



**REQUEST FOR QUALIFICATIONS  
(RFQ) & EXPRESSIONS OF INTEREST  
CONSULTING SERVICES**

(29 Del.C. §§6981 & 6982)

**Agreement No. 1733-1735**

**RIGHT-OF-WAY CONSULTANT SERVICES**

**PROJECT DESCRIPTION**

The purpose of this procurement is to select up to three (3) qualified appraisal firms who will be eligible to perform full-service land acquisition, relocation assistance and property management as part of 3-year open-end agreements. Once under contract, appraisers will supplement DelDOT's staff and provide the necessary services to continue the Department's Real Estate Appraisal needs for ongoing projects when staff appraisers are unavailable. Task orders will be at the discretion of DelDOT's contracting official.

Definitions:

<u>Appraisal Manager</u> -	DelDOT staff member identified as the Head of the Appraisal Section. Typically an Agent IV level position
<u>Appraisal Waiver</u> -	DelDOT version of an FHWA waiver valuation, limited to \$25,000
<u>Consultant</u> -	The prequalified firm that provides right-of-way services
<u>ROW Manual</u> -	Right-of-Way Acquisition Manual
<u>DelDOT/Department</u> -	Delaware Department of Transportation including the Right-of-Way "ROW"
<u>Right-of-Way - Acquisition Manual</u>	DelDOT Manual controlling right-of-way related activities
<u>Department's - Designated Representative (DDR)</u>	ROW Agent, Manager or other assigned employee formerly assigned by the Department as the ROW Project Manager
<u>Chief of ROW</u> -	Lead DelDOT staff member responsible for the ROW Unit

**CONSULTANT SERVICES REQUIRED**

The tasks noted below cover the range of those typically provided by a full-service land acquisition and relocation assistance consultant. Depending on the specific project, some tasks listed herein may be unnecessary and, if necessary, others of a more specialized nature may need to be added.

## **1 - Public Involvement**

The selected consultant with the assistance and guidance of DeIDOT shall provide all necessary handouts/graphics and conduct informational presentations regarding right-of-way procedures provided by DeIDOT, at formal public hearings, or at one (or more) separate public meetings in conjunction with inter-agency coordination.

## **2 - Appraisal/Appraisal Review Services**

Among the services that may be required to be performed are:

- Review the project site and right-of-way plan with the Department's Designated Representative and Appraisal Manager.
- Identify the valuation problems, determine the number and type of appraisal reports needed for each parcel (aka "case" or "claim"), identify items pertinent to the valuation of each case, and note any specific or unusual appraisal problems. (E.g. the need for septic and well relocations, parking studies, special engineering reports, architect reports, unity of use situations).
- Prepare or have prepared studies and special reports that are not appraisals, which are usually incorporated into the final appraisal to provide a complete valuation of the property. Examples of these include, but are not limited to FF&E reports, cost to cure studies, planning studies, architects reports, and septic system replacements.
- Review the cost estimate and appraisal recommendation prepared by the DeIDOT Appraisal Manager addressing all parcels to be acquired and the scope of work on the assigned project.
- Utilize appraisers, appraisal reviewers, and specialists from the Department's lists of pre-qualified fee appraisers, reviewers and specialists who are approved by the Manager of Appraisals.
- Prepare a comprehensive appraisal plan detailing the fee appraisers to be contacted. This plan must be approved by the Department.

If the estimated fee is less than \$25,000.00, the assigned selected consultant shall:

- Contact a fee appraiser qualified to perform the appraisal service required, requesting fee and completion date proposals to include a final submission date for the proposals and the Scope of Work Statement.
- Upon receipt of the proposals, the assigned consultant shall submit a recommendation to the Appraisal Manager who, if approved, shall select the appraiser based on a competitive fee quote, anticipated completion date, and the appraiser's determination of the valuation method to be utilized. If the Appraisal Manager does not agree with the recommendation of the consultant, the Manager shall recommend another possible selection. Any fee in excess of \$25,000 must be approved by the DeIDOT Appraisal Manager and the Chief of Right-of-Way.

