

**DELAWARE DEPARTMENT OF TRANSPORTATION**

**REQUEST FOR PROPOSALS**



**Delaware Department  
of Transportation**

**AGREEMENT NOS. 1715-1716**

**COLLECTION SERVICES**

**PROPOSAL DUE DATE/TIME: 3:00 P.M. Tuesday, July 8, 2014**

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

Issued: June 18, 2014

## Table of Contents

1.	OVERVIEW AND AUTHORITY .....	1
1.1.	Purpose .....	1
1.2.	Intent.....	1
1.3.	Scope .....	1
1.4.	Authority .....	1
1.5.	Inquiries.....	1
1.6.	Right to Amend .....	2
1.7.	Liability for Errors.....	2
1.8.	Use of the RFP .....	2
1.9.	Vendor’s Expenses .....	2
1.10.	Timeline.....	3
2.	AGREEMENT REQUIREMENTS .....	3
2.1.	Formal Agreement.....	3
2.2.	Terms of Agreement.....	3
2.3.	Department Responsibilities.....	7
2.4.	Performance Bond.....	7
2.5.	Debarment or Suspension.....	8
3.	PROJECT REQUIREMENTS .....	8
3.1.	Account Notification .....	8
3.2.	Collection Procedures.....	8
3.3.	Volume of Current Accounts .....	8
3.4.	Remitting Collections.....	9
3.5.	Reporting Procedures .....	9
3.6.	Fee Schedule .....	9
3.7.	Billing Method .....	9
3.8.	Payment Provision.....	9
3.9.	Start-Up Date .....	9
4.	PROPOSAL REQUIREMENTS .....	10
4.1.	Written Proposals .....	10
4.2.	Submission of Proposals .....	12
4.3.	Proposal Due Date/Time – 3:00 P.M. Tuesday, July 8, 2014 (local time).....	12
4.4.	Extensions .....	12
4.5.	Submitted Copies .....	12
4.6.	Cost of Proposals.....	12
4.7.	Confidentiality.....	12
4.8.	Proposer Validity.....	13
4.9.	Proposal Rejection.....	13
5.	SELECTION AND AWARD PROCESS.....	13
5.1.	Selection Committee .....	13
5.2.	Proposal Review.....	13
5.3.	Evaluation Process .....	13
5.4.	Selection Criteria.....	13
5.5.	Award .....	14
5.6.	Department Rights.....	14
5.7.	REQUIRED FORMS .....	15

# REQUEST FOR PROPOSALS

## COLLECTION SERVICES

### 1. OVERVIEW AND AUTHORITY

#### 1.1. Purpose

This Request For Proposals (RFP) is issued by the Delaware Department of Transportation (hereinafter designated as 'Department') for the primary purpose of acquiring Collection Services. These efforts will primarily be for the collection of toll violations and E-ZPass Customer Service Center receivables, but may include other receivables owed to the Department. The primary function will be collection on accounts where attempts have been previously made by the Department. The contract will provide for the collection of delinquent accounts from persons and businesses presently located within Delaware as well as outside the state.

#### 1.2. Intent

These specifications are intended to cover services for the collection of delinquent receivables in an efficient manner and in quantities to be determined subsequent to the proposal opening. The intent of this proposal request is to secure one or more qualified firms which have proven ability to collect upon large volume, accounts receivable for state governments. This intent may be served by one or more than one firm, with each to handle a portion of the accounts assigned to outside collections. Accordingly, whenever the singular (e.g., "agency") is used, it implies the singular or plural (e.g., "agencies"). The contract is for a three-year period.

#### 1.3. Scope

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

#### 1.4. Authority

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

#### 1.5. Inquiries

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

Questions and answers (not identities) will be shared with all proposers on the following Website: [www.bids.delaware.gov](http://www.bids.delaware.gov) as addendums. It is the responsibility of the proposer to check the website often for addendums, questions and answers, and other information concerning this solicitation. All inquiries concerning this RFP must be submitted to the

address shown below. No other Department, Division, or employee may be contacted, and responses from such other person shall have no effect on this solicitation.

