

Request for ~~Proposal~~ Qualifications
to provide
Professional Sculpture Services
for the
Dr. Jerome Holland Memorial



J. Holland Statue Committee
October 2, 2015 (Revised 11/11/2015)

1. Historic Background

Dr. Jerome H. Holland was the President of Delaware State College from 1953-1960. Dr. Holland is credited with saving then-Delaware State College (DSC) from closure in the 1950s through his critical presidential leadership – without which there would not have been a Delaware State University.

When Dr. Holland was enlisted by then-Gov. Caleb Boggs to assume the institution's presidency, DSC was in dire straits. It had lost its accreditation as a four-year college in late 1949, causing it to lose more than two-thirds of its student enrollment. Its physical infrastructure was inadequate, reflective of decades of inadequate state financial support. The financial management of the College was in shambles, evidenced by DSC's widespread reputation of bad credit with the business communities throughout the state. These and other shortcomings generated a clamor from legislators, the education community and others that the College be closed.

Undaunted by the tremendous tasks before the institution, Dr. Holland met the challenges head on, using his leadership ability and his unwavering belief in the potential of DSC to reverse its course from institutional extinction to restored levels of respect and immense value as a baccalaureate college.

Within only a few years, Dr. Holland revamped DSC's business office, generating improved confidence from the business sector and legislators. The DSC president persuaded the Delaware General Assembly that the College needed better state support, prompting the allocation of \$2.5 million in state funding for new construction (resulting in three new buildings during his tenure) as well as an increase in state funding to support the College's operating budget. There were also much needed improvements made in the DSC academic and administrative structures.

That and many other improvements at DSC led to the reaccreditation of the College in 1957. It was during the tenure of Dr. Holland that the upward trajectory of the College began, leading over the next 67 years to a massive transformation of the campus' physical infrastructure, a dramatic increased diversification in academic offerings that included the establishment of master's and doctoral degree programs, its elevation to University status, an aggressively growing research portfolio, as well as an enrollment growth from the low hundreds in the 1950s to 4,644 students in 2014.

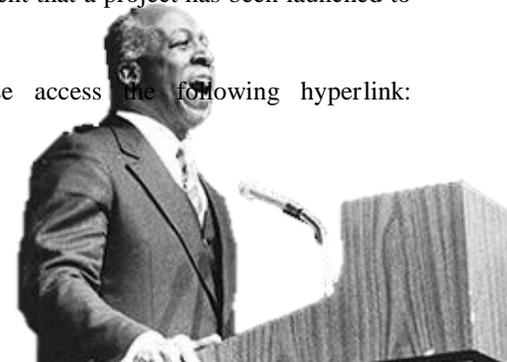
Dr. Holland resigned from DSC in 1960 to become the president of then-Hampton Institute (now University) where he enjoyed similar transformative success during his 10-year tenure there. Dr. Holland would later be appointed as ambassador of Sweden, become a board member of nine major U.S. companies, become the first African American to sit on the Board of Directors for the New York Stock Exchange, and toward the end of his life would serve as President Jimmy Carter's appointed board chairman of the American Red Cross.

Prior to his DSC years, he would distinguish himself in football as a two-time All-American end for Cornell in the 1930s where he broke the school's athletics color line. His prolific intercollegiate gridiron accomplishments led to his induction in the College Football Hall of Fame in 1965.

After death at age 69 from cancer in 1985, Dr. Holland was that year posthumously awarded the Presidential Medal of Freedom, the highest civilian honor one can receive.

While DSU's history acknowledges the lifelong accomplishments of Dr. Jerome H. Holland, the University particularly and eternally celebrates the success of Dr. Holland in literally saving Delaware State College through his diligent commitment and leadership. It is due to his critical accomplishments as a DSC president that a project has been launched to memorialize Dr. Holland through the creation and erection of a campus statue.

For additional historic information on the Dr. Jerome Holland story, please access the following hyperlink: <http://www.desu.edu/hollandstatuehistory>.