Consultant may be required to prepare Appraisal Waiver forms by analyzing the acquisition and applying unit rates obtained by the consultant through comparable sale research. The Department will sign such forms to authorize the Waiver as an offer.

All appraisal reports will be reviewed by a pre-qualified appraiser (pre-approved fee, staff or DelDOT staff), independent of the individual who issued the report. The review appraiser will recommend the fair market value for a particular parcel based on the results of the review process. The Department's representative or other qualified Department employee will make the final acceptances of the appraisal(s) received and will select one of the appraisal(s) as the approved appraisal for the purpose of determining the amount to be offered to the owner as the Department's determination of just compensation. The acceptance and approval of appraisal waiver, appraisal and review reports, and the determination of the Department's estimate of just compensation shall only be made by the Department's Designated Representative after consideration of the review analysis and reviewer's recommendation or the information set forth in the appraisal waiver.

### **3 - Negotiations**

- The selected consultant may conduct preliminary acquisition interviews with affected property owners prior to the initiation of negotiations. Such preliminary contacts may be made on an individual basis or in a public meeting of property owners.
- Prior to negotiations, the consultant may prepare property descriptions and individual plat maps per the ROW manual. All descriptions and individual plat maps shall be approved by a designated DelDOT representative prior to any commencement of negotiations.
- The consultant may negotiate acquisitions in accordance with the ROW Manual, the Uniform Act, and the laws of the State of Delaware. This includes describing the taking, ROW plats, construction plans, and need for the project. It also includes discussing and explaining the appraisal and engineering reports, detailing how the offer was developed, and other valuation questions. The consultant shall prepare all necessary documents for review and signature by the DDR. The only offer allowed is that approved by the Department. The consultant may not present any counter offer or agree to any engineering plans revisions or changes without express permission by DelDOT. The consultant is to relay all concerns, counter offers, or issues to the DDR for review and consideration.
- If the DDR approves the offering of an administrative settlement to the owner, prior to any presentation of the settlement to the owner, the consultant shall prepare an administrative settlement request for review and written approval by the Chief of ROW. This will include justification for the recommended settlement. Only upon written approval by the Chief may any offer beyond the Fair Market Value be presented by the consultant.
- When negotiations result in an agreement or a DelDOT approved administrative settlement, the consultant shall prepare the necessary documents and secure signatures from the owner or their representatives for processing the case for settlement. When negotiations result in condemnation, the consultant shall submit completed case file documents to the Chief of ROW.

- At a minimum the consultant's agent(s) must take the following acquisition actions on each right-of-way case being acquired on the project: Deliver owner's notification letters, acquisition brochures, plans, offer letters, and unsigned agreements by means of personal contact or certified mail. Offers by mail must have written approval by the Chief of ROW. Maintain diary of negotiator's contacts with property owners to document bona fide negotiations, efforts to achieve amicable settlements, responsiveness to owners' counter proposals, and suggestions for changes in plans. Utilize the DeIDOT approved electronic data system to create documents and maintain documents.
- Complete negotiations on all parcels (cases) on the project to settlement stage or condemnation (letter of intent) prior to the scheduled project right-of-way certification date.

#### **4 - Relocation Services**

- The consultant will provide relocation assistance to eligible displaced individuals and businesses. All relocation services must be performed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the implementing regulations (49 CFR Part 24). State laws and regulations should also be adhered to when delivering the Relocation Assistance program.
- Conduct personal interviews with all occupants to be relocated and prepare a Relocation Plan in accordance with the ROW Manual. Identify specific relocation needs and suggest solutions.
- Evaluate and make eligibility determination for relocation claims, including replacement housing supplemental payments, down payment and/or supplemental rent payments, moving payments, last resort housing plans, business relocation benefits, business re-establishment evaluations, and loss of tangible personal property evaluations. Prepare the necessary documents and secure signatures for processing of all payments of relocation claims. Submit claimants' requests for appeal of a determination of ineligibility for all or a portion of relocation assistance payment to the Chief of ROW.
- Maintain an inventory of comparable replacement housing and replacement sites. Each parcel requiring relocation assistance shall have relocation files set up for each occupant, including site surveys and digital color photos showing the four sides of the affected dwelling or business. Site surveys shall be completed, including photos for all parcels on a project, whether occupied or not.
- Inspect replacement housing and assure that it meets applicable decent, safe and sanitary standards. Minimize hardship to displacees by providing counseling, information as to other sources of assistance, methods of claiming relocation benefits, and such other help as may be appropriate. Coordinate the settlement on replacement dwellings, as necessary, with claimants and their attorney or representative. Deliver Replacement Housing Supplemental check(s) to settlement.
- Issue Notice to Vacate to displacees according to the needs of the project. The initial 90 day notice should be given after the offer of the State's determination of just

