

DELAWARE DEPARTMENT OF TRANSPORTATION

**REQUEST FOR PROPOSALS**



Delaware Department  
of Transportation

**AGREEMENT NO. 1700**

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
SUPPORTIVE SERVICES CONSULTANT**

**PROPOSAL DUE DATE/TIME: 3:00 P.M. Tuesday, June 24, 2014**

Requests for Proposals are to be delivered to Contract Administration, Delaware Department of Transportation, 800 Bay Road, Dover, Delaware 19903 until **3:00 PM** local time on proposal due date shown above.

Issued: May 30, 2014

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## **REQUEST FOR PROPOSALS**

### **DISADVANTAGED BUSINESS ENTERPRISE SUPPORTIVE SERVICES CONSULTANT**

#### **1. OVERVIEW AND AUTHORITY**

##### **1.1 Purpose**

The Civil Rights Division is responsible for developing, implementing, and monitoring the DBE Program, which is based on federal legislation, 49 CFR Part 26. This legislation ensures nondiscrimination in the award and administration of federally-assisted transportation agreements.

This DBE Supportive Services program is guided by 49 CFR Part 26.51 (b) which provides regulatory guidance for state transportation agencies. Regulations for the DBE Business Development Program implementation are found in 49 CFR Part 26 Appendix C.

This Request for Proposals (RFP) is issued by the Delaware Department of Transportation (hereinafter designated as 'Department') for the purpose providing services to certified Disadvantaged Business Enterprises (DBE's) to enhance their ability to compete in the transportation/highway construction industry. The DBE Supportive Services consultant shall be tasked to develop the Supportive Services (SS) program to meet the goals of the program in accordance with all federal and state laws, rules and guidelines. Particularly, the consultant will be required to develop and implement a Supportive Services Program that incorporates all aspects of 49 CFR 26, Appendix C, as it relates to the business development program (BDP). The selected consultant will also be required to develop and implement supportive services for DBE firms and small businesses that do not participate in the BDP, but that are still eligible to receive supportive services.

The selected consultant must develop and submit a written DBE Supportive Services Program, including the BDP formulated in accordance with 49 CFR 26, Appendix C, within 120 days of issuance of the written Notice to Proceed (NTP) from the Department's Contract Administration Office.

##### **1.2 Intent**

The intent of this proposal request is to secure qualified consultants that have proven ability to perform the services described. The Department intends to select one consultant to provide these services. The agreement is for a three-year period contingent upon consultant performance and program funding. The Department reserves the right to terminate this agreement for any reason upon written notification to the consultant. Selection is not based solely on price.

### **1.3 Scope**

This document contains general information relating to the procedural requirements in the preparation of proposals to the Department, performance requirements and proposer characteristics, which must be met in order for a proposal to receive consideration.

### **1.4 Authority**

This Request for Proposals is issued pursuant to 29 Del C §6982 (b).

### **1.5 Inquiries**

Should proposers have any questions as to the intent or meaning of any part of this proposal, they must contact the Department as indicated below no later than one week prior to proposal due date to guarantee a reply. **Responses to questions concerning the RFP, submissions, and procedures** may be obtained by submitting your questions to the DOT Professional Services mailbox at [DOT.Profservices@state.de.us](mailto:DOT.Profservices@state.de.us) or via telephone at (302)760-2531.

Questions and answers (not identities) will be shared with all proposers on the following Website: [www.bids.delaware.gov](http://www.bids.delaware.gov) as addendums. It is the responsibility of the proposer to check the website often for addendums, questions and answers, and other information concerning this solicitation. All inquiries concerning this RFP must be submitted to the address shown below. No other Department, Division, or employee may be contacted, and responses from such other person shall have no effect on this solicitation.

Ms. Wendy B. Henry, Consultant Control Coordinator  
Contract Administration  
Delaware Department of Transportation  
800 Bay Road  
Dover, Delaware 19901  
(302) 760-2531

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.

Questions should be submitted in the following format.

- Section number
- Paragraph number
- Page number
- Text of passage being questioned
- Question

### **1.6. Right to Amend**

The Department reserves the right to amend or supplement this RFP, giving equal information and cooperation by way of an issued addendum to all consultants as a result of any such amendment.

### **1.7. Liability for Errors**

While the Department has used considerable efforts to ensure an accurate representation of information in this RFP, the information contained in the RFP is supplied solely as a guideline for all consultants submitting responses.

The information is not guaranteed or warranted to be accurate by the Department nor is it necessarily comprehensive or exhaustive.

Consultants acknowledge and understand that it is their responsibility to obtain clarifications concerning this RFP through the Questions and Answers process prior to the date listed in Section 1.10, and that failure to understand the terms of the RFP will not be considered a valid reason for any resulting non-compliant rating.

### **1.8. Use of the RFP**

The RFP document or any portion thereof may not be reproduced or used for any purpose other than the preparation of proposal submissions by the consultant.

### **1.9. Consultant's Expenses**

Consultants shall be solely responsible for any liability or expenses they incur in preparing, delivering, or presenting a response to this RFP, and for subsequent negotiations with the Department, if any. All consultants shall fully bear the costs associated with pre-agreement activities including, but not limited to, proposal preparation, negotiations, and/or proposed agreements.

### **1.10. Timeline**

Provided below is a list of critical dates and actions. These dates are subject to change. Notice of changes will be posted on the State of Delaware Bid Solicitation Directory at [www.bids.delaware.gov](http://www.bids.delaware.gov) under this RFP number. It is the responsibility of all interested Consultants to monitor this site for any changing information prior to submitting your proposal.

