



**REQUEST FOR QUALIFICATIONS  
(RFQ) & EXPRESSIONS OF INTEREST  
CONSULTING SERVICES**  
(29 Del.C. §6982 (b))

**REAL ESTATE APPRAISAL SERVICES**

**AGREEMENT NO. 1690**  
**FEE APPRAISAL SERVICES**

**AGREEMENT NO. 1691**  
**FEE REVIEW APPRAISAL SERVICES**

**PROJECT DESCRIPTION**

The purpose of this procurement is to establish a list of Certified Real Estate Fee Appraisers & Fee Review Appraisers who will be eligible to perform appraisal services as part of 3-year open-end agreements. Task orders will be at the discretion of DelDOT's contracting official. Once under contract, appraisers will supplement DelDOT's staff and provide the necessary services to continue the Department's Real Estate Appraisal needs for ongoing projects when staff appraisers are unavailable.

Agreement #1690 will be primarily for Fee Appraisal Services and Agreement #1691 will be primarily for Fee Review Appraisal Services. Appraisers responding to this RFQ must complete an Expression of Interest Questionnaire for each agreement you wish to be considered for. (See 'Attachment A').

**ADDITIONAL INFORMATION**

Successful candidates will be required to sign a MASTER AGREEMENT ('Attachment B') which will provide general guidelines for services. Those selected are not guaranteed any work. Work assignments will be made at the discretion of DelDOT.

Expressions of Interest will be accepted from individual appraisers only, not businesses. More than one individual of the same firm may apply separately. Appraisal services shall not be sublet or any part of the assignment transferred to a third party. Appraisers may use assistance, provided the individual and the nature of the assistance to be provided are approved in advance by DelDOT. The successful candidates are required to submit a price and availability proposal for potential task assignments.

Individuals issued their initial Real Estate Appraisal Licenses after the below submission date can submit an Expression of Interest to be considered for addition to the list. All requirements and processes will be the same as set forth herein, with the exception of the submission deadline. All successful candidates must provide a valid Delaware Business License and complete a W-9 (<https://w9.accounting.delaware.gov/W9form.aspx>) in order to receive payment for services rendered on assignments.

## SUBMISSION REQUIREMENTS

1. **Expression of Interest submissions** must be received by: **3:00 P.M. Local Time, Tuesday April 8, 2014.**

Electronic and facsimile responses to this Request for Expressions of Interest are not acceptable. No response hand-delivered or otherwise will be accepted after the above date and time. Expressions of Interest arriving after the deadline will be rejected regardless of the reason for late arrival. DelDOT's time is considered the official time for determining the cut-off for accepting Expression of Interest submissions. Firms wishing to be considered for work on this project must submit statements expressing interest as set forth herein. Any variation, including additions, is considered a basis for rejection. Expressions of Interest are to be mailed or delivered to:

Wendy B. Henry, Consultant Control Coordinator  
Contract Administration  
Delaware Department of Transportation  
800 Bay Road, Dover, DE 19901

Should the office be closed at the time responses are due (i.e. an unexpected event or inclement weather) the submission due date shall be the following business day, at the time originally scheduled.

2. **Specific Type Firm Solicited:**  
There is no pre-registration requirement in order to submit an expression of interest on this project.
3. **DBE Goals** may be established by the DBE Program Office on federally funded tasks issued under this agreement. Tasks will be evaluated independently for potential DBE participation. Expressions of Interest must include a statement of commitment to achieve goals established for individual tasks. The commitment shall include an understanding that proposed DBE firms to be used for goal attainment purposes must be certified with DelDOT's DBE Program Office.
4. **The Consultant shall submit one (1) original and three (3) copies** of an Expression of Interest. Receipt of insufficient copies of the Expression of Interest and non-compliance with providing the requested information in the desired format may result in elimination from the overall shortlist and selection process.
5. **In order to comply with the State of Delaware's Freedom of Information Act**, firms responding to this Request for Qualifications **shall prepare and submit** one (1) electronic copy (e.g. CD, flash drive) of their Expression with any proprietary or confidential information redacted. This copy should be clearly marked as "Redacted Copy" and submitted along with the other copies. **This electronic copy is required even if the submission contains no proprietary or confidential information.** Firms should review Delaware's Freedom of Information Regulations, section 6, Requests for Confidentiality, on the DelDOT Website [www.deldot.gov](http://www.deldot.gov) and Section 10002(l) "Public record" of the Delaware Code, <http://delcode.delaware.gov/title29/c100/index.shtml> to determine what information may be considered proprietary or confidential and may be redacted from their Expression of Interest. Appraisers responding to both RFQ's 1690 and 1691 may submit both 'Redacted Copies' on the same electronic media.