compensation has been made to the owner and the displacee has received a written statement of benefits, or offer of replacement housing. A follow up 30 day notice is made based on project schedule.

- Current and detailed contact reports shall be maintained in each relocation file, documenting all actions relating to the relocation including dates, places, and names. Contact reports will be typed when package is submitted for payment.
- Secure moving cost estimates from reputable Delaware licensed moving companies. This includes the payment, by the consultant, of any estimating fees that may be required by moving companies (reimbursed by the Department).

## **5 - Legal Processing**

The consultant shall cooperate and assist when necessary with the legal representatives of DelDOT to assist in the processing of all cases for legal action. The consultant will make available staff and information as may be required by DelDOT legal representatives.

## **6 - Property Management**

- Identify property management requirements for all right-of-way parcels on the project.
- Prior to the acquisition of any building, prepare an Inventory of Improvements, and prepare the necessary estimates and bidding documents for the issuing of demolition contracts in compliance with procedures outlined in the ROW Manual.
- Initiate all advertising and solicitation for the asbestos testing/mitigation and demolition contracts as per the ROW Manual.
- Maintain contact with acquisition and settlement personnel and the Department's Designated Representative, to ensure prompt action upon the legal possession of acquired parcels and verify that closings have occurred and the requisite documents have been filed as per the ROW Manual.
- As part of closing, obtain keys to structures.
- Inspect properties after they have been vacated to verify that the improvements listed on the inventory remain in place and notify the Department of any missing items. Secure the real property.
- If any personal property remains on the acquired parcel(s), obtain a letter of abandonment from the owner for any remaining personal property, including papers and files that could possibly have any value to the owner or the public and manage proper disposition of the same.
- Upon vacation of any acquired building, undertake the disconnection of all utilities. Verify that the utility services have all been discontinued and that the meters have been removed, where appropriate.
- Inspect acquired buildings weekly for any unauthorized entry, unsafe exterior conditions, or needed maintenance.

- At the request of the Department, initiate and prepare all necessary documents for contracting property maintenance post-acquisition, such as lawn care, shrub trimming, litter cleanup, and snow removal. When requested, provide the necessary coordination to obtain needed services (any required services will be placed under contract with the Department).
- At the request of the Department, initiate and prepare all necessary documents for contracting the demolition or removal of structures.
- Consultant shall develop, maintain, and submit to the Department's Designated Representative a monthly status report on the inventory of acquired real property. Consultant shall ensure transition of acquired parcels to property management status.
- Arrange for occupancy of structures, if they are to be rented, develop estimates of short-term rental rates, advertise rental units. Negotiate new and re-rental agreements. Conduct inspections for needed maintenance and arrange for maintenance if required. Collect rentals on a monthly basis. Submit income and bills to the Department's Designated Representative for processing. Notice to tenants 10 days past due.
- Develop, maintain, and provide on a monthly basis records indicating the status of income and expenses generated by property management.
- Identify excess land parcels to determine viability for disposal. Maintain a record of all excess land parcels acquired for specific projects. Prepare distribution packages for approval by the Department heads.
- Provide other property management and/or excess land disposal activities on active and inactive projects as required by DelDOT.