<b>Action/Location</b>	<b>Date</b>	<b>Local Time</b>
<b>RFP Advertisement</b>	<b>5/30/2014</b>	<b>8:00 am</b>
<b>Final Date to Submit Questions</b>	<b>6/17/2014</b>	<b>3:00 pm</b>
<b>RFP Submissions Due</b>	<b>6/24/2014</b>	<b>3:00 pm</b>
<b>Anticipated Award</b>	<b>7/31/2014</b>	<b>4:30 pm</b>

## **2. AGREEMENT REQUIREMENTS**

### **2.1 Formal Agreement**

The Consultant shall promptly execute an agreement prepared by the Department that shall incorporate the terms of this RFP within twenty (20) days after award, unless an extension of time is mutually agreed upon by both parties. The Consultant is not to begin

any work prior to receipt of a written Notice To Proceed (NTP) from the Department's Contract Administration group. The proposals submitted by the Consultant become a part of the agreement. Submission of a proposal in response to this RFP indicates acceptance of all of the terms and conditions contained herein.

## **2.2. Terms of Agreement**

The following agreement terms shall be included in the Consultant's agreement with the Department:

- 2.2.1. This agreement shall be for a three (3) year term, and all work assignments will be issued on an on-call task order basis and will be at the discretion of the Department and the availability of funding. The agreement award shall be for a period of three years from the date of execution of the agreement. The agreement must be executed with the successful Consultants within 20 days after award. The Department may terminate the agreement at any time upon written notice to the Consultant.
- 2.2.2. The selected consultant(s) will be expected to enter negotiations with the State of Delaware, which will result in a formal agreement between parties. This RFP and the selected Consultant's response to this RFP will be incorporated as part of any formal agreement.
- 2.2.3. **The DBE Program Office has set a fifteen percent (15%) DBE Goal** on federally funded tasks issued under this agreement. Tasks will be evaluated independently for potential DBE participation. DBE firms must be certified through the Department's DBE Program in order to qualify towards meeting this goal. Candidate firms should become familiar with the Department's [DBE Program](#).
- 2.2.4. **Fee Structures**

The Consultant will certify, by signing the agreement, that the Consultant has thoroughly investigated the Department's requirements and shall make no claims for compensation in addition to amounts set forth in the written agreement.

In consideration of the faithful and competent performance by the Consultant of the work and services set forth in this RFP, the Department agrees to pay the Consultant, including any sub consultant expenses, as follows:

- 2.2.4.1. Actual direct salary cost of productive technical personnel, which is defined as salaries paid to productive technical personnel engaged in fulfilling the work and services delineated in the Agreement, plus payroll burdens and approved indirect overhead expenses. No premium for overtime will be paid without prior written Department authorization. Payroll burden and indirect overhead cost shall not be applied to the premium portion of overtime.
- 2.2.4.2. For billing purposes, payroll burden and overhead rate of salaries paid to productive technical personnel are a combined rate based on the actual rate audited in accordance with the Federal Acquisition Regulations (FAR) Part 31 for a set period of time and approved by the Department, or a provisional overhead rate established by the Department. All overhead rate determinations will become a part of the Agreement. Final payment for payroll burdens and indirect overhead under the agreement is subject to audit and will be based on actual costs. The Consultant's combined FAR Part 31 audited payroll burden and overhead rate shall be submitted to the Department annually within six months from the end of their fiscal year. Failure to submit a FAR audited rate in a timely manner will result in deduction of

overhead payments until such time as the proper audited report is submitted. Rate preparation and audit costs are not chargeable to the project.

- 2.2.4.3. Reasonable reimbursable direct non-salary costs attributed to the project are as follows:
  1. Lodging and subsistence, actual cost not to exceed CONUS (Continental United States) per diem rates set for the location by the U.S. General Services Administration, and pre-approved by the Department.
  2. Mileage will be reimbursed in accordance with the Consultant's written policy for mileage reimbursement. It shall represent the actual amount of reimbursement paid to employees for mileage, and only for approved project related mileage properly documented by a trip log. In no case can the rate exceed the U.S. General Services Administration (GSA) rate established for the year in which work is being performed. Said mileage will not include commuting to or from work. For measurement purposes, the point of beginning shall be taken from the official place of business for each of the Consultant's employees.
  3. Procurement of any goods, services or documents not specifically listed above will require prior written approval from the Department.
- 2.2.4.4. Cost plus fixed fee for profit payments shall be made for performance of work described in the RFP. The fixed fee for profit shall be negotiated based on current Department policy on a task-by-task basis, or when the overhead rate is set or adjusted by the Department. The amount for fixed fee for profit shall not be expressed as a percentage in either the proposal or subsequent billings. Fixed fee for profit shall not be permitted on non-salary direct costs. Payments for fixed fee for profit are subject to review by the Department and must be supported by monthly progress reports showing an acceptable percentage of work completed as verified by a certified progress report.
- 2.2.5. The proposals submitted by the successful Consultants may become an addendum to the agreement signed by the successful Consultants, and the proposal must be valid for a minimum of one hundred twenty [120] days from the proposal due date.
- 2.2.6. By submitting a proposal, the proposing Consultant agrees that in the event it is awarded an agreement, it will indemnify and otherwise hold harmless the State of Delaware, its agents and any employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Consultant's, its agents and employees' performance of work or services in connection with the agreement.
- 2.2.7. The Consultant 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 Consultant's negligent performance under this agreement, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Consultant in their negligent performance under this agreement
- 2.2.8. In meeting this obligation the Consultant shall secure and furnish the Department a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, Automobile, and Errors and Omissions insurance coverage from an insurance company authorized to do business in the State of Delaware. The minimum

amounts of coverage for property damage and personal injury shall be \$1,000,000 combined single limit. Errors and Omissions insurance coverage shall be for a minimum of \$1,000,000. The insurance company shall be authorized to do business in the State of Delaware. The successful Consultants shall provide the Department with 30 days' notice in the event the policy is cancelled or not renewed.

