CONTRACT NO: 20-04-30-13

Air Charter Services – 2020 Football Season

Bid packets must be received by:

3:00 pm (local time), May 19, 2020

Time listed above is the local time in the State of Delaware

Email: contracts@desu.edu

Note: **Bidder bears the risk of bid's late delivery, non delivery, or spam box delivery. Bidder must have a system delivered email return receipts request.**

Point of Contact:
Zafar Chaudhry, **Associate Vice President**

Email: contracts@desu.edu

TO: ALL BIDDERS

The enclosed packet contains an "INVITATION TO BID" for Air Charter Services - 2020 Footbal Season. The bid consists of the following documents:

I. PURPOSE, BACKGROUND, DEFINITIONS AND GENERAL PROVISIONS
A – GENERAL PROVISIONS

B – AWARD AND EXECUTION OF CONTRACT

C – GENERAL AUTHORITY

D – EQUAL OPPORTUNITY

II. SPECIAL PROVISIONS
III. TECHNICAL SPECIFICATIONS
IV. BID QUOTATION REPLY SECTION INCLUDING BID SUBMISSION FORM

Attachments:

1) **Non-Collusion Statement**
2) **Exceptions**
3) **Confidentiality and Proprietary Information**
4) **Business References**
5) **Subcontractor Information Form**
6) **Bid/ Pricing Sheet/ Bid Quotation**

Appendix(s):

A. **Scope of work/ Specifications**

IMPORTANT NOTES:

In order for your proposal to be considered, the Proposal Reply Section shall be executed completely and correctly including but not limited to all attachments and bid submission form.

Please review and follow completely the information and instructions contained in this Invitation to Bid (ITB) document.

All prospective bidders must submit bids electronically through email to contracts@desu.edu The email subject must have RFP name and contract number. If you need to abbreviate the RFP name, you can do so. Electronic response should have only one file in total. File name must start with vendors name. Aggregate size of your response without compressing the file must not be more than 5 megabytes. Do not send any unnecessary messages to this email address. Otherwise, your emails will be marked as spam thus you will fully assume the risk/ liability of no response from the University to your email messages. Bidder bears the risk of incomplete response, late delivery or delivery at wrong email address of the University other than specified in this ITB. Bidder must make sure they receive confirmation stating their bid has been received. University is not responsible if bid goes into spam or is not delivered by the system whatsoever until University confirms its receipt.

There will be NO mandatory pre-bid meeting.

Bid bond requirement for this ITB has been waived.

The term of the contract between the successful bidder and the University shall be for **the flights/ game schedules that must be coordinated with the Athletic Department of the University**.

I. PURPOSE, BACKGROUND, DEFINITIONS AND GENERAL PROVISIONS

PURPOSE

Delaware State University is requesting bids for Air Charter Service for one round trip during the 2020 Football season. Please see bid quotation page for destinations.

BACKGROUND

Delaware State University is a public, comprehensive, 1890 land-grant institution that offers access and opportunity to diverse populations from Delaware, the nation, and the world. Building on its heritage as a historically black college, the University purposefully integrates the highest standards of excellence in teaching, research, and service in its baccalaureate, master's and doctoral programs. Its commitment to advance science, technology, liberal arts, and the professions produces capable and productive leaders who contribute to the sustainability and economic development of the global community. It is located in Dover, Delaware the capital of the State. For more information, please visit us at www.desu.edu

At present, there is no valid University's central contract for above mentioned items/ services.

DEFINITIONS AND GENERAL PROVISIONS

The attached Definitions and General Provisions apply to all contracts and are part of each invitation to bid. The requirement to furnish a bid bond and performance bond is applicable unless waived in the Special Provisions. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Bidders or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

DEFINITIONS

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

STATE: The State of Delaware

UNIVERSITY: Delaware State University

AGENCY: Delaware State University or any other State Agency as noted on cover sheet.

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

BIDDER'S DEPOSIT: The security designated in the proposal to be furnished by the bidder 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 the bidder.

BID INVITATION: The "bid invitation" or "invitation to bid" is a packet of material published for vendors and consists of General Provisions, Special Provisions, specifications, 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.

CONTRACTOR: Any individual, firm, or corporation with whom a contract is made by the University/ Agency.

DESIGNATED OFFICIAL: The agent authorized to act for the 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.

ITB: Invitation to Bid.

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time

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

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 contractor's payments of all debts pertaining to and for its acceptable performance of the work for which it has contracted.