2. Project overview

- a. Delaware State University is seeking professional services for ~~concept and~~ sculpture services. This request for proposals (“RFP”) is issued pursuant to 29 Del. C. §§ 6981 and 6982.
- b. Delaware State University reserves the right to deny any and all exceptions taken to the RFP requirements.
- c. Schedule of Key Events
 - i. Pre-proposal conference: October 13, 2015, 2:00pm, local time.
 - ii. Deadline for questions: ~~November 6~~ November 20, 2015, 3:00pm local time.
 - iii. Posting of Answers: ~~November 13~~ November 25, 2015
 - iv. Proposals Due: ~~November 20~~ December 4, 2015, 3:00pm local time
 - v. Vendor Interview(s): ~~December 1-8~~ December 8-15, 2015
 - vi. Vendor Selection: December 15, 2015
- d. Project Site Limits:



- e. Memorial Features – The following list of features shall be incorporated into the Memorial complex.
 - i. Statue
 - ii. Pedestal
 - iii. ADA Accessibility
 - iv. “1957” (Refer to Vision Statement, Paragraph 3B)
 - v. Alumni & Friends Donor Feature
 - vi. Memorial Walkway Feature



- vii. Corporate & Foundation Donor Feature
- viii. Lighting
- ix. The Holland Story Feature
- x. Sitting Area

3. Committee Vision Statement

- a. The design of the memorial shall capture the physical likeness of Dr. Holland in height and weight proportion, and facial expression when delivering a talk publicly.
- b. The design shall incorporate the essence of Dr. Holland as he proclaims the return of accreditation for Delaware State College in 1957... standing next to a podium with his right hand high holding an easy to see document with '1957' being prominent.
- c. The design shall make plain the arch of transition of Delaware State College from almost closing to becoming an important educational change agent in Delaware and around the world.
- d. The design shall make plain the national and international contributions of Dr. Holland from college president to Swedish ambassador to the American Red Cross Blood Bank leader.
- e. The memorial shall be designed to complement the existing university entrance (and mall), at the same time be a focal point that is educational for all to witness and participate in regards (to the) importance of Dr. Holland.

4. Scope of services: The selected vendor will responsible for providing the following scope of services:

- a. Phase 1 – Project Research
 - i. Conduct background interviews including but not limited to alumni, faculty and staff, family, and community leaders.
 - ii. Conduct historic data research sufficient to develop a concept that will satisfy the committee’s vision statement.
 - iii. Submit a detailed report documenting all research findings, including citations for all reference materials.
 - iv. The University will provide all, on file, existing background information available.
- b. Phase 2 – ~~Concept Model~~ Development
 - ~~i. Graphic concepts of all memorial features indicated in paragraph 2e.~~
 - ~~ii. Preliminary model of memorial complex~~
 - ~~iii-i.~~ Statue model progress review submissions (via video, photo, or other approved format).
 - 1. 25% completion submission
 - 2. 50% completion submission
 - 3. 75% completion submission
 - 4. 100% completion submission
- c. Phase 3 – Final model review, which will include a physical inspection by a committee designated team or individual.
- d. Phase 4 – A ~~4:41:8~~ 1:41:8 scale replica of statue will be submitted and will become the property of Delaware State University. The University reserves the right to produce up to 100 scaled replicas for fundraising purposes.
- ~~e. Phase 5 – Statement of Probable Construction Cost~~
 - ~~i. Detailed cost estimate outlining costs associated with the memorial.~~
- ~~f.e.~~ Phase 6 – Mold and casting of statue at foundry approved by the University.
- ~~g.f.~~ Phase 7
 - i. Delivery and Coordination of statue during the memorial construction.
 - ii. Memorial design and construction will be provided under an agreement separate from the scope of services herein.
- ~~h. Phase 8 – Coordination and Management of statue installation during the construction phase.~~



i.g. Meetings – All meetings associated with obtaining the above mentioned approvals shall be included in this scope of work. At a minimum, the following meetings shall be attended by the successful vendor:

- i. Project kick-off meeting. (held at Delaware State University)
- ii. Historic background interviews.
- iii. 25% progress submission. (held at Delaware State University)
- iv. 50% progress submission. (held at Delaware State University)
- v. 75% progress submission. (held at Delaware State University)
- vi. 100% progress submission. (held at Delaware State University)
- vii. Attendance at the construction kick-off meeting.
- viii. Meetings as necessary to properly coordinate and manage the statue installation.

