RFP Number: **1834-1837**
(1837 Designated for Small Business Program)

**TRANSPORTATION ALTERNATIVE PROGRAM (TAP) SERVICES**

Submission Due Date/Time: **Thursday, November 30, 2017 at 2:00 P.M. Local Time**

Three (3) year Term with two (2) possible one-year extensions

Agreement Type: IDIQ

Up to four (4) Agreements may be awarded from this solicitation.

State and/or Federal funding may be used.

The anticipated method of payment is cost plus fixed fee.

29 Del.C. §6981, 2 CFR part 200, 23 CFR part 172

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**SMALL BUSINESS PROGRAM DESIGNATION (1837)**

Firms that wish to submit a bid for RFP Number 1837 – TAP Services, Small Business Program Designation, must be an existing, for-profit small business, as defined by SBA standards and 49 CFR Part 26. DelDOT applies the SBA business size standard that correlates to the appropriate type of work that the small business seeks to perform on the contract. In determining business size, firms must count their receipts or employees, including all of those of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit. See “Small Business Program” Special Provision for further information. There is a zero percent (0%) DBE goal for RFP Number: 1837, Small Business Designation.

The most highly qualified firm must provide copies of the previous three year’s federal tax returns, and any other information needed to verify qualification under the Small Business Program, within 10 Calendar Days of notification of selection. Agreement Award will not take place until the Department has been satisfied the most highly qualified firm meets the Small Business Program requirements.

Failure of the most highly qualified firm to present proof of qualification of meeting the Small Business Program requirements within ten (10) calendar days after selection shall create a rebuttable presumption that the bid is not responsive.

**PROJECT INFORMATION (1834 – 1837)**

This Request for Proposal (RFP) issued by the Delaware Department of Transportation is for the purpose of acquiring Proposals from interested firms to provide for the planning, design and implementation of a variety of non-traditional transportation related projects that highlight the cultural, aesthetic, and environmental aspects of the transportation system.

**PROFESSIONAL SERVICES REQUIRED**

Services include but are not limited to the following: Planning, Engineering, Design and Technical Review.
To be eligible under the TAP Program, projects must have a relationship to surface transportation, they must be dedicated to public use, and they must fit into at least one of the eleven categories listed below:

1. Construction, planning and design of on-road and off-road trail facilities for pedestrians, bicyclists and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.

2. Construction, planning and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults and individuals with disabilities to access daily needs.

3. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists or other non-motorized transportation users.

4. Construction of turnouts, overlooks and viewing areas.

5. Inventory, control or removal of outdoor advertising.

6. Historic preservation and rehabilitation of historic transportation facilities.

7. Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species and provide erosion control.

8. Archaeological activities relation to impacts from implementation of a transportation project eligible under title 23.

9. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to address Stormwater management control and water pollution prevention or abatement related to highway construction or due to highway runoff including activities described in section 133(b) (11), 328(a), and 329 of title 23.

10. Any environmental mitigation activity including pollution prevention and pollution abatement activities and mitigation to reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

11. Planning and design to provide safe, convenient connections for students attending elementary and middle schools to walk or bike to school.

Typical types of TAP projects include the development of off-road or on-road bicycle and/or pedestrian facilities. General aesthetic that include brick sidewalks, pedestrian lighting, and landscaping, and historic preservation for transportation related facilities such as historic rail stations.
QUESTIONS (1834 – 1837)

Questions are to be submitted to DOT.Profservices@state.de.us. In order to ensure a timely response, questions must be submitted according to the Procurement Schedule found in this RFP. The Department’s response to questions, along with this RFP and related information, are posted on the State of Delaware Bid Solicitation Directory Website: http://www.bids.delaware.gov/.

DISADVANTAGED BUSINESS ENTERPRISE (1834 – 1836)

A five percent (5%) DBE goal has been established for the sum total of all federally-funded tasks associated with RFP Numbers: 1834-1836. 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.