SECTION A - GENERAL PROVISIONS

1. **BID INVITATION**
   See "Definitions".

2. **PROPOSAL FORMS**
   The invitation to bid shall contain pre-printed forms for use by the vendor in submitting its bid. The forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, etc.

3. **INTERPRETATION OF ESTIMATES**
   The attention of bidders is called to the fact that, unless stated otherwise, any quantities given in the proposal form 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.

   An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

4. **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.

5. **EXAMINATION OF SPECIFICATIONS AND PROVISIONS**
   The bidder shall examine carefully the proposal and the contract forms for the material contemplated. The bidder 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 the Special Provisions and the contract. The submission of a proposal shall be conclusive evidence that the bidder has made examination of the aforementioned conditions.

6. **KEY ITB DATES/MILESTONES**

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

- **Deadline for Questions** **April 23, 2020 at 10:00 AM (Local Time)**
- **Response to Questions Posted by** **May 06 , 2020**
- **Deadline for Receipt of Proposals** **May 19 at 3:00 PM (Local Time)**
- **Contractor Selection Date** **TBD**
- **Anticipated Contract Start** **July 01, 2020**

*** Each date subject to change. Times listed above are local time in the State of Delaware.**

Note: All questions shall be in writing and submitted via email to contracts@desu.edu Questions should be submitted in the following format. Deviations from this format will not be accepted and entertained.

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

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the ITB which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 2). The proposal must be submitted to:

Email: contracts@desu.edu

The Delaware State University reserves the right to deny any and all exceptions taken to the ITB requirements.

7. 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 Invitation to Bid.

All questions shall be in writing and submitted via email to Zafar Chaudhry at contracts@desu.edu Questions should be submitted in the following format. Deviations from this format will not be accepted and entertained.

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

Questions not submitted electronically shall be accompanied by a USB memory stick and questions shall be formatted in Microsoft Word. USB containing questions must be received prior to the deadline by the University's designated contact person. Questions will be answered in writing and posted at http://bids.delaware.gov/ website. Oral explanations or instructions will not be binding.

8. PREPARATION OF PROPOSAL

a. The bidder's proposal shall be written in ink or typewritten on the form provided.

b. If items are listed with a zero quantity, bidder shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The proposal shall show a total bid price for each item bid and the total bid price of the proposal excluding zero quantity items.

9. PRICES QUOTED

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract.

All prices must be quoted in U.S. Dollars.

10. DISCOUNT

No qualifying letter or statements in or attached to the proposal, or separate discounts will be considered in determining the low bid except as may be otherwise herein noted. Cash or separate discounts should be computed and incorporated into unit bid price(s).

11. SAMPLES OR BROCHURES

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

12. PROPOSAL GUARANTY; BID BOND

Unless Bid Bond has been waived, each bidder shall submit with its proposal a guaranty in sum equal to at least 10% of the total value of its bid, according to Delaware Code Title 29, Section 6927(a).

Each vendor shall furnish a bond to the State of Delaware for the benefit of **Delaware State University** in the amount equal to 10% of the respective bid value. The bond shall be drawn upon an insurance or bonding company authorized to do business in the State of Delaware. A certified check made out to the Delaware State University in an amount equal to 10% of the respective proposed value may be submitted in lieu of a proposal bond.

13. ITB DESIGNATED CONTACT

All requests, questions, or other communications about this ITB shall be made in writing to the Delaware State University. Address all communications to the person listed below; communications made to other 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 ITB designated contact.

Delaware State University
Office of Procurements, Contracts and Data Administration
Room Number 301, Dr. Claiborne D. Smith Administration Building, 3rd Floor
Attention: Zafar Chaudhry, Associate Vice President
1200 North DuPont Highway
Dover, DE 19901-2277
contracts@desu.edu

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable.

14. DELIVERY OF PROPOSALS

Unless exception granted in this ITB on page 2, proposals must be delivered via **Email to contracts@desu.edu**

All proposals will be accepted at the time and place set in the advertisement. **Bidder bears the risk of incomplete response, late delivery or delivery at wrong email address other than specified in this ITB.**

15. PUBLIC OPENING OF PROPOSALS

The bids shall be publicly opened at the time and place specified by the Agency. Bidders or their authorized representatives are invited to be present. But their presence is not required.

