

**DEPARTMENT OF TECHNOLOGY AND INFORMATION
REQUEST FOR PROPOSALS**



RFP Number: **DTI 180023-BRBND_NET**

RURAL BROADBAND INTERNET NETWORK

Submission Due Date/Time: **Thursday, October 4, 2018 at 2:00 P.M. Local Time**

Seven (7) year term with three (3) one year extensions.

Multiple Agreements may be awarded from this solicitation.

29 Del.C. §6982b

PROJECT INFORMATION

This Request for Proposal (RFP) issued by the Delaware Department of Technology and Information (DTI) is for the purpose of acquiring proposals from interested firms to provide affordable broadband access for underserved and unserved residents in the rural parts of the State. This RFP is part of DTI's work to expand affordable broadband in unserved and underserved areas.

PROJECT DESCRIPTION

DTI seeks to identify one or more qualified firms to build, operate, and maintain a network to provide broadband internet service to unserved and underserved residents and businesses in key target areas (Target Areas) of the State. Through this RFP, DTI will evaluate Firms who commit to building and sustaining new broadband service capabilities to Target Areas.

DTI estimates Target Areas include approximately 127,700 homes and businesses in the rural parts of Sussex and Kent Counties. Target Areas are defined in Exhibit 1 – TARGET AREAS of this RFP.

DTI will provide funding for startup costs of a defined service radius that may include Wireless Infrastructure, Network Infrastructure, UPS Installation Tower Lease, Internet Bandwidth, Marketing, Customer Premise Equipment (CPE), installation and purchase of communications equipment but will not provide any funding toward operations or maintenance of the facilities and broadband network. DTI seeks bids from potential Firms who will use the State funds to construct and procure the network with a commitment to operating and maintaining the network, at their own cost and risk, for at least seven years.

DTI has placed prioritization on low-cost services for low-income families to enable them to take full advantage of the internet.

PROJECT REQUIREMENTS

Through this RFP, DTI seeks a qualified Firm(s) to deploy, operate, and maintain a terrestrial (i.e., not satellite) broadband internet network to provide data services.

DTI's requirements with respect to the Firm are as follows:

1. Technical

This RFP does not dictate which technologies the Firm should select or build, but rather leaves it to the Firm to propose terrestrial (non-satellite) technologies that are suitable for deployment and able to reach the Target Areas.

Firms proposed solutions should meet the following technical performance requirements:

- A. Network should have controllers to manage quality of service on a customer-by-customer basis for multiple tiers of service

- B. 15 Megabits per second (Mbps) download throughput and >2 Mbps upload throughput to more than 75% of the homes and businesses in coverage area
- C. 50 Mbps download throughput and >5 Mbps upload throughput to more than 33% of homes and businesses in coverage area
- D. Latency <30 ms to U.S. destinations support VoIP services to more than 75% of homes and businesses in coverage area
- E. System will have backup power of at least 4 hours at each base station site in case of electric outage
- F. System designed to 99.9% uptime
- G. Network Backhaul capacity per base station site must be 1 Gigabit per second (Gbps) minimum, but capable of scaling to accommodate the maximum customer capacity as designed. Total Internet peering capacity must accommodate the aggregate backhaul bandwidth of all base stations be scalable if implementing a hub and spoke design.

2. **Service**

DTI has identified key service requirements for the services to be covered by this RFP. Firms should indicate how they will enable the following if awarded:

- A. Develop the potential for service to as many as possible customer premises in the Target Areas. Develop a buildout and service strategy for a network serving as many unserved and underserved customers as possible.
- B. Firms should have experience in providing efficient and effective customer service support to residents and businesses in the following areas:
 - placing orders,
 - customer inquiries and response time to inquiries,
 - sales support, account representation and customer relationship
 - services and strategies offered,
 - billing
- C. Provide cost-effective services that are competitively priced. Bidding Firms should also offer creative ideas about low-cost pricing to meet the needs of low-income families, including those families with children who are eligible for the federal free and reduced school lunch program. Providers certified with programs such as Lifeline Program for Low-Income Consumers are encouraged to apply.
- D. Offer data services that do not limit, quota, cap, or otherwise ration a user's total upload and download data capacity to an extent that limits reasonable use of broadband.

3. **Funding**

DTI seeks bids from potential Firm(s) that are willing and able to contract based on the following financial parameters:

A. Ownership of Assets

DTI seeks bids with the understanding that all equipment or infrastructure procured with State funds will remain the property of DTI for seven years, at which time it will become the property of the Firm(s). DTI intends to retain an ownership interest in the equipment for the seven-year time period so as to ensure that, in the event of Firm default, DTI could take back the assets and seek another Firm to operate and maintain the network. In the event that the Firm fails at any time during the seven-year performance period to meet the requirements of this RFP and the obligations of its bid, DTI may terminate the lease and take immediate

possession of all the assets, equipment, and facilities purchased with DTI funds in accordance with the termination language found in Appendix B of this RFP.

QUESTIONS

Questions are to be submitted to DTI_Vendorservices@state.de.us. In order to ensure a timely response, questions must be submitted at least fifteen (15) business days before the Proposal due date. The Department's response to questions, along with this RFP and related information, are posted on the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/>. Firm names will be removed from questions in the responses released. Questions should be submitted in the following format where applicable. Deviations from this format will not be accepted.

