

STATE OF DELAWARE, DELAWARE TECHNICAL AND COMMUNITY COLLEGE
REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
WELLNESS CENTER MANAGEMENT
ISSUED BY DELAWARE TECHNICAL AND COMMUNITY COLLEGE
CONTRACT NUMBER DTCC16001-WELLNESS_CTR_MGMT

I. Overview

The State of Delaware, Delaware Technical and Community College (“DTCC”) seeks professional services to manage the daily operations of one or more of its four wellness centers located on its campuses in Georgetown, Dover, Wilmington and Stanton, Delaware. This request for proposals (“RFP”) is issued pursuant to 29 Del. C. §§ [6981 and 6982](#).

A **pre-proposal meeting** will be held on **December 16, 2015 at 12:00 p.m.** in Room 400A of the Terry Campus Conference and Training Center in Dover. All comments and requests for clarification or for additional information shall be submitted in writing and received no later than **December 15, 2015**. Comments and requests for information should be directed to Darlene Johnston at Delaware Technical Community College, Office of the President, 100 Campus Drive, Dover, DE 19903, or by email at darlene.johnston@dtcc.edu. Answers and original questions will be shared with all offerors at the pre-proposal meeting. **A mandatory pre-bid meeting has not been established for this Request for Proposal.**

Interested firms shall submit one (1) original and six (6) copies of its proposal no later than **4:00 p.m., January 8, 2016** to Mr. Gerard M. McNesby, Vice President for Finance, Delaware Technical Community College, Finance Division, Office of the President, 100 Campus Drive, Dover, DE 19903. All proposals must be sealed and in writing. Proposals received after 4:00 p.m. January 8, 2016 may be rejected. All submissions will become the property of DTCC and will not be returned unless rejected.

In support of the Governor’s Supplier Diversity Initiatives, all minority and/or women-owned businesses should refer to the OMWBE website at: <http://gss.omb.delaware.gov/omwbe/index.shtml>.

DTCC reserves the right to reject any or all proposals or to contact any bidder prior to award for explanation or clarification.

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 RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public DTCC data outside of the United States. For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

DTCC reserves the right to deny any and all exceptions taken to the RFP requirements.

II. Scope of Services

DTCC requests formal proposals to manage the daily operations of one or more of its four wellness centers located on its campuses in Georgetown, Dover, Wilmington and Stanton, Delaware. Requested services include the development, coordination, and delivery of high quality, value added health education programs to a diverse population of students and staff of DTCC through a multi-disciplinary portfolio of health and wellness programs including exercise physiology testing, lifestyle consultations, nutrition programming, fitness and activity programming and data reporting/analysis.

Proposals shall include the staffing and management of each campus wellness center with employees of Contractor for a minimum of 40 hours per week on a schedule to be determined in consultation with campus administration.

Proposals shall be for an initial three (3) year term with an option to renew for two (2) successive one (1) year terms at the discretion of DTCC.

NOTE: DTCC reserves the right to award multiple contracts for the requested services or to award contracts for some locations and not others. Offerors are therefore encouraged to submit alternate proposals to provide the services requested at each location under a separate contract and to provide the requested services to two or more locations under a single contract if cost savings will result.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of DTCC.

A. Minimum Requirements

Each Offeror shall set forth the following information in their proposal:

1. A proposal letter demonstrating the Offeror's understanding of the Scope of Work and describing the Offeror's ability to provide the requested services.
2. Profiles of company officers and staff, including the names and qualifications of the individuals who will be providing the specific services requested.
3. Company profile to include a brief history of the company; years in business; type of organization; size of company and professional affiliations.
4. A summary of the Offeror's recent prior experience providing comprehensive wellness center management and employee health services of the scope and type requested herein.
5. A list of current contracts for similar services provided by Offeror to others, including a description of the services provided.
6. Evidence of fiscal stability.
7. A description of the health assessments and fitness and wellness programs/services that Offeror proposes for DTCC students, including student athletes.
8. A description of the health assessments and fitness and wellness programs/services that Offeror proposes for DTCC employees.
9. A description of services that Offeror proposes to provide in connection with the day-to-day operation and management of the campus wellness center, including the names and qualifications of center staff.
10. A description of the type and frequency of data that will be collected by the Offeror and provided to DTCC to evaluate and assess the impacts of its programs.
11. Proposed fee structure and terms of payment.
12. Location of Offeror's main office and any branch offices.