6. **Joint venture** submissions will not be considered.
7. **DeIDOT reserves the right to reject** any and all Expressions of Interest. All submissions become property of the Delaware Department of Transportation and shall be retained for a period not to exceed 30 days from the date of the approved shortlist. DeIDOT reserves the right to any and all ideas included in this response without incurring any obligations to the responding firms or committing to procurement of the proposed services.

### **RATING CRITERIA**

Major factors/criteria for selection of candidates:

- a) Qualifications/Licensing
- b) Experience in the profession
- c) Project understanding/approach/services required

**NOTE:** Selection Committee membership appointments are confidential.

### **CONTACTS**

**Responses to questions concerning submissions and procedures** may be obtained from: Wendy B. Henry Consultant Control Coordinator's Office, Telephone: (302) 760-2531. E-mail address: [wendy.henry@state.de.us](mailto:wendy.henry@state.de.us).

### **QUESTIONS**

**Questions regarding this RFQ should be submitted via email** to the point of contact listed above. The Department's response to questions will be posted on the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/>.

### **FEDERAL CONTRACT PROVISIONS**

All firms responding to the RFQ are expected to comply with the federal contract provisions located at the end of this document.

### **REQUIRED CERTIFICATION FORMS**

All firms responding to the RFQ must complete and return the Submission Forms located in 'Attachment C' of this document.

### **OVERVIEW OF SELECTION PROCESS**

The Expressions of Interest will be used to determine selection of Certified Real Estate Fee Appraisers and Fee Review Appraisers. Of those expressing interest in the Project, those deemed qualified may be requested to submit additional written material as part of the Selection phase in lieu of an Oral Presentation/Interview. The Department's Professional Services Procurement Manual may be viewed [here](#).

## EXPRESSION OF INTEREST REQUIREMENTS

The Expression of Interest submission cover page shall clearly identify which agreement(s) you wish to be considered for. The submission should be tabbed and collated in the following order:

1. Please submit the firm's mailing address, phone number, and an e-mail address for the firm's point of contact person. Future contacts by DelDOT will be done via e-mail, whenever possible.
2. Indicate the county or counties for which you wish to be considered.
3. List your current Real Estate Appraiser license number (i.e.; X1-0000000).
4. Complete and sign an Expression of Interest Questionnaire for each agreement you wish to be considered for.
5. A copy of the appraiser's current license.
6. A listing of the appraiser's qualifications.
7. References. Submit three (3) references, limited to one (1) page – single side of a sheet of paper. Provide a minimum of three clients, addresses and verified phone numbers and contact persons.
8. All candidates expressing interest in this project must complete an Internal Control Questionnaire. This form can be found on the DelDOT website <http://www.deldot.gov/information/business/> , under 'External Audit' then by clicking on 'Internal Control Questionnaire'. Please complete and return the form via email to Christine Levely, External Audit Supervisor, at [DOT.AuditManagement@state.de.us](mailto:DOT.AuditManagement@state.de.us).

NOTE: If you are currently on the list of Certified Fee Appraisers for Agreement 1581-1582 and there are no updates to the information you are submitting, please complete only page one of the Internal Control Questionnaire indicating that there are no changes to your information, sign and return the form via email to Christine Levely at the email address listed above.

If you have questions concerning completion of this form please contact our Audit Department at 302-760-2494.

No promotional materials or brochures to be included as part of the Expression of Interest package.

The Department is not liable for any cost incurred by the consultant in the preparation or presentation of the Statement of Qualifications.

The Department of Transportation will affirmatively insure individuals and businesses will not be discriminated against on the grounds of race, creed, color, sex, or national origin in consideration for an award. Minority business enterprises will be afforded full opportunity to submit bids/proposals in response to this invitation.