- 2.2.9. The Consultant 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 agreement. The Consultant and its officers, employees, or agents are independent contractors and are not employees of the State of Delaware.
- 2.2.10. The selected Consultant shall secure and furnish the Department a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, and Automobile insurance coverage from an insurance company authorized to do business in the State of Delaware. The State of Delaware- Department of Transportation shall be named a certificate holder on the certificates of insurance. The insurance agency shall provide the Department with 30 days' notice in the event the policy is canceled or not renewed.
- 2.2.11. During the term of this agreement, the Consultant shall, at its own expense, carry insurance minimum limits as follows:

a.	Commercial General Liability	\$1,000,000 per person and \$3,000,000 per occurrence
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And at least one of the following, as outlined below:

b.	Medical or Professional Liability	\$1,000,000/\$3,000,000
c.	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
d.	Product Liability	\$1,000,000/\$3,000,000

The successful Consultant must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

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

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

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

- 2.2.12 Notwithstanding the information contained above, the successful Consultant(s) shall indemnify and hold harmless the State of Delaware, the DDOJ, and its employees from contingent liability to others for damages because of bodily injury, including death, that may result from the successful Consultant(s) negligent performance under

- this agreement, and any other liability for damages for which the successful Consultant(s) is required to indemnify the State, the DDOJ and its employees under any provision of this agreement.
- 2.2.13 In performing the services subject to this RFP the successful Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The successful Consultants shall comply with all federal and state laws and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this provision constitutes a material breach of contract. Appendix A of this RFP contains a statement of Federal Contract Provisions which includes, among other subjects, details related to civil rights.
- 2.2.14 The successful Consultant shall certify that it has not employed or retained any company or person other than a bona fide employee working for the successful Consultant, to solicit or secure the agreement and that he has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the Department shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. Notwithstanding anything in the errors and omissions policy to the contrary, the standard of performance with which the successful Consultant(s) must comply is that degree of care and skill ordinarily exercised under similar conditions by other like Consultants currently practicing in this state.
- 2.2.15 The Laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful Consultant(s) consents to jurisdiction and venue in the State of Delaware.
- 2.2.16 The successful Consultant must have a valid Delaware business license in order to receive payment for services.
- 2.2.17 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 hereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to law.
- 2.2.18 The Department reserves the right to annul any agreement if, in its opinion, there is a failure at any time to perform adequately the stipulations of this invitation to respond, and the general conditions and specifications which are part of these proposals, or in any case of any attempt to impose upon the Department services of an unacceptable quality. Any action taken in pursuance of this latter stipulation shall not affect or impair any rights or claim of the Department to damages for the breach of any covenants of the agreement by the contractor.
- 2.2.19 If the Consultant 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 Consultant. Such Consultant shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- 2.2.20 Performance Requirements - The selected Consultant 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.
- 2.2.21 This RFP (including any written questions and Department responses), the executed agreement between the successful Consultant and the Department, and the successful Consultant's proposal, shall constitute the agreement between the Department and the Consultant. In the event there is any discrepancy between any of these agreement documents, the following order of documents govern so that the former prevails over the latter: Agreement, RFP (including written questions and answers), any addendum to the RFP, and then the selected Consultant's proposal. No other documents shall be considered. These documents contain the entire agreement between the Department and the Consultant.
- 2.2.22 With respect to work provided to or conducted for the State by a Consultant, the Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished to the State by the selected Consultant, or any of its subcontractors.
- 2.2.23 The selected Consultant shall follow practices consistent with generally accepted professional and technical standards.
- 2.2.24 The selected Consultant shall be responsible for ensuring that all services, products and deliverables furnished to the State are coordinated with the Department and are consistent with practices utilized by, or standards promulgated by State of Delaware.
- 2.2.25 If any service, product or deliverable furnished by the selected Consultant does not conform to Department standards or general practices, the Consultant shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to Department standards or practices
- 2.2.26 The selected Consultant is prohibited from divulging any information attained during the work activities for the Department.
- 2.2.27 Should the selected Consultant fail to furnish any item or items, or fail to complete the required work included in the agreement, the Department reserves the right to withdraw such items or required work from the operation of the agreement without incurring further liabilities on the part of the Department.
- 2.2.28 Access to Records - The Consultant shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this agreement and make such materials available at its offices at all reasonable times during the period of this agreement and for a minimum period of three years after final payment by the Department and shall make the material available upon request for inspection and audit by the Department. The Consultant is required to comply with all reasonable requests and supply information and documentation pertaining to this project to Department authorized auditors.

### **2.3. Debarment or Suspension**

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.

### **3. PROJECT REQUIREMENTS**

Services may include, but are not limited to, the following:

#### **3.1. DBE Supportive Services Program**

A written DBE Supportive Services program plan in accordance with 49 CFR 26.51 (b), including the Business Development Program (BDP) that is formulated in accordance with 49 CFR part 26, Appendix C, and with the direction of the Department, must be submitted by the selected Consultant to the Department for review and approval within 120 days of issuance of the notice to proceed (NTP).

#### **3.2. Business Development Program**

The DBE Supportive Services Consultant shall be tasked to develop a list of Qualified DBEs by evaluating the capacity of DBEs already housed in the Department's directory. Such evaluation must include the firm's geographical concentration and related business activity concentration, gross receipts, equipment, and relevant experience among other considerations. For the Department it is imperative that we have a concise indication of the DBE community's capacity to complete specific items on the Department's-federal-aid contracts.