16. PUBLIC INSPECTION OF PROPOSALS

If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

17. DISQUALIFICATION OF BIDDERS

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

a. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
b. Evidence of collusion among bidders.
c. Unsatisfactory performance record as evidenced by past experience.
d. 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.
e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.
f. 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.
g. If attendance of pre-bid meetings is required, then non-attendance of mandatory pre-bid meetings may be cause of disqualification.

18. ADDENDA TO THE INVITATION TO BID (ITB)

If it becomes necessary to revise any part of this ITB, revisions will be posted at http://bids.delaware.gov/ . By submitting an offer to the University, vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Invitation to Bid.

19. LOBBYING AND GRATUITIES

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware/ University employee or agent of the State of Delaware/ University concerning this ITB or the award of a contract resulting from this ITB shall have their proposal immediately rejected and shall be barred from further participation in this ITB.

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 ITB upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware/ University shall have the right to annul any contract resulting from this ITB 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.

All contact with State of Delaware/ University employees, contractors or agents of the State of Delaware concerning this ITB shall be conducted in strict accordance with the manner, forum and conditions set forth in this ITB.

20. SOLICITATION OF STATE/ UNIVERSITY EMPLOYEES

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware/ University to leave the State of Delaware/ 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 State of Delaware/ University's contracting officer. Solicitation of State of Delaware/ University employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware/ University employee who has initiated contact with the vendor. However, State of Delaware/ 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 University policies or state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

21. 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 State of Delaware/ University's discretion as to the location of work for the contractual support personnel during the project period.

22. TEMPORARY PERSONNEL ARE NOT STATE/ UNIVERSITY EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware/ University 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/ University 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/ University pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State and its agencies 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 or its agency 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 and its agency 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 and its agency for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware and its agency. 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 of Delaware and its agency's intention to hire.

SECTION B - AWARD AND EXECUTION OF CONTRACT

1. CONSIDERATION OF BIDS

The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. MATERIAL GUARANTY

Before any contract is awarded, the successful bidder 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.

3. CONTRACT AWARD

Within thirty days from the date of opening proposals, the contract may be awarded or the proposals rejected.

4. EXECUTION OF CONTRACT

The bidder to whom the award is made shall execute a formal contract and bond within twenty days after date of notice.

If the successful bidder fails to execute the required contract and performance bond, as aforesaid, within twenty days of notice, its proposal guaranty shall immediately become forfeited as liquidated damages. Award will then be made to the next lowest qualified bidder of the work or re-advertised, as the Agency may decide.

5. REQUIREMENT OF CONTRACT PERFORMANCE BOND

Unless Performance Bond has been waived, successful bidders shall furnish a Performance Bond simultaneously with the execution of the formal contract, to the State of Delaware for the benefit of the Delaware State University with surety in the amount of 100% of the total contract award or as otherwise provided. Said bonds shall be conditioned upon the faithful performance of the contract. Performance Bonds are not required at the time of bid submission.

The bond forms shall be provided by the Agency and the surety shall be acceptable to the Agency.

6. WARRANTY

The successful bidder(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.

7. THE CONTRACT(S)

The contract(s) with the successful bidder(s) will be executed with Delaware State University.

8. INFORMATION REQUIREMENT

The successful bidder's shall be required to advise the University of the gross amount of purchases made as a result of the contract.

9. CONTRACT EXTENSION

The University reserves the right to extend this contract on a month-to-month basis.

10. SUPPLEMENTAL SOLICITATION

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

SECTION C – GENERAL AUTHORITY

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 the Agency shall be final and binding.

2. LAWS TO BE OBSERVED

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall indemnify and save harmless the State of Delaware, the Agency, 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 or by its employees.

3. 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.

4. PERMITS AND LICENSES

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

5. PATENTED DEVICES, MATERIAL AND PROCESSES

a. The contractor 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.

b. The contractor 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.

6. EMERGENCY TERMINATION OF CONTRACT

a. 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.

b. In the event the contractor 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. TAX EXEMPTION

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

b. 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 contractor. Each bidder shall take its exemption into account in calculating its bid for its work.

8. 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.

9. BID EVALUATION AND AWARD

The University will award this contract to the lowest responsible bidder(s) which in their judgment best serves the interest of the State of Delaware in accordance with Delaware Code Title 29, Section 6923(k). Personnel with experience and technical background may be utilized by the University in making judgment. In case of error in price extension, the unit price(s) shall prevail.