**Department of Transportation**  
**State of Delaware**  
**By: Shailen P. Bhatt**  
**Secretary**  
**Dover, DE**  
**March 10, 2014**

**EXPRESSION OF INTEREST QUESTIONNAIRE**  
REAL ESTATE FEE APPRAISERS

**Please complete the following questions to the best of your ability. Summarize your education, training, ability and experience in each of the following areas.**

Name:

Are you willing to testify in a court of law, to support appraisal conclusions, with an emphasis on knowledge and experience with formal eminent domain proceedings?	Yes ___	No ___
--	---------	--------

If yes describe related experiences:

Do you possess a current <b><u>Certified General (X1)</u></b> or <b><u>Certified Residential (X2)</u></b> Real Estate Appraiser license, as issued by the State of Delaware, Division of Profession Regulation, <b><u>Copy of license must be attached.</u></b>	Yes ___	No ___
---	---------	--------

License Number:

Expiration Date:

Have you done work for any DOT or for eminent domain proceedings?	Yes ___	No ___
---	---------	--------

Please summarize your education and experience with real property appraisals:

Please summarize your knowledge and ability to interpret construction and site development plans, with an emphasis on interpreting highway construction/right of way plans, as they relate to property being appraised:

Specify hourly rate for pre-trial conference and court appearances:

Do you agree to comply with the applicable provisions of Section 2 of DelDOT's Real Estate Manual as well as standards and opinions as set forth in the Uniform Standards of Professional Appraisal Practice (USPAP)?	Yes ___	No ___
---	---------	--------

Do you agree to attend a mandatory annual one-day meeting with appropriate DelDOT staff for the purpose of addressing new issues and general reviewing of related appraisal matter? There shall be no charge to DelDOT for this meeting.	Yes ___	No ___
--	---------	--------

Desired geographic service area:

Desired appraisal type (partial acquisition, strip acquisition, total acquisition, before and after valuations, denial of access, corridor preservation, development rights, etc.):

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

**EXPRESSION OF INTEREST QUESTIONNAIRE**  
REAL ESTATE FEE REVIEW APPRAISER

**Please complete the following questions to the best of your ability. Summarize your education, training, ability and experience in each of the following areas.**

Name:

Are you willing to testify in a court of law, to support appraisal conclusions, with an emphasis on knowledge and experience with formal eminent domain proceedings?	Yes __	No __
--	--------	-------

If yes describe related experiences:

Do you possess a current <b><u>Certified General (X1)</u></b> Real Estate Appraiser license, as issued by the State of Delaware, Division of Profession Regulation; <b><u>Copy of license must be attached.</u></b>	Yes __	No __
---	--------	-------

License Number:

Expiration Date:

Have you done work for any DOT or for eminent domain proceedings?	Yes __	No __
---	--------	-------

Please summarize your education and experience with real property appraisal reviews:

Please summarize your knowledge and ability to interpret construction and site development plans, with an emphasis on interpreting highway construction/right of way plans, as they relate to property being appraised:

Specify hourly rate for pre-trial conference and court appearances:

Do you agree to comply with the applicable provisions of Section 3 of DelDOT's Real Estate Manual as well as standards and opinions as set forth in the Uniform Standards of Professional Appraisal Practice (USPAP)?

Yes \_\_\_ No \_\_\_

Do you agree to attend a mandatory annual one-day meeting with appropriate DelDOT staff for the purpose of addressing new issues and general reviewing of related appraisal matter? There shall be no charge to DelDOT for this meeting.

Yes \_\_\_ No \_\_\_

Desired geographic service area:

Desired appraisal review type (partial acquisition, strip acquisition, total acquisition, before and after valuations, denial of access, corridor preservation, development rights, etc.):

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

**AGREEMENT 1690**  
**MASTER AGREEMENT FOR FEE APPRAISERS**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

LICENSE NUMBER: \_\_\_\_\_

hereinafter referred to as the "**APPRAISER**", and the Department of Transportation, P. O. Box 778, Dover, Delaware, 19903, hereinafter referred to as the "**DEPARTMENT**,"

**WITNESSETH:**

**WHEREAS**, the **DEPARTMENT** will require the professional services of the **APPRAISER** in connection with the acquisition or disposition of property rights for public improvement projects under the **DEPARTMENT'S** jurisdiction; and,

**WHEREAS**, the **APPRAISER** is willing to provide such services to the **DEPARTMENT** when required and agrees to perform such appraisal services in conformance with the hereinafter stated terms and conditions:

**NOW, THEREFORE**, it is mutually agreed by and between the **APPRAISER** and the **DEPARTMENT** as follows:

- A.** The **DEPARTMENT** will, as the need arises, make individual appraisal assignments to the **APPRAISER** through the use of a "Fee Appraiser Assignment Contract". (Attachment A) The assignment contract shall set forth the following information: the date of the contract; the complete name and address of each party to the contract; the State and Federal-aid project numbers, project parcel numbers, location of the project, and location of the property to be appraised, as applicable; description of the work to be done in sufficient detail to show the nature and extent of the services contemplated; data to be furnished by the **DEPARTMENT**; date completed reports are due; the appraisal fee; and, separate from the appraisal fee, the hourly and per diem rates to be paid for pretrial conferences and court appearances, respectively, as an expert witness.
- B.** The **DEPARTMENT** will furnish the **APPRAISER** with a list of items generally considered noncompensable under Delaware Law, to be supplemented by legal counsel for the **DEPARTMENT** when necessary. The **APPRAISER** will consider as noncompensable any such items in completing the appraisal assignment.
- C.** The **DEPARTMENT** will furnish the **APPRAISER** with a copy of applicable subsections of the section of the Real Estate Manual entitled "Appraisals" and "Appraisal Review" and Exhibits.
- D.** The **APPRAISER** agrees to prepare all appraisal reports in accordance with acceptable appraisal principles and techniques in the valuation of real property and in conformance with the Appraisals section of the Real Estate Manual and the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation and all relevant Federal, State, and local laws and ordinances. If through error, omission or otherwise, information required to document an appraisal report is not incorporated therein, it shall be furnished upon demand at no extra cost. There shall be no compensation paid by the **DEPARTMENT** for revisions or corrections of an appraisal report required because of the appraiser's or specialist's errors, omissions or failure to comply with contract or agreement specifications and standards in the contract and/or agreement.
- E.** The **APPRAISER** agrees to provide the **DEPARTMENT** with a copy of his current certification of licensure issued by the Delaware Council on Real Estate Appraisers (This requirement does not apply to Machinery and Equipment Appraisers).
- F.** The **APPRAISER** agrees to update all appraisal reports upon request of the **DEPARTMENT**. Any fee to be paid for the additional work required to update an appraisal report shall be based upon a negotiated fee for such additional work as agreed, in writing, between the **DEPARTMENT** and the **APPRAISER** at the time of the assignment to update the report.
- G.** The **APPRAISER** agrees to be available for necessary pretrial conferences and to testify as to the value of any and all of the property included in his appraisal report in any judicial proceeding involving the value of said property. Separate and additional hourly compensation, as stipulated in the fee appraiser assignment contract, will be paid for pretrial conferences and court appearances by the **APPRAISER**. In the event of any judicial procedure requiring attendance upon the court for the purpose of testifying, compensation based upon an agreed hourly rate shall be limited to time necessarily spent (1) traveling to and from the courthouse, (2) waiting in the courthouse for the call to the witness stand, and (3) testifying.
- H.** The **DEPARTMENT** and the **APPRAISER** agree that in the event of a major change in the scope, character, or estimated total cost of the work to be performed, either an increase or a decrease, then, upon the mutual agreement of both parties, the fee appraiser assignment contract may be renegotiated and modified by written agreement between the parties hereto.
- I.** Payment for services rendered by the **APPRAISER** in completing appraisal assignments will be tendered by the **DEPARTMENT** within 30 days of the **DEPARTMENT'S** approval of an appraisal report.
- J.** The **APPRAISER** warrants that he has not employed or retained any company, firm, or person other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any company, firm, or person, other than a bona fide employee working solely for him, any fee, commission, percentage, brokerage fees, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the **DEPARTMENT** shall have the right to annul this agreement without liability.
- K.** The **APPRAISER** agrees not to sublet or transfer any part of the appraisal assignment to a third party unless such permission is received in advance, in writing, from the **DEPARTMENT**.

**L.** The **APPRAISER** agrees to save the **DEPARTMENT** harmless from any and all liability and claims arising out of or incident to the completion of the appraisal assignment by the **APPRAISER** or the **APPRAISER's** agents or employees. **APPRAISER** is not an employee of the **DEPARTMENT** and is responsible for providing their own insurance requirements and coverage.

