



DELAWARE DEPARTMENT OF TRANSPORTATION

# State of Delaware

## Request for Proposal

Title: **FIXED DYNAMIC MESSAGE SIGNS**

Contract ID: **DOT2001-FIXED\_DMS**

**- *Deadline to Respond* -**

**Tuesday, February 11, 2020**

**PRIOR TO 2:00 P.M. Local Time**

**Responses to be received at:**



State of Delaware  
**DEPARTMENT OF TRANSPORTATION**  
Administration Building  
Contract Administration  
800 Bay Road, Dover, DE 19901



**QUESTIONS** are to be submitted via e-mail to [dot-ask@state.de.us](mailto:dot-ask@state.de.us).

Responses to Questions will be posted to this project at <http://www.bids.delaware.gov>.

**FIXED DYNAMIC MESSAGE SIGNS**

ALL VENDORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" consisting of the following documents:

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**INFORMATIONAL DOCUMENTS:** *(not required to be returned with bid)*

- 1 – Sample Monthly Usage Report (Sample Report 1)
- 2 – Sample Subcontracting (2<sup>nd</sup> Tier) Quarterly Reporting (Sample Report 2)
- 3 – Office of Supplier Diversity (OSD) Application Information
- 4 – Proposal Reply Requirements

**REQUIRED BID DOCUMENTS:** *(MUST be completed and returned with your bid)*

- [ATTACHMENT A – NON-COLLUSION STATEMENT](#)
- [ATTACHMENT B – SUBCONTRACTOR INFORMATION FORM](#)
- [ATTACHMENT C – BUSINESS REFERENCES](#)
- [ATTACHMENT D – CONFIDENTIAL AND PROPRIETARY INFORMATION](#)
- [ATTACHMENT E – BID FORM – \(Paper\)](#)
- [ATTACHMENT F – BID BOND](#)

All above documents are made part of this solicitation and are contained within this file, or available for download at the following site: <http://bids.delaware.gov/>.

In order for your response to be considered, the REQUIRED BID DOCUMENTS must be executed completely and correctly and received in a sealed envelope clearly displaying the contract number and vendor name prior to the due date and time.

**COMPETITIVE SEALED PROPOSAL**

The Department has determined, pursuant to **Delaware Code Title 29, Chapter 6924(a)** that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not practical and/or not in the best interest of the State. The use of competitive sealed proposals is necessary to:

- Use a contract other than a fixed-price type; or
- Conduct oral or written discussions with vendors concerning technical and price aspects of their proposals; or
- Afford vendors an opportunity to revise their proposals through best and final offers; or
- Compare the different price, quality and contractual factors of the proposals submitted; or
- Award a contract in which price is not the determining factor.

**FIXED DYNAMIC MESSAGE SIGNS**

**PROJECT INFORMATION**

This Request for Proposal (RFP) issued by the Delaware Department of Transportation (DelDOT) is for the purpose of acquiring Proposals from qualified firms to furnish full matrix, LED (light emitting diode) Fixed Dynamic Message Signs (Fixed DMS or DMS), miscellaneous equipment and items and to provide DMS training and warranty support to the Department. The DMS will enable The Department to deliver traveler advisory and travel time information along critical sections of the transportation system. The DMS system is a component of the statewide Integrated Transportation Management System (ITMS) initiative undertaken to provide for the safe and efficient management of the transportation system.

**1.1. KEY RFP DATES/MILESTONES**

The following dates and milestones apply to this RFP and contract award. Vendors are advised that these dates and milestones are not absolute and may change by Addendum or due to unplanned events during the bid proposal and award process.

<b>Activity</b>	<b>Due Date / Time</b>
Questions Due - No Later Than:	Thursday, January 28, 2020 by 3:00 P.M.
Final Questions/Answers Posted:	One week prior to Proposal Due Date
<b>Proposals Due - Prior To Public Opening:</b>	<b>Tuesday, February 11, 2020 prior to 2 P.M.</b>
Contract Award	Within 90 days of bid opening

**1.2. INQUIRIES & QUESTIONS**

We welcome your interest in working with us, and we will be pleased to answer any questions you may have in formulating your response to this Request for Proposal.