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

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

Questions should be submitted in the following format.

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

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

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

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

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

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

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

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

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

#### **1.9. Vendor's Expenses**

Vendors shall be solely responsible for any liability or expenses they incur in preparing, delivering, or presenting a response to this RFP, and for subsequent negotiations with the Department, if any. All Vendors shall fully bear the costs associated with pre-agreement

activities including, but not limited to, proposal preparation, negotiations, and/or proposed agreements.

### **1.10. Timeline**

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

<b>Action/Location</b>	<b>Date</b>	<b>Local Time</b>
<b>RFP Advertisement</b>	<b>6/18/2014</b>	<b>8:00 am</b>
<b>Final Date to Submit Questions</b>	<b>7/02/2014</b>	<b>3:00 pm</b>
<b>RFP Submissions Due</b>	<b>7/08/2014</b>	<b>3:00 pm</b>
<b>Anticipated Award</b>	<b>7/31/2014</b>	<b>4:30 pm</b>

## **2. AGREEMENT REQUIREMENTS**

### **2.1. Formal Agreement**

The Vendor shall promptly execute an agreement prepared by the Department that shall incorporate the terms of this RFP within twenty (20) days after award, unless an extension of time is mutually agreed upon by both parties. The Vendor is not to begin any work prior to receipt of a written Notice To Proceed (NTP) from the Department's Contract Administration group. The proposals submitted by the Vendor become a part of the agreement. Submission of a proposal in response to this RFP indicates acceptance of all of the terms and conditions contained herein.

### **2.2. Terms of Agreement**

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

- 2.2.1. This agreement shall be for a three (3) year term, with the option for two one-year extensions if mutually agreeable between both parties. All work assignments will be issued on an on-call task order basis and will be at the discretion of the Department and the availability of funding. The agreement award shall be for a period of three years from the date of execution of the agreement. The agreement must be executed with the successful Vendors within 20 days after award. The Department may terminate the agreement at any time upon written notice to the Vendor.
- 2.2.2. The selected Vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal agreement between parties. This RFP and the selected Vendor's response to this RFP will be incorporated as part of any formal agreement.

### 2.2.3. Fee Structures

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

2.2.4. The proposals submitted by the successful Vendors may become an addendum to the agreement signed by the successful Vendors, and the proposal must be valid for a minimum of one hundred twenty [120] days from the proposal due date.

2.2.5. The Vendor shall maintain, for all accounts, records that reflect all account activity. The State shall have a right to inspect such records at its convenience during the term of the contract and for a period of three years after the completion of a contract.

2.2.6. By submitting a proposal, the proposing Vendor agrees that in the event it is awarded an agreement, it will indemnify and otherwise hold harmless the State of Delaware, its agents and any employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Vendor's, its agents and employees' performance of work or services in connection with the agreement.

2.2.7. The Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Vendor's negligent performance under this agreement, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Vendor in their negligent performance under this agreement

2.2.8. In meeting this obligation the Vendor shall secure and furnish the Department a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, Automobile, and Errors and Omissions insurance coverage from an insurance company authorized to do business in the State of Delaware. The minimum amounts of coverage for property damage and personal injury shall be \$1,000,000 combined single limit. Errors and Omissions insurance coverage shall be for a minimum of \$1,000,000. The insurance company shall be authorized to do business in the State of Delaware. The successful Vendors shall provide the Department with 30 days' notice in the event the policy is cancelled or not renewed.

2.2.9. The Vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this agreement. The Vendor and its officers, employees, or agents are independent contractors and are not employees of the State of Delaware.

2.2.10. The selected Vendor shall secure and furnish the Department a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, and Automobile insurance coverage from an insurance company authorized to do business in the State of Delaware. The State of Delaware- Department of Transportation shall be named a certificate holder on the certificates of insurance. The insurance agency shall provide the Department with 30 days' notice in the event the policy is canceled or not renewed.