**M.** If the **APPRAISER** refuses or fails to perform the fee appraiser assignment contract within the time specified, or any permitted extension thereof, or does not comply with the terms of this Agreement, or if the quality or progress of work is unsatisfactory as determined by the **DEPARTMENT**, the **DEPARTMENT** may, by written notice, terminate the rights of the **APPRAISER** to continue with the contract, or with such part or parts thereof as to which there has been delay, and may hold the **APPRAISER** liable for any damage caused the **DEPARTMENT** by reason of such termination. The right of the **APPRAISER** to proceed with the performance of the contract shall not be terminated if the delay is due to causes beyond the control and without the fault or negligence of the **APPRAISER**, as determined by the **DEPARTMENT**. If the contract is terminated because of failure on the part of the **APPRAISER** to fulfill his responsibilities under the contract or this Agreement, the **DEPARTMENT** may take over the work and services and prosecute the same to completion by contract or otherwise, and the **APPRAISER** shall be liable to the **DEPARTMENT** for any extra cost occasioned to the **DEPARTMENT** thereby.

**N.** During the performance of this contract, the **APPRAISER**, for himself or herself, assignees and successors in interest, agrees as follows:

(1) **COMPLIANCE WITH REGULATIONS:** The **APPRAISER** shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **NONDISCRIMINATION:** The **APPRAISER**, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The **APPRAISER** shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In solicitations either by competitive bidding or negotiation made by the **APPRAISER** for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the **APPRAISER** of the **APPRAISER's** obligations under this contract and the Regulations relative to nondiscrimination on the grounds

of race, color, or national origin. including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the **APPRAISER** of the **APPRAISER's** obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **INFORMATION AND REPORTS:** The **APPRAISER** shall provide all information and reports required by the Regulations, or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of an **APPRAISER** is in the exclusive possession of another who fails or refuses to furnish this information, the **APPRAISER** shall so certify to the **DEPARTMENT**, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **SANCTIONS FOR NONCOMPLIANCE:** In the event of the **APPRAISER's** noncompliance with the nondiscrimination provisions of this contract, the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding of payments to the **APPRAISER** under the contract until the **APPRAISER** complies, and/or (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **INCORPORATION OF PROVISIONS:** The **APPRAISER** shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The **APPRAISER** shall take such action with respect to any subcontract or procurement as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event an **APPRAISER** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **APPRAISER** may request the **DEPARTMENT** to enter into such litigation to protect the interests of the State, and, in addition, the **APPRAISER** may request the United States to enter into such litigation to protect the interests of the United States.

**O.** In the event of questions or disputes of fact arising from or in connection with this Agreement or the fee appraiser assignment contract not disposed of by agreement, the **DEPARTMENT** and the **APPRAISER** agree that the Office of the Attorney General of the State of Delaware shall act as arbitrator and its decision shall be final and binding upon both parties.

**P.** This agreement shall expire on May 31, 2017. The **DEPARTMENT** may authorize completion of tasks extending beyond said date if assigned prior to the expiration date.

**MASTER AGREEMENT 1691 FOR FEE REVIEW APPRAISERS**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between:  
 NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

LICENSE NUMBER: \_\_\_\_\_

hereinafter referred to as the "**REVIEW APPRAISER**", and the Department of Transportation, P. O. Box 778, Dover, Delaware, 19903, hereinafter referred to as the "**DEPARTMENT**,"

**WITNESSETH:**

**WHEREAS**, the **DEPARTMENT** will require the professional services of the **REVIEW APPRAISER** in connection with the acquisition or disposition of property rights for public improvement projects under the **DEPARTMENT**'s jurisdiction; and,

**WHEREAS**, the **REVIEW APPRAISER** is willing to provide such services to the **DEPARTMENT** when required and agrees to perform such appraisal services in conformance with the hereinafter stated terms and conditions:

**NOW, THEREFORE**, it is mutually agreed by and between the **REVIEW APPRAISER** and the **DEPARTMENT** as follows:

**A.** The **DEPARTMENT** will, as the need arises, make individual appraisal assignments to the **REVIEW APPRAISER** through the use of a "Fee Appraiser Assignment Contract". (Attachment A) The assignment contract shall set forth the following information: the date of the contract; the complete name and address of each party to the contract; the State and Federal-aid project numbers, project parcel numbers, location of the project, and location of the property appraisal to be reviewed, as applicable; description of the work to be done in sufficient detail to show the nature and extent of the services contemplated; data to be furnished by the **DEPARTMENT**; date completed reports are due; the review appraisal fee; and, separate from the review appraisal fee, the hourly and per diem rates to be paid for pretrial conferences and court appearances, respectively, as an expert witness.

**B.** The **DEPARTMENT** will furnish the **REVIEW APPRAISER** with a list of items generally considered noncompensable under Delaware Law, to be supplemented by legal counsel for the **DEPARTMENT** when necessary. The **REVIEW APPRAISER** will consider as noncompensable any such items in completing the appraisal assignment.