PROCUREMENT SCHEDULE

<table>
<thead>
<tr>
<th>Action Item</th>
<th>Date</th>
<th>Time</th>
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<tbody>
<tr>
<td>Deadline for Questions to ensure response:</td>
<td>Ten (10) business days prior to the proposal due date</td>
<td>2:00 P.M. Local Time</td>
</tr>
<tr>
<td>Final Response to Questions posted by:</td>
<td>Five (5) business days prior to the proposal due date</td>
<td>2:00 P.M. Local Time</td>
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<tr>
<td>Proposals Due by:*</td>
<td>Thursday, November 30, 2017</td>
<td>2:00 P.M. Local Time</td>
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NOTE: Only asterisk (*) marked date changes will be communicated (via posted Addendums).

PROPOSAL REQUIREMENTS (1834 – 1837)

Interested firms must submit the material required herein or they may not be considered for the project:

1. Proposals must be received prior to the Submission due date and time indicated above.

   Facsimile and E-mail responses to this RFP are not acceptable. No response hand-delivered or otherwise will be accepted after the above date and time. It is the responsibility of the submitter to ensure the Proposal is received on time. DelDOT's time is considered the official time for determining the cut-off for accepting submissions. To be considered for this agreement, firms must submit the Proposal as set forth herein. Any variation, including additions, may negatively impact the scoring.

Proposals are to be delivered to:

Contract Administration – RFP 1834-1837
Delaware Department of Transportation
800 Bay Road
Dover, DE 19901

Should the office be closed at the time responses are due (such as an unexpected event or inclement weather) the submission due date shall be the following business day, at the time originally scheduled.
2. **The Prime Consultant must be Registered**, or submit application for registration with DelDOT at or before the time of submission in order to be considered. For registration information, click here.

3. **Submit one (1) original and five (5) hard copies** of the Proposal. Receipt of insufficient copies or non-compliance with providing the requested information in the desired format, may negatively impact the scoring. Proposal must state if your firm qualifies as a Small Business under SBA standards.

4. **Submit two (2) pdf format electronic copies** (e.g. CD, flash drive) of the Proposal; one original and one a redacted copy. The original must be a .pdf file of the original signed proposal as submitted and should be clearly marked “Original”. The redacted copy must be a .pdf file of the original signed proposal with any proprietary or confidential information redacted, and this copy should be clearly marked as “Redacted”. Electronic copies are to be submitted with the printed Proposal. The electronic redacted copy is required even if the submission contains no proprietary or confidential information.

   Firms should review Delaware’s Freedom of Information Regulations here; http://regulations.delaware.gov/AdminCode/title8/1400.shtml#TopOfPage to determine what information may be considered proprietary or confidential and may be redacted from their Submission.

5. **Architect-Engineer Qualifications; GSA SF330**: http://www.gsa.gov/portal/forms/download/116486

   Follow instructions for the SF330, and add the following Individual Agency Instructions:

   A. Part I Section C 11, Proposed Team;
      Indicate if DBE firm and approximate percentage of contract cost they will perform.

   B. Part I Section E, Resumes of Key Personnel Proposed for this Contract;
      Resume information is limited to eight (8) individuals regardless of affiliation.

   C. Part I Section F, Example Projects;
      Example Projects provided are limited to ten (10).

   D. Part I Section H 30, Additional Information;
      Should only include the following:

      - The Prime consultant must indicate the current workload with the Department to include the following in a table format: Agreement No.; Agreement Title; Consultant PM; Prime or Sub; Total Dollars paid to date; current number of Tasks issued; and date of contract expiration. 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.

      - Firms may include a "Rating Criteria Support Information" Section limited to four (4) pages on two (2) sheets of paper formatted using Times New Roman, 12pt. font within Section H that covers any information that directly relates to your ability to meet the specific rating criteria cited within the RFP document.

Note: Letters of Interest should not be included.
6. **Joint venture** submissions will not be considered.

7. **DelDOT reserves the right to reject** any and all submissions. Submissions become property of the Department and shall be retained electronically for a minimum period of three (3) years from the date of receipt. 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.

8. **Required Certification Forms.** All firms responding to the RFP must complete and return the submission forms located in ‘Appendix A’ of this document.

   No promotional materials or brochures are to be included as part of the submission.