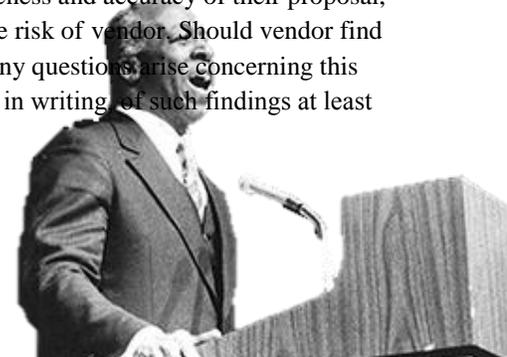
5. Submission Requirements (Instructions to Bidders)

- a. Acknowledgement of Understanding of Terms – By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.
- b. Submission Deadline – Interested firms shall submit one (1) unbound hard copy and (1) electronic copy of their reply. Submissions will be received by the Delaware State University, in the reception area of the Purchasing Office in the Administration Building, 1200 N. DuPont Highway, Dover, DE 19901-2277 (Third Floor), until 3:00pm local time on ~~November 4~~ December 4, 2015, at which time they will be publicly opened and read aloud in the Conference Room. Submitting firm bears the risk of late delivery. Any submissions received after the stated time will be returned unopened.
- c. Submission shall be addressed to the Delaware State University c/o the Purchasing Department, Administration Building, Room 321 (Third Floor), Dover, DE 19901-2277, Attn: Jessica Wilson, Director of Purchasing. The outer envelope should clearly indicate: **"DSU CONTRACT NO. FD-15-024.01 – DR. JEROME HOLLAND MEMORIAL PROFESSIONAL SERVICES - SEALED PROPOSAL - DO NOT OPEN."**
- d. Proposal Costs and Expenses: will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.
- e. Minimum Submission Requirements - Submission should be tabbed and collated in the following order:
 - i. Expression of Interest
 1. Table of Contents
 - a. Table of Contents - Limited to One (1) page on 1 sheet of paper
 2. Letter of Interest
 - a. No promotional materials or brochures to be included as part of the Expression of Interest package.
 - b. Letter of Interest - Limited to four (4) pages on two (2) sheets of paper, indicate the following:
 - i. Mailing address, phone number, and an e-mail address for the firm's point of contact person on page 1
 - ii. An understanding of the anticipated assignments, services required, and approach to providing the services required
 - iii. Identify who the proposed project manager will be and what office location they will be working from.
 - iv. The location, size, and description of the firm
 - v. Availability of personnel for immediate placement



- vi. A list of any and all sub-consultant usage, if anticipated. Indicate the percentage of work estimated to be performed by each subcontractor. Also, indicate if the prime consultant has previously worked with the proposed subcontractor and give a brief example of the previous relationship(s).
 - vii. The vendor submitting the proposal must indicate the present workload by Location, Agreement No. (to include Supplemental), Total Dollar Upset Limit, total paid-to-date, and the amount still available for use on the project(s).
 - viii. Provide a listing of similar projects over the past five (5) years.
3. Qualifications Statement
- a. Experience and Reputation with projects of a similar nature
 - b. Organization structure (personnel) established for the project including sub-consultants and previous experience (frequency) working with them
 - c. Defined approach firm/team will implement
 - d. Firm capacity to meet requirements (size, financial condition, etc.)
 - e. Location (geographical) of main or branch office that will be assigned the project
4. References
- a. Provide a list of References who have personal knowledge of the prime consultant's and any sub-consultant's previous performance. Provide three (3) client references each for both the prime and any sub-consultant(s). The references must include verified addresses and telephone numbers, contact persons, and a brief description of services that have been provided similar to those described in this document.
 - i. References shall be shown on separate sheets (limited to one (1) single-sided sheet; one sheet for the prime and one sheet for each sub proposed). These shall not be included in the four page Letter of Interest.
 - ii. At least one reference should be from a foundry with recent working experience with prime or sub-consultants.
5. Work samples – Including the following at a minimum:
- a. Project Location
 - b. Description of services provided
 - c. Detailed photographs of the statue before and after installation.
- ~~ii. Concept design~~
- ~~1. Submission shall include a concept design package which shall incorporate the following:

 - a. Incorporation of all Memorial Features, see paragraph 2e.
 - b. Committee vision statement, see paragraph 3.~~
 - ~~2. Submission shall include a detailed description of approach that would be taken if selected.~~
- ~~iii.ii.~~ Price Proposal – Lump Sum Price with a detailed breakout for each phase indicated within the scope of services herein.
- ~~iv.iii.~~ Production Schedule - Detailed schedule outlining the duration and interface of each phase indicated within the scope of services herein.
- f. Non-conforming proposals: 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 within the Delaware State University.
- g. Discrepancies and Omissions: The vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the Delaware State University's Designated Contact, in writing of such findings at least



ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

- h. Acknowledgement of Understanding of Terms: By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

6. Evaluation Process

- a. Expression of Interest submissions will be evaluated based on the following weighted criteria:
 - ~~i.~~ ~~Concept Design (30%)~~
 - ~~ii.~~ ~~Demonstrated Ability / Qualifications Statement/ references (3050%)~~
 - ~~iii.~~ ~~Letter of Interest (2025%)~~
 - ~~iv.~~ ~~Price Proposal (1525%)~~
 - ~~v.~~ ~~Documentation of MBE/WBE Participation (5%)~~
- b. The Expression of Interest submission will be used to determine a finalist list/short list and also will be used for reference material during the actual selection process.
- c. Interviews
 - i. Once a finalist list/short list has been established, a mandatory on-site oral presentation interview will be scheduled for those vendors. Interview will be conducted at 1200 N. DuPont Highway, Dover, Delaware, location and schedule to be determined. After the oral presentation interview, the finalists will be rescored on the evaluation criteria. The selection process and contract negotiation shall be as set forth in 29 Del. C. § 6982.

7. RFP Designated Contact

- a. All requests, questions, or other communications about this RFP shall be made in writing to the Delaware State University on or before ~~October 20~~November 20, 2015, 3:00pm local time. Address all communications to the person listed below; communications made to other Delaware State University personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.
 - i. Jessica Wilson
Director of Purchasing
Delaware State University
1200 N. DuPont Highway
Administration Building, Third Floor
Email: constructionbid@desu.edu
- b. To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.
- c. Assistance to Vendors with a Disability – Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

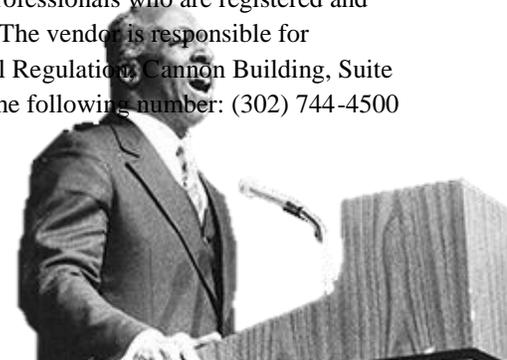


8. General RFP Requirements

- a. Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.
- b. The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:
 - i. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
 - ii. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
 - iii. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
 - iv. Has violated contract provisions such as;
 1. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 2. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
 - v. Has violated ethical standards set out in law or regulation; and
 - vi. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.
- c. Collusion or Fraud:
 - i. Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.
 - ii. By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the Delaware State University participated directly or indirectly in the vendor's proposal preparation.
 - iii. Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.
- d. Lobbying and Gratuities:
 - i. Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a Delaware State University employee or agent of the Delaware State University concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.
 - ii. The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Delaware State University shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.