**C.** The **DEPARTMENT** will furnish the **REVIEW APPRAISER** with a copy of applicable subsections of the section of the Real Estate Manual entitled "Appraisals" and "Appraisal Review" and Exhibits.

**D.** The **REVIEW APPRAISER** agrees to prepare all appraisal reports in accordance with acceptable appraisal principles and techniques in the valuation of real property and in conformance with the Appraisals section of the Real Estate Manual and the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation and all relevant Federal, State, and local laws and ordinances. If through error, omission or otherwise, information required to document an appraisal review report is not incorporated therein, it shall be furnished upon demand at no extra cost. There shall be no compensation paid by the **DEPARTMENT** for revisions or corrections of an appraisal review report required because of the review appraiser's or specialist's errors, omissions or failure to comply with contract or agreement specifications and standards in the contract and/or agreement.

**E.** The **REVIEW APPRAISER** agrees to provide the **DEPARTMENT** with a copy of his current certification of licensure issued by the Delaware Council on Real Estate Appraisers (This requirement does not apply to Machinery and Equipment Appraisers).

**F.** The **REVIEW APPRAISER** agrees to update all appraisal reports upon request of the **DEPARTMENT**. Any fee to be paid for the additional work required to update an appraisal review

report shall be based upon a negotiated fee for such additional work as agreed, in writing, between the **DEPARTMENT** and the **REVIEW APPRAISER** at the time of the assignment to update the report.

**G.** The **REVIEW APPRAISER** agrees to make himself or herself available for necessary pretrial conferences and to testify as to the value of any and all of the property included in his appraisal review report in any judicial proceeding involving the value of said property. Separate and additional hourly compensation, as stipulated in the fee review appraiser assignment contract, will be paid for pretrial conferences and court appearances by the **REVIEW APPRAISER**. In the event of any judicial procedure requiring attendance upon the court for the purpose of testifying, compensation based upon an agreed hourly rate shall be limited to time necessarily spent (1) traveling to and from the courthouse, (2) waiting in the courthouse for the call to the witness stand, and (3) testifying.

**H.** The **DEPARTMENT** and the **REVIEW APPRAISER** agree that in the event of a major change in the scope, character, or estimated total cost of the work to be performed, either an increase or a decrease, then, upon the mutual agreement of both parties, the fee review appraiser assignment contract may be renegotiated and modified by written agreement between the parties hereto.

**I.** Payment for services rendered by the **REVIEW APPRAISER** in completing appraisal assignments will be tendered by the **DEPARTMENT** within 30 days of the **DEPARTMENT**'s approval of an appraisal review report.

**J.** The **REVIEW APPRAISER** warrants that he has not employed or retained any company, firm, or person other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any company, firm, or person, other than a bona fide employee working solely for him, any fee, commission, percentage, brokerage fees, gifts, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the **DEPARTMENT** shall have the right to annul this agreement without liability.

**K.** The **REVIEW APPRAISER** agrees not to sublet or transfer any part of the appraisal review assignment to a third party unless such permission is received in advance, in writing, from the **DEPARTMENT**.

L. The **REVIEW APPRAISER** agrees to save the **DEPARTMENT** harmless from any and all liability and claims arising out of or incident to the completion of the appraisal review assignment by the **REVIEW APPRAISER** or the **REVIEW APPRAISER**'s agents or employees. **APPRAISER** is not an employee of the **DEPARTMENT** and is responsible for providing their own insurance requirements and coverage.

M. If the **REVIEW APPRAISER** refuses or fails to perform the fee review appraiser assignment contract within the time specified, or any permitted extension thereof, or does not comply with the terms of this Agreement, or if the quality or progress of work is unsatisfactory as determined by the **DEPARTMENT**, the **DEPARTMENT** may, by written notice, terminate the rights of the **REVIEW APPRAISER** to continue with the contract, or with such part or parts thereof as to which there has been delay, and may hold the **REVIEW APPRAISER** liable for any damage caused the **DEPARTMENT** by reason of such termination. The right of the **REVIEW APPRAISER** to proceed with the performance of the contract shall not be terminated if the delay is due to causes beyond the control and without the fault or negligence of the **REVIEW APPRAISER**, as determined by the **DEPARTMENT**. If the contract is terminated because of failure on the part of the **REVIEW APPRAISER** to fulfill his responsibilities under the contract or this Agreement, the **DEPARTMENT** may take over the work and services and prosecute the same to completion by contract or otherwise, and the **REVIEW APPRAISER** shall be liable to the **DEPARTMENT** for any extra cost occasioned to the **DEPARTMENT** thereby.

