



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

(29 Del.C. §§6981 & 6982)

Agreement No. 1684

DAM PRESERVATION SERVICES

PROJECT DESCRIPTION

The Delaware Department of Transportation is seeking a professional engineering firm to assist with the completion of hydrologic and hydraulic analyses required for state owned dams in accordance with the most current applicable state and federal requirements. Each dam or series of dams will be required to have a comprehensive Hydraulic Report to document the analyses. These services will be performed on a task-order basis over the five (5) year term of the agreement.

The successful consultant will be responsible for performing these analyses for approximately 30 state owned dams. The hydrologic and hydraulic analyses shall be conducted utilizing a Department approved hydrologic/hydraulic computer model. The modeling effort must conform to the intended use of the chosen computer model.

The consultant will develop a hydrologic model for the contributing watershed to the dam. The discharges generated from these watershed models will be routed through existing outlet structures to evaluate non-breach discharges and the associated water surface elevations within the impoundment. The hydrologic model will also include an analysis for each watershed that contributes flow within the inundation zone and for any watershed that contributes flow to the downstream channel that may affect upstream water surface elevations

DATA COLLECTION AND FIELD RECONNAISSANCE

Data necessary to perform hydrologic and hydraulic analyses for this project will need to be collected. The best available existing topographic base mapping and field survey data may be used as the basis for all hydrologic and hydraulic analyses. Bathymetric surveys may be required to develop accurate estimates of the lake storage volume below normal pool.

Additional data sources may include as-built construction plans for the dam, available topographic or digital terrain data for the watershed and downstream inundation zone, available DNREC design data for the dam, DelDOT roadway and bridge plans for hydraulic structures within the inundation zone, and FEMA floodplain data.

Spillway Design Flood Determination and Spillway Capacity Analysis

Hydrologic and hydraulic analysis is required to determine the Spillway Design Flood (SDF) and assess spillway capacity for selected dams in the State of Delaware. Hydrologic and hydraulic models will be used for watershed analysis, Spillway Design Flood determination, dam breach analysis, and flood routing. The Spillway Design Flood for each dam shall be in accordance with Sections 8.2.1 and 8.2.2 of the Delaware Dam Safety Regulations. Information regarding these regulations can be found at the following link:

<http://regulations.delaware.gov/AdminCode/title7/5000/5103.shtml>. The hazard classification of each dam shall be verified with the DNREC Dam Safety Program in accordance with section 5.0 of the Delaware Dam Safety Regulations.

Breach Analysis

Based on survey and field data, breach model parameter values for appropriate dam failure scenarios will be developed in order to generate breach discharges and create hydrographs for downstream routing. A piping failure shall be modeled to represent a sunny-day dam failure. An overtopping failure shall be modeled if the dam overtops during the spillway design flood.

Dam Break Analysis and Inundation Zone Mapping

Dam break analysis and inundation zone mapping is required from each dam downstream to a point where there are no longer significant impacts to life or property caused by the dam failure. Water-surface elevations associated with various dam breach and no dam breach scenarios shall be computed using appropriate hydrologic and hydraulic modeling techniques. For each dam the following flooding scenarios may be analyzed and the associated inundation zones mapped: 1) Sunny Day dam breach 2) Spillway Design Flood with dam breach and 3) Spillway Design Flood without dam breach. For dams where an Incremental Flooding Assessment (IFA) is performed, dam break analysis and inundation zone mapping may be required for various percentages of the Probable Maximum Flood (PMF). The results of the dam break analyses and inundation zone mapping will be used by DelDOT and the DNREC Dam Safety Program to verify the hazard classification and Spillway Design Flood of each dam. A dam failure inundation map for each dam shall then be prepared in accordance with DNREC's Inundation Mapping Guidelines.

CONSULTANT SERVICES REQUIRED

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

- Bathymetric and ground surveying
- Hydrologic and hydraulic analysis including determination of the Probable Maximum Precipitation (PMP) and Probable Maximum Flood (PMF)
- Performing an Incremental Flooding Assessment (IFA) for various percentages of the (PMF)
- Determination of the Spillway Design Flood (SDF)
- Perform dam breach modeling for the Sunny Day dam breach and the SDF dam breach
- Prepare dam breach inundation maps in accordance with DNREC's Inundation Mapping Guidelines (see Appendix A).

Additional work may include the following:

- Perform the design and develop plans and details for dam improvement and dam maintenance projects in accordance with applicable state and federal requirements and guidelines.
- Develop a QA/QC Plan for each dam improvement project in accordance with DelDOT's Quality Assurance/Quality Control Plan.
- Perform inspections of dams as needed.
- Perform field surveys to develop existing base mapping.
- Coordinate with construction personnel and contractors to resolve issues during construction of dam improvement projects.