### RATING CRITERIA

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<thead>
<tr>
<th>#</th>
<th>Criteria Description:</th>
<th>Weight</th>
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<tbody>
<tr>
<td>1</td>
<td>Key Staff and Project Team qualifications</td>
<td>25 %</td>
</tr>
<tr>
<td>2</td>
<td>Firm’s resources and capability to accomplish proposed work on schedule</td>
<td>20 %</td>
</tr>
<tr>
<td>3</td>
<td>Firm’s experience on similar projects, project understanding /approach/services required</td>
<td>35 %</td>
</tr>
<tr>
<td>4</td>
<td>Completeness of submissions to include clarity, readability and presentation of material</td>
<td>15 %</td>
</tr>
<tr>
<td>5</td>
<td>Location(s) where work will be initiated from (to include subconsultant)</td>
<td>5 %</td>
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</tbody>
</table>

**TOTAL : 100%**

### OVERVIEW OF SELECTION PROCESS – IDIQ

- This is an indefinite delivery/ indefinite quantity agreement utilized for the performance of services for a number of projects under task orders issued on an as-needed basis. The dollar value of each individual agreement under RFP Number: 1834-1836 cannot exceed five million dollars ($5,000,000.00). The dollar value of agreement under RFP Number: 1837, Small Business Designation, cannot exceed two million, five-hundred thousand dollars ($2,500,000.00). There is no guarantee of actual agreement value.

- This is a single phase solicitation process with the availability for discussions with eight (8) of the most highly qualified firms. Five (5) firms will be eligible for discussions for RFP Number: 1834-1836; and separately, three (3) firms for RFP Number: 1837, Small Business Designation. Based upon the listed criteria and evaluation of each firm’s submitted proposal, the Selection Committee may decide if a small sample task and/or discussions will be held with the most highly qualified consultants. If discussions are held, they will serve to clarify the technical approach, qualifications, and capabilities provided in response to the RFP, after which the committee will determine the ranking of the candidate firms.

- Selection Committee members will individually score each firm’s submitted proposal which determines individual ranking. The Department’s ranking is the combined ranking of all Committee members. Awarded firms for 1834 – 1836, and separately 1837, in order of ranking, will have the opportunity to negotiate an agreement with the Department. If the Department cannot reach agreement...
with the highest ranked firm(s), the Department terminates negotiations and begins negotiations with the next highest ranked firm, and so on until an agreement is reached. The Department notifies via email the awarded firm(s) of the opportunity to enter into an agreement with the Department. This notification also includes information on the next steps for the agreement process.

- After the ranking process has been completed, applicable price information will be requested from the successful candidate firm(s), such as; salary rates for various classifications of personnel; and an indirect cost derivation for the most current accounting period.

- 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.

- Selection Committee membership appointments are confidential. The Department’s Professional Services Procurement Manual may be viewed [here](#).

- Each specific task order for 1834 – 1836 shall be awarded to the selected, qualified consultants:

  Through an additional qualifications-based selection procedure, which may include, but does not require, a formal IDIQ RFP.

**MISCELLANEOUS**

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

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 RFP.

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: Jennifer Cohan
Secretary
Dover, DE
SMALL BUSINESS PARTICIPATION REQUIREMENT (1837)

Important submittor information is listed below. Submitters are required to make themselves familiar with the full Small Business Program information pages that follow.

Small Business Participation within DelDOT’s DBE Program

DelDOT’s DBE Program containing the Fostering Small Business Participation element has been accepted by both the USDOT’s Federal Highway Administration and the Federal Transit Administration.

General Provisions of the DelDOT Small Business Plan
Competition within DelDOT’s Small Business Program is limited only on the basis of business size, thus the Program is based on race-neutral (rather than race-conscious) classification. Race-neutral classification will ensure that all small businesses, DBEs and non-DBEs alike, are given equal opportunity to participate in DelDOT’s Small Business Program. All small businesses that wish to participate will be subject to the same financial and employee size standards, and consequently, will be competing with similarly-sized businesses.

Participation Criteria
In order to be awarded this agreement, a firm must meet one of the following two criteria:

The firm must be a DelDOT-certified DBE prior to the bid date;

Or,

The firm (including any of its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. DelDOT will apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the small business seeks to perform on each DOT-assisted agreement. A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. To maintain parity with the DBE business size restriction, the average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402) over the firm's previous three fiscal years cannot be in excess of $23.98 million.