N. During the performance of this contract, the **REVIEW APPRAISER**, for himself or herself, assignees and successors in interest, agrees as follows:

(1) **COMPLIANCE WITH REGULATIONS:** The **REVIEW APPRAISER** shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) **NONDISCRIMINATION:** The **REVIEW APPRAISER**, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The **REVIEW APPRAISER** shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) **SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the **REVIEW APPRAISER** for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be

notified by the **REVIEW APPRAISER** of the **REVIEW APPRAISER**'s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) **INFORMATION AND REPORTS:** The **REVIEW APPRAISER** shall provide all information and reports required by the Regulations, or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of an **REVIEW APPRAISER** is in the exclusive possession of another who fails or refuses to furnish this information, the **REVIEW APPRAISER** shall so certify to the **DEPARTMENT**, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **SANCTIONS FOR NONCOMPLIANCE:** In the event of the **REVIEW APPRAISER**'s noncompliance with the nondiscrimination provisions of this contract, the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding of payments to the **REVIEW APPRAISER** under the contract until the **REVIEW APPRAISER** complies, and/or (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **INCORPORATION OF PROVISIONS:** The **REVIEW APPRAISER** shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The **REVIEW APPRAISER** shall take such action with respect to any subcontract or procurement as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a **REVIEW APPRAISER** becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **REVIEW APPRAISER** may request the **DEPARTMENT** to enter into such litigation to protect the interests of the State, and, in addition, the **REVIEW APPRAISER** may request the United States to enter into such litigation to protect the interests of the United States.

O. In the event of questions or disputes of fact arising from or in connection with this Agreement or the fee review appraiser assignment contract not disposed of by agreement, the **DEPARTMENT** and the **REVIEW APPRAISER** agree that the Office of the Attorney General of the State of Delaware shall act as arbitrator and its decision shall be final and binding upon both parties.

P. This agreement shall expire on May 31, 2017. The **DEPARTMENT** may authorize completion of tasks extending beyond said date if assigned prior to the expiration date.

**ATTACHMENT C**

**CERTIFICATION FORMS**

**RFQ 1690- 1691**

**REAL ESTATE APPRAISAL SERVICES**

### **Attachment C - REQUIRED FORMS**

The following completed forms are required to be returned with each proposal:

- **Certification of Eligibility**
- **Certificate Of Non-Collusion**
- **Certification Of Primary Participant Regarding Debarment, Suspension, And Other Responsibility Matters**
- **Certification Of Restrictions On Lobbying**

**CERTIFICATION OF ELIGIBILITY**

**Delaware Department of Transportation**

**Request for Qualification 1690 –1691 Real Estate Appraisal Services**

**Attention:** Wendy B. Henry, Contract Administration  
Delaware Department of Transportation  
800 Bay Road  
Dover, DE 19901

We have read Request for Qualifications number 1690 & 1691 and fully understand the intent of the RFQ as stated, certify that we have adequate personnel and knowledge to fulfill the requirements thereof, and agree to furnish such services in accordance with the contract documents as indicated should we be awarded the contract.

\_\_\_\_\_ hereby certifies that it is not included on the United States Comptroller General’s Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standard Provisions.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

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

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## CERTIFICATE OF NON-COLLUSION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting to such prices, with any other bidder or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING  
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY  
MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), \_\_\_\_\_ certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- 4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.

If the primary participant (applicant for an FTA grant or cooperative agreement, or potential third party contractor) is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract), \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq, are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

\_\_\_\_\_  
Date

## CERTIFICATION OF RESTRICTIONS ON LOBBYING

The Bidder or Offeror certifies, to the best of its knowledge and belief, that:

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)).

3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE BIDDER OR OFFEROR, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

\_\_\_\_\_ Signature of the Bidder or Offeror's Authorized Official

\_\_\_\_\_ Name and Title of the Bidder or Offeror's Authorized Official

\_\_\_\_\_ Date

## **FEDERAL CONTRACT PROVISIONS**

FTA's Master Agreement contains a current, but not all-inclusive, description of statutory and regulatory requirements that may affect a recipient's procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). The Master Agreement states that applicable Federal requirements will apply to project participants to the lowest tier necessary to ensure compliance with those requirements. A recipient will also need to include applicable Federal requirements in each subagreement, lease, third party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other Federal agencies, FTA recommends that the recipient contact those agencies.