NOTE: Offers are encouraged to submit one or more alternate proposals.

B. General Evaluation Requirements. Responses to this Request for Proposals will be evaluated by a Committee appointed in accordance with DTCC Administrative Guidelines. The following criteria shall be considered:

1. Experience and reputation (15%);
2. Price/Value (25%);
3. Qualifications and experience of key personnel (15%);
4. Capacity to meet contract requirements (size, financial condition, etc.) (15%);

5. Quality and variety of proposed health/wellness programming (including data reporting/analytics) (25%); and
6. Response time (5%)

The selection process will be conducted in accordance with 29 Delaware Code Chapter 69.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* [§6981](#).

2. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov . Paper copies of this RFP will not be available.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to DTCC. Address all communications to the person listed below; communications made to other DTCC personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact:

Gerard M. McNesby
Vice President for Finance
Delaware Technical Community College
100 Campus Drive
Dover, DE 19903

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

5. Consultants and Legal Counsel

DTCC may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the DTCC's consultant or legal counsel on any matter related to the RFP.

6. Contact with DTCC Employees

Direct contact with DTCC employees other than DTCC Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting DTCC employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

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

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of DTCC determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

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

2. Proposals

Interested firms shall submit one (1) original and six (6) copies of its proposal no later than **4:00 p.m., January 8, 2016** to Mr. Gerard M. McNesby, Vice President for Finance, Delaware Technical Community College, Finance Division, Office of the President, 100 Campus Drive, Dover, DE 19903. All proposals must be sealed and in writing. Proposals received after 4:00 p.m. January 8, 2016 may be rejected. All submissions will become the property of DTCC and will not be returned unless rejected.

Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. DTCC16001-WELLNESS_CTR_MGMT” on the outside of the bid submission package.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

DTCC will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through February 29, 2016. DTCC reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

DTCC will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of DTCC personnel. Any unopened proposals will be returned to the submitting Vendor. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

8. Non-Conforming Proposals

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

9. Concise Proposals

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

10. Realistic Proposals

It is the expectation of DTCC that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

DTCC shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's proposal will be treated as confidential during the evaluation process. As such, vendor proposals will not be available for review by anyone other than DTCC/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

DTCC as a state agency is required to comply with Delaware Freedom of Information Act, [29 Del. C. § 10001, et seq.](#) ("FOIA"). FOIA requires that DTCC's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection

and copying by any person upon a written request. Once a proposal is received by DTCC and a decision on contract award is made, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

DTCC wishes to create a business-friendly environment and procurement process. As such, DTCC respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the DTCC to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, DTCC will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be binding on DTCC. DTCC shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

12. Price Not Confidential

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

13. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for DTCC and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by DTCC, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to DTCC caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. Primary Vendor

DTCC expects to negotiate and contract with only one “prime vendor”. DTCC will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit DTCC from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by DTCC.

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

14. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by DTCC.

15. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify DTCC’s Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor’s proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

DTCC will allow written requests for clarification of the RFP. All questions shall be received no later than December 15, 2015. All questions will be addressed at the preproposal, non-mandatory meeting on December 16, 2015. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Questions shall be formatted in Microsoft Word.

16. DTCC's Right to Reject Proposals

DTCC reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in DTCC's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as DTCC may deem necessary in the best interest of DTCC.

17. DTCC's Right to Cancel Solicitation

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

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

18. DTCC's Right to Award Multiple Source Contracting

Pursuant to *29 Del. C. § 6986*, DTCC may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of DTCC.

19. Potential Contract Overlap

Vendors shall be advised that DTCC, 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 DTCC. 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. DTCC 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 DTCC.

20. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by DTCC prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of DTCC at the proposal submission deadline. All proposals received are considered firm offers at that time.

21. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on DTCC's website at www.bids.delaware.gov . DTCC is not bound by any statement related to this RFP made by any DTCC employee, contractor or its agents.

22. Exceptions to the RFP

Any exceptions to the RFP, or DTCC's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

23. Award of Contract

The final award of a contract is subject to approval by DTCC. DTCC has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by DTCC and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

The successful Offeror will be required to execute a formal written agreement in the form attached hereto within ten (10) days following notice of award. The proposal, submitted along with the requirements included within this RFP, shall constitute the preliminary substance of the agreement between DTCC and Offeror. All terms reasonably contemplated by the provisions herein, whether expressly stated or implied, will be included in and thus become part of the final draft of the agreement.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, DTCC will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that DTCC is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to DTCC. The award is subject to the appropriate DTCC approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with DTCC; remaining vendors will be notified in writing of their selection status.

24. 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.

C. RFP Evaluation Process

An evaluation team composed of representatives of DTCC will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

DTCC reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that DTCC may deem necessary to make a decision.

Criteria Weight

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

Criteria	Weight
Experience and Reputation	15
Price/Value	25
Qualifications and experience of key personnel	15
Capacity to meet contract requirements (size, financial condition, etc.)	15
Quality and variety of proposed health/wellness programming (including data reporting/analytics)	25
Response time	5
Total	100%

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

1. Proposal Clarification

DTCC may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

2. References

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

3. Oral Presentations

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to DTCC. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for DTCC are the vendor's responsibility.

D. Contract Terms and Conditions

1. Contract Use by Other Agencies

REF: Title 29, Chapter 6904(e) Delaware Code. 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.

2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

3. General Information

- a.** The term of the contract between the successful bidder and the State shall be for 3 years with 2 optional extensions for a period of one (1) year for each extension.
- b.** The selected vendor will be required to enter into a written agreement with DTCC. DTCC reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by DTCC. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c.** The selected vendor or vendors will be expected to enter negotiations with DTCC, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d.** DTCC's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e.** The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a DTCC purchase order signed by two authorized representatives of the agency requesting service, properly processed through DTCC Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f.** If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- g.** DTCC reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

4. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of DTCC participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

5. 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 DTCC employee or agent of DTCC concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DTCC shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with DTCC employees, contractors or agents of DTCC concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

6. Solicitation of DTCC Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of DTCC to leave DTCC'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 DTCC's contracting officer. Solicitation of DTCC 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 DTCC employee who has initiated contact with the vendor. However, DTCC employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

7. General Contract Terms

a. Independent Contractors

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

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employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at DTCC's discretion as to the location of work for the contractual support personnel during the project period. DTCC may provide working space and sufficient supplies and material to augment the Contractor's services.

b. Temporary Personnel are Not DTCC Employees Unless and Until They are Hired

Vendor agrees that any individual or group of temporary staff person(s) provided to DTCC 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 DTCC pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by DTCC 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 DTCC is a dual employer or the sole employer of any individual temporary staff person(s) provided to DTCC pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should DTCC subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend DTCC 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 DTCC for any liability that arises out of compliance with the ACA prior to the date of hire by DTCC. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in DTCC as provided in 30 *Del. C. § 2502*.

Prior to receiving an award, the successful vendor shall either furnish DTCC with proof of DTCC Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with DTCC licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Notice

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

Mr. Gerard M. McNesby,

e. Indemnification

1. General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless DTCC, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

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

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

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

f. Insurance

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 DTCC.
3. During the term of this contract, the vendor shall, at its own expense, also carry insurance minimum limits as follows:

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

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

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

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

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

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

g. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h. PERFORMANCE BOND

There is no Performance Bond requirement.

i. 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 DTCC 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 may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

j. Warranty

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

k. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of DTCC. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

DTCC will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. DTCC may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

l. Penalties

DTCC may include in the final contract penalty provisions for non-performance, such as liquidated damages.

m. Termination of Contract

The contract resulting from this RFP may be terminated as follows by DTCC.