All questions must be received by DelDOT at the following email address prior to the ‘Questions Due’ date and time shown above in order to be addressed:

**EMAIL QUESTIONS TO: [dot-ask@delaware.gov](mailto:dot-ask@delaware.gov)**

Questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this RFP must make specific reference to the section(s) and page numbers of the RFP where applicable. All communications with DelDOT regarding this RFP are to be made through email to the ‘dot-ask’ email address.

Responses issued by DelDOT will be posted on the <http://bids.delaware.gov/> website. Vendors should rely only on written statements issued by DelDOT regarding this RFP. Information otherwise obtained is not valid.

Direct contact with State of Delaware employees other than DelDOT’s Contract Administration staff regarding this RFP is expressly prohibited without prior consent. *Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration.* Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

**1.3. PREBID MEETING**

A pre-bid meeting has not been established for this Request for Proposal.

**1.4. BID BOND REQUIREMENT**

The Bid Bond requirement has been waived.

**1.5. PERFORMANCE BOND REQUIREMENT**

The Performance Bond requirement has been waived.

**1.6. CONTRACT PERIOD**

Each successful Vendor's contract shall be valid for a three (3) year period. The contract may be extended for up to two (2), one (1) year periods through negotiation between the Vendor and DeIDOT. Negotiation should be initiated no later than ninety (90) days prior to the termination of the agreement period.

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the contract has been completed.

**1.7. PRICES**

Prices and/or rates shall remain firm for the initial three (3) year term of the contract, unless further negotiations are deemed necessary by the State. The pricing policy that you choose to submit must be clear, accountable and auditable and must cover the full spectrum of services required. Submittal must be structured as described.

**1.8. PRICE ADJUSTMENT**

The Vendor is not prohibited from offering a price reduction on its services or materiel offered under the contract. The State is not prohibited from requesting a price reduction on those services or materiel during the initial term or any subsequent options that the State may agree to exercise.

If agreement is reached to extend this contract beyond the initial period, DeIDOT shall have the option of offering a determined price adjustment based on the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

**1.9. SHIPPING TERMS**

FOB destination, freight prepaid and allowed

**2. SCOPE OF WORK**

The Vendor(s) shall provide all equipment, materials and labor to supplement DeIDOT's need for Fixed Dynamic Message Signs as described herein. The contract will require the Vendor(s) to cooperate with DeIDOT to insure the State receives the most current state-of-the-art material and/or services.

**2.1. BACKGROUND**

The Department utilizes Fixed Dynamic Message Signs (Fixed DMS or DMS) to deliver travel advisories and travel time information along critical sections of the transportation system. The DMS system is a

component of the statewide Integrated Transportation Management System (ITMS) initiative undertaken to provide for the safe and efficient management of the transportation system.

## **2.2. MANDATORY INSURANCE REQUIREMENTS**

As a part of the contract requirements, the vendor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits below with a carrier satisfactory to the State. All vendors/contractors must carry at least the following coverages:

- Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to other, and
- 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 contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

**Note: The State of Delaware shall not be named as an additional insured.**

Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, must be filed with DelDOT. The certificate holder is as follows:

**State of Delaware  
Department of Transportation  
P.O. Box 778 Dover, DE 19903  
Contract: DOT2001- FIXED\_DMS**

Should any of the above described policies be cancelled before the expiration date thereof, notice must be delivered in accordance with the policy provisions.

## **2.3. TECHNICAL SPECIFICATIONS**

The Technical Specifications of this RFP are stated in **Appendix A**.

## **2.4. OR EQUAL (PRODUCTS BY NAME)**

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified. DelDOT must approve any substitutions in writing.

## **3. PROPOSAL REQUIREMENTS**

This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each Vendor must provide every component listed in the order shown below, using the format prescribed for each component. A proposal may be rejected if it is incomplete or conditional.

The Request for Proposal contains required Forms for use by the vendor in submitting its proposal. The forms required by this solicitation shall be considered mandatory, prevailing documents.

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The Vendor's proposal must be written in ink or computer generated. When submitting a required Form, any corrections or erasures MUST be initialed by vendor's representative completing the bid submission. Required Forms must be complete, Bid Forms must show each required entry.

Vendors' proposal must respond to each and every requirement outlined in the RFP criteria in order to be considered responsive.

DelDOT discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. DelDOT's interest is in the quality and responsiveness of the proposal.

Vendor's costs associated with participation in their response to this RFP are the vendor's responsibility.

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely with DelDOT.