2.2.11. During the term of this agreement, the Vendor shall, at its own expense, carry insurance minimum limits as follows:

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

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

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

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

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

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

- 2.2.12. Notwithstanding the information contained above, the successful Vendor shall indemnify and hold harmless the State of Delaware, the DDOJ, and its employees from contingent liability to others for damages because of bodily injury, including death, that may result from the successful Vendor negligent performance under this agreement, and any other liability for damages for which the successful Vendor is required to indemnify the State, the DDOJ and its employees under any provision of this agreement.
- 2.2.13. In performing the services subject to this RFP the successful Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The successful Vendor shall comply with all federal and state laws and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this provision constitutes a material breach of contract. Appendix A of this RFP contains a statement of Federal Contract Provisions which includes, among other subjects, details related to civil rights.
- 2.2.14. The successful Vendor shall certify that it has not employed or retained any company or person other than a bona fide employee working for the successful Vendor, to solicit or secure the agreement and that he has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the Department shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. Notwithstanding anything in the errors and omissions policy to the contrary, the standard of performance with which the successful Vendor must comply is that degree of care and skill ordinarily exercised under similar conditions by other like Vendors currently practicing in this state.

- 2.2.15. The Laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful Vendor consents to jurisdiction and venue in the State of Delaware.
- 2.2.16. The successful Vendor must have a valid Delaware business license in order to receive payment for services.
- 2.2.17. If the scope of any provision of this agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the agreement shall not hereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to law.
- 2.2.18. The successful Vendor, upon awarding of this contract and as a condition of this contract, will provide full and adequate justification to the Department that all persons connected with the State's account will be sufficiently bonded in amounts deemed satisfactory for the nature of this contract.
- 2.2.19. The Department reserves the right to annul any agreement if, in its opinion, there is a failure at any time to perform adequately the stipulations of this invitation to respond, and the general conditions and specifications which are part of these proposals, or in any case of any attempt to impose upon the Department services of an unacceptable quality. Any action taken in pursuance of this latter stipulation shall not affect or impair any rights or claim of the Department to damages for the breach of any covenants of the agreement by the contractor.
- 2.2.20. Should the Vendor fail to furnish any item or items, or to complete the required work included in the contract, the Department reserves the right to withdraw such items or required work from the operation of a contract without incurring further liabilities on the part of the Department.
- 2.2.21. The contract will include disclosure provisions prohibiting the successful firm from divulging any information attained during the collection activities for the Department.
- 2.2.22. If the Vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another Vendor. Such Vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- 2.2.23. Performance Requirements - The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.
- 2.2.24. This RFP (including any written questions and Department responses), the executed agreement between the successful Vendor and the Department, and the successful Vendor's proposal, shall constitute the agreement between the Department and the Vendor. In the event there is any discrepancy between any of these agreement documents, the following order of documents govern so that the former prevails over the latter: Agreement, RFP (including written questions and answers), any addendum to the RFP, and then the selected Vendor's proposal. No other documents shall be considered. These documents contain the entire agreement between the Department and the Vendor.

- 2.2.25. With respect to work provided to or conducted for the State by a Vendor, the Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished to the State by the selected Vendor, or any of its subcontractors.
- 2.2.26. The selected Vendor shall follow practices consistent with generally accepted professional and technical standards.
- 2.2.27. The selected Vendor shall be responsible for ensuring that all services, products and deliverables furnished to the State are coordinated with the Department and are consistent with practices utilized by, or standards promulgated by State of Delaware.
- 2.2.28. If any service, product or deliverable furnished by the selected Vendor does not conform to Department standards or general practices, the Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to Department standards or practices.
- 2.2.29. The selected Vendor is prohibited from divulging any information attained during the work activities for the Department.
- 2.2.30. Should the selected Vendor fail to furnish any item or items, or fail to complete the required work included in the agreement, the Department reserves the right to withdraw such items or required work from the operation of the agreement without incurring further liabilities on the part of the Department.
- 2.2.31. Access to Records - The Vendor shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this agreement and make such materials available at its offices at all reasonable times during the period of this agreement and for a minimum period of three years after final payment by the Department and shall make the material available upon request for inspection and audit by the Department. The Vendor is required to comply with all reasonable requests and supply information and documentation pertaining to this project to Department authorized auditors.