1. **Termination for Cause**: If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, DTCC shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of DTCC, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from DTCC, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless DTCC provides a written acceptance of the vendor response. If DTCC does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion DTCC may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

2. **Termination for Convenience**: DTCC may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
3. **Termination for Non-Appropriations**: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of DTCC 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.

n. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, pregnancy, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

o. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty DTCC shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

p. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

q. Vendor Responsibility

DTCC will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of DTCC.

r. Personnel, Equipment and Services

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. 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.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

s. 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 are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

t. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the DTCC'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 DTCC 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.

u. 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](#)

v. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the DTCC. The vendor will seek written permission to use any product created under the contract.

w. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between DTCC and the successful vendor shall constitute the contract between DTCC and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, DTCC's RFP,

Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between DTCC and the vendor.

x. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

1. the laws of the State of Delaware;
2. the applicable portion of the Federal Civil Rights Act of 1964;
3. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

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

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

y. 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.

z. Scope of Agreement

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

aa. 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.

bb. 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 DTCC, 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 DTCC representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to DTCC for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

cc. Other General Conditions

- 1. Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- 2. Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- 3. Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- 4. Prior Use** – DTCC reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by DTCC.
- 5. Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- 6. Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- 7. Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
- 8. Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of DTCC.
- 9. Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DTCC16001-WELLNESS_CTR_MGMT on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
- 10. Billing** – The Vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
- 11. Additional Terms and Conditions** – DTCC reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

DTCC 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 DTCC 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 DTCC.

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

2. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

3. Production Environment Requirements

DTCC requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

F. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1– Proposed Form of Agreement
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontracting (2nd Tier Spend) Report
- Attachment 7 – Employing Delawareans Report
- Attachment 8 – Office of Supplier Diversity Application

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IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5 and 8 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- **AGENCIES MAY NOT REMOVE SUBCONTRACTING 2ND TIER REPORTS** – Reporting is required by Executive Order.
- In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.
- Accurate 2nd tier reports shall be submitted to the contracting Agency’s Office of Supplier Diversity at vendorusage@state.de.us on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

Proposed Form of Agreement

AGREEMENT

This Agreement ("Agreement") is entered into on this ___ day of _____ 2016, by and between Delaware Technical and Community College ("DTCC") and _____ ("Vendor"). At times herein DTCC and Vendor may be referred to collectively as the "Parties".

WHEREAS, DTCC desires to enter into an agreement with a reputable partner that is capable of delivering quality health assessment, health promotion, and wellness center management and programming services to the students and staff of DTCC ("Services").

WHEREAS, _____ has responded to DTCC's Request for Proposal ("RFP") in its correspondence of _____, 2016 which includes a proposal for health assessment, health promotion, and wellness center management and programming services at one or more of DTCC's locations in Georgetown, Dover, Stanton and Wilmington Delaware.

NOW THEREFORE, the parties agree as follows:

1. **Term.** This Agreement shall commence on _____, ____, 2016, and terminate on _____, 201_, consisting of a three (3) year term unless terminated earlier pursuant to paragraph 16 or other provisions of this Agreement. Notwithstanding the foregoing, DTCC shall have the option to extend this Agreement for two (2) successive one (1) year terms upon thirty (30) days written notice prior to the expiration of the initial or a succeeding term of the Agreement.
2. **Scope of Services.** Vendor agrees to provide the Services in a good, professional manner. The services shall include, but not be limited to, those obligations of Vendor specified in its original response ("Proposal") to the RFP dated _____, ____, 2016. Vendor further agrees to perform such other duties as may be necessary or desirable, in DTCC's reasonable judgment, to implement and maintain high quality health and wellness programs.
3. **Compensation.** In consideration of performance of the Services, DTCC hereby agrees to make payment to Vendor in the total amount of \$_____ as set forth in the Proposal. Vendor will submit to DTCC monthly invoices for Services rendered hereunder, and DTCC hereby agrees to make payment to Vendor within thirty (30) days after its receipt of such invoice.
4. **Governance.** Vendor agrees that all personnel, prices, policies, and all other matters pertaining to the Services shall be subject to DTCC's prior approval.
5. **DTCC Responsibility.** DTCC, shall be responsible for the following:
 - A. DTCC custodial staff shall clean the bathroom and locker room, replace light bulbs and light fixtures where necessary, clean the carpets, and empty trash receptacles in each location; provided, however, as set forth in the Proposal, DTCC shall have no responsibility whatsoever for the maintenance, repair, or upkeep of the equipment contained in each location which shall be the sole responsibility of Vendor.
 - B. Provide heat, electricity, and space for the wellness centers.