### **3.1. COVER LETTER**

Each proposal must have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the Vendor's ability to provide the services specified in the RFP. The cover letter shall be signed by an officer of the company who has the legal capacity to enter the organization into a formal contract with DelDOT.

### **3.2. TABLE OF CONTENTS**

Each proposal must include a Table of Contents with page numbers for each of the required components of the proposal.

### **3.3. DESCRIPTION OF SERVICES AND QUALIFICATIONS**

Each proposal must contain a detailed description of how the Vendor will provide the goods and services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the Vendor will provide that are not mentioned in this RFP. Vendors are encouraged to review the Evaluation criteria to see how the proposals will be scored and verify that the response has sufficient documentation to support each scoring criteria identified.

### **3.4. PRICES QUOTED**

The prices quoted are those for which the material will be furnished F.O.B. DelDOT unless otherwise specified, and include all charges that may be imposed during the period of the contract. All prices quoted must be in U.S. Dollars.

Vendors may offer to add related material or services that have been identified as necessary. The Vendors and DelDOT must agree on the pricing of any addition in writing.

### **3.5. INTERPRETATION OF ESTIMATES/QUANTITIES**

Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract. Bidders shall recognize there

are no guaranteed minimum contract quantities or values associated with this solicitation. An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

**3.6. NON-COLLUSION STATEMENT**

Include a signed and notarized copy of the Non-Collusion Statement. Must have original signatures and notary mark. **Use Attachment A.**

**3.7. SUBCONTRACTORS**

Subcontracting is permitted under this RFP and contract. Every subcontractor must be identified. Make as many copies of the form as needed. **Use Attachment 7.**

**3.8. BUSINESS REFERENCES**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered. Please provide references other than DelDOT contacts. **Use Attachment 6.**

**3.9. CONFIDENTIALITY FORM**

Complete and include the Confidentiality Form. If your submittal includes confidential information, list on the form the confidential areas of your submittal. Please check box if no confidential or proprietary information is submitted. **Use Attachment D.**

**3.10. EXCEPTIONS FORM**

Bidders may elect to take **minor exception** to the terms and conditions of this RFP. DelDOT will evaluate each exception according to the intent of the terms and conditions contained herein. DelDOT must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening, and listed on the Exceptions form. DelDOT maintains sole discretion to reject any vendor exceptions that are submitted. **Use Attachment B.**

**3.11. BROCHURES**

Samples or brochures are optional for evaluation purposes. They shall be such as to permit the Department to compare and determine if the item offered complies with the intent of the specifications.

**3.12. NUMBER OF PROPOSAL COPIES**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The Department reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with **one original and five paper copies**. The original must be marked "Original" and must contain original signatures in all locations requiring a vendor signature. The copy must contain either original signatures or copied signatures.

**Submit two (2) pdf format electronic copies** (e.g. CD, flash drive) of the Proposal; one original and one 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

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proprietary or confidential information redacted, and this copy should be clearly marked as “Redacted” on the first page of the Proposal. 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.

*To determine what information may be considered proprietary or confidential and may be redacted from their Proposal, firms should review Delaware’s Freedom of Information Regulations [here](http://regulations.delaware.gov/AdminCode/title8/1400.shtml#TopOfPage); <http://regulations.delaware.gov/AdminCode/title8/1400.shtml#TopOfPage>. Under Delaware FOIA law, 29 *Del. C.*, §10002(l)(2), “Trade secrets and commercial or financial information...which is of a privileged or confidential nature” are “records that shall not be deemed public” and are therefore exempt from disclosure under FOIA.*

**3.13. Bidding Procedures**

Bidders may bid on any one item or all items.

**3.14. PROPOSAL SUBMISSION**

Interested firms must submit the material required herein or they may not be considered for the project. Proposals must be received prior to the Submission due date and time indicated in Section 1.1 above. Proposals must be delivered in sealed envelopes, and shall bear on the outside the name and address of the Vendor as well as the designation of the contract.

Facsimile and E-mail responses to this RFP are not acceptable. No response hand-delivered or otherwise will be accepted after the due 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, 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 – DOT2001-FIXED\_DMS  
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.

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Any proposal received after the date and time deadline referenced above will not be considered and will be returned unopened. The proposing vendor bears the risk of delays in delivery.