Size Standards for the Small Businesses Program
In order to qualify for participation in the DBE Program (of which the Small Business Program is part), the three-year average annual gross receipts of the firm, including its affiliates, cannot exceed $23.98 million. Additionally, each small business will be measured against their NAICS code financial and employee size standard.
Size standards have been established for types of economic activity or industry under the North American Industry Classification System (NAICS). NAICS codes are described by the U.S. NAICS Manual, available from the U.S. Census Bureau at [http://www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/). A full table matching a size standard with each NAICS Industry is also published annually by SBA in the Federal Register. Some of the common transportation industry-related NAICS codes and their size standards have been attached at the end of this document.

**Affiliation (Small Business Independence)**
The financial/employee size standard applies to the bidding firm and the sum of any of its business affiliates. It is the responsibility of each individual small business to report to DelDOT any real or perceived affiliation among other entities. DelDOT uses Title 13, Section 121.103 as a guide to determine affiliation among business concerns.

**Small Business Program Requirement**
Firms that wish to submit a bid for this project must be an existing, for-profit, small business, as defined by SBA standards and 49 CFR Part 26. DelDOT applies the SBA business size standard that correlates to the appropriate type of work that the small business seeks to perform on the contract. In determining business size, firms must count their receipts or employees, including all of those of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

**Proof of Eligibility**
The selected firm must provide copies of the previous three year’s federal tax returns, and any other information needed to verify qualification under the Small Business Program, within 10 Calendar Days of notification of selection. Agreement Award will not take place until the Department has been satisfied the selected firm meets the Small Business Program requirements.

Failure of the selected firm to present proof of eligibility meeting the Small Business Program requirements within ten (10) calendar days after notification of selection shall create a rebuttable presumption that the bid is not responsive.

**Small Business Verification**
DelDOT will not rely upon or accept a small business verification process used by any other entity. No award may be issued without expressed written approval from the DelDOT DBE Program Manager.

**U.S.D.O.T. Office of Inspector General**
Any suspected evidence of; falsified documents or fraudulent attempts to join this program; fraudulent activity, such as not reporting affiliation in order to gain access to the Small Business Program; attempts to take part in the DelDOT Small Business Program either through falsified or misleading financial data, unreported business alliances, or otherwise; will result in immediate removal from the Program and directed to the attention of the U.S. Department of Transportation, Office of Inspector General.

*The following is an excerpt of Section VI, Small Business Participation within the DBE Program, from the DELAWARE DEPARTMENT OF TRANSPORTATION, DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN, January 2013. The full DBE Program is available at the following:*
VI. SMALL BUSINESS PARTICIPATION WITHIN THE DBE PROGRAM (26.39)


On April 20, 2012 DelDOT was notified that the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) completed their review of the DelDOT DBE Program Submission containing the new Fostering Small Business Participation Element; and, in reviewing Delaware's small business element, both operating administrations have determined that it sufficiently fulfills the intent of the regulations.

The Small Business Program is a provision for which status as a small or disadvantaged business is required, thus it is advantageous to those firms that qualify as such. Any suspected evidence of falsified documents or fraudulent attempts to join this program will be directed immediately to the attention of the U.S. Department of Transportation, Office of Inspector General.

Introduction
On January 28, 2011, the Office of the Secretary of Transportation issued a final rule to 49 CFR Part 26, stating to all recipients of federal transportation aid:

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012.
(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

General Provisions of the DelDOT Small Business Plan
In response to the USDOT directive to “establish program elements to foster small business participation,” all DelDOT purchases, contracts or agreements funded either in whole or in part by Transportation Alternatives Program funds, hereinafter referred to collectively as TAP funds, are to be set-aside for competition only between eligible small business concerns. Included in this provision are all DelDOT purchases, contracts, or consulted activities that are funded with TAP federal-aid for either mass or surface transit projects.
Competition within DelDOT’s Small Business Program is limited only on the basis of business size, thus the Program is based on race-neutral (rather than race-conscious) classification. Race-neutral classification will ensure that all small businesses, DBEs and non-DBEs alike, are given equal opportunity to participate in DelDOT’s Small Business Program. All small businesses that wish to participate will be subject to the same financial and employee size standards, and consequently, will be competing with similarly-sized businesses.