### **7- General Requirements (for all Right-of-Way Tasks)**

- Develop memoranda for all project related meetings and provide them to the Department's Designated Representative and the Chief of ROW within 10 working days of the meeting.
- Use of Department approved forms is mandatory.
- Weekly status reports are to be sent to the Department's Designated Representative no later than 12 pm each Friday. Monthly status meetings will be held on a regular basis as determined by the Department. Attend project related meetings as required.
- Throughout the consultant's involvement in the Department's projects and for all benchmark occurrences, the consultant is required to maintain and input data and documents in the Department's electronic data system.
- Unless otherwise directed, the consultant will be the primary contact for all correspondence (verbal and written) and document preparation with the property owners/agents/relocates from the initial notification through closing or the filing of a condemnation complaint.

- The Department's Designated Representative or their designee must sign any correspondence that appears on DelDOT letterhead and commits the Department to expend funds, such as offer letters and administrative settlement approvals. The determination of when to use DelDOT letterhead shall be the Department's decision.
- In the event that the Department determines that a deficiency exists concerning any tasks (negotiation, appraisal, relocation assistance, property management, etc.) performed by the consultant, the Department shall notify the consultant who shall then provide such information, and take such action as is necessary to resolve the deficiency.
- The consultant shall identify all personnel who will be performing the work. Consultant personnel shall be qualified personnel experienced in performing their function in accordance with state and federally funded projects. The Department reserves the right to approve all of consultant's personnel employed to perform work under this contract.
- When required by project needs, the consultant will maintain a project site field office within the project limits. If a suitable site office cannot be found within the project limits, the site will have to be approved by the Department. The site office must comply with the Americans with Disabilities Act (ADA) requirements. Suggested hours when staff must be available are two (2) nights per week (5:00 p.m. to 8:00 p.m.) and on Saturday (10:30 a.m. to 2:00 p.m.). The site office must be properly equipped. The phone number and office hours for the field office must be visible from the exterior. Closing/termination of project office operations shall be the responsibility of consultant.
- The consultant must identify the need for interpreters as soon as possible. If DelDOT cannot provide interpreters, the consultant will assist DelDOT in obtaining the necessary interpreters.
- Maintain a supply of all brochures, forms, maps, and other documents required by the ROW Manual for acquisition, relocation or property management activities.
- Promptly report problems and complaints of corridor residents and local officials to the Department's Designated Representative.
- Provide any other right-of-way services as determined necessary by the Department.
- All work by the consultant shall be performed in accordance with the applicable provisions of the ROW Manual, with Delaware's Eminent Domain or other pertinent Statutes and the Uniform Act.
- All major project related consultant activities will be coordinated through the Department's Designated Representative.
- Revisions may be caused by a variety of factors beyond the control of the consultant, such as errors and incomplete documents or maps, revisions stemming from design changes, additional parcels or easements. New appraisals may be needed due to unforeseen delays, changes in ownership, occupants to be relocated, legal settlements and eminent domain proceedings.

- Consultant shall give the Department's Designated Representative notice of any potential need for parcel changes or revisions. These are to include minor revisions not requiring changes in acquisition offers, as well as major revisions requiring changes in acquisition offers. The Department's Designated Representative shall review and provide authorization to proceed with necessary revisions. Consultant will be eligible for additional compensation as a supplemental scope of work only for those revisions requiring adjustments in offers or acquisition payments and/or occupants to be relocated. Consultant shall be compensated for additional eligible work as set forth in the original Agreement.

### **SUBMISSION REQUIREMENTS**

1. **Expression of Interest submissions** must be received by: **3:00 P.M. Local Time, Tuesday, January 13, 2015.**