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

PROCUREMENT SCHEDULE

Action Item	Date	Time
Deadline for Questions to ensure response:	Fifteen (15) business days prior to the proposal due date	2:00 P.M. Local Time
Final Response to Questions posted by:	Ten (10) business days prior to the proposal due date	2:00 P.M. Local Time
Proposals Due by: *	Thursday, October 4 th 2018	2:00 P.M. Local Time

NOTE: Only asterisk (*) marked date changes will be communicated (via posted Addendums).

PROPOSAL REQUIREMENTS

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

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

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

Proposals are to be delivered to the RFP Point of Contact:

Shelly K. Aliaa, IT Procurement Officer
RFP: DTI180023-BRBND_NET
Delaware Department of Technology
801 Silver Lake Blvd.
Dover, DE 19904

Should the office be closed at the time responses are due (such as an unexpected event or inclement weather) the submission due date shall be the following business day, at the time originally scheduled.

2. **Submit one (1) original hard copy** of the Proposal. Receipt of insufficient copies or non-

compliance with providing the requested information in the desired format, may negatively impact the scoring.

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

Firms should review Delaware's Freedom of Information Regulations in Section 10002(l) "Public record" of the Delaware Code, <http://delcode.delaware.gov/title29/c100/index.shtml> to determine what information may be considered proprietary or confidential and may be redacted from their proposal.

4. **A Letter of Interest** should accompany each proposal to briefly summarize the proposing firm's interest in providing the required services. The Letter of Interest is limited to four (4) pages on two (2) sheets of paper and must indicate the following:
 - A. An understanding of the anticipated assignments, services required, and approach to providing the services required.
 - B. The location, size, and description of the firm.
 - C. Confirmation that the Firm shall not store or transfer non-public State of Delaware data outside of the United States.
 - D. Firms should review and confirm the ability to adhere to the Delaware Department of Technology and Information Standard Terms and Conditions included in this solicitation in Appendix B.
 - E. Name and contact information of the Project Manager for this project.
 - F. Sub-contractor usage if anticipated. Indicate the percentage of work estimated to be performed by the sub-contractor vs. the prime Firm. Also, indicate if the prime consultant has previously worked with the proposed sub-contractor and give a brief example of the previous relationship(s).
5. **Firm Technical Capability and Experience** should be demonstrated by explanation of how the Firm is suitable for this project. Please provide a proposal discussing past performance, capabilities, and qualifications. At a minimum, please address the following:
 - A. Identify a maximum of five (5) other networks your firm (or the management team you propose here) has operated, as well as any network design and build experience; include the levels of broadband speed, technology type, availability and adoption among different categories of end-users and unique capabilities or attributes. Discuss your capabilities with regard to engineering and design of broadband wireless systems (or an alternative technology, if that is what you propose). If you are proposing a wireless network, describe your experience deploying and operating wireless systems in each of the following bands:

900 MHz, 2.4 GHz, 5 GHz, and TV White Spaces. If you are proposing an alternative technology, please describe your experience with that type of technology. Additionally, because delivery of residential broadband services differs significantly from delivery of commercial services, please illustrate your ability and describe your past experience engineering and designing a system capable of serving and supporting residential and business customers identified as underserved or unserved.

- B. Describe agreements with other service providers, government, or non-profit entities you have undertaken, particularly any in which you provide service to rural unserved or underserved populations. Describe the nature of the projects and your firm's role.
- C. Discuss your capabilities regarding operation and maintenance of the form of broadband technology you propose. Overall operation, including routine and emergency maintenance, of the network will be crucial to its success. Please demonstrate through experience your ability to operate and maintain all aspects of the network.
- D. Provide example(s) of existing Customer Relationship Management system(s) or equivalent that demonstrate your ability to deliver quality customer service.
- E. Provide an example of a web customer interface or portal you have provided in a residential or business deployment.
- F. Discuss your firm's ability to provide customer service to the Target Areas as identified in this RFP.

6. Technical Proposal

In this section of your proposal, please tell DTI how you will meet the technical requirements described in this RFP. You should address the following in your proposal numbered and in order as they appear below:

- A. Describe your ability to meet the requirements as listed in the Project Requirements Section, Part 1. Technical, Items A – G.
- B. Describe your ability to report quarterly on the requirements as listed in the Project Requirements Section, Part 1. Technical, Items A – G. Provide report sample with your proposal.
- C. Describe your approach to developing service for the network described above. Specify locations of equipment (such as, for example, base station antennas) and how they will provide coverage for the service areas for which you are requesting funding.
- D. Describe the technologies and entities you plan to use. Provide a network diagram with key links, key components, and their location. Describe what protocols will be used, loss budget, and capacities of each link. Provide make and model of base station and customer premises equipment. Describe a typical customer installation, including antenna mounting and interface with customer equipment.
- E. Describe the approach you will use for backhaul and how you will ensure that your network has sufficient commodity internet bandwidth to meet the needs of your customers.
- F. Describe how you will perform installation and network management. Describe at what sort of facility (or facilities) you would place network electronics.
- G. Describe and provide maps of the expected coverage area and number of homes and

businesses served with each technology and service level.

H. Describe your technological roadmap for providing increases in performance.

I. Describe your plan to perform network maintenance on an ongoing and as-needed basis.

J. Discuss the spectrum you propose to use, your access to that spectrum, and any interference concerns.

K. Provide a detailed bill of materials (BOM) of the equipment you propose to purchase and facilities you propose to install with DTI funds throughout the project. Please include a description of the customer premises equipment (CPE) you propose to purchase and install, including quantities anticipated.