The rules set forth in Title 13 §121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including this program. Any firm that wishes to participate in the DelDOT Small Businesses Program must be an existing, for-profit, small business, as defined by SBA standards and 49 CFR Part 26. DelDOT applies the SBA business size standard that correlates to the appropriate type of work that the small business seeks to perform on the contract. In determining business size, any firm wishing to participate in DelDOT’s Small Business Program must count their receipts or employees, including all of those of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

**Participation Criteria**

In order to participate in the Small Business Program, the firm must meet one of the following two criteria:

- The firm must be a DelDOT-certified DBE prior to the bid date,
- The firm (including any of its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. DelDOT will apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the small business seeks to perform on each DOT-assisted contract or agreement. A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. To maintain parity with the DBE business size restriction, the average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402) over the firm's previous three fiscal years cannot be in excess of $23.98 million.

**Affiliation (Small Business Independence)**

The financial/employee size standard applies to the bidding firm and the sum of any of its business affiliates. It is the responsibility of each individual small business to report to DelDOT any real or perceived affiliation among other entities. DelDOT uses Title 13, Section 121.103 as a guide to determine affiliation among business concerns. Any evidence of fraudulent activity, such as not reporting affiliation in order to gain access to the Small Business Program, will result in immediate removal from the Program and directed to the attention us the U.S. Department of Transportation, Office of Inspector General.

Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. DelDOT considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Affiliation may be found where an individual, concern, or entity
exercises control indirectly through a third party. In determining whether affiliation exists, DelDOT will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. Affiliation can also be determined based on shared stock ownership, common management, common interests (family members, individuals, or firms with common investments), or firms that are economically dependent through contractual or other relationships.

Size Standards for the Small Businesses Program
In order to qualify for participation in the DBE Program (of which the Small Business Program is part), the three-year average annual gross receipts of the firm, including its affiliates, cannot exceed $23.98 million. Additionally, each small business will be measured against their NAICS code financial and employee size standard.

DelDOT uses the size standards set by the U.S. Small Business Administration (SBA) to define whether a business entity is small and, thus, eligible for programs and preferences reserved for “small business” concerns. An SBA size standard is the largest that a firm can be and still qualify as a small business for federal-aid-based government programs. SBA size standards are expressed in either millions of dollars (financial size) or in the number of employees (workforce size) – not both. Small business size standards are determined either by calculating the annual receipts of the most recent fiscal year or the number of all part and full-time employees of a firm (including those of its affiliates).

Size standards have been established for types of economic activity or industry under the North American Industry Classification System (NAICS). NAICS codes are described by the U.S. NAICS Manual, available from the U.S. Census Bureau at www.census.gov/eos/www/naics/. A full table matching a size standard with each NAICS Industry is also published annually by SBA in the Federal Register. Some of the common transportation industry-related NAICS codes and their size standards have been attached at the end of this document.

- Financial Size Standard
  In accordance with the SBA standard of 13 CFR §121.104(c), DelDOT uses the previous three fiscal years as the period of measurement in determining the financial size of an business and its affiliates. A firm must report the total receipts of the concern over its most recently completed three fiscal years divided by three. The previous three years business receipts must be reported by the apparent low bidder and must match the amount shown on the three previous federal tax returns. The affirmation of financial size must be accompanied by the corresponding federal tax return(s), showing proof of gross receipts, or it will not be accepted. If a firm has affiliates, the average annual receipts size of the small business concern is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate. In order to qualify to participate in the Small Business Program, a firm’s average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402) over the previous three fiscal years cannot be in excess of $23.98 million. This rule is to maintain equal financial size standards between both DBE’s and non-DBE’s that wish to participate.

Gross receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service (IRS) tax
return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Multi-member LLC’s file as either a partnership or a corporation, including an S corporation. Individual-member LLC’s file as sole proprietorships. Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph.

All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

Previous to the award of any TAP federal aid contract or professional service agreement, the small business and its affiliates, if any, must submit the federal income tax form(s) and any related amendments filed with the IRS to DelDOT in order to verify the financial size status of the firm. The previous paragraph gives examples of the forms for common legal business structures. Small businesses which submit proof of financial size must allow for no less than ten (10) working days for DelDOT review and approval to award the contract. There are no exceptions to this rule.