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

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

2. **Specific Type Firm Solicited:**  
There is no pre-registration requirement in order to submit an expression of interest on this project. Selected firms may be asked to register following selection.
3. **DBE Goals** will be established by the DBE Program Office on federally funded tasks issued under this Agreement. Tasks will be evaluated independently for potential DBE participation. Expressions of Interest must include a statement of commitment to achieve goals established for individual tasks. The commitment shall include an understanding that proposed DBE firms to be used for goal attainment purposes shall be certified with DelDOT's DBE Program Office.
4. **The consultant shall submit one (1) original and five (5) copies** of an Expression of Interest. Receipt of insufficient copies of the Expression of Interest and non-compliance with providing the requested information in the desired format may result in elimination from the overall shortlist and selection process.
5. **In order to comply with the State of Delaware's Freedom of Information Act**, firms responding to this Request for Qualifications **shall prepare and submit** one (1) electronic copy (e.g. CD, flash drive) of their Expression with any proprietary or confidential information redacted. This copy should be clearly marked as "Redacted Copy" and submitted along with the other copies. **This electronic copy is required even if the submission contains no proprietary or confidential information.** Firms should review Delaware's Freedom of Information Regulations, section 6, Requests for Confidentiality, on the DelDOT Website

[www.deldot.gov](http://www.deldot.gov) and Section 10002(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.

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

### **RATING CRITERIA**

Major factors/criteria for the establishment of a reduced candidate/shortlist and selection:

- a) Key Staff/Project Team Qualifications/Licensing/Certifications
- b) Experience in the profession
- c) Project understanding/approach/services required
- d) Firm resources/capability to accomplish proposed work on schedule, and experience on similar projects
- e) Completeness of submission to include clarity, readability & presentation of material

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

### **CONTACTS**

**Responses to questions concerning the RFQ, submissions, and procedures** may be obtained by submitting questions to the DOT Professional Services mailbox at [DOT.Profservices@state.de.us](mailto:DOT.Profservices@state.de.us) or via telephone at (302)760-2034. In order to ensure a timely response, questions must be submitted at least two (2) business days before the Expressions of Interest due date.

### **QUESTIONS**

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

### **FEDERAL CONTRACT PROVISIONS**

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

### **REQUIRED CERTIFICATION FORMS**

All firms responding to the RFQ must complete and return the Submission Forms located in ‘Appendix A’ of this document.

### **OVERVIEW OF SELECTION PROCESS**

The Expressions of Interest will be used to determine a reduced candidate's list/short list and also will be used for reference material during the actual selection process. Once a short list has been determined, a mandatory pre-proposal meeting may be established for a briefing and to provide an opportunity for the short-listed candidates to ask questions. Once the Pre-proposal Meeting has

been completed, there may be a written submission and/or oral interview sessions scheduled, after which the committee will determine the successful candidate. The Department's Professional Services Procurement Manual may be viewed [here](#).

After the selection process has been completed, applicable price information will be requested from the successful candidate; i.e. salary rates for various classifications of personnel, and an indirect cost derivation for the most current accounting period. It is expected that all firms submitting are prepared for the work and include necessary work materials in their overhead rates. If an interested firm is requested to submit a priced proposal, the proposal should substantially reflect the same composition and area of involvement as the Expression of Interest submission.

Payroll burden and overhead will be computed on direct salary costs only (not including overtime) at the consultant's audited rate, as per Federal Acquisition Regulations Part 31, and Department policies. Computer and CADD costs are not allowable as a direct cost to this project. Rate determination and applicability is subject to audit by the Department. Additionally, candidates should be prepared for the Department to work with your current accounting firm to provide information and backup documentation. Full and immediate cooperation is required to avoid delays in execution of an agreement. Failure to cooperate may result in breaking off of negotiations and moving to the next ranked firm.

### **EXPRESSION OF INTEREST REQUIREMENTS**

The letter portion of the Expression of Interest shall indicate the firms desire to perform services and indicate the specific tasks or areas of expertise, which will be subcontracted, and to whom. Interested firms must submit the material required herein or they will not be considered for the project.