3.2.1. The following six (6) categories of firms are targeted for program assistance via the Business Development Program (BDP):

1. Newly-certified DBE firms that have been bidding on transportation-related projects for twelve (12) months or less.
2. DBE firms that have, in the past, or are currently participating in transportation-related projects.
3. Newly-certified DBE firms who have been in business for at least 3 years.
4. DBE firms that have never engaged in transportation-related projects, but, have the desire and potential to do so.
5. DBE firms with marketable goods and services (applicable to the transportation industry) that are not considered a construction company.
6. Underutilized firms.

Participation in the BDP will be based on selection criteria developed by the consultant, available funding, and progress DBE firms make within the program.

#### **3.3. Department DBE Capacity Assessment**

- 3.3.1. Within 30 days after the written Business Development Program (BDP) is approved, the Consultant will create, make available, and start administering detailed and comprehensive capacity/needs assessments to DBEs to evaluate each firm's proficiency level to perform highway construction and transportation support related projects.
- 3.3.2. The consultant will identify BDP participants via a method developed and described in the written BDP plan.

### **3.4 General Business Assistance**

The consultant will facilitate monthly (or bi-monthly) orientation to new or re-evaluated the Department's certified DBE firms. The orientation shall consist of the following:

- 3.4.1. Inform DBE firms about the types of technical assistance available from the supportive services consultant including Basic DBE program terminology; Department construction/consulting contracting procedures and requirements; networking with prime consultants and large sub consultants and training on the bidding process.
- 3.4.2. The orientation shall assist and encourage DBEs in developing their capability to utilize new technology and conduct business through electronic media. The supportive services consultant must ensure computers are available for use by DBE firms, either at their offices, or at other convenient locations in order to provide training and other services.
- 3.4.3. The Consultant should also plan for DBE firms who are out of town utilizing web-based technology.

### **3.5. Technical Assistance**

Technical assistance shall be provided in such a manner to enable the firm, in the future, to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance.

### **3.6. Implement the BDP**

The Consultant is expected to actively recruit DBE firms into the BDP while funding, program resources, and qualified DBE firms (identified based on their business assessment) exist. To implement the BDP, the contractor shall perform the following as specified in 49, CFR Part 26, Appendix C.

- 3.6.1. Recruit and enroll firms into the Department's Business Development Program for the purpose of providing technical assistance to build business and workforce capacity for DBE firms whose business is highway construction or highway construction related such as an Architectural/Engineering (A/E) Consultant, fee appraisers for right-of-way work or construction-related activity that is directly tied to something that is eligible for Federal-aid highway reimbursement under 23USC.
- 3.6.2. Perform individual needs assessment surveys to ascertain areas of financial and/or technical assistance required and refer the DBE firm to the appropriate firm or develop a business strategy to enter in the Department's highway construction procurement program;
- 3.6.3. Provide technical assistance to DBE firms to assist them in developing and growing their business. If the supportive services consultant or firm is unable to provide assistance they shall make referrals to appropriate local, State, and federal agencies that can provide the needed services. DBE firms shall make a two-year commitment to the program and abide by all program governance rules;

- 3.6.4. Develop customized technical assistance for each participant for the:
1. Developmental phase to assist in strengthening financial and managerial skills, and to access relevant markets; and the
  2. Transitional phase to prepare firm for leaving the business development program.
- 3.6.5. By no later than six (6) months of a DBE firm's entry into the BDP, and with the consultant's assistance, the participant should develop and submit to the consultant a comprehensive business plan setting forth the participant's business targets, objectives and goals.
- 3.6.6. The participant will not be eligible for program benefits until such business plan is submitted, reviewed by the consultant and approved by the Department. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.
- 3.6.7. Each DBE participant should annually review its currently approved business plan with the consultant and modify the plan as may be appropriate to account for any changes in the Consultant's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the consultant approves in writing a modified plan. The consultant should establish an anniversary date for review of the participant's business plan and agreement forecasts.
- 3.6.8. Each participant should annually forecast in writing its need for agreement awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph 3.6.19.5 of this document. Such forecast should be included in the participant's business plan. The forecast should include:
1. The aggregate dollar value of agreements to be sought under the DBE program, reflecting compliance with the business plan;
  2. The aggregate dollar value of agreements to be sought in areas other than traditional areas of DBE participation;
  3. The types of agreement opportunities being sought, based on the firm's primary line of business; and
  4. Such other information as may be requested by the consultant to aid in providing effective business development assistance to the participant.
- 3.6.9. Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.
- 3.6.10. The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of agreements, aggregate amount of the agreement received, years in business, growth potential, etc.

- 3.6.11. Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the consultant at the same time other modifications are submitted pursuant to the annual review under paragraph 3.6.19.5 of this section. The plan should set forth the same information as required under paragraph 3.6.19.6 of steps the participant will take to continue its business development after the expiration of its program term.
- 3.6.12. When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient and consultant.
- 3.6.13. In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:
1. Profitability;
  2. Sales, including improved ratio of non-traditional agreements to traditional-type agreements;
  3. Net worth, financial ratios, working capital, capitalization, access to credit and capital;
  4. Ability to obtain bonding;
  5. A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
  6. Good management capacity and capability.
- 3.6.14. Upon determination by the consultant and recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.
- 3.6.15. Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on agreements, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.
- 3.6.16. DBE firms who are receiving technical assistance via the BDP must sign an agreement for a two-year commitment to ensure that the firm shall progress through the BDP.