- **Employee Size Standard**
  In determining their total number of employees, the small business must count all individuals employed on a full-time, part-time, or other basis. Where the size standard is number of employees, the method for determining a business concern's size includes the following principles:

  1. The average number of employees of the concern is used (including the employees of its affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

  2. Part-time and temporary employees are counted the same as full-time employees.

  3. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

  4. The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate.

- **NAICS Codes**
  Because small business size standards are indexed directly to NAICS code(s), it is important that the correct code is assigned to any small business that wishes to participate in the Small Business Program. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the DBE firm will be providing on the federal-aid project.
All DelDOT DBEs have already been assigned specific NAICS codes which signify the type of work they are authorized to perform as a DelDOT DBE.

The small business bears the burden of providing any information that DelDOT needs to make an appropriate NAICS code designation. When describing the type(s) of work a firm can perform, DelDOT will use terms of the most specific available NAICS code for that type of work.

- **Personal Net Worth**
  There are no limits as to the personal net worth of the owner(s) of any small business that wishes to participate in the DelDOT Small Business Program.

- **Control**
  The DelDOT Small Business Program is a race- and gender-neutral program, thus there is no requirement for an owner to show proof of control over his or her firm.

- **Small Business Participation Goals**
  Since the DelDOT Small Business Plan is a race-neutral set aside applied to an entire source of federal aid, the use of additional race-conscious DBE goals will not be administered on Transportation Alternatives Program federal-aid contracts or professional service agreements. There will not be a necessary reason to set small business goals participation on TAP projects, as it is required that the contract be awarded to a qualified small business.

- **DelDOT Small Business and DBE Directories**
  DelDOT will not maintain a separate small business directory; however it will keep records in-house of all small businesses that have been verified and approved for contract award throughout the fiscal year. Businesses that have had their financial or employment sizes verified by DelDOT within a fiscal year will not have to do so again during the same fiscal year. All Certified DBE businesses listed within DelDOT’s Directory of firms automatically qualify as small businesses, as long as they continue to meet the SBA size requirements. The DelDOT certified DBE Vendor search is available online at [http://dbe.deldot.gov](http://dbe.deldot.gov).

- **DelDOT Sub Recipients**
  This Small Business Program is to be made part of DelDOT’s overall DBE program, thus the Small Business requirements apply to both DelDOT and its sub-recipients in the same way as the overall DBE program does. Just as DelDOT is expected to ensure that its sub-recipients comply with the federal DBE requirements, so are we expected to ensure that all DelDOT sub-recipients implement the approved small business element now made part of the DelDOT DBE program.

In any case where a sub-recipient of DelDOT has its own DBE program, separate from that of DelDOT, the sub-recipient is responsible for creating its own small business program and submitting it to the concerned federal operating administration for approval.

- **DelDOT Responsibilities**
  The DelDOT DBE Program will be responsible for carrying out this plan with respect to Transportation Alternative Program funds. The DelDOT DBE Program Manager will provide updates to FHWA if there are any significant changes in this Small Business/DBE Program. DelDOT’s Delaware Transit...
Corporation (DTC) DBE division will be responsible for carrying out this plan with respect to transit projects utilizing Transportation Alternatives Program funds. The DTC Fiscal Manager will provide updates to FTA if there are any significant changes in this Small Business/DBE Program.

- **Verification of Program Eligibility**
  To ensure that a firm is in fact a small business concern and to minimize fraud and abuse, DelDOT must take steps to verify eligibility of any firm that wishes to participate in its Small Business Program.

  Previous to the award of construction contract or Consultant agreement in which federal Transportation Alternatives Program funds were made part, the apparent lowest bidder will be given ten (10) days to satisfy the burden of proving that they are an eligible small business under the rules created by the Small Business Association and the USDOT. See sections on Financial and Employee Size Standards, above. This information will be matched against the corresponding NAICS code to verify the firm’s qualification for entry into the Small Business Program. If efforts to ensure a firm’s small business status have not been fulfilled within ten days of being named the lowest bidder, the corresponding bid proposal is automatically disqualified from consideration. If small business status is either overturned or unmet within the ten-day period, DelDOT will begin the process of verification with the next lowest bidder, and so on until the size standards are met. The average annual receipts for any business that wishes to participate in the Small Business/DBE Program cannot exceed $23.98 million, regardless of the SBA size standards. Annual receipts include the sum receipts of the small business and all of its affiliates.