### **2.3. Department Responsibilities**

The Department's responsibilities will include:

- 2.3.1. Providing Accounts to the Vendor.
- 2.3.2. Providing available name, address, license plate number for each collection Account from state motor vehicle registration files, or other customer data bases.

### **2.4. Performance Bond**

The successful proposer must furnish a Performance Bond in the amount of \$100,000, made payable to the State of Delaware and prepared on an approved form as security for the faithful performance of the contract within ten (10) days of its notification of contract award. The surety thereon must be such surety company or companies as are acceptable to the State of Delaware and are authorized to transact business in this State. Attorneys-in-Fact who sign proposal bonds must file with each bond a certified copy of their power of attorney to sign said bond.

## **2.5. Debarment or Suspension**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

## **3. PROJECT REQUIREMENTS**

### **3.1. Account Notification**

The Vendor is expected to acknowledge accounts assigned to them by the Department promptly upon receipt. The Vendor and Department shall subsequently agree upon specific procedures relating to proper identification of accounts and handling various transactions.

### **3.2. Collection Procedures**

Implementation of collections shall not occur until the Vendor's collection procedures have been approved by the Department's Project Manager in writing to ensure that such procedures are ethical and lawful, giving no misrepresentations of authority. No collection methods or tactics may be employed which would adversely reflect on the Department's public image.

- 3.2.1. The Vendor's collection procedures shall include, but not be limited to, use of telephone contact, direct mail contact, and skip tracing efforts. The Vendor shall not initiate any action beyond the terms of the contract without express written permission of the Department.
- 3.2.2. All accounts or customer information obtained in the course of referred account collection efforts shall be confidential and shall not be released to any person, firm, or Vendor other than the referring Department. The Department requests to have on-line access to account information.
- 3.2.3. The Department will provide referred accounts to the Vendor in electronic format. The file will be in the format that is exported from the billing system and no modifications to this file will be made.
- 3.2.4. Additionally, the Department will also provide in electronic format a file that lists account balance changes due to adjustments (not payments) to accounts. These adjustments are not considered payment. The Vendor is expected to acknowledge accounts assigned to them by the Department promptly upon receipt. The Vendor and Department shall subsequently agree upon specific procedures relating to proper identification of accounts and handling various transactions.
- 3.2.5. The agency is to provide collection procedures to achieve maximum possible recovery from the debtor. These will include a reasonable number of telephone calls; direct mailing efforts and some skip tracing procedures, as well as other procedures outlined by the agency. The agency may undertake legal action only when authorized by the Department.

### **3.3. Volume of Current Accounts**

The Department anticipates forwarding on a monthly basis to collection agencies, individual violations notices of approximately 3,400 each with an anticipated annual value of \$2.5 million each. The volume for the selected firm(s) will vary depending on the number of

firms selected, and the Department's satisfaction with the performance of the selected firm(s).

**3.4. Remitting Collections**

All recovered money owed to the Department is required to be deposited in a separate designated State bank account within one week of receipt. The agency agrees to remit all amounts due the Department on a weekly basis for the amounts collected during the prior weekly period. If the Vendor requires a minimum monetary amount to be accrued prior to making a deposit, this condition, as other conditions, must be stipulated in the proposal response. The Department will set the time period for Accounts to be returned if no payments have been received. Extension of time would require Department approval. The Department may request the return of an account at any time, with no financial penalty for doing so.

**3.5. Reporting Procedures**

The Vendor shall provide a detailed weekly accounting of collection activity. The Vendor shall submit weekly statements itemizing the following by account; any payment received the previous week, the commission amount retained, the amount deposited in the Department's bank account, current status of collection effort, and number of days each open account has been handled by the agency. Proof of deposit to the designated Department bank account shall accompany the report. Additionally, the Vendor will provide detailed monthly reporting to include account aging, and overall success rates for collection activities.