**3.16.1. EXAMINATION OF SPECIFICATIONS AND PROVISIONS**

The Vendor shall examine carefully the proposal and the contract forms for the material contemplated. The Vendor shall investigate and satisfy itself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of any Special Provisions in the RFP and the contract. The submission of a proposal shall be conclusive evidence that the Vendor has made examination of the aforementioned conditions.

#### **4. PROPOSAL EVALUATION**

##### **4.1. PUBLIC OPENING OF PROPOSALS**

The proposals shall be publicly opened at the time and place specified. Vendors or their authorized representatives are invited to be present.

Only the vendor's name and address will be read aloud during the bid opening process.

The contents of any proposal shall not be disclosed so as to be available to competing vendors during the negotiation process.

##### **4.2. DISQUALIFICATION OF VENDORS**

Any one or more of the following causes may be considered as sufficient for the disqualification of a vendor and the rejection of its proposal or proposals:

- 4.2.1. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
- 4.2.2. Evidence of collusion among vendors.
- 4.2.3. Unsatisfactory performance record as evidenced by past experience with DelDOT or on a State of Delaware contract.
- 4.2.4. Any suspension or debarment of the parent company, subsidiary or individual involved with the vendor by federal, any state or any local governments within the last five (5) years.
- 4.2.5. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- 4.2.6. Non-attendance of mandatory pre-bid meetings shall be cause of disqualification.
- 4.2.7. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.

##### **4.3. RESPONSIVENESS AND RESPONSIBILITY OF VENDOR**

- 4.3.1. An individual proposal may be rejected for one or more of the following reasons:
  - 4.3.1.1. The respondent to the solicitation is determined to be nonresponsive or non-responsible.
  - 4.3.1.2. It is unacceptable.
  - 4.3.1.3. It is otherwise not advantageous to the State.
  - 4.3.1.4. The proposed price is unreasonable.
- 4.3.2. It shall be determined whether a vendor is responsible before awarding a contract. Factors to be considered in determining if a vendor is responsible include:
  - 4.3.2.1. The vendor's financial, physical, personnel or other resources, including subcontracts.
  - 4.3.2.2. The vendor's record of performance and integrity.
  - 4.3.2.3. Any record regarding any suspension or debarment.
  - 4.3.2.4. Whether the vendor is qualified legally to contract with the State.
  - 4.3.2.5. Whether the vendor supplied all necessary information concerning its responsibility.

- 4.3.3. If a vendor is determined to be non-responsible or non-responsive, the vendor shall be informed in writing.
- 4.3.4. DeIDOT reserves the right to waive minor irregularities, or request additional information before determining if the Vendor is responsible and/or responsive. All Vendors will be afforded the same or similar opportunities, as necessary, and will be treated with equal regard before such determinations are finalized.

**4.4. RIGHT TO CANCEL SOLICITATION**

DeIDOT reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. DeIDOT makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by DeIDOT. Vendor’s participation in this process may result in DeIDOT selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by DeIDOT to execute a contract nor to continue negotiations. DeIDOT may terminate negotiations at any time and for any reason, or for no reason.

**4.5. PROPOSAL EVALUATION COMMITTEE**

The Selection Committee is generally comprised of representatives of DeIDOT, other agency employees, and/or persons familiar with the subject matter.

4.5.1. The Committee reserves the right to:

- 4.5.1.1. Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- 4.5.1.2. Waive or modify any information, irregularity, or inconsistency in proposals received.
- 4.5.1.3. Request modification to proposals from any or all vendors during the contract review and negotiation.
- 4.5.1.4. Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- 4.5.1.5. Select for contract, or for negotiations, a proposal other than that with lowest costs.
- 4.5.1.6. Select more than one vendor pursuant to 29 Del. C. §6926. Such selections will be based on the highest rated Criteria and Scoring evaluations.

**4.6. CRITERIA AND SCORING**

#	Criteria Description:	Points	Weight
1	Vendor Pricing	1 – 10	20%
2	Firm’s resources and capability to accomplish proposed work on schedule	1 – 10	20 %
3	Ability to provide the product that meets the special provisions and technical specifications	1 – 10	20 %
4	Compliance to industry and State system design standards	1 – 10	20 %
5	Warranty and Technical Support	1 – 10	20 %

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Selection Committee members will assign up to the maximum number of points listed for each of the above criteria which determines individual ranking. The Department's ranking is the averaged ranking of all Committee members. Upon review of the Department's ranking the Committee will;

- Select the firm(s) with the highest Department ranking and award a contract(s); or
- Conduct negotiations with offerors who submit proposals found to be reasonably likely to be selected for award. If negotiations are held, Best and Final Offers will be requested from those offerors.