10. INVOICING

The successful bidder (s) is required to bill upon completion, delivery, and installation as specified. All invoices must be identified by the approved purchase order received and be forwarded to: Invoices@desu.edu or to Accounts Payable Department, Administration Building, 3rd Floor, Delaware State University, 1200 N. DuPont Highway, Dover, DE 19901-2277. The contractor or vendor must accept full payment by credit card

and/or conventional check and/or other electronic means at the University's option, without imposing any additional fees, costs or conditions.

11. 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.

12. 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 and University 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/ University pursuant to this contract. Upon either the State/ University'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/ University and Vendor shall meet and confer about coordination of representation in such action.

SECTION D - EQUAL OPPORTUNITY

1. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware or the University, the contractor agrees as follows:

a. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment 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 contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

b. During the performance of this contract, the contractor agrees as follows:

1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual 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 contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin."

c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

II. SPECIAL PROVISIONS

1. CONTRACT REQUIREMENTS
This contract will be issued to fulfil all the requirements of University.

2. 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.

3. CONTRACT PERIOD
The term of the contract shall be valid as specified in this ITB.

4. PRICES
Prices shall remain firm for the term of the contract. All prices shall be quoted in U.S. Dollars.

Vendors are not restricted from offering lower pricing at any time during the contract term.

5. NUMBER OF COPIES WITH MAILING OF PROPOSAL
To be considered, all proposals must be submitted as specified in this ITB.

6. COOPERATIVES
Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. State of Delaware terms will take precedence.

7. 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 University 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.

8. SUPPLEMEMTAL SOLICITATION
The University reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State and or University.

9. PRICE ADJUSTMENT

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

If agreement is reached to extend this contract beyond the initial period, the University shall have the option of offering a determined price adjustment and shall not exceed 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.

10. SHIPPING TERMS

F.O.B. destination; freight pre-paid.

11. QUANTITIES

The attention of bidders is called to the fact that, unless stated otherwise, the quantities given in the proposal are best estimates and are given as a basis for the comparison of bids. Quantities ordered may be increased or decreased by any eligible agency as deemed necessary during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.

12. ELECTRONIC CATALOG

At the discretion of University, the successful vendor(s) may be required to submit their items list in an electronic format designated by the University.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

13. FUNDING OUT

The continuation of this contract is contingent upon availability of funding by the University.

14. BID BOND REQUIREMENT

If the bid bond requirement has not been waived, each bidder shall furnish a Bid Bond to the State of Delaware for the benefit of Delaware State University in the amount equal to 10% of the respective bid value. The bond shall be drawn upon an insurance or bonding company authorized to do business in the State of Delaware. If the standard State of Delaware bond form is not used, the substitute bond must reflect the minimum conditions specified in the standard form. A certified check made out to University in an amount equal to 10% of the respective proposed value may be submitted in lieu of a proposal bond.

15. PERFORMANCE BOND REQUIREMENT

If submission of Performance Bond requirement has been waived, contractors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of Delaware State University with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract.

16. MANDATORY INSURANCE REQUIREMENTS

1. 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.

2. 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.
3. As a part of the contract requirements, the contractor 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 specified below with a carrier satisfactory to the University. All contractors must carry the following coverage depending on the type of service or product being delivered. These insurances requirements are in addition to additional insurance requirements, if any, somewhere listed in this ITB.

    a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

    b. Commercial General Liability - $1,000,000 per occurrence/$3,000,000 per aggregate.

    c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

        1. $1,000,000 combined single limit each accident, for bodily injury;

        2. $250,000 for property damage to others;

        3. $25,000 per person per accident Uninsured/Underinsured Motorists coverage;

        4. $25,000 per person, $300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. §2118; and

        5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

    a. Medical/Professional Liability - $1,000,000 per occurrence/$3,000,000 per aggregate

    b. Miscellaneous Errors and Omissions - $1,000,000 per occurrence/$3,000,000 per aggregate

    c. Product Liability - $1,000,000 per occurrence/$3,000,000 aggregate

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

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the University's Risk Management Office that is:

Delaware State University
Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor,
1200 North DuPont Highway, Dover, DE 19901-2277

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the University's insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the University be named as an additional insured on any policy required under this agreement.

4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to University contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
7. In case of a software/ information technology related work, additional insurance must be provided as listed under http://mymarketplace.delaware.gov/documents/cyber-liability.doc

17. BASIS OF AWARD

University will award this contract to the lowest responsible and responsive bidder(s) who best meets the terms and conditions of the bid. The award will be made on the basis of price, product evaluation, and prior history of service and capability.