**3.6. Fee Schedule**

It is expected that the fee schedule (commission fee) is guaranteed and fixed for the duration of the contract period and that no payment for services will be made unless and until funds are deposited in the State account pursuant to section 3.4 above. Firms may submit, in their proposal, multiple commission fees covering different levels of collection efforts.

**3.7. Billing Method**

The Department is seeking Proposals for collection services on a commission fee basis. The commission fee is to be deducted from recovered monies. There are to be no charges to the Department other than the commission fee.

**3.8. Payment Provision**

The Vendor shall be reimbursed on the basis of a percentage commission fee on all monies collected on the accounts. If commission fees are to be variable, the proposer must describe the possible variations in detail in their response.

**3.9. Start-Up Date**

The Department of Transportation prefers a start-up date as soon as possible after July 31, 2014. The Vendor or agencies must state the expected start-up date.

## **4. PROPOSAL REQUIREMENTS**

### **4.1. Written Proposals**

1. Proposals should be prepared simply and economically, providing a straightforward, concise description of proposer capabilities to satisfy the requirements of this proposal. To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP using the requested format. Emphasis should be on completeness and clarity of contents.
2. Proposal responses will be expected to address the following areas; the submission should be tabbed and collated in the following order:
  - A. Cover Letter – Two pages maximum -Each proposal shall have a cover letter on the letterhead of the Vendor submitting the proposal. At the top of the first page, list the Technical Representative's Name, Telephone Number and e-mail address. This will be the main contact representing the proposer. The cover letter shall summarize the Vendor's qualifications and the experience of all team members; briefly discuss the system proposed to respond to the requirement of this RFP, and the proposed implementation date, plan and schedule.
  - B. Experience – Two pages maximum -The Vendor shall submit information demonstrating experience in similar debt collection services for a state/local government agency. The Vendor must demonstrate, to the satisfaction of the Department, that the proposed implementation team is capable of satisfactorily performing the work of this project. The proposer's business history and number of years in operation is to be included.
  - C. Company Facilities – Two pages maximum -Number of offices on a national, state, or local level and the address and name of each. Also, the number of employees at each office must be included.
  - D. Methods of Collection – Routine methods of collection applicable to this contract. An overview of your collection system, including computer aids, and copies of representative letters and notices reflecting your procedures. Emphasis should be given to the following:
    1. The ability to send data and funds electronically, such as e-mail and FTP;
    2. Discuss in detail the methods of transferring of data and funds that you would provide;
    3. What methods, frequency, and format of reporting do you regularly provide regarding status or collection activities (include samples of your standard reports);
    4. Please address the following areas and state how each factor affects the collection method utilized:
      - a) Geographical location of debtor;
      - b) Size of debt;
      - c) Age of debt;
      - d) Others factor which influence collection method;