L. Outline your proposed schedule for design, construction, and initiation of service. Please offer a timeline with key milestones.

7. **Firm Financial Viability** Financial information (balance sheets and income statements) for the past three years. Include background, balance sheets and income statements for the past three years and/or Dun & Bradstreet report.

8. **Staff Qualifications**

Follow instructions below:

A. Proposed Team: Indicate Name, Position, and approximate percentage of contract cost each member will perform. Organization Chart format is preferred. Confirm availability of personnel for immediate placement.

B. Resumes of Key Personnel Proposed for this Contract;
Resume information is limited to eight (8) individuals regardless of affiliation. Each resume is limited to a single sided page.

9. **Consumer Service and Cost Proposal** should include these three sections:

A. **Pricing Proposal** should include:

- List service options, including low-income options if available, you plan to offer over this network with price offerings for each to include installation fees and any other applicable fees to be charged to users.
- For each priced service option, describe how your residential and business offerings will differ, if at all. Discuss whether and to what degree your service plans will limit, quota, throttle, or otherwise ration a user's total upload and download data capacity in relation to each price option given. If the services vary based on service area, please describe.
- Describe your ability to hold price over the initial 24 months of the contract and projected annual increases over the life of the contract.
- Describe how customers will receive notification of price increase and period in which they will receive prior notification.

B. **Customer Service** offering should be defined with the Firm describing the following:

- Marketing Plan that will be implemented to acquire customers including but not limited to:
 - The strategy to market your services to each of the proposed service areas
 - Incentives for customers and businesses
- Basic customer service functions to include:
 - The process for placing orders

- The process for handling customer inquiries and response time to inquiries
- The proposed sales support/account representation and customer relationship
- Services and strategies offered to residents and businesses served
- Billing procedures
- Firms must describe hours of operation, operator responsibilities, technical skill levels and what the response time and maintenance window would be should service be lost within the area of responsibility. Firms should provide any statistics that indicate the time duration from the time of problem detection to the time of problem resolution.

C. **Proposed Coverage Area** based on the data and maps provided in this RFP, please describe and map the areas to which you propose to provide broadband coverage in the Target Areas. Please specify the number of unserved and underserved homes and businesses you anticipate will have the potential of service based on your proposed deployment. In detail, state the amount of funding you seek from the Department to support the proposed plan. Please provide a proposal with respect to the following items:

- Amount sought for network deployment (funds to be dispersed to you and used for equipment purchase, but equipment to remain DTI property for seven years)
- Amount sought for Customer Premise Equipment (CPE) purchase (funds to be dispersed based on demonstrated customer commitments)

10. **Proof of Lifeline provider certification**, if applicable.

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

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

RATING CRITERIA

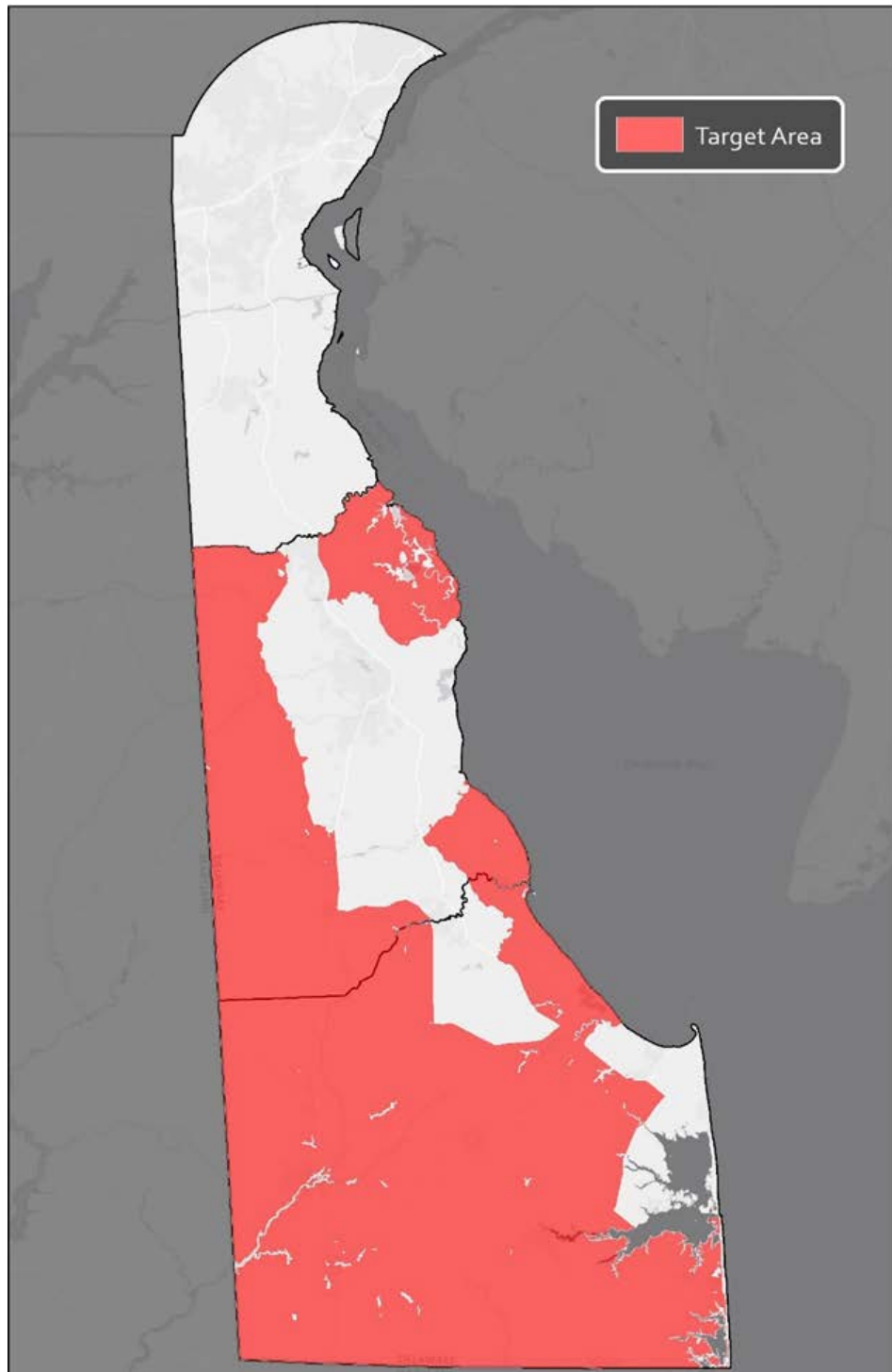
All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Selection Committee to evaluate proposals:

#	Criteria Description:	Weight
1	Firm Technical Capability and Experience	20 %
2	Technical Proposal	20 %
4	Firm Financial Viability	15 %
5	Consumer Service and Cost Proposal	30 %
6	Pricing program for Low-Income Residents	15%
TOTAL :		100%

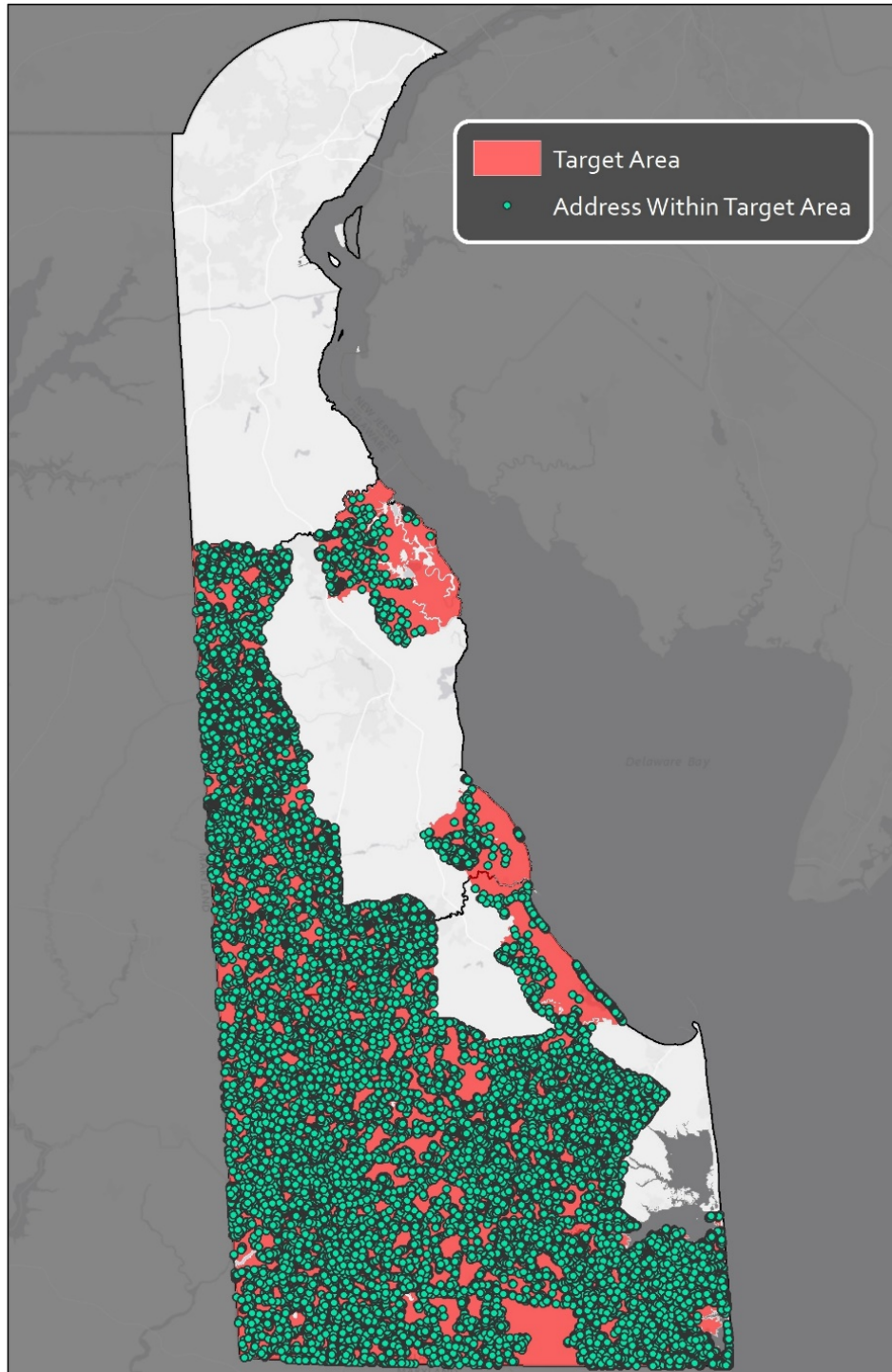
Remainder of page intentionally left blank.