University reserves the right to reject any or all bids in whole or in part, 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 and or University, pursuant to 29 Del. C. § 6926.

18. STATE OF DELAWARE BUSINESS LICENSE

Prior to receiving an award, the successful vendor shall either furnish 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 19899-8750 or by telephone to one of the following numbers: (302) 577-8201 - Public Service, (302) 577-8205 - Licensing Department. https://dorweb.revenue.delaware.gov/scripts/licrenew/licrenew.dll

19. INDEMNIFICATION

a. 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, 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.

b. 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 or University, the State of Delaware or 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 State of Delaware and 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:

1. Procure the right for the State of Delaware and University to continue using the Product(s);
2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
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 and or University agrees to and accepts in writing.

20. OWNERSHIP OF INTELLECTUAL PROPERTY

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the University. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the University to evidence the University's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

21. 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/ University may terminate any individual orders in accordance with Special Provisions, Item labeled "TERMINATION OF INDIVIDUAL ORDERS OR 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 University no later than 30 days following the delivery of the University'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.

22. 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.

23. CONTRACTOR NON-ENTITLEMENT

State of Delaware Contractors for Materiel and for Services shall not have legal entitlement to, nor seek business from another Contractors' Central Contract. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract as they are not a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code.

24. EXCEPTIONS

Bidders may elect to take **minor exception** to the terms and conditions of this ITB. University shall evaluate each exception according to the intent of the terms and conditions contained herein, but University 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.

Exceptions must be submitted utilizing Attachment 2 to be considered. University maintains sole discretion to reject any vendor exceptions that are submitted.

25. BUSINESS REFERENCES

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 4. 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 DO NOT UTILIZE STATE OF DELAWARE OR UNIVERSITY PERSONNEL AS REFERENCES.

26. ORDERING PROCEDURE

Successful contractors 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. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, email, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the University's option, without imposing any additional fees, costs or conditions.

27. BILLING

The successful vendor is required to "Bill as Shipped" to the University.

28. PRODUCT SUBSTITUTION

All items delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the bid proposal unless specific approval is given by the University to do otherwise. However, 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 University exists. In such cases, the University may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

29. BID/CONTRACT EXECUTION

Both the non-collusion statement with this Invitation to Bid and the contract form delivered to the successful bidder for signature **shall** be executed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Delaware State University.

The University requires completion of the W-9. Successful completion of this form enables the creation of a University vendor record.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

30. VENDOR RESPONSIBILITY

The University 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 ITB 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 by completing Attachment 5, and are subject the approval and acceptance of University.

31. PERSONNEL, EQUIPMENT AND SERVICES

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

b. 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.

c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the University. Only those subcontractors identified in Attachment 5 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 5 must be approved in writing by the University.

32. FAIR BACKGROUND CHECK PRACTICES

Pursuant to 29 Del. C. §6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State/ University are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions.

33. VENDOR BACKGROUND CHECK REQUIREMENTS

Vendor(s) selected for an award that access state and or University property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State/ University's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at: https://sexoffender.dsp.delaware.gov/

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature

of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

34. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS

Pursuant to 29 Del.C. §6908(a)(6), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. §6962.

Final publication of the identified regulations can be found at the following:

4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

35. LIFE CYCLE COSTING

If applicable, the specifications contained within this ITB have been developed through Life Cycle Cost Analysis that will allow the University to realize the lowest total cost of ownership and operation over the useful life of the equipment

36. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the State of Delaware Minimum Wage Rates or the Delaware Prevailing Wage rates. Vendor must comply to the State of Delaware Minimum Wage Rates if it fall under this requirement.

37. PREVAILING WAGE

The prevailing wage law, 29 Del.C.§6960, is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of $500,000 for new construction (including painting and decorating) or $45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. The Department of Labor has determined that awarded contract is subject to prevailing wage. Awarded vendors shall confirm with the Department of Labor which of the prevailing wage rates applies to their project. Awarded vendors must identify the central contract when confirming the proper rates.