5. Proposed procedures for compromise payment (settlements); e.g., prior written approval for a settlement based on proposer's recommendation;
  6. Minimum and maximum duration of collection cycle;
  7. Expected recovery rates based on historical data.
- E. Capabilities – A narrative detailing the method by which the proposer intends to deal with the increased work load this contract would bring.
- F. Account Acknowledgement – The Vendor is expected to acknowledge accounts promptly upon receipt. Provide sufficient information of your current methods to allow for evaluation.
- G. Legal Action – A statement of whether legal/litigation capabilities exists in the firm and how and when the firm would indicate to Department and the debtor that it desires to proceed with legal action.
- H. Financial Statements – Financial statements from the previous two fiscal years, which also adequately portray the financial position of collection operations (if the operation is a portion of other financial services of the firm).
- I. Quality – Provide; a SAS 70 Statement of auditing from your last audit; or, similar outside quality review of your company's procedures; or, define your internal quality system and address how quality is improved in your organization.
- J. Assurance – The basis for assurance that your firm can meet the bonding requirements, Delaware State Law, and professional performance requirements of the Fair Debt Collection Practices Act.
- K. Information Exchange – A narrative as to how your firm will be able to electronically exchange Account information and financial payments.
- L. Compliance with Law – The proposers must state adherence to, and comply with, all federal and state laws that apply to Vendor services.
- M. References – References from large volume customer accounts (i.e.; from customers with similar or greater number and value of cases forwarded for collection). It is preferred that one or more of said references be a large governmental account. By providing such information, the Vendor grants the Department permission to contact these individuals. Also state whether the proposer is a member of any state or national trade associations.
- N. Stipulations / Exceptions – A listing of any and all stipulations or exceptions taken to any item in this proposal. The Department reserves the right to reject any stipulations and/or exceptions taken.
- O. Contractual Expectations – List any contractual provisions which the proposer expects the Department to agree. NOTE: The Department will issue the contract covering this work.
- P. Bid Page – All Vendors who wish to perform services on this contract shall specify unit bid amounts on the provided form in Appendix A. The unit bid amounts shall be inclusive of all services, materials, equipment and incidentals necessary for implementation of the full performance system and for ongoing maintenance, technical support and engineering updates for any equipment. The specified unit bid amount will remain in effect during the thirty-six (36) month contract period. All

figures entered on the bid form shall be typewritten. If commission fees are to be variable, the proposer must describe the possible variations in detail in their proposal, and show same on the bid form.

Q. Submission Form – Complete and attach the Submission Forms from Appendix A.

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

The Department will receive sealed proposals until the date and time indicated in Section 1.10 as described in this Proposal. Proposals must be delivered and addressed as indicated. Facsimile responses to this Request for Proposal are not acceptable.

#### **4.3. Proposal Due Date/Time – 3:00 P.M. Tuesday, July 8, 2014 (local time)**

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

#### **4.4. Extensions**

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

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

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

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

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

#### **4.7. Confidentiality**

In order to comply with the State of Delaware's Freedom of Information Act, Vendors responding to this Request for Proposals **shall prepare and submit one (1) electronic copy (e.g. CD, flash drive) of their Proposal 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.** Vendors should review Delaware's Freedom of Information Regulations, Section 6, Requests for Confidentiality, on the Department's Website [www.deldot.gov](http://www.deldot.gov) and Section 10002(1) "Public record" of the Delaware Code, <http://delcode.delaware.gov/title29/c100/index.shtml> to determine what information may be considered proprietary or confidential and may be redacted from their submission.

#### **4.8. Proposer Validity**

Proposers will be required, if requested by the Department, to furnish satisfactory evidence that they are qualified as a Vendor, having a regularly established place of business. An inspection by the Department of any proposer's place of business may be made to determine whether satisfactory physical facilities are available to fulfill the requirements of the detailed specification, which may be considered to be pre-qualifying.

#### **4.9. Proposal Rejection**

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

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

#### **5.1. Selection Committee**

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

#### **5.2. Proposal Review**

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

#### **5.3. Evaluation Process**

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

#### **5.4. Selection Criteria**

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

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

<b>Evaluation Item</b>	<b>Maximum Points</b>
Recovery rate expected or previously demonstrated	<b>20</b>
Cost of Service	<b>20</b>
State or Federal Government Collection Experience	<b>15</b>
References	<b>15</b>
Overall quality and completeness of submissions to include clarity, readability, and presentation of material	<b>15</b>
Quality Systems (positive SAS 70 or outside review rates highest)	<b>15</b>
<b>Total Points</b>	<b>100</b>

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

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

5.4.4. The Department reserves the right to enter into negotiations and/or entertain the option of requesting a Best and Final Offer from Vendors in order to reach a final selection. If a Best and Final Offer is requested, Vendors will be given at least one (1) week to develop this response and provide it in writing to the Department.