- 3.6.17. The selected consultant will provide monthly Client reports to monitor the progress of the DBE firm. Reports must be submitted to the Department's Office of Civil Rights' designee for FHWA reporting purposes and shall include all back-up documentation such as contact sheets, reports from sub-consultants and other outside service providers.
- 3.6.18. The selected consultant will facilitate bi-monthly meetings for DBE firms who are receiving direct technical assistance via the DBE/SS Program to provide additional supportive services training, and other matters of importance;
- 3.6.19. Specific areas of assistance include, but are not limited to:
  - 3.6.19.1 Writing a business plan to be approved by the Department's Civil Rights Office, and which must be reviewed and updated annually;
  - 3.6.19.2 Estimating;
  - 3.6.19.3 Bid preparation and submission;
  - 3.6.19.4 Assist DBE firms in identifying contracting opportunities, reading solicitations, specifications and drawings;
  - 3.6.19.5 Referral to an accounting/financial firm for education related to accounting, cash flow management, and to develop financial statements for submission to SBA-backed financial institutions for bonding or loan packaging;
  - 3.6.19.6 Marketing plan development to include review of existing capability statement, website design and promotional/information brochures; Lease, rental, or purchase of equipment;
  - 3.6.19.7 Navigating the Department's website and the State of Delaware website;
  - 3.6.19.8 Reading and interpreting plans and specifications;
  - 3.6.19.9 Developing and/or following progress charts;
  - 3.6.19.10 Developing subcontract agreements;
  - 3.6.19.11 Developing plans for financial packages for the purposes of securing a loan or bid bonds;
  - 3.6.19.12 Pre-bid conferences;
  - 3.6.19.13 Basic business management;
  - 3.6.19.14 Business law;
  - 3.6.19.15 Equal Employment Opportunity (EEO);
  - 3.6.19.16 Safety
  - 3.6.19.17 Computer training;
  - 3.6.19.18 Coordinate, in conjunction with the Department's DBE/SS Program, Manger relevant training for DBE firms that will increase their business capacity.
- 3.6.20. Assistance shall be provided in the form of education that includes counseling, classroom and online training, workshops, and one-on-one technical or managerial assistance, and when appropriate, referrals to other supportive services providers. The selected consultant is required to maintain a confidential case management file for each DBE receiving assistance.
- 3.6.21. Each quarter during the two year commitment period each participant will be reviewed to determine if they are ready to move into the transitional phase to prepare for leaving the business development program. This is demonstrated by a

significantly increased capacity to bid and compete on Department projects. The move to the transitional phase can occur at any point during the two years. If the participant is not ready to enter the transitional phase after two years in the program, reasons for such must be documented. This information must be reported to the Department's Civil Rights office for review. A determination will be made regarding whether or not the participant is eligible to continue in the business development program. Participants in the transitional phase may continue in the program for a period of 12 months at which time they must be reviewed to determine whether or not they can continue in the program. Specific documentation and criteria must support all determinations.

### **3.7. Annual DBE Needs Assessment Survey**

The Supportive Service consultant shall assist the Department's staff in developing assessment instruments, distribution of survey and analyzing the data for Agency consideration and adjustment needed to provide quality business assistance and programmatic adjustments.

### **3.8. Networking/Recruitment**

The Supportive Services consultant shall develop working relationships with all of the certified DBE firms. As time and budget permits, this can be accomplished via site visits, and/or written, phone and/or email contacts with each firm.

3.8.1. The Supportive Services Consultant shall perform the following:

- 3.8.1.1 Organize and facilitate quarterly meet and greet events for DBEs and DelDOT/FHWA staff and/or other Agency representatives that support small business development;
- 3.8.1.2 Organize and facilitate two semi-annual (fall and late winter/early spring) networking events between the prime contracting community and Department- certified DBE firms. These events may also be facilitated in collaboration with the other State and Local small business development agencies, and organizations.
- 3.8.1.3 Administer an effective outreach and marketing program to solicit qualified firms to the DBE program, including but not limited to identifying potential DBEs in areas of need to the Department; and working with outside entities such as the Small Business Administration, Small Business Development Council, U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization (OSDBU), colleges, and universities.
- 3.8.1.4 Conduct statewide outreach activities and events to raise DBE program awareness and disseminate information to potential DBEs that have the potential to conduct business in the transportation construction industry.
- 3.8.1.5 Participate in and disseminate information about the Department, and Delaware Office of Supplier Diversity meetings and other events with DBE opportunities. Provide ongoing communication to DBEs in order for them to become better prepared to compete for and receive transportation related awards.
- 3.8.1.6 Identify and recruit Small Business Enterprises and Minority Business Enterprises potentially eligible for DBE certification that perform road and bridge work to become certified DBEs.

- 3.8.1.7 May assist firms through the steps to become certified.
- 3.8.1.8 DBE firms that do not take advantage of assistance through the BDP may still qualify for similar services under the DBE Supportive Services Program.
- 3.8.1.9 Develop working relationships with state, local and federal agencies and staff for possible referrals of DBE firms. The agencies and individuals may provide additional supportive services to DBE firms in the areas of bonding, small business accounting practices, marketing, computer technology, equipment purchasing and leasing, workforce development and basic business financial management skills. The entities include, but are not limited to:
  - 1. Delaware Office of Supplier Diversity
  - 2. Delaware River and Bay Authority
  - 3. The U.S Department of Transportation Office of Small and Disadvantaged Business Utilization
  - 4. U.S. Department of Transportation Small Business Transportation Resource Center Program (Financial technical assistance provider)
  - 5. U.S. Small Business Administration (SBA)
  - 6. U.S. Department of Commerce (Minority Business Development Agency)
- 3.8.1.10 The consultant shall develop working relationships with other small business development entities, including, but not limited to:
  - 1. National Association of Minority Contractors
  - 2. Delaware Contractors Association (DCA)
  - 3. American Council of Engineering Companies
  - 4. Conference of Minority Transit Officials
  - 5. Latin American Community Center
  - 6. Delaware Chamber of Commerce
  - 7. Other small business development entities