SUBMISSION REQUIREMENTS

1. **Expression of Interest submissions** must be received by: **3:00 P.M. Local Time, Wednesday, February 19, 2014.**

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

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

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

2. **Specific Type Firm Solicited:**

The Prime Consultant must be Pre-Registered, or make application for registration with DelDOT and appear on the Department's list of registered consultants in the area of Structural Design, Item #2, OR Soil Engineering and Geologic Studies, Item #6, at the time of submission in order to be considered for evaluation on this project.

3. **A nine percent (9%) DBE goal has been established** for the sum total of all federally-funded tasks associated with this Agreement. The Department will require ongoing reviews and approval of *good faith efforts* before a Notice to Proceed is issued. Department DBE Program staff will monitor this Agreement to ensure that good faith efforts are being made to meet the DBE goal. DBE firms must be certified through DelDOT's DBE Program in order to qualify toward meeting the goal.
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 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. **DelDOT 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. DelDOT 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/firm resources/capability to accomplish proposed work on schedule
- b) Experience on similar projects
- c) Demonstrated specialized experience and technical competence in dam engineering, hydraulic and hydrologic modeling, bathymetric surveying and dam failure inundation mapping
- d) Project understanding/approach/services required
- e) Completeness of submissions to include clarity, readability, and presentation of material

Short List and Selection Committee membership appointments are confidential.

CONTACTS

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

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 B' 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 DelDOT 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 four (4) pages on two (2) 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 DelDOT for the past five (5) years. Clearly indicate if your firm has not been short listed for a DelDOT 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. Architect-Engineer Qualifications

Provide either form SF330, or; SF254 and SF255

- (1) GSA form SF330
[http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/\\$file/SF%20330.pdf](http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/$file/SF%20330.pdf)

Or:

- (2) GSA forms SF254 and SF255 (forms are obsolete but may be used)

Instructions for completing the SF 255 form:

- a) **Item # 4, Personnel by Discipline**, the consultant shall document clearly personnel by discipline presently employed at the work location proposed and their availability for assignment to this project.
- b) If more than one (1) location is being proposed, the consultant must clearly document all locations proposed and show the total number of personnel by discipline for all locations proposed.
- c) **Item #7, Key Staff**, is limited to eight (8) individuals who are expected to spend a significant amount of productive time on the project. Staffing information can be either shown as two (2) individuals per page/sheet, or one (1) individual per page/sheet. Resume information presented may pertain to individual(s) that is/are not connected with the Prime/Lead consultant. It should be clearly noted what the affiliation is for any SF 255 resume information submitted other than for the Prime/Lead consultant firm. Resume information is limited to eight (8) individuals regardless of affiliation. Experience listed should be limited to that within the last five (5) years.

If the proposed project personnel have been with the lead firm for less than one (1) year, indicate the name(s) of the previous employer(s) and the length of employment with the previous employer (s) for the last five (5) years.

- d) **Information for Item #8, Similar Projects**, shall be limited to five (5) similar projects and shall not exceed one (1) page in length.
- e) **Information for Item #10, Additional Information**, shall not exceed one (1) page.

NOTE: Submit either a SF255 or a SF330 as prescribed above.
CANNOT SUBMIT BOTH OR INTERMINGLE THE FORMS.

Also, item limitations are the same regardless of the form being used (i.e. if using SF330 submit 8 resumes (1 per page), 5 similar projects (1 project per page) and one (1) page additional information)

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 four 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 subconsultants 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

January 17, 2014



Inundation Mapping Guidelines

The purpose of a dam failure inundation map in an Emergency Action Plan (EAP) is to show the extent and timing of expected flooding from a dam failure. The maps should show downstream infrastructure, developments, recreation areas, and other significant features within the inundation zone, so that emergency managers and responders can coordinate evacuation and rescue operations. The maps should contain sufficient information for the agencies to warn and evacuate all people who may be at risk from a dam failure.

Inundation zones should be depicted for one flooding condition only (i.e., sunny day failure or storm event failure, depending on the level of analysis), unless there is a significant difference between the number of people, or extent of infrastructure impacted, during the different dam failure conditions being analyzed. In the case of multiple events being analyzed, the agencies that will retain a copy of the EAP should agree on which dam failure events will be shown on the inundation maps.

Inundation maps should be prepared using a Geographic Information System (GIS), with the following base map information, which is available on the Delaware DataMil web site (<http://datamil.delaware.gov/geonetwork/srv/en/main.home>):

- Delaware 2007 orthophotography
- 2' contours for the appropriate county from the 2007 statewide LiDAR data

On top of the base mapping, the following features should be clearly shown and labeled:

- Location of the dam
- Inundation zone(s)
- Other downstream dams
- Streets
- Railroads
- Bridges
- Critical infrastructure such as schools, hospitals, nursing homes, etc.
- Campgrounds and other recreational facilities

Printed inundation maps in the EAP should be on 11" x17" sheets, at a scale of 1" = 200', unless a different sheet size and scale is agreed to by all agencies that will retain a copy of the EAP. This will result in multiple sheets for each inundation map, so a clearly labeled index map should be included as the first sheet in the map set. Each sheet should have match lines or a key so that a map user can follow the sequence of map sheets.