- iii. All contact with Delaware State University employees, contractors or agents of the Delaware State University concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.
 - e. Solicitation of Delaware State University Employees:
 - i. Until contract award, vendors shall not, directly or indirectly, solicit any employee of the Delaware State University to leave the Delaware State University's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the Delaware State University's purchasing office. Solicitation of Delaware State University employees by a vendor may result in rejection of the vendor's proposal.
 - ii. This paragraph does not prevent the employment by a vendor of a Delaware State University employee who has initiated contact with the vendor. However, Delaware State University employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.
9. General Contract Terms
- a. **Independent Contractors:** The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this 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. It may be at the University's discretion as to the location of work for the contractual support personnel during the project period. If required, the State of Delaware shall provide working space and sufficient supplies and material to augment the Contractor's services.
 - b. **Non-Appropriation:** In the event the ~~General Assembly~~ University 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 University 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.
 - c. **Licenses and Permits:**
 - i. In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 Del. C. § 2502.
 - ii. Prior to receiving an award, the successful vendor shall either furnish the University 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) 577-8200 -- Public Service, (302) 577-8205 -- Licensing Department.
 - iii. Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.
 - iv. Additionally, work on this contract may require the use of licensed professionals who are registered and firms who have Certificates of Authorization to practice in the State. The vendor is responsible for complying with and contacting the Delaware Division of Professional Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, DE 19904; by telephone at the following number: (302) 744-4500



or at their website: <http://dpr.delaware.gov>. Professional Engineers are regulated by the Delaware Association of Professional Engineers (DAPE). Contact DAPE at: Delaware Association of Professional Engineers, 92 Read’s Way, Suite 208, New Castle, DE 19720, by telephone at the following number: (302) 323-4588 or at their website: <https://www2.dape.org>

d. Indemnification

- i. 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 Delaware State University, 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, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to the University, its employees or agents.
- ii. 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 Delaware State University, the Delaware State University 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 Delaware State University 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: a) Procure the right for the Delaware State University to continue using the Product(s); b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or c) 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 Delaware State University agrees to and accepts in writing.

e. Insurance

- i. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
- ii. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the Delaware State University.
- iii. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

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

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

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

a.	Automotive Liability (Bodily Injury)	\$1,000,000/\$3,000,000
b.	Automotive Property Damage (to others)	\$25,000

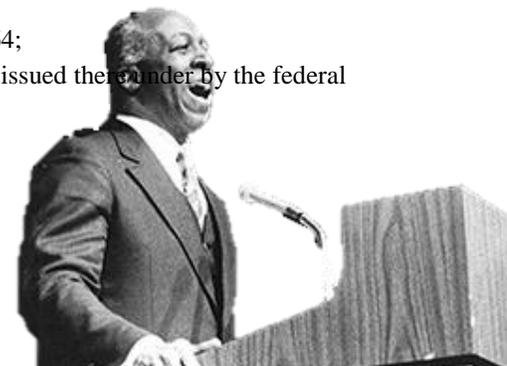
If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage;

- iv. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).
- f. **Performance Requirements:** The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.
- g. **Warranty:** The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than two (2) years from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.
- h. **Costs and Payment Schedules**
 - i. All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the Delaware State University. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.
 - ii. The Delaware State University will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The Delaware State University may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).
- i. **Penalties:** The Delaware State University may include in the final contract penalty provisions for nonperformance, such as liquidated damages.
- j. **Termination for Cause:** If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the Delaware State University shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) 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 the contract shall, at the option of the Delaware State University, 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 useable to the Delaware State University.
- k. **Termination for Convenience:** The Delaware State University may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) 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 the contract shall, at the option of the Delaware State University, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the Delaware State University. If the contract is terminated by the Delaware State University as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

- l. **Non-discrimination:** In performing the services subject to this RFP the vendor, as set forth in Title 19, Delaware Code, Chapter 7, Section 711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.
- m. **Covenant against Contingent Fees:** The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the Delaware State University shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- n. **Vendor Activity:** No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.
- o. **Work Product:** All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.
- p. **Contract Documents:** The RFP, the purchase order, the executed contract and any supplemental documents between the Delaware State University and the successful vendor shall constitute the contract between the Delaware State University and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, Delaware State University's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the Delaware State University and the vendor.
- q. **Applicable Law:**
 - i. The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.
 - ii. In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:
 1. the laws of the State of Delaware;
 2. the applicable portion of the Federal Civil Rights Act of 1964;
 3. the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;



4. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the Delaware State University reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

- r. **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.
- s. **Scope of Agreement:** If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