### **3.9. Coordination with the Delaware Office of Supplier Diversity**

As a part of the Department's collaborative efforts to assist local small business firms to compete and win opportunities on the Department's federally-assisted highway construction projects, the DBE/SS consultant shall support the Department's relationship with the Delaware Office of Supplier Diversity by:

- 3.9.1. Information sharing of the Department's federally-assisted procurement opportunities;
- 3.9.2. Joint Sponsorship of networking and outreach events targeted towards the small business community;
- 3.9.3. Inviting access to the Department's subsidized or reduced cost highway construction-related training programs

### **3.10. DBE Training**

In accordance to the Title VI regulations, the contractor must have the capability to correspond with and provide services to non-English speaking participants.

- 3.10.1. The consultant shall develop and organize training workshops for participants in the BDP as well as non-participant DBE firms. Trainings should be held semi-annually during the fall/winter and early spring seasons. Those trainings shall include, but shall not be limited to the following:
- 3.10.1.1. Financial capacity workshops – in coordination with the US Department of Transportation Small Business Resource Technical Centers, Short-Term Lending Program Lenders and other SBA-backed financial entities that support small business development.
  - 3.10.1.2. Davis Bacon Wage Act Workshop in partnership with the U.S. Department of Labor. This workshop is to assist consultants in understanding how to properly submit certified payrolls and is helpful in determining labor costs during the bidding process.
  - 3.10.1.3. Develop, organize and facilitate a winter highway construction training program during the period of December – April to include, but not limited to, the following courses:
    - 1. 30 Hour OSHA Safety Training
    - 2. Construction Math
    - 3. Estimating
    - 4. Blueprint Reading
    - 5. Flagger Certification
    - 6. Work Zone Safety (Delaware Manual on Uniform Traffic Control Devices MUTCD standards)
    - 7. Certified Construction Reviewer
    - 8. How to Read A DelDOT solicitation
    - 9. Marketing Strategies
    - 10. Quickbooks or other financial software training
    - 11. Project Management Software
    - 12. Contractor Debriefing Procedures
    - 13. Agency Construction Manual
    - 14. Electronic Bidding
    - 15. Other informative workshops
  - 3.10.1.4. The consultant shall develop and maintain an electronic list of relevant business training opportunities for DBE firms from:
    - 1. Local colleges and universities
    - 2. State and federal agencies
    - 3. Other Department approved training facilities

### **3.11. Service Locations**

The DBE Supportive Services consultant must be able to provide online and onsite services including training, counseling and other services to program participants within the State of Delaware. Consultant must be available for meeting with the Department as required.

### **3.12. Documentation**

3.12.1 Written documentation of all assistance provided to DBE firms and applicants by the supportive services consultant must be maintained in a data base. This information is to be provided to the Department monthly as

- support documentation for monthly reports, or at the request of the Department's Project Manager/Civil Rights Staff.
- 3.12.2 Each supportive services consultant staff member shall be required to maintain strict confidentiality regarding the contents of files from DBE applicants and DBE firms who are certified or recertified (provided assistance).
  - 3.12.3 Monthly reports shall be submitted to the Department's Civil Rights office within ten (10) calendar days following the end of each month in a format approved by the Department.
  - 3.12.4 Quarterly reports shall be submitted to the Department's Civil Rights office within ten (10) calendar days following the end of each Quarter (January, April, July, and October). The report format must be approved by the Department.
  - 3.12.5 An annual report (summation of all period activities, including the last period of July 1 to September 30) must be provided within fifteen (15) calendar days following the end of the Federal Fiscal Year, or by October 15<sup>th</sup>). The report format must be approved by the Department.
  - 3.12.6 Each report must be narrative in nature, addressing each task listed in the proposal, the progress made, and state any problems that were encountered. The reports must also contain a detailed budget including:
    - 3.12.6.1 Summary of work activities and tasks including: state project number assigned by the Department, reporting period, activities completed, action items, issues, etc.
    - 3.12.6.2 Summary of payroll costs by work activity identified in the scope of work. The payroll summary shall show the name of the employee, employee classification, overtime hours, straight-time hours, and salary paid.
    - 3.12.6.3 Mileage summary, if applicable, showing: miles, rate, and total amount.
    - 3.12.6.4 General expense summary including all direct expenses paid by the consultant.
    - 3.12.6.5 Sub-consultant summary showing: date, consultant name, work activity, summary of payroll costs as required in item 3.12.6.2 above, and total amount (sub-consultant invoice should be attached to voucher).
    - 3.12.6.6 Project summary showing: current billing subtotals, current profit billed, and total billed amount.
  - 3.12.7 Profit/Fixed fee is a negotiated amount. The payment for profit shall be based on the total percentage of work completed to date.
  - 3.12.8 The supportive services consultant may be requested to provide other reports upon written request by the Department.
  - 3.12.9 All records are subject to random review at any time by the Department and shall become the property of the Department upon completion/termination of the agreement.
  - 3.12.10 Review meetings shall be scheduled by the Department with the supportive services consultant as deemed necessary.
  - 3.12.11 The Department shall annually survey DBE companies' satisfaction with the supportive services consultant, and sub-consultant/contractors. The survey shall

help the Department measure the effectiveness of the supportive services program and identify areas for improvement.