38. ENVIRONMENTAL PROCUREMENT PRODUCTS

a. Energy Star - If applicable, the Contractor must provide products that earn the ENERGY STAR rating and meet the ENERGY STAR specifications for energy efficiency in order to keep overall event costs to a minimum. The Contractor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.

b. Green Products – third party certification of green products accepted from GSS w/approved green certification shall be offered wherever available in addition to or as a substitute for non-green products.

c. Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: Environmentally Preferred Purchasing Policy

39. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

a. 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.

b. 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/ University, 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 as per solely determined by the Agency.

c. Termination for Non-Appropriations or Non-Availability of Funds

In the event the 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. This is not a termination for convenience and will not be converted to such.

40. DISPUTE RESOLUTION

At the option of, and in the manner prescribed by the University, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, Agency elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by Agency, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the University's General Counsel, for final and binding arbitration. University reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Vendor shall bear of the costs of mediation, arbitration or litigation, including attorneys' fees for both parties.

41. TERMINATION OF CONTRACT

The contract resulting from this ITB may be terminated as follows by the University.

a. 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 University 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. 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 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 usable to the University.

b. Termination for Convenience

The University 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 University, 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 University as per University's sole discretion.

d. Termination for Non-Appropriations or Non-Availability of Funds

In the event the 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. This is not a termination for convenience and will not be converted to such.

42. 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.

43. AFFIRMATION

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

44. 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 and University, 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 and or University representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State, University 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 or University for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

45. IRS 1075 Publication (If Applicable)

Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of $1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by

virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

Inspection

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

46. ASSIGNMENT

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

47. NOTICE

Any notice to the University required under the contract shall be sent by registered mail to:

Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor
1200 North DuPont Highway
Dover, DE 19901

48. 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. Failure to provide this information could render the proposal as non-responsive.

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

49. SUBCONTRACTS

Subcontracting is permitted under this ITB and contract. However, every subcontractor shall be identified in the Proposal and agreed to in writing by the University. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the University.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the ITB and with all local, State and Federal Laws and University policies and procedures. 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 University.

If a company elects to be a subcontractor for another vendor, the subcontractor shall not independently bid on this solicitation.

50. PRICE NOT CONFIDENTIAL

Vendors shall be advised that as a publicly bid contract, no Vendor shall retain the right to declare their pricing confidential.

51. NO PRESS RELEASES OR PUBLIC DISCLOSURE

The University 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 University 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 the University.

The University 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 University's seal or imply preference for the solution or goods provided.

III. TECHNICAL SPECIFICATIONS

The Vendor(s) shall provide all equipment, materials, software, and labor to supplement the University's need for this contract as described herein in Appendix A. The contract will require the Vendor(s) to cooperate with the University to insure the University receives the most current state-of-the-art material and/or services.

IV. BID QUOTATION REPLY SECTION

Please fill out the attached forms fully and completely and return with your bid in a sealed envelope clearly displaying the contract number to the University's designated contact by entering bid opening date and at time (Local Time) at which time bids will be opened.

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. The agency conducting the opening is required by law to publicly open the bids at the time and place specified. 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 the University.

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

Bid Submission Form
Delaware State University
Air Charter Services - 2020 Footbal Season
Contract Number 20-04-30-13

By signing this statement, you certify the information provided is accurate and that you are authorized to sign on behalf of the responder. If the contract is awarded, vendor agrees to the terms and conditions of the State of Delaware's standard contract posted at http://mymarketplace.delaware.gov/agency-forms.shtml under Agency/Vendor Contract and under Professional Services Agreement. The Delaware State University reserves the right to deny any and all exceptions taken to the ITB requirements. It's further understood that in case of any conflict or inconsistency between the provisions of the contract documents shall be resolved by giving precedence to such documents in the following order: (a) the signed Contract/ Agreement (including any amendments or modifications thereto); and (b) the ITB itself.

Vendor/ Business Name	Authorized Signature/ Date
Address	Printed Name of Authorized Signatory
City, State Zip Code	Cell Phone Numbers
Other Telephone Numbers	E-Mail Address (print clearly)
Fax Number	Additional E-Mail Address (print clearly)
Federal EI Number	Web Address

Attachment 1

CONTRACT NO. 20-04-30-13
CONTRACT TITLE: Air Charter Services - 2020 Footbal Season

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor 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 proposal**, and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the Delaware State University

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

COMPANY NAME _____ Check one)

	Corporation
	Partnership
	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

STATE OF DELAWARE
FEDERAL E.I. NUMBER _____ LICENSE NUMBER _____

	Certification type(s)	Circle all that apply
COMPANY CLASSIFICATIONS:	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
CERT. 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 HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

Attachment 2

CONTRACT NO. **20-04-30-13**
CONTRACT TITLE: **Air Charter Services - 2020 Footbal Season**

EXCEPTIONS FORM

Bids must include all exceptions to the specifications, terms or conditions contained in this Invitation to Bid (ITB). If the vendor is submitting the bid without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this ITB.