The requirements listed herein must be adhered to by any firms selected to perform work required under these agreements.

### **1. AUDIT AND INSPECTION OF RECORDS**

The Contractor agrees to provide the Delaware Department of Transportation (Department), the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives' access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

### **2. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES**

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 *et seq.* And 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. App. Section 1612; and implementing regulations, as may be amended

### **3. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – Lower Tier Covered Transactions (Third Party Contracts over \$100,000)**

- a) By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal

Government, the Department may pursue available remedies, including suspension and/or debarment.

- c) The prospective lower tier participant shall provide immediate written notice to the Department if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- d) The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “persons,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the Department for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Department.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include the clause “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the No procurement List issued by the U. S. General Service Administration.
- h) Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under Paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Department may pursue available remedies including suspension and/or debarment.

- j) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its “principals” [as defined at 49 CFR §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- k) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**4. CLEAN WATER REQUIREMENTS**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2)The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**5. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**6. CLEAN AIR**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**7. ENERGY CONSERVATION**

The Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 US Section 321 et seq.).

**8. CONTRACT TERMINATION**

a) Termination for Convenience

The Department may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on product delivered up to the time of termination. The Contractor shall promptly submit its termination claim for payment. If the Contractor has any property in its possession belonging to the Department, the Contractor will account for the same and dispose of it in the manner the Department directs.

b) Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Department may terminate this contract for default. Termination shall be affected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined that the Contractor had an excusable reason for not performing, such as a strike, flood, events which are not the fault of or are beyond the control of the Contractor, the Department, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

In the event the Department exercises its right of termination for default, and if an amount for liquidated damages is set forth, the Contractor shall be liable to the Department for excess costs and, in addition, for liquidated damages in the amount set forth, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Department may reasonably obtain delivery or performance of similar supplies or services.

If the contract is so terminated, the Contractor shall continue performance and be liable to the Department for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

The Contractor shall not be liable for liquidated damages resulting from delays such as acts of God, strikes, fire or flood, and events which are not the fault of, or are beyond the control of the Contractor.

**9. CIVIL RIGHTS**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment

opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq. And 49 U.S.C. Section 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. App. Section 1612; and implementing regulations, as may be amended.

(4) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **10. DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this contract. Consequently the DBE Requirements of 49 CFR Part 26 apply to this contract. The recipient or its contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under

this contract. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of FTA assisted subcontracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems appropriate.

The successful bidder agrees to comply with the following clauses:

Prompt Payment: The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Department. This clause applies to both DBE and Non-DBE subcontractors.

Retainage: The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Department. This clause applies to both DBE and non-DBE subcontractors.

The specific goal for this contract is:

Disadvantaged Business Enterprise                      **0 Percent**

**11. ENVIRONMENTAL VIOLATIONS**

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection

Agency regulations: (40 CFR, Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. The Contractor shall report violations to the FTA.

**12. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, age, sex or disability. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are tested during their employment without regard to their race, creed, religion, color, national origin, age, sex or disability. Such actions shall include, but not be limited to the following, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

**13. FTA FUNDING REQUIREMENTS**

This project may be financed in part by funds from the Federal Transit Administration. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**14. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Department requests which would cause the Department to be in violation of the FTA terms and conditions.

**15. LOBBYING:**

The Contractor is required to certify using the Certification of Restrictions on Lobbying Form included that, to the best of his or her knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

**16. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

(1) The Department and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**17. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**18. PROTEST PROCEDURES**

Protests based upon the award of the contract shall be made in writing to the Contract Services Administrator no later than ten (10) calendar days following the award of the contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The protest will be reviewed and decided pursuant to; the proposal documents issued by the Department, the Delaware Code, and the Federal Transit Authority's regulations.

**19. RECORD RETENTION**

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Department, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

**20. SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**21. TITLE VI COMPLIANCE**

During the performance of any Contract entered into pursuant to these specifications, the Contractor, for itself, its assignees and successor in interest, agrees that it shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. section 2000d) and the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations Part 21, as they may be amended from time to time which are incorporated by reference and made a part of this contract.

**22. INTELLIGENT TRANSPORTATION SYSTEMS**

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.