3.12.12 The Department may conduct a performance audit at the consultant’s office at any point during the agreement period.

**3.13. DBE Supportive Services For Non BDP Participants**

Supportive services are available to all Delaware registered DBE firms, whether or not they participate in the Business Development Program. Those services are virtually identical with the exception of the requirement for a signed commitment to participate. Consultants that do not participate in the BDP may take advantage of supportive services based on their needs, but are not enrolled in a program that provides a customized plan to graduate. The DBE Supportive Services Consultant must provide services to these DBE firms as requested, and as the budget allows.

**3.14. Inspection and Acceptance**

Performance monitoring by the Department will take place daily, monthly, and annually. The combination of these monitoring levels will ensure process and acceptable performance throughout the term of the Agreement. Performance monitoring will be conducted by the Department’s Project Manager (PM). The PM will not become involved in the Contractor's staffing or equipment requirements or individual work activities. The Department shall inspect the quality of the work performed to ensure that it meets applicable specifications.

**3.15. Deliverables**

The Contractor shall perform the activities required to successfully complete the Department’s requirements and submit each deliverable to the Department’s PM in accordance with the following:

<u>Deliverable</u>	<u>Due Date</u>
Written and approved DBE Supportive Services Program Plan	Within 4 months of NTP
Written and approved business development Program	Within 4 months of NTP
DBE Capacity Assessments	Begin within 30 days of FHWA approved BDP
Identify firms that meet criteria for business development program	Within 6 months of NTP
Identify and Evaluate Firms in the DelDOT's directory for Suitability for DelDOT's Federal Aid Projects	within 6 months of NTP
Provide a Curriculum of DBE Trainings for use During the Remaining Period of Performance	within 6 months of NTP
Provide a Strategy for Better Coordination with the Delaware Office of Supplier Diversity	within 6 months of NTP

### **3.16. Project Personnel and Resources**

The DBE Supportive Services consultant's team will consist of a project manager, business consultants, marketing and outreach consultant, technical support, and administrative/project support. The Consultant's project manager shall be experienced in the type of work noted in this RFP, and will be the Department's point of contact for all matters related to the agreement. The consultant's project manager shall be approved by the Department's Project Manager and shall be the official representative of the Consultant for the purpose of receiving and carrying out the instructions of the Contracting Officer and the Department's Program Manager and otherwise acting for the Consultant in any and all matters arising under the Agreement. The name of the designated representative shall be submitted to the Department's Project Manager for approval within seven (7) days after award of the Agreement.

The Department can provide meeting and training facilities, and will dedicate time in support of the program by providing guidance and oversight to the consultant, and attending meetings and workshops presented by the consultant to discuss specific issues and general DBE opportunities.

### **3.17. Project Monitoring and Evaluation**

The Department will monitor activity and measure the program's success on an ongoing basis. Information may be collected via phone, during site visits, via consultant monthly performance reports, annual program reviews or any method the Department deems appropriate. Concerns and issues will be identified and addressed in a timely manner with the DBE/SS provider. All findings will be documented by the Department in quarterly reports and communicated to the DBE/SS provider.

The Department's DBE/SS project manager will communicate with DBE participants, contractors and those receiving services and will assess the quality of services received. The consultant's project manager will communicate the results to their sub-consultants and/or other service providers monthly to identify needed improvements, and to provide redirection if needed. Documentation of such must be included in monthly reports to the Department.

### **3.18. Reporting**

The consultant will submit monthly, quarterly, and annual activity reports to the Department. Those reports will include, but not be limited to, performance measure results including firms receiving assistance, type of assistance, cost of assistance, positive or negative impacts to the firm, DBE firm goals met. Any other activities and accomplishments and concerns or barriers to goal accomplishment must be reported.

### **3.19. Start Date**

The Department anticipates a start date as soon as possible after Notice of Award and signature of agreement by both parties.

### **3.20. Data Management**

The consultant will be required to maintain data electronically via a current system, a system developed or acquired by the consultant, or a system developed or acquired by the

Department. The Department must approve any system in advance of use for this program.

Data to be maintained includes, but is not limited to, participant profiles, training data, assessment results, training results, financial assistance, each encounter/contact with participant, partnerships and the nature of such, events sponsored and attended with demographic data.

All information and any systems developed and/or purchased as a result of the Department's DBE Supportive Services Program becomes the sole property of the Department.

## **4. PROPOSAL REQUIREMENTS**

### **4.1 Written Proposals**

Proposals should be prepared simply and economically, providing a straightforward, concise description of proposer capabilities to satisfy the requirements of this proposal. To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP using the requested format. Emphasis should be on completeness and clarity of contents. Proposal responses will be expected to address the following areas; the submission should be tabbed and collated in the following order:

- A. Cover Letter – Two pages maximum - Each proposal shall have a cover letter on the letterhead of the Consultant submitting the proposal. The covers letter should be signed by the individual authorized to commit the company to the work being proposed. At the top of the first page, **list the Consultant Representative's Name, Telephone Number and e-mail address**. This will be the main contact representing the proposer.
- B. Experience – Two pages maximum - The Consultant shall submit information demonstrating the Consultant's qualifications, experience of key employees, and list the number of employees by job title.
- C. Company Facilities - The proposer's business history to include the number of years in operation; number of offices on a national, state, or local level and the address and name of each; the number of employees located at each office.
- D. References – List three (3) references, company names, contact names and phone numbers. By providing such information, the Consultant grants the Department permission to contact these individuals.
- E. Stipulations / Exceptions – A listing of any and all stipulations or exceptions taken to any item in this proposal. The Department reserves the right to reject any stipulations and/or exceptions taken.
- F. Contractual Expectations – List any contractual provisions which the proposer expects the Department to agree. NOTE: The Department will issue the Agreement covering this work.
- G. Certification – The Certification forms included in Appendix A must be filled out, signed, attested, notarized, sealed, and attached to the original proposal submission.