**5.5. Award**

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

**5.6. Department Rights**

The Department reserves the right to:

- Select for agreement or for negotiations a proposal other than that with the lowest costs;
- Reject any and all proposals received in response to this RFP;
- Make no award;
- Issue a new RFP;
- Waive any informalities, irregularities, or inconsistency in proposals received;

- Request modification to proposals from any or all proposers during the review and negotiation;
- Negotiate any aspect of the proposal with any Vendor and negotiate with more than one Vendor at the same time;
- Make partial awards;
- Increase or decrease quantities;
- Reject any request that shows any omission, alterations of forms, additions not called for, conditions, or alternate proposals;
- Deny any and all exceptions to the RFP requirements;
- Reject any non-responsive or non-conforming proposals;
- Make any such award as is deemed to be in the best interest of the State of Delaware.

#### **5.7. REQUIRED FORMS**

The following forms located in Appendix A of this document and must be completed and returned with each proposal:

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

**APPENDIX A**

**CERTIFICATION FORMS**

**REQUEST FOR PROPOSAL  
Nos. 1715-1716**

**COLLECTION SERVICES**

**COLLECTION SERVICES  
BID PAGE**

\*\* ALL COLUMNS MUST BE COMPLETED AS INDICATED \*\*  
**ALL FIGURES MUST BE TYPEWRITTEN**

ITEM NO.		UNIT PRICE IN PERCENTAGE MUST BE TYPEWRITTEN	
1		Collection Services Commission Percentage  _____ % UNIT - EACH	Start Up Date:  _____
2		Describe Additional Service and Cost: Percentages are preferred.  _____ UNIT - EACH	_____ _____
3		Describe Additional Service and Cost: Percentages are preferred.  _____ UNIT - EACH	
4		Describe Additional Service and Cost: Percentages are preferred.  _____ UNIT - EACH	

## CERTIFICATION OF ELIGIBILITY

### Delaware Department of Transportation

#### Request for Proposal Numbers 1715-1716 – Collection Services

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

We have read Request for Proposal Numbers 1715-1716 and fully understand the intent of the RFP as stated, certify that we have adequate personnel and knowledge to fulfill the requirements thereof, and agree to furnish such services in accordance with the contract documents as indicated should we be awarded the contract.

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

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

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

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

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

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

## CERTIFICATE OF NON-COLLUSION

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

## CERTIFICATION OF RESTRICTIONS ON LOBBYING

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

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)).
- 3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

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

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

\_\_\_\_\_ Date

## **FEDERAL CONTRACT PROVISIONS**

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

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

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

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

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

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

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

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

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

determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may pursue available remedies, including suspension and/or debarment.

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

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

**4. CLEAN WATER REQUIREMENTS**

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

**5. FEDERAL CHANGES**

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

**6. CLEAN AIR**

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

**7. ENERGY CONSERVATION**

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

**8. CONTRACT TERMINATION**

a) Termination for Convenience

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

directs.

b) Termination for Default

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

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

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

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

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

**9. CIVIL RIGHTS**

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

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

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

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

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

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

#### **10. DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this contract. Consequently the DBE Requirements of 49 CFR Part 26 apply to this contract. The recipient or its contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this contract. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out

applicable requirements of 49 CFR part 26 in the award and administration of FTA assisted subcontracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems appropriate.

The successful bidder agrees to comply with the following clauses:

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

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

The specific goal for this contract is:

Disadvantaged Business Enterprise                      **0 Percent**

**11. ENVIRONMENTAL VIOLATIONS**

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

**12. EQUAL EMPLOYMENT OPPORTUNITY**

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

**13. FTA FUNDING REQUIREMENTS**

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

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

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

**15. LOBBYING**

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

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

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

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

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

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

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

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

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

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

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

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

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

**18. PROTEST PROCEDURES**

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

**19. RECORD RETENTION**

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

**20. SEISMIC SAFETY**

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

**21. TITLE VI COMPLIANCE**

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

**22. INTELLIGENT TRANSPORTATION SYSTEMS**

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