#### 4.6.1. References

The Committee may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, DelDOT may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the DelDOT will pay travel costs only for State of Delaware personnel for these visits.

## 5. **AWARD**

DelDOT reserves the right to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

DelDOT reserves the right to waive technicalities, to reject any or all bids, or any portion thereof, to seek new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of DelDOT, the best interest of the State will be promoted thereby.

DelDOT will award this contract within ninety (90) days from the date of opening proposals to the most responsible and responsive vendor(s) who best meets the RFP terms and conditions, or all proposals will be rejected. A formal contract must be executed with the successful firm(s) within 20 days after award.

### 5.1. **STATE OF DELAWARE BUSINESS LICENSE**

Prior to receiving an award, the successful Vendor(s) shall either furnish DelDOT with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

Information regarding the award of this contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

### 5.2. **MATERIAL VERIFICATION**

Before any contract is awarded, the successful Vendor(s) may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

### 5.3. **CONTRACT IMPLEMENTATION**

No order is to be shipped, or employee of the Vendor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly

processed through the State of Delaware Accounting Office. A Notice to Proceed may also be required prior to beginning work if directed in this RFP.

**5.4. VENDOR EMERGENCY RESPONSE POINT OF CONTACT**

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**5.5. WARRANTY**

In addition to any warranty requirements listed or proposed, the successful Vendor(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

**5.6. PERSONNEL, EQUIPMENT AND SERVICES**

The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.

All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

**5.7. ASSIGNMENT**

This contract shall not be assigned except by express prior written consent from the Agency.

**5.8. SUBCONTRACTS**

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal and agreed to in writing by DelDOT or as specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the RFP and with all local, State and Federal Laws. The vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

**5.9. LAWS TO BE OBSERVED**

The vendor is presumed to know and shall strictly comply with all Federal, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The Vendor shall indemnify and save harmless the State of Delaware, DelDOT, and all Officers, Agency and Servants thereof

against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by itself, by its employees, or by its subcontractor (s).

**5.10. PERMITS AND LICENSES**

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Vendor at its own expense.

**5.11. AUDIT ACCESS TO RECORDS**

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

**5.12. NO PRESS RELEASES OR PUBLIC DISCLOSURE**

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware or DelDOT with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of DelDOT.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

**5.13. PUBLICATION, REPRODUCTION AND USE OF MATERIAL**

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the State agrees not to use any design or engineering plans prepared by the vendor for anything other than their intended purpose under this Contract. The Vendor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

**5.14. CONTRACT DOCUMENTS**

The executed Contract, DelDOT's Request for Proposal with Attachments and Appendices, the Purchase Order(s), and the Vendor's submitted Proposal shall be a part of and constitute the entire Agreement entered into by the State of Delaware and any Vendor. In the event there is any discrepancy between any of these contract documents, the former prevails over the latter.

## **6. TERMS AND CONDITIONS**

### **6.1. VENDOR RESPONSIBILITY**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal, and are subject to the approval and acceptance of DelDOT.

### **6.2. RIGHTS AND OBLIGATIONS**

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been approved by the Secretary of Finance, and all procedures of the Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

### **6.3. ORDERING PROCEDURE**

Successful Vendor(s) are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, DelDOT and each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Vendor and received by DelDOT or a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, email, fax or computer on-line systems.

### **6.4. BILLING**

The Vendor is required to "Bill as Shipped" to DelDOT or the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. The Vendor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Vendors shall be required to report semi-annually opportunities to enhance the discounts achieved.

### **6.5. INVOICING**

After the award(s) are made, DelDOT will forward their purchase orders ("P.O.") to the successful Vendor(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an acceptable invoice from the vendor.

### **6.6. METHOD OF PAYMENT**

6.6.1. For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor's billing, the amount which is legitimately earned by the Vendor, and supported by data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Vendor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

6.6.2. No premium time for overtime will be paid without prior written State authorization. Any indirect overhead cost shall not be applied to the premium portion of the overtime.