Appendix A

On each map, the area representing the inundation zone should be shaded to distinguish it from the background image, using a color that will not mask important features on the map. When the inundation zone enters the area of a downstream lake or pond, it should be depicted outside of the normal perimeter of the water body, unless the analysis shows that the dam failure would result in no increase in the elevation of the water body. A note should be placed on the map indicating the magnitude of the water surface increase in the water body due to the dam break flood wave. When the inundation zone overtops a downstream roadway at a bridge or culvert, the inundation zone should be depicted as being continuous across the roadway, clearly indicating that the roadway would be flooded. When the inundation zone passes through a downstream roadway at a bridge or culvert, but does not overtop the roadway, the inundation zone should be discontinuous on either side of the roadway, to clearly indicate that the roadway would not be overtopped.

Inundation zones should extend downstream of the dam to a point where there are no longer significant impacts to life or property caused by the dam failure. When the inundation zone from a storm event dam failure is mapped, and there is also a mapped 100-year floodplain boundary for the water course (freshwater or tidal), the dam failure inundation zone should be mapped downstream to the point where the dam failure water surface elevation is equal to and intersects the 100-year flood water surface elevation. The 100-year floodplain boundary should be continued downstream beyond the point of intersection, to a point where the 100-year flood no longer results in significant impacts to life or property.

When the sunny day dam failure is mapped, the dam failure inundation zone should extend downstream to a point where there are no longer significant impacts to life and property from the sunny day dam failure. At this location, the elevation of the sunny day dam failure inundation may be above or below the elevation of the 100-year flood (if the 100-year flood has also been mapped for the water course). Where the elevation of the 100-year flood is higher than the elevation of the sunny day dam failure flood, the 100-year flood boundary lines may be included on the inundation map for reference (with no shading between the boundary lines), unless inclusion of the floodplain boundary lines makes the inundation map too confusing for users. The 100-year floodplain boundary may have little or no relevance to map users during an actual sunny day dam failure event.

Each roadway crossing that is flooded within the mapped inundation area should be labeled with the travel time (in hours and minutes) of the leading edge and the peak of the dam break flood wave, and the depth of flooding over the top of the roadway. If there is no significant time difference between the leading edge of the flood and the peak of the flood, then only the time for the leading edge of the flood should be used. Roadways that cross the mapped inundation zone but are not flooded should be labeled with a note indicating the roadway is not overtopped during the flood.

Critical infrastructure facilities within the mapped inundation zone should be labeled with the name and address of the facility, the depth of the expected flooding, and the time of the leading edge and the peak of the flood at the facility. Critical infrastructure facilities located outside of the mapped inundation zone that may have access to the facility disrupted during the dam break flood should be labeled with the name and address of the facility and a note describing how access to the facility may be affected.

Appendix A

Commercial, industrial and institutional facilities within the mapped inundation area should be labeled with the name and address of the facility. Residential structures within the mapped inundation area should be labeled with the street address of the property. For maps with a large number of structures within the inundation zone, to the point that labeling on the map is not practical, structures should be numbered on the map in a logical order, and a separate list prepared with the corresponding property information.

The first sheet of each map set should contain a note describing the limitations of the map, such as “Because the methods, procedures, and assumptions used to develop the flooded areas are not exact, the limits of flooding and flood wave travel times shown are approximate and should be used only as a guideline for establishing evacuation zones. The extent of the area that would be inundated during a dam failure event will depend on actual failure or flooding conditions, and may differ from the area shown on these maps.”

Because the dam failure inundation maps contained in the EAP will intentionally not include detailed engineering information, a separate set of maps on larger sheets (such as 24" x 36") may be prepared containing relevant engineering data, such as location of cross sections used in the dam failure analysis, water surface elevations and peak discharges at cross section locations, etc. These maps can be included in the EAP as an appendix if requested by the agencies that will retain a copy of the EAP.

APPENDIX B

CERTIFICATION FORMS

RFQ 1684

**DAM PRESERVATION &
DESIGN SERVICES**

Appendix B - 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 1684 – Dam Preservation & Design Services

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

We have read Request for Qualifications number 1684 and fully understand the intent of the RFQ as stated, certify that we have adequate personnel and knowledge to fulfill the requirements thereof, and agree to furnish such services in accordance with the contract documents as indicated should we be awarded the contract.

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

Signed: _____

Title: _____

Date: _____

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

Notary Public

CERTIFICATE OF NON-COLLUSION

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

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

Company Name

Authorized Signature

Date

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

Notary Public

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

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

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

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

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

Signature and Title of Authorized Official

Date

CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

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

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

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

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

_____ Signature of the Bidder or Offeror's Authorized Official

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

_____ Date

FEDERAL CONTRACT PROVISIONS

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

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

1. AUDIT AND INSPECTION OF RECORDS

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

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

2. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

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

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

- a) By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later

- 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 **9 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 b 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.