Exhibit 1 – TARGET AREAS

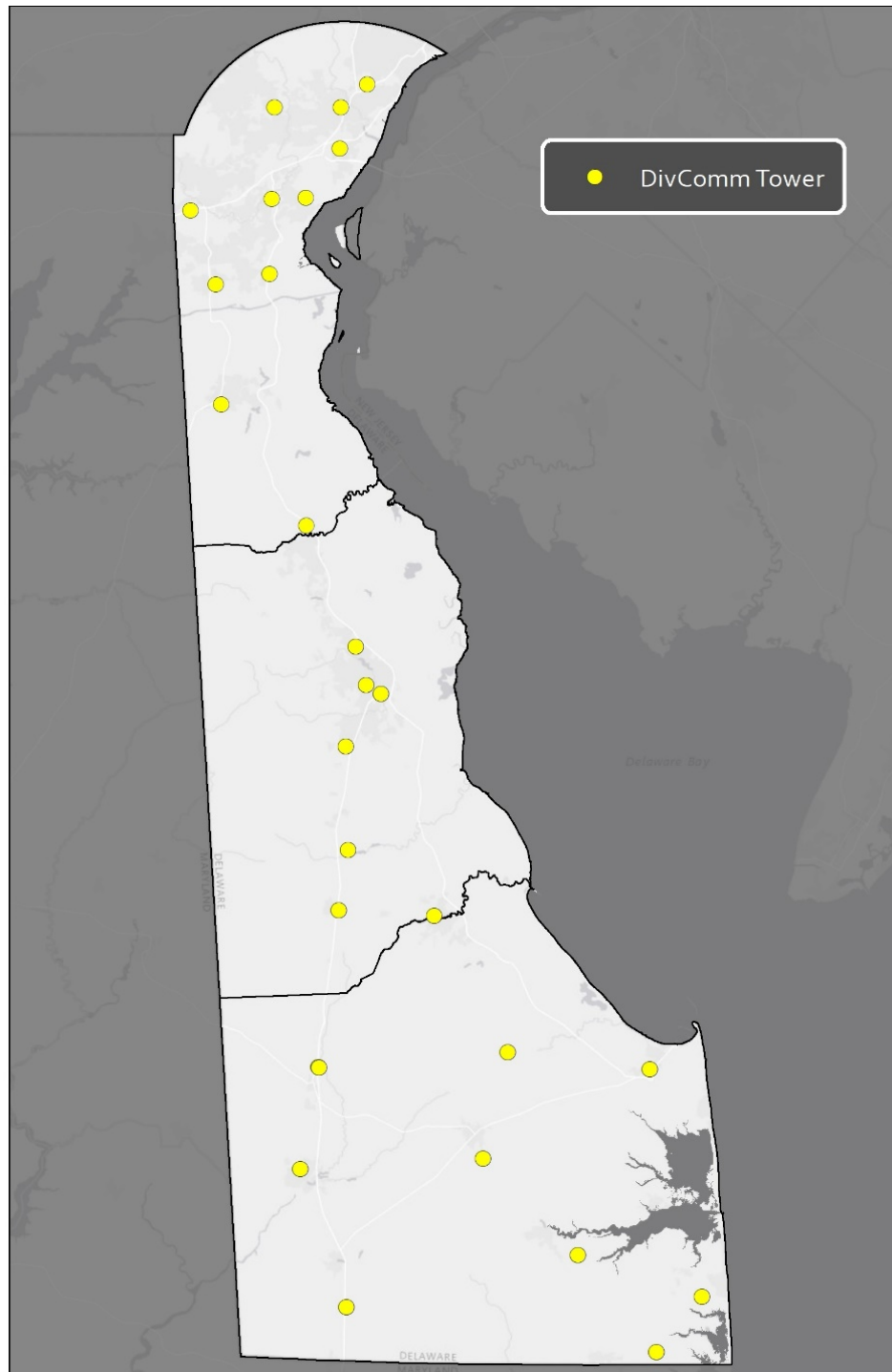
1. The Target Areas are generally represented on the following map:

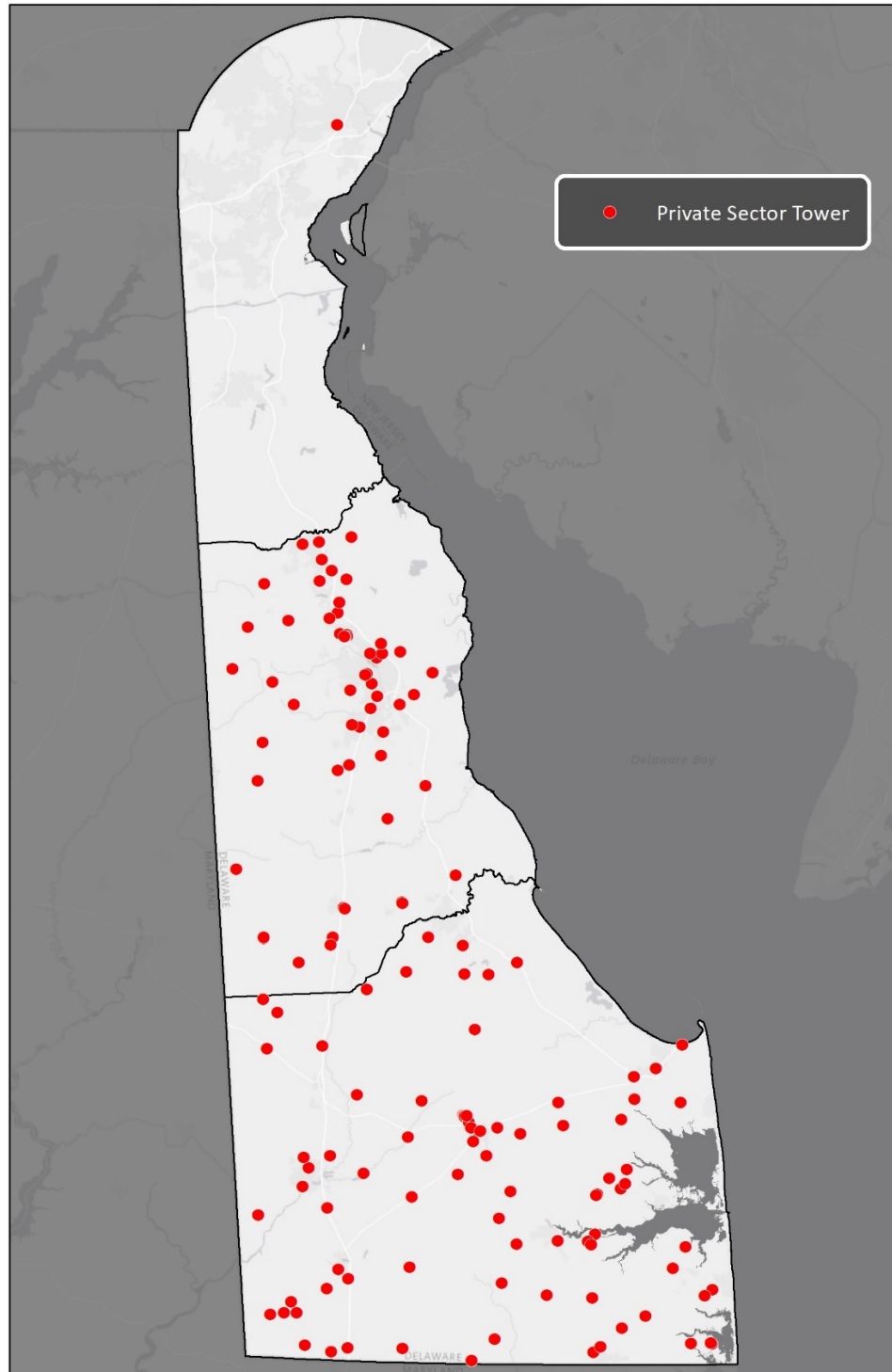


2. The following map includes approximate locations of the homes and businesses DTI believes, based on communications from Delaware residents and businesses, to lie within the unserved and underserved Target Areas:



3. For the purpose of providing potentially useful data to prospective Firms, the following maps include approximate locations of State of Delaware wireless towers, as well as those owned by private sector companies. DTI encourages prospective Firms to seek information from the tower owners about rates, terms, and conditions under which space can be leased for this effort.





Appendix A - REQUIRED FORMS

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

- **NO PROPOSAL REPLY FORM**
- **NON-COLLUSION STATEMENT**
- **EXCEPTION FORM**
- **CONFIDENTIAL INFORMATION FORM**
- **BUSINESS REFERENCES**
- **SUBCONTRACTOR INFORMATION FORM**

**DTI180023-BRBND_NET
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NO PROPOSAL REPLY FORM

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number.

Unfortunately, we must offer a "No Proposal" at this time because:

- _____ 1. We do not wish to participate in the proposal process.
- _____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

- _____ 3. We do not feel we can be competitive.
- _____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- _____ 5. We do not wish to sell to the State. Our objections are:

- _____ 6. We do not sell the items/services on which Proposals are requested.
- _____ 7. Other: _____

FIRM NAME

SIGNATURE

**DTI180023-BRBND_NET
RURAL BROADBAND INTERNET NETWORK**

NON-COLLUSION STATEMENT

This is to certify that the undersigned Firm 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 Firm who also submitted a proposal as a primary Firm in response to this solicitation** submitted this date to the State of Delaware, Department of Technology and Information.

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

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

COMPANY NAME _____ (Check one)
NAME OF AUTHORIZED REPRESENTATIVE (Please type or print) _____

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

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL EIN _____ STATE OF DELAWARE LICENSE NUMBER _____

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

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

PURCHASE ORDERS SHOULD BE SENT TO:

COMPANY NAME _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL 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 _____

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the Firm is submitting the proposal without exceptions, please state so below.

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

[illegible]

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CONFIDENTIAL INFORMATION FORM

☐ By checking this box, the Firm 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.

[illegible]

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

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BUSINESS REFERENCES

Provide at least three (3) business references consisting of current or previous customers of similar scope and value. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. The selection committee will not consider personal references. 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).