6.6.3. DeIDOT, agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACI or check. Should a Vendor wish to provide a financial incentive to not process payment by P-Card in their proposal, they are to prepare their proposals to clearly outline any incentives for alternative payment methods the Vendor is willing to accept.

### **6.7. PRODUCT SUBSTITUTION**

All items or services delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the proposal unless specific approval is given by the Agency to do otherwise. Awarded vendors are highly encouraged to offer any like substitute product (s), either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In all cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

### **6.8. CHANGES**

Both parties may, from time to time, require changes in the services to be provided by the Vendor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

### **6.9. SCHEDULE FOR PERFORMANCE OF WORK**

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, the State of Delaware shall be the sole judge of the term "reasonable". If the Vendor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated and the State will forthwith proceed to collect for nonperformance of work.

### **6.10. VENDOR- OWNED EQUIPMENT REMOVAL**

The awarded Vendor shall remove all rental equipment and supplies from the event location (s) no later than an agreed to date once all contract obligations by the Vendor have been met.

### **6.11. CONTRACT EXTENSION**

DeIDOT reserves the right to extend this contract on a month-to-month basis for a period of up to three months.

## **6.12. LAWS OF DELAWARE**

This Agreement and the terms thereof shall be construed in accordance with the laws of the State of Delaware. In addition, Vendor(s) agrees to the jurisdiction and venue of a competent court within the State of Delaware.

## **7. GENERAL PROVISIONS**

### **7.1. AUTHORITY OF AGENCY**

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of DelDOT or the Agency shall be final and binding.

### **7.2. FUNDING OUT or NON-APPROPRIATION**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

### **7.3. INDEPENDENT CONTRACTORS**

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

### **7.4. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES**

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee

provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

#### **7.5. EMERGENCY TERMINATION OF CONTRACT**

- 7.5.1. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- 7.5.2. In the event the Vendor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

#### **7.6. INDEMNIFICATION**

##### 7.6.1. General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and 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 work or services in connection with the contract.

##### 7.6.2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively ""Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- 7.6.2.1. Procure the right for the State of Delaware to continue using the Product(s);
- 7.6.2.2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- 7.6.2.3. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

#### **7.7. NON-PERFORMANCE**

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with General Provisions, Item titled as ""TERMINATION OF INDIVIDUAL PURCHASE ORDERS"" below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of the contract prices for

reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State's invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

**7.8. FORCE MAJEURE**

Neither the vendor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

**7.9. VENDOR NON-ENTITLEMENT**

State of Delaware Vendors for Materiel and for Services shall not have legal entitlement to utilize any Central Contract held by the State of Delaware. The Vendors may not seek business from another Vendors' Central Contract for the purpose of preparing a bid or proposal to the State of Delaware. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract unless they are considered a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code or otherwise permitted by law.

This is not a prohibition from any Vendor choosing to work with another Vendor who holds a State Central Contract for private business.

**7.10. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS**

The individual orders may be terminated as follows:

- 7.10.1. **Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.
- 7.10.2. **Termination for Convenience:** The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.
- 7.10.3. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

## **7.11. TERMINATION OF CONTRACT**

The contract awarded as a result of this RFP may be terminated as follows by DeIDOT.

7.11.1. **Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

7.11.2. **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

7.11.3. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

## **7.12. PUBLIC INSPECTION OF PROPOSALS**

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Committee or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

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Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

**7.13. TAX EXEMPTION**

7.13.1. Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.

7.13.2. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Vendor. Each Vendor shall take its exemption into account in calculating its bid for its work.

**7.14. AGENCY USE CONTRACT**

Pursuant to 29 Del. C. §6904(e) respectively, if no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

**7.15. SILENCE OF SPECIFICATIONS**

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

**7.16. APPLICABLE LAW AND JURISDICTION**

This bid, any resulting contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Bidder submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this bid, and any resulting contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

**7.17. SEVERABILITY**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the

parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**7.18. PATENTED DEVICES, MATERIAL AND PROCESSES**

- 7.18.1. The Vendor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner, and shall file a copy of this agreement with the Agency.
- 7.18.2. The Vendor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

**7.19. INTEREST OF VENDOR**

The vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The vendor further covenants, that in the performance of this contract, no person having any such interest shall be employed.