6. Independent Contractor. In the performance of this Agreement, Vendor shall be acting as an independent contractor and not as an agent or employee of DTCC. Vendor shall not subcontract nor permit anyone other than employees of Vendor to perform any of the services without the prior written consent of the Campus.

7. Government Approvals. Vendor shall obtain and pay for all necessary permits and licenses pertaining to the services and equipment and shall post such document as required by law. Vendor agrees to comply with all federal, state and local laws, ordinances, rules and regulations without additional cost or expense to DTCC. Vendor agrees to indemnify, hold harmless, and defend DTCC, its agents, employees, officers, and trustees, harmless from and against all liability, demands, claims, expenses, suits, losses, damages, causes of action, fines, and judgments (including attorneys' fees) resulting directly or indirectly from Vendor's non-compliance herewith.

8. Taxes. Vendor shall accept full and exclusive liability for the payment of any and all wages, tax contributions for unemployment insurance, retirement benefits, and life pensions, and annuities which may now or hereafter be imposed by the United States or any state, whether measured by the wages, salaries, or remuneration paid to persons employed by Vendor or otherwise in preparation of the Services. Vendor shall comply with all federal and state laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books, and records and save DTCC harmless from the payment of any and all such taxes and contributions, or penalties.

9. Personnel. Vendor agrees at all times to maintain an adequate staff of its own employees necessary for proper and efficient operation of the wellness centers in accordance with the terms of this agreement. Vendor's employees will adhere to DTCC's policies and regulations regarding personal behavior. All employees of Vendor shall be required to conspicuously display an identification badge issued by the Campus Office of Public Safety at all times while working on campus.

DTCC shall have the right to approve any person employed by Vendor to provide services under this Agreement and may require the remediation or removal of any such person employed by Vendor who fails to perform to DTCC's satisfaction or acts in a manner detrimental to the interests of DTCC, as deemed by DTCC in its sole discretion, and Vendor agrees to cooperate with DTCC in the event it undertakes an internal investigation into allegations of impropriety or threatening/concerning behavior regarding an employee of Vendor.

Vendor's employees assigned to perform services under this agreement shall remain employees of Vendor and shall in no event be considered agents or employees of DTCC. Vendor agrees that its employees assigned to perform services under this agreement will have and maintain appropriate credentials and certifications related to the services performed.

10. Indemnification. Vendor will indemnify, release, hold harmless, and defend DTCC, its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages, causes of action, fines, and judgments (including attorneys' fees) resulting from the acts or omissions of its respective agents, employees, subcontractors or assigns arising out of or in connection with Vendor's performance or failure to perform under this Agreement or in connection with any breach thereof, unless caused by the gross negligence or willful misconduct of DTCC. Vendor shall give prompt written notice of any demand, claim or suit arising hereunder and permit DTCC, at its option, to defend against the same.

11. Non Assignment. Neither party may assign or transfer this Agreement or any obligation hereunder without the prior written approval of the other party, except that, upon written notice, a party may assign or transfer to an entity acquiring all or substantially all of the assets of that party, whether by acquisition of assets or shares, or by merger or consolidation. Any assignment in violation of this Section shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

12. Insurance. Vendor agrees to maintain general liability insurance in the amounts of at least one million (\$1,000,000) per occurrence and at least three million (\$3,000,000) in the aggregate covering the Services at all times during this Agreement. The parties further acknowledge that failure to maintain such coverage or failure to maintain such coverage by Vendor in the minimum amounts set forth herein shall be a breach of this Agreement. Certificates of insurance shall be filed with DTCC before Vendor starts its performance hereunder. Certificates shall name DTCC an additional insured (except for worker's compensation insurance) and contain a provision that no cancellation or material change in the policies will become effective except upon thirty (30) days written notice to DTCC. If Vendor fails to maintain such insurance or deliver the certificates, DTCC may immediately terminate this Agreement.