1. Please submit the firm's mailing address, phone number, and an e-mail address for the firm's point of contact person on page 1 of the Letter of Interest. Future contacts by DeIDOT will be done via e-mail, whenever possible.
2. The Expression of Interest submission should be tabbed and collated in the following order:

#### **A. Table of Contents**

Table of Contents (1 per set) - Limited to One (1) page on 1 sheet of paper

#### **B. Letter of Interest**

Letter of Interest (1 per set) - Limited to six (6) pages on three (3) sheets of paper

Indicate the following:

- (1) An understanding of the anticipated assignments, services required, and approach to providing the services required.
- (2) Identify who the proposed project manager will be and what office location they will be working from.
- (3) The location, size, and description of the firm.
- (4) Availability of personnel for immediate placement.
- (5) Sub-consultant usage if anticipated. Indicate the percentage of work estimated to be performed by the sub vs. the prime. Also, indicate if the prime consultant has previously worked with the proposed sub and give a brief example of the previous relationship(s).
- (6) The Prime/Lead consultant must indicate the present workload either as a Prime consultant or a Sub-consultant with the Delaware Department of Transportation by Location, Agreement No. (to include Supplementals),

Total Dollar Upset Limit, total paid-to-date, and the amount still available for use on the project(s). Also, include the estimated date of completion. If possible, include the estimated fees for any Delaware DOT projects for which your firm has been selected and does not have an executed agreement in place.

- (7) Provide a listing of contracts with DeIDOT for the past five (5) years. Clearly indicate if your firm has not been short listed for a DeIDOT project within the past five (5) years.

### **C. Project Organization Chart**

Project Organization Chart (1 per set) - Limited to one (1) side of one sheet of paper.

### **D. Company Information**

Submit the following packet of information titled "Company Information" to include:

- (1) Name of entity and address.
- (2) Address of office where work will be performed.
- (3) Resumes for 6 key persons (6-single sided sheets of paper for resumes – 1 resume on each sheet). Indicate if the individual is a full-time member of your firm, part-time, on-call, etc. Indicate where key personnel are currently assigned & the length of the assignment. Clearly identify who will be the Project Manager.
- (4) List 5 projects that your firm has participated in within the last 3 years that are similar to the requirements in the Project Description portion of this Request for Qualifications. Include project name & location, nature of responsibility, contracting agency & address on one-single sided sheet of paper maximum for each project.
- (5) Additional information you would like to submit is limited to 1-single sided sheet of paper.

### **E. References**

Provide a list of References who have personal knowledge of the prime consultant's and the sub-consultant's previous performance. Provide three (3) client references each for both the prime and the sub-consultant(s). The references must include **verified** addresses and telephone numbers, contact persons, and a brief description of services that have been provided similar to those described by Delaware DOT for this project.

- (1) References shall be shown on separate sheets (limited to one (1) single-sided sheet; one sheet for the prime and one sheet for each sub proposed). These shall not be included in the six (6) page Letter of Interest.

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

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

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including sub-consultants currently debarred or suspended is ineligible to participate as a candidate for this process. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFQ.

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

**Department of Transportation**

**State of Delaware**

**By: Shailen P. Bhatt**

**Secretary**

**Dover, DE**

**December 15, 2014**

**APPENDIX A**

**CERTIFICATION FORMS**

**RFQ 1733-1735**

**RIGHT-OF-WAY CONSULTANT SERVICES**

## **Appendix A - REQUIRED FORMS**

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

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

# CERTIFICATION OF ELIGIBILITY

## Delaware Department of Transportation

### Request for Qualification 1733-1735 – Right-Of-Way Consultant Services

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

We have read Request for Qualifications number 1733-1735 and fully understand the intent of the RFQ as stated, certify that we have adequate personnel and knowledge to fulfill the requirements thereof, and agree to furnish such services in accordance with the contract documents as indicated should we be awarded the contract.

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

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

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

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

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
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 \_\_\_\_\_, 2015.  
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                      **0 Percent**

**11. ENVIRONMENTAL VIOLATIONS**

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations: (40 CFR, Part 15) which prohibit the use under nonexempt Federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. The Contractor shall report violations to the FTA.

**12. EQUAL EMPLOYMENT OPPORTUNITY**

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

**13. FTA FUNDING REQUIREMENTS**

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

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

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

**15. LOBBYING:**

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

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

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

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

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

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

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

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

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

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

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

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

Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

**18. PROTEST PROCEDURES**

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

**19. RECORD RETENTION**

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

**20. SEISMIC SAFETY**

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

**21. TITLE VI COMPLIANCE**

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

**22. INTELLIGENT TRANSPORTATION SYSTEMS**

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