**7.20. ASSIGNMENT OF ANTITRUST CLAIMS**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

**7.21. TESTING AND INSPECTION**

The State of Delaware reserves the right to conduct any test or inspection it may deem necessary to insure equipment, materials and services conform to contract requirements.

**7.22. COVENANT AGAINST CONTINGENT FEES**

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

**7.23. GRATUITIES**

- 7.23.1. If it is found, after notice and hearing, by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Vendor or any agent of the State with a view toward securing a contract, or securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performance of this contract, the State may, by written notice to the Vendor, terminate the right of the Vendor to proceed under this contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which the State makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this contract; and

7.23.2. In the event this contract is terminated pursuant to subparagraph “a”, the State shall be entitled (i) to pursue the same remedies against the Vendor, and (ii) to exemplary damages, as a penalty in addition to any other damages to which it may be entitled by law, in an amount which shall be not less than three, nor more than ten, times the costs incurred by the Vendor in providing any such gratuities to any such officer or employee. The amount of such exemplary damages shall be in the sole discretion of the State.

**7.24. POTENTIAL CONTRACT OVERLAP**

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**7.25. SUPPLEMENTAL SOLICITATION**

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

**7.26. REQUIRED REPORTING**

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels, if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (**Attachment 8**) shall be furnished in an Excel format and submitted electronically, no later than the 15<sup>th</sup> (or next business day after the 15<sup>th</sup> day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to [vendorusage@state.de.us](mailto:vendorusage@state.de.us), with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15<sup>th</sup> will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council,

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Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment 9.

Accurate 2nd Tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at [vendorousage@delaware.gov](mailto:vendorousage@delaware.gov) on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

## **8. DEFINITIONS**

The attached Definitions apply to this Request for Proposal. The requirement to furnish a bid bond and performance bond is applicable unless waived. Vendors or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting a proposal.

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

**STATE:** The State of Delaware

**AGENCY:** Delaware Department of Transportation (DelDOT).

**BID INVITATION:** The "Request for Proposal" is a packet of material sent to vendors and consists of related documents and enclosures.

**BOND:** The approved form of security furnished by the Vendors and its surety as a guaranty of good faith on the part of the Vendor to execute the work in accordance with the terms of the contract.

**CONTRACT:** The written agreement covering the furnishing and delivery of material or work to be performed.

**DESIGNATED OFFICIAL:** The agent authorized to act for an Agency.

**GENERAL PROVISIONS:** General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

**LOCAL TIME:** Eastern Standard Time/Eastern Daylight Time.

**PROPOSAL:** The offer of the Vendor submitted on the approved form(s) and setting forth the Vendor's offer and prices for performing the work or supplying the material or equipment described in the specifications.

**RFP:** Request for Proposal.

**SPECIAL PROVISIONS:** Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

**SURETY:** The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the Vendor's payments of all debts pertaining to and for its acceptable performance of the work for which he has contracted

**VENDOR:** Any individual, firm, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

**VENDOR'S DEPOSIT:** The security designated in the proposal to be furnished by the Vendor as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to it.



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Informational Document- 2.  
Sample Report 2

FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																	
Subcontracting (2nd tier) Quarterly Report																	
<b>Prime Name:</b>						<b>Report Start Date:</b>											
<b>Contract Name/Number</b>						<b>Report End Date:</b>											
<b>Contact Name:</b>						<b>Today's Date:</b>											
<b>Contact Phone:</b>						*Minimum Required			Requested detail								
Vendor Name*	Vendor TaxID*	Contract Name/Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran/Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id	Date Paid

SAMPLE

**Note:** A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: [vendusage@state.de.us](mailto:vendusage@state.de.us)



**The Office of Supplier Diversity (OSD) has moved to the  
Division of Small Business (DSB)**

Supplier Diversity Applications can be found here:

<https://gss.omb.delaware.gov/osd/>

Completed Applications can be emailed to: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

For more information, please send an email to OSD:

[OSD@Delaware.gov](mailto:OSD@Delaware.gov) or call 302-577-8477

Self-Register to receive business development information here:

<http://directory.osd.gss.omb.delaware.gov/self-registration.shtml>

**New Address for OSD:**

Office of Supplier Diversity (OSD)  
State of Delaware  
Division of Small Business  
820 N. French Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

Telephone: 302-577-8477 Fax: 302-736-7915

Email: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

Web site: <https://gss.omb.delaware.gov/osd/>

**Dover address for the Division of Small Business**

**Local applicants may drop off applications here:**

Division of Small Business  
99 Kings Highway  
Dover, DE 19901  
Phone: 302-739-4271

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

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**FIXED DYNAMIC MESSAGE SIGNS**

Informational Document- 4.