#### **4.2. Submission of Proposals**

The Department will receive sealed proposals until the date and time indicated in Section 1.10 as described in this Proposal. Proposals must be delivered and addressed as indicated. Proposals will be opened and only the names of the submitting consultants publicly read on the date and time indicated. Facsimile responses to this Request for Proposal are not acceptable.

#### **4.3. Proposal Due Date/Time – 3:00 P.M. Tuesday, June 24, 2014 (local time)**

Proposals are to be delivered to Contract Administration, Delaware Department of Transportation, 800 Bay Road, Dover, Delaware 19903. Proposals must be delivered in sealed envelopes and be clearly marked on the outside: "**DBE Supportive Services Consultant Proposal**". Proposals can be either delivered via courier or Delivered by Hand.

#### **4.4. Extensions**

The Department may extend the time and place for the receipt and opening of proposals, on not less than two (2) calendar days' notice, by certified delivery, facsimile machine or other electronic means to those bidders who obtained copies of the specifications or descriptions.

#### **4.5. Submitted Copies**

One (1) original (so marked) and five (5) copies of the Proposal must be submitted. An authorized representative of the company submitting a proposal must sign the original proposal. Notification of the proposal award and all communications will be made by e-mail.

#### **4.6. Cost of Proposals**

The proposers shall be responsible for any liability or cost incurred in connection with responding to this request for proposal. All Consultants shall fully bear the costs associated with pre-agreement activities, including proposal preparation, negotiations, and/or proposed agreements.

#### **4.7. Confidentiality**

In order to comply with the State of Delaware's Freedom of Information Act, Consultants 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.** Consultants should review Delaware's Freedom of Information Regulations, Section 6, Requests for Confidentiality, on the Department's Website [www.deldot.gov](http://www.deldot.gov) and Section 10002(1) "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.

#### **4.8. Proposal Rejection**

Failure to follow instructions contained in this document may be cause for rejection of submitted proposals.

## **5. SELECTION AND AWARD PROCESS**

### **5.1. Selection Committee**

The Selection Committee shall be comprised of State employees. The Selection Committee shall review all proposals submitted in response to this RFP, may negotiate with one or more of these Consultants.

### **5.2. Proposal Review**

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

### **5.3. Evaluation Process**

The Selection Committee shall determine the Consultants that meet the minimum requirements pursuant to criteria of the RFP. The Committee may negotiate with responsible offerors who submit proposals found to be reasonably likely to be selected for award. The Committee may request best and final offers from one or more Consultants, and may amend the proposal before award for this purpose. The Committee may, at its discretion, terminate negotiations with any or all Consultants. The Committee will score and rank accepted proposals. The Committee shall make a recommendation to the Division Director, to award an agreement to the successful Consultant(s) in the best interests of the State of Delaware.

### **5.4. Selection Criteria**

The Selection Committee shall score each accepted proposal and assign up to the maximum number of points as stated in this Section for each Evaluation Item to each of the accepted proposing Consultants. All assignments of points shall be at the sole discretion of the Selection Committee members.

- 5.4.1. All accepted proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Committee to evaluate proposals:

<b>Evaluation Item</b>	<b>Maximum Points</b>
Project Understanding and approach	<b>35</b>
Data management system/capability	<b>25</b>
Scheduling/Firms capability/Resources	<b>20</b>
Demonstrated experience	<b>15</b>
Completeness of Submission/Clarity/Readability	<b>5</b>

5.4.2. Each Selection committee member will score each Consultant as provided on the Score sheet. The total scores of each proposal from each Selection Committee member will be ranked from highest to lowest (highest score receives ranking of 1).

5.4.3. At the conclusion of ranking by the Selection Committee, a preliminary list will be compiled, in the order of ranking, of the most responsive and responsible proposals. This will be the Committee’s recommendation for award.

**5.5. Award**

The Department intends to award the agreement to the most responsive and responsible Consultant(s). The Department, within 20 days from date of receipt of proposals, shall make this award in writing and for the selected Consultant (s). If a successful Consultant cannot be chosen, all proposals will be rejected in this same time period.

**5.6. Department Rights**

The Department reserves the right to:

- Select for agreement or for negotiations a proposal other than that with the lowest costs;
- Reject any and all proposals received in response to this RFP;
- Make no award;
- Issue a new RFP;
- Waive any informalities, irregularities, or inconsistency in proposals received;
- Request modification to proposals from any or all proposers during the review and negotiation;
- Negotiate any aspect of the proposal with any Consultant and negotiate with more than one Consultant at the same time;
- Make partial awards;
- Increase or decrease quantities;
- Reject any request that shows any omission, alterations of forms, additions not called for, conditions, or alternate proposals;
- Deny any and all exceptions to the RFP requirements;

- Reject any non-responsive or non-conforming proposals;
- Make any such award as is deemed to be in the best interest of the State of Delaware.

## **5.7 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**

**APPENDIX A**

**CERTIFICATION FORMS**

**REQUEST FOR PROPOSAL No. 1700**

**DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
SUPPORTIVE SERVICES CONSULTANT**

## CERTIFICATION OF ELIGIBILITY

### Delaware Department of Transportation

#### Request for Proposal Number 1700 – DBE Supportive Services

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

We have read Request for Proposal Number 1700 and fully understand the intent of the RFP 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

- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) 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.
- j) 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.

- k) 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.
- l) 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                      **15 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.