13. Ownership of Work Product and Copyright. Vendor agrees any data, reports, documents (digital or hard copy), or other materials that are conceived, developed, written, or contributed by Vendor pursuant to this Agreement, either individually or in collaboration with others, shall belong to and be the sole property of DTCC and shall constitute works made for hire. Vendor warrants that any information, documents, materials, or data provided by it for use by DTCC pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other similar law. Vendor shall be solely responsible for ensuring that any materials provided by Vendor pursuant to this Agreement satisfy this requirement.

14. Confidentiality. Vendor agrees that all information communicated to Vendor by DTCC with respect to the Services, including any information gained by Vendor or its representatives by reason of association or employment with Vendor or its associates, is confidential. Vendor agrees that neither it nor any of its agents or employees shall disclose any confidential information to any other person unless specifically authorized in writing by DTCC to do so, except to the extent disclosure is required by subpoena or an order from a court of competent jurisdiction. Vendor shall use its best efforts to prevent inadvertent disclosure of any confidential information to any third party. Vendor agrees to indemnify, release, hold harmless, and defend DTCC its agents, employees, officers, and trustees, from and against all liability, demands, claims, expenses, suits, losses, damages' fees resulting from any use or disclosure of confidential information by Vendor or any person acquiring such information, directly or indirectly, from Vendor.

15. Advertising. Vendor agrees that it will not, in the course of the performance of this Agreement or thereafter, use DTCC's name in any advertising or promotional media as a customer or client of Vendor, without the prior written consent of DTCC.

16. Termination. This Agreement may be terminated as follows:

- A. For cause by either party upon thirty (30) day written notice if the other party: (i) files, or has filed against it, a petition in bankruptcy; (ii) makes a general assignment for the benefit of creditors; (iii) has a receiver appointed therefor; (iv) violates any laws or ordinances; or (v) otherwise violates any provision of this Agreement. If DTCC terminates this Agreement pursuant to this subparagraph A, then in addition to any remedies provided for herein or at law or in equity, DTCC may obtain services from another vendor or provide services itself, and Vendor shall be liable for all costs and expenses incurred by the Campus in obtaining or providing said alternate services.
- B. By DTCC, without cause and for any reason, upon sixty (60) days written notice. If this Agreement is terminated pursuant to this subparagraph B, Vendor shall continue to provide services to the effective date of termination.

17. Funding Out. This Agreement is contingent on the continuation, and availability of the funding appropriated by the General Assembly of State of Delaware to DTCC. Accordingly, if the funding or appropriations cease or are exhausted based upon previously available funds or appropriations, the Agreement will terminate due to lack of funding. In such circumstances, DTCC shall terminate this Agreement by giving

Vendor written notice of such unavailability of funds. All payment obligations of DTCC will cease upon the date of termination specified in such notice; provided, however, that Vendor shall be paid all amounts due and owing under this agreement through the date of termination.

18. Non waiver. The failure of either party to insist upon the performance of any terms or conditions of this Agreement, or to exercise any right or privilege conferred hereby, shall be construed as a waiver of such terms, conditions, rights or privileges, but the same shall instead continue and remain in full force and effect.

19. Notices. All notices or other communications shall be in writing and shall be deemed to have been duly given if sent certified mail, return receipt requested, to the respective addresses herein designated, or to such other addresses as may be designated, in the manner provided for in this paragraph by either party:

IF TO DTCC:

Gerard M. McNesby
Vice President for Finance
Delaware Technical Community College
100 Campus Drive
Dover, DE 19903

If to Vendor:

20. Anti-discrimination. The parties agree that, in the performance of this Agreement, no person shall, on the basis of race, color, creed, religion, sex, national origin, age, disability, genetic information, marital status, veteran status, sexual orientation, gender orientation, gender identity or pregnancy, be subjected to any discrimination prohibited by law.