Contact Name & Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

Contact Name & Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

Contact Name & Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

* Use a separate form for each subcontractor

Appendix B – STANDARD TERMS AND CONDITIONS

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 Firms with a Disability

Firms 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 the Department. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the Firm. Firms should rely only on written statements issued by the RFP designated contact.

Shelly K. Aliaa, IT Procurement Officer

RFP: DTI180023-BRBND_NET

Delaware Department of Technology

801 Silver Lake Blvd.

Dover, DE 19904

DTI_Vendorservices@state.de.us

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

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

6. Contact with State Employees

Direct contact with State of Delaware employees other than the Designated Contact regarding this RFP is expressly prohibited without prior consent. Firms directly contacting State of Delaware employees risk elimination of their proposal from further consideration.

Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

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 the State of Delaware 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 Firm 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 the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each Firm 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. 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.

3. Proposal Costs and Expenses

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

4. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the Firm at least through contract award. The Department reserves the right to ask for an extension of time if needed.

5. 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, Firm 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.

6. Proposal Opening

The Department will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of Department personnel. Any unopened proposals will be returned to the submitting Firm.

7. Non-Conforming Proposals

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

8. Concise Proposals

The Department 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. The Department's interest is in the quality and responsiveness of the proposal.

9. Realistic Proposals

It is the expectation of the Department that Firms 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.

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

10. Price Not Confidential

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

11. Multi-Firm Solutions (Joint Ventures)

Multi-Firm 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 the Department 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 Firm 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 the Department, and approval of a request to subcontract shall not in any way relieve Firm of responsibility for the professional and technical accuracy and adequacy of the work. Further, Firm shall be and remain liable for all damages to the Department caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-Firm 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 Firm.

a. Primary Firm

The Department expects to negotiate and contract with only the "prime Firm". The Department will not accept any proposals that reflect an equal teaming arrangement or from Firms who are co-bidding on this RFP. The prime Firm will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime Firm 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 Firm.

Payments to any-subcontractors are the sole responsibility of the prime Firm (awarded Firm).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Appendix B – STANDARD TERMS AND CONDITIONS, Section B, Item 16 regarding multiple source contracting.

b. Sub-contracting

The Firm selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, Firms 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 Firm shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by the Department.

c. Multiple Proposals

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

12. Sub-Contracting

The Firm selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, Firms 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 the Department.

13. Discrepancies and Omissions

Firm 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 Firm. Should Firm find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, Firm shall notify the Department'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 Firm'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.

14. Department's Right to Reject Proposals

The Department 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 the Department's specifications or Firm'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 the Department may deem necessary in the best interest of the State of Delaware.

15. Department's Right to Cancel Solicitation

The Department reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The Department makes no

commitments expressed or implied, that this process will result in a business transaction with any Firm.

This RFP does not constitute an offer by the Department. Firm's participation in this process may result in the Department 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 the Department to execute a contract nor to continue negotiations. The Department may terminate negotiations at any time and for any reason, or for no reason.

16. Department's Right to Award Multiple Source Contracting

Pursuant to 29 Del. C. [§ 6986](#), the Department may award a contract for a particular professional service to two or more Firms if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

17. Potential Contract Overlap

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

18. Notification of Withdrawal of Proposal

Firm may modify or withdraw its proposal by written request, provided that both proposal and request is received by the Department 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 the Department at the proposal submission deadline. All proposals received are considered firm offers at that time.

19. Revisions to the RFP

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

20. Exceptions to the RFP

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

21. Award of Contract

The final award of a contract is subject to approval by the Department. The Department has the sole right to select the successful Firm(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 Firm of the acceptance of its proposal by the Department and the subsequent full execution of a written contract will constitute a contract, and no Firm will acquire any legal or equitable rights or privileges until the occurrence of both such events.

22. RFP Award Notifications

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

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

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

24. Cooperatives

Firms, 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 the Department will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

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

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which Firms meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981](#) and [6982](#). Professional services for this solicitation are considered under 29 *Del. C.* §6982(b). The Team may negotiate with one or more Firms during the same period and may, at its discretion, terminate negotiations with any or all Firms. The Team shall make a recommendation regarding the award to the Department of Technology and Information, IT Procurement Officer, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982\(b\)](#), to award a contract to the successful Firm in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing Firm's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the Department to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.

- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all Firms during the contract review and negotiation.
- Negotiate any aspect of the proposal with any Firm and negotiate with more than one Firm at the same time.
- Select more than one Firm pursuant to 29 Del. C. [§6986](#).

3. Proposal Clarification

The Evaluation Team may contact any Firm 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.

4. References

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

5. Oral Presentations

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

The selected Firms 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 Firm 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 Firm's costs associated with participation in oral discussions and system demonstrations conducted for the Department are the Firm's responsibility.

D. Contract Terms and Conditions

1. General Information

- a. The selected Firm will be required to enter into a written agreement with the Department. The Department 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 the Department. Firms will be required to sign the contract for all services, and may be required to sign additional agreements.
- b. The selected Firm or Firms will be expected to enter negotiations with the Department, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected Firm's response to this RFP will be incorporated as part of any formal contract.
- c. The Department's standard contract will most likely be supplemented with the Firm'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.
- d. No Firm is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly

processed through the State of Delaware 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 Firm.

- e. If the Firm 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 Firm. Such Firm shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

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

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

Advance knowledge of information which gives any particular Firm advantages over any other interested Firm(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.