Paragraph#/Item #and Page #	Exceptions to Specifications, terms or conditions	Proposed Alternative

Note: **Vendor may use additional pages as necessary, but the format shall be the same as provided above.**

Attachment 3

CONTRACT NO. **20-04-30-13**
CONTRACT TITLE: **Air Charter Services - 2020 Footbal Season**

CONFIDENTIAL INFORMATION FORM

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

Confidentiality and Proprietary Information

Note: **Vendor may use additional pages as necessary, but the format shall be the same as provided above.**

Attachment 4

CONTRACT NO. 20-04-30-13
CONTRACT TITLE: Air Charter Services - 2020 Footbal Season

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 Personal References or University Employees as a business reference. If you have held a University contract within the last 5 years, please provide a separate list of the contract(s).

1. **Contact Name & Title:**	
Business Name: Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO): Years	
Associated & Type of Work Performed:	

2. **Contact Name & Title:**	
Business Name:	
Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO): Years	
Associated & Type of Work Performed:	

3. **Contact Name & Title:**	
Business Name:	
Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO): Years	
Associated & Type of Work Performed:	

Attachment 5

CONTRACT NO. 20-04-30-13
CONTRACT TITLE: Air Charter Services - 2020 Footbal Season

SUBCONTRACTOR INFORMATION FORM

<table>
<tr><td colspan="4">PART I – STATEMENT BY PROPOSING VENDOR</td></tr>
<tr><td colspan="2">1. CONTRACT NO. 20-04-30-13</td><td>2. Proposing Vendor Name:</td><td>3. Mailing Address</td></tr>
<tr><td colspan="2">4. SUBCONTRACTOR</td><td colspan="2"></td></tr>
<tr><td colspan="2">a. NAME</td><td colspan="2">4c. Company OSD Classification:

Certification Number:</td></tr>
<tr><td colspan="2">b. Mailing Address:</td><td colspan="2">4d. Women Business Enterprise Yes No
4e. Minority Business Enterprise Yes No
4f. Disadvantaged Business Enterprise Yes No
4g. Veteran Owned Business Enterprise Yes No
4h. Service Disabled Veteran Owned Business Enterprise Yes No</td></tr>
<tr><td colspan="4">5. DESCRIPTION OF WORK BY SUBCONTRACTOR</td></tr>
<tr><td>6a. NAME OF PERSON SIGNING
6b. TITLE OF PERSON SIGNING</td><td>7. BY (Signature)</td><td colspan="2">8. DATE SIGNED</td></tr>
<tr><td colspan="4">PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</td></tr>
<tr><td>9a. NAME OF PERSON SIGNING
9b. TITLE OF PERSON SIGNING</td><td>10. BY (Signature)</td><td colspan="2">11. DATE SIGNED</td></tr>
</table>

*** Use a separate form for each subcontractor**

Attachment 6

CONTRACT NO. **20-04-30-13**
CONTRACT TITLE: **Air Charter Services - 2020 Footbal Season**

BID/ PRICING SHEET/ Bid Quotation

***DEPARTURE AND RETURN TIMES TO BE DETERMINED**

DATE	**CHARTER FLIGHTS SERVICES–Dover AFB**	**ROUND TRIP PRICE**
SAT, November 07, 2020 OUTBOUND	9:30AM - 140 PASSENGERS – OUTBOUND - Depart Dover AB for Daytona Beach International Airport	
SAT, November 07, 2020 INBOUND	Estimated time around 10:30PM - 140 PASSENGERS – INBOUND from Daytona Beach International Airport to Dover AB Note: Return time will be directly after the game, postgame showers, press conferences and the bus ride to the airport. Delaware State University is a tax exempt organization. You can check its tax exempt status by clicking at: https://charitycheck101.org/report/?id=510305893	
Catering: No alcoholic beverages are to be served. Gatorade and juices will be loaded onboard for departure and return.		

Appendix A

CONTRACT NO. 20-04-30-13
CONTRACT TITLE: Air Charter Services - 2020 Footbal Season

Scope of Work/ Specifications

Bid Specifications

1. Specification Requirements

1.1 The successful bidder must provide a single airplane which is capable of transporting one hundred and forty (140) passengers per trip plus luggage and football equipment.