21. Family Educational Rights and Privacy Act. Vendor shall not disclose or release any educational record or other information concerning a student to any person, group or entity other than DTCC without the student's prior written consent and shall otherwise comply with the provisions of the Family Educational Records Privacy Act of 1974, as amended, and DTCC'S policies concerning student access to educational records and confidentiality of student records. Vendor shall defend, indemnify and hold DTCC harmless from all liability associated with Vendor's breach of this provision.

23. Choice of Law and Venue. This Agreement shall be deemed to be entered into and shall be construed in accordance with the laws of the State of Delaware. Vendor hereby consents to the personal jurisdiction of the Delaware Courts which shall have the exclusive jurisdiction of any disputes under this Agreement and appoints the Delaware Secretary of State as its agent for the service of process on its behalf.

24. Severability. If it is determined that any provision hereof is in conflict with the law, then such provision shall be given effect only to the extent permitted by law. Nevertheless, the remaining provisions shall remain in full force and effect.

25. Binding Effect. The terms, covenants, and conditions herein shall bind and insure to the benefit of the parties hereto and their respective heirs, distributees, executors, administrators, successors, and, except as otherwise provided herein, their assignees.

26. Force Majeure. Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of such party, provided that the party relying upon this provision: (i) gives prompt written notice thereof, and (ii) takes all

STATE OF DELAWARE, DELAWARE TECHNICAL AND COMMUNITY COLLEGE

steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that in the event a force majeure event extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate this Agreement upon written notice.

27. Interpretation. In the event of any conflict between the terms of this Agreement, the RFP, or the Proposal, the terms of this Agreement shall govern and control.

28. Entire Agreement. This instrument and the Exhibits attached hereto contain the entire Agreement of the parties and may not be modified except in writing and signed by both parties.

IN WITNESS WHEREOF, the parties, through their acknowledged and duly authorized agents, hereto have set their hands and seals of this Agreement as of the date first written above.

DELAWARE TECHNICAL AND
COMMUNITY COLLEGE

VENDOR

BY: _____

BY: _____

NAME: Mark T. Brainard

NAME: _____

TITLE: President

TITLE: _____

DATE: _____

DATE: _____

CONTRACT NO.: DTCC16001-WELLNESS_CTR_MGMT
CONTRACT TITLE: WELLNESS CENTER MANAGEMENT
DEADLINE TO RESPOND: January 8, 2016 at 4:00 PM (Local Time)

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 DTCC.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

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

COMPANY NAME _____ Check one)

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

NAME OF AUTHORIZED REPRESENTATIVE _____
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ DTCC
NUMBER _____ LICENSE

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

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

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL 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 _____

Contract No. DTCC16001-WELLNESS_CTR_MGMT
Contract Title: WELLNESS CENTER MANAGEMENT

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.

Contract No. DTCC16001-WELLNESS_CTR_MGMT
 Contract Title: WELLNESS CENTER MANAGEMENT

BUSINESS REFERENCES

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

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

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

DTCC PERSONNEL MAY NOT BE USED AS REFERENCES.

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

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

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

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorusage@state.de.us

Contract No. DTCC16001-WELLNESS_CTR_MGMT
Contract Title: WELLNESS CENTER MANAGEMENT

EMPLOYING DELAWAREANS REPORT

As required by House Bill # 410 (Bond Bill) of the 146th General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: _____
2. Number and percentage of such employees who are bona fide legal residents of Delaware: _____
Percentage of such employees who are bona fide legal residents of Delaware: _____
3. Total number of employees of the bidder: _____
4. Total percentage of employees who are bona fide resident of Delaware: _____

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: _____
2. Percentage of employees who are residents of Delaware: _____

“Bona fide legal resident of this State” shall mean any resident who has established residence of at least 90 days in the State.

DTCC

**Office of Supplier Diversity
Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

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

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)

100 Enterprise Place, Suite 4

Dover, DE 19904-8202

Telephone: (302) 857-4554 Fax: (302) 677-7086

Email: osd@state.de.us

Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.
THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.**