**PROPOSAL REPLY REQUIREMENTS**

The response must contain at a minimum the following information:

1. **Attachment A** - One (1) completed, signed and notarized copy of the Non-Collusion Statement.  
*MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.*
2. **Attachment B** - One (1) completed signed paper copy of the Subcontractor Information Form.  
*One form for each Subcontractor, if no Subcontractors submit form and mark it N/A.*
3. **Attachment C** - One (1) completed Business References Form.  
*Please provide references other than State of Delaware contacts.*
4. **Attachment D** - One (1) completed Confidentiality Form.  
*Please check box if no confidential or proprietary information is claimed.*
5. **Attachment E** - One (1) completed paper copy of each Bid Form.  
*Must be legible and contain all Bid Form pages.*

**Proposals must be submitted in writing and respond to the items outlined in this RFP - do not email.**

Please fill out the attached forms fully and completely and return with your bid in a sealed envelope clearly displaying the contract number, prior to the date and time bids will be opened.

**Bids shall be received at:**



State of Delaware  
**DEPARTMENT OF TRANSPORTATION**  
Administration Building  
Contract Administration  
800 Bay Road, Dover, DE 19901



**PUBLIC BID OPENINGS**

The public bid opening insures the citizens of Delaware that contracts are being bid fairly on a competitive basis and comply with Delaware procurement laws. DeIDOT is required by law to publicly open the bids at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the bid opening is to reveal the name(s) of the bidders(s), not to serve as a forum for determining the apparent low bidders. The disclosure of additional information, including prices, shall be at the discretion of DeIDOT until such time that the responsiveness of each bid has been determined. After receipt of a fully executed contract(s), the results will be posted online in order to review pricing and other non-confidential information.

**NOTE: ONLY THE BIDDER'S NAME MAY BE READ AT THE BID OPENING**

STATE OF DELAWARE  
 Department of Transportation  
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**FIXED DYNAMIC MESSAGE SIGNS**

**Attachment: A**

**NON-COLLUSION STATEMENT**

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid submitted this date to the Department of Transportation.

It is agreed by the undersigned bidder that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Transportation.

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

COMPANY NAME \_\_\_\_\_ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE \_\_\_\_\_

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE LICENSE NUMBER \_\_\_\_\_

COMPANY CLASSIFICATIONS:  CERT. NO.: _____	Certification type(s)	Circle all that apply	
	Minority Business Enterprise (MBE)	Yes	No
Woman Business Enterprise (WBE)	Yes	No	
Disadvantaged Business Enterprise (DBE)	Yes	No	
Veteran Owned Business Enterprise (VOBE)	Yes	No	
Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No	

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:  
 (COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

**THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR PROPOSAL TO BE CONSIDERED**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_

STATE OF DELAWARE  
 Department of Transportation  
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**FIXED DYNAMIC MESSAGE SIGNS**

**Attachment: B**

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO.	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification:  Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
9a. NAME OF PERSON SIGNING	10. BY ( <i>Signature</i> )	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

**Note: Add additional pages as needed.**

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**Attachment: C**

**BUSINESS REFERENCES**

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please list the contract.

1.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
2.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
3.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	

**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**



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**Attachment: E**

BIDDER: \_\_\_\_\_

**BID FORM**

\*\* ALL COLUMNS MUST BE COMPLETED AS INDICATED \*\*  
**ALL FIGURES MUST BE TYPEWRITTEN OR HANDWRITTEN IN INK**  
 Use as many lines as needed.

ITEM NO.	QTY	UOM	ITEM DESCRIPTION	UNIT PRICE IN \$XXX.XX	EXTENDED TOTAL \$XXX.XX
01	5	EACH	Type 1 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
02	5	EACH	Type 2 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
03	5	EACH	Type 3 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
04	5	EACH	Type 4 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
05	4	EACH	Type 5 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
06	4	EACH	Type 6 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
07	30	EACH	Type 7 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
08	10	EACH	Type 8 DMS or Specify Other Type: _____ _____	\$ _____	\$ _____
<b>TOTAL BID:</b>				\$ _____	\$ _____