2.1. The successful bidder must ensure that all aircraft and the operators of such aircraft are both licensed and insured in accordance with all applicable laws and regulations for the purpose set forth herein.

2.2 During the term of this contract (including covered warrantee period of material and services performed under this ITB) the vendor must maintain insurance (at its own expense) as required by the Federal Aviation Authority of the United State of America. The successful bidder must provide copies of the Certificate of Insurance regarding all flights, prior to each trip, must also provide a copy of the air worthiness certificate for the airplane to be used to:

Delaware State University
Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor,
1200 North DuPont Highway, Dover, DE 19901-2277

2.3 Origin of Trips: The successful bidder understands and agrees that all required trips shall originate and conclude at the Dover DE Civil Air Terminal or Dover Air Force Base.

2.4 Meals: The successful bidder will provide generously proportioned meals, including Gatorade and water for all passenger meals for departing and returning trips.

* Saturday evening return to Delaware (steak or chicken, veggies, rice/potatoes, salad, desert), nonalcoholic drinks & inflight snacks.

2.5 Dates of charters and estimated times of departure are shown in the attached schedule and are subject to change resulting from game time changes, television broadcasting, weather, etc. Actual departure times are to be confirmed with the Delaware State University Football Department approximately ten (10) days prior to departure, as the needs of the Football Department may vary from the present anticipated departure times shown. Proposers offering alternate times must so indicate on their bids.

2.6 Charter Contractor must furnish an Air Worthiness Certificate along with a Certificate of Insurance to the Delaware State University, Office of Contract Administration prior to beginning of flight service. Certificate of Insurance coverage's shall include Passenger Liability, Bodily Injury, Property Damage, and Personal Injury Liability. The Board of Trustees of the Delaware State University is to be named as an additional insured. Requesting MINIMUM Coverage of $300,000,000 per occurrence.

2.7 Fuel Costs Adjustments: Since fuel costs are very volatile, the University will entertain provisions for adjusting charter pricing in response to fuel cost changes. Any adjustment should be based on fuel "in wing" If Carrier/Agent wants such a clause in the contract, the Carrier/Agent must include the formula to be used for making such fuel adjustment along with its response to this Bid Proposal. Please include as part of the adjustment how the fuel price is determined - (Index, Average, Site specific, etc). If, the Carrier/Agent submits no adjustment formula with its response to the Bid Proposal, it will be assumed that the bid pricing is firm and no adjustments for fuel price will be made for duration of contract. Also any formula offered and clause that might be added to address fuel cost adjustments will consider both increases and decreases in fuel prices. If a formula is offered which does not make it easy to determine the extent of any adjustment to fuel costs of which only makes provisions for price increase, this may be considered grounds to consider a Carrier/Agent's bid as "non-responsive".

2.8 The Carrier/Agent will be expected to provide charter services in a clean, safe, efficient and lawful manner, and, in so doing, shall fully comply with all applicable statutes, Federal laws, municipal ordinances and FAA regulations.

2.9 Cargo: Need cargo room for football equipment, medical trainers & equipment manager carts (the passengers all do carry on only) Weight total 10,000 pounds or less.

2.10 Total Cost: All prices quoted shall be for the complete charter flight service offered including complete crew, any and all services to aircraft, in-flight meals, expenses of crew, taxes, escrow fees ferry and layover charges, and baggage handling fee from, to, or between aircraft and terminals, landing fees, security and any other expense which may be incurred in providing this charter service.

2.11 All payments made to any vendor under this contract will be made to an escrow account, not directly to the vendor.

2.12 Please provide a boiler plate copy of your contract that DSU would sign if you are the successful vendor.

2.13 Please provide fuel burn per hour of plane you are bidding and number of total hours of flying for each trip.

2.14 List of current Universities you are flying for in upcoming season or flew for in 2019.

2.15 Carrier must be familiar with all runway restrictions and codes for the planned destination. The University requires name and phone number of the representative assigned as contact as well as a direct contact with the airline representative in charge of flight operations in order to confirm schedule status and notification of any schedule changes, etc.

2.16 The carrier is required to ensure travel on another airline should the chartered flight for any reason become unable to have flight completed without sufficient time to attend scheduled practice, games and return home.

2.17 Neither the inbound nor outbound flight may be used to dead leg additional crews.