  Any ineligible business that attempts to take part in the DelDOT Small Business Program either through falsified or misleading financial data, unreported business alliances, or otherwise, will be removed from consideration and reported to the U.S. Department of Transportation, Office of Inspector General.

  If the apparent lowest bidder is a DelDOT-certified DBE, the firm is automatically qualified for participation as a small business unless it is determined that more information is needed before a decision can be made.

  DelDOT will not rely upon or accept a small business verification process used by any other entity. No Transportation Alternatives Program contract of any kind may be awarded without expressed written approval from the corresponding DelDOT DBE Program Manager or DTC Fiscal Manager.

**Fast Act Transportation Alternatives (TAP) Program**

The majority of DelDOT contracts that use Fast Act Transportation Alternatives Program funding are relatively small-scale transportation projects, most often initiated at the local level by sponsors from city or county governments or community-based organizations. Projects funded with TAP dollars can also be initiated directly by other state agencies, tribal governments, or federal agencies.

The following is a list of Fast Act TAP eligible activities that qualify under the federal law (23 U.S.C. 213(b)), and that will be eligible projects under the DelDOT Small Business/DBE Program:
1) Transportation Alternatives as defined in 23 U.S.C. 101(a)(29) (Fast Act 1109 (b) (7)):
   a) Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.
   b) Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
   c) Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users.
   d) Construction of turnouts, overlooks, and viewing areas.
   e) Community improvement activities, including-
      i) inventory, control, or removal of outdoor advertising;
      ii) historic preservation and rehabilitation of historic transportation facilities;
      iii) vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
      iv) archaeological activities relating to impacts from implementation of transportation projects eligible under title 23.
   f) Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
      i) address stormwater management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329 of title 23; or
      ii) reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.

2) The recreational trails program under section 206 of title 23.

3) The safe routes to school program under section 1404 of the SAFETEA-LU (23 U.S.C. 402; Public Law 109-59).
   a) Infrastructure-related projects.-planning, design, and construction of infrastructure-related projects on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools that will substantially improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.
   b) Non infrastructure-related activities to encourage walking and bicycling to school, including public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and funding for training, volunteers, and managers of safe routes to school programs.
c) Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

XI. COMMON TRANSPORTATION-INDUSTRY NAICS PAIRED WITH CURRENT DBE PROGRAM SIZE STANDARDS*

<table>
<thead>
<tr>
<th>NAICS Codes</th>
<th>NAICS U.S. Industry Title</th>
<th>Size standard in millions of dollars**</th>
</tr>
</thead>
</table>

**To maintain parity with the DBE financial size regulation (49 CFR §26.65(b)), the average annual gross receipts of any firm's previous three fiscal years cannot be in excess of $23.98 million, regardless of the SBA size standard.**
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. The recipient will need to include applicable Federal requirements in each sub-agreement, 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.
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.

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 shown above under Disadvantaged Business Enterprise.

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, 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.
Appendix A - REQUIRED FORMS

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

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

Delaware Department of Transportation

RFP Number 1834-1837

TRANSPORTATION ALTERNATIVE CONSULTANT SERVICES

We have read the above referenced Request for Proposal 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.

_______________________________________ Signature of the Bidder or Offeror’s Authorized Official

_______________________________________ Name and Title of the Bidder or Offeror’s Authorized Official

_______________________________________ Date

Sworn and subscribed before me this __________ day of __________________________, 20___

_____________________________________ My commission expires: ______ / ______ / 20___
Notary Public

Month Day Year
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.

________________________________ Signature of the Bidder or Offeror’s Authorized Official

________________________________ Name and Title of the Bidder or Offeror’s Authorized Official

________________________________ Date

Sworn and subscribed before me this _________ day of _____________________________, 20___

________________________________ My commission expires: _____ / _____ / 20___

Notary Public            Month      Day Year
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 of the Bidder or Offeror’s Authorized Official

________________________Name and Title of the Bidder or Offeror’s 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.


_______________________________ Signature of the Bidder or Offeror’s Authorized Official

_______________________________ Name and Title of the Bidder or Offeror’s Authorized Official

_______________________________ Date