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Firms found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware 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 Firm will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Department 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 State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

4. Solicitation of State Employees

Until contract award, Firms shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the Firm, its affiliates, actual or prospective contractors, or any person acting in concert with Firm, without prior written approval of the Department's IT Procurement Officer. Solicitation of State of Delaware employees by a Firm may result in rejection of the Firm's proposal.

This paragraph does not prevent the employment by a Firm of a State of Delaware employee who has initiated contact with the Firm. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor

under certain circumstances. Firms may not knowingly employ a person who cannot legally accept employment under state or federal law. If a Firm discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms

a. Independent Contractors

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

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

b. Licenses and Permits

In performance of the contract, the Firm 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 Firm. The Firm shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § [2502](#).

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

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

c. Notice

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

Shelly K. Alioa, IT Procurement Officer
Delaware Department of Technology
801 Silver Lake Blvd.
Dover, DE 19904

d. Indemnification

1. General Indemnification

By submitting a proposal, the proposing Firm agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Firm's, its agents and employees' performance work or services in connection with the contract.

2. Proprietary Rights Indemnification

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

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

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

e. Insurance

1. Firm 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 Firm'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 Firm in their negligent performance under this contract.
2. The Firm 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 Firm is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the Firm shall, at its own expense, also carry insurance minimum limits as follows:
 - a. Firm shall in all instances maintain the following insurance during the term of this Agreement.
 - i. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
 - ii. Commercial General Liability
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate.
 - b. The successful Firm must carry at least one of the following depending on the scope of work being delivered.
 - i. Medical/Professional Liability
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate

- ii. Miscellaneous Errors and Omissions
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- iii. Product Liability
\$1,000,000 per occurrence/\$3,000,000 aggregate

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

- i. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident.

- ii. Automotive Property Damage (to others) - \$25,000

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

f. Performance Requirements

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

g. Firm Emergency Response Point of Contact

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

h. Costs and Payment Schedules

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

The Department will require a payment schedule based on defined and measurable milestones. Proposals should be submitted for proposed work. Payments for services will not be made in advance of work performed. The Department may require

holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

Payments made under the resulting contract are subject to audit and will be based on actual costs. Invoices submitted for the duration of the resulting contract shall include, but not be limited to, the task order assignment number, a brief description of the assignment, and proof of actual retail cost of all equipment related to the invoice. Final settlement for total payment to the Firm will be made within ninety (90) days from the date of final written Department acceptance of each task/project.

i. Project Schedule

Work assigned under the resulting contract will be by individual task orders for services as required in this RFP, throughout the State of Delaware. The Firm will prepare a specific proposal for each task order assignment including a work plan, cost proposal, and schedule to be approved by the Department.

Within three (3) working days the Firm shall acknowledge each work assignment. The Firm shall contact the Department to discuss project requirements and will provide a work plan, schedule and cost proposal to the Department within five (5) working days following the initial project scoping meeting. The Firm shall submit a monthly status report for each assigned task and shall advise of any decisions needed concerning matters that appear to be preventing progress.

Notify the Department in writing if the Firm is of the opinion that any work or service is beyond the scope of the contract. If by its sole discretion the Department concurs, in accordance with Delaware law, a Supplemental Agreement may be executed in writing. No work covered by Supplemental Agreements shall be begin unless ordered in writing by the Department and receipt of a Notice to Proceed.

The Firm will proceed with the work and services for each task within three (3) working days after receipt of a written Notice to Proceed issued by the DTI Procurement Office.

j. Liquidated Damages

The Department may include in the final contract liquidated damages provisions for non-performance.

k. Dispute Resolution

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

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the Department elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by the Department. The Department reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the

Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

I. Termination of Contract

The contract resulting from this RFP may be terminated as follows by the Department of Technology and Information.

1. Termination for Cause

If, for any reasons, or through any cause, the Firm fails to fulfill in timely and proper manner its obligations under this Contract, or if the Firm violates any of the covenants, agreements, or stipulations of this Contract, the Department shall thereupon have the right to terminate this contract by giving written notice to the Firm 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 Firm under this Contract shall, at the option of the Department, become its property, and the Firm 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 Department.

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

2. Termination for Convenience

The Department 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 Department, become its property and the Firm shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the Department.

3. Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the Department 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.

m. Non-discrimination

In performing the services subject to this RFP the Firm, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful Firm 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.

n. Covenant against Contingent Fees

The successful Firm 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 Firm for the purpose of securing business. For breach or violation of this warranty the Department 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.

o. Firm 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 Firm. The Firm 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.

p. Firm Responsibility

The successful Firm(s) shall be responsible for all products and services as required by this RFP whether or not the Firm or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Firm's proposal, and are subject the approval and acceptance of the Department.

q. Supplier Diversity

State of Delaware, Office of Supplier Diversity Certification Applications are available here for download:

<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>

r. Personnel, Equipment and Services

1. The Firm 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 Firm 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. Firms doing business with the State are encouraged to adopt fair background check practices. Firms can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

t. Firm Background Check Requirements

Firm(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 Department'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 Firms. Should an individual be identified and the Firm(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Firm(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 Firm 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 Firm(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

u. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the Department and the successful Firm shall constitute the contract between the Department and the Firm. 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, Department's RFP, Firm's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the Department and the Firm.

v. Applicable Law

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

In submitting a proposal, Firms 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 Firm fails to comply with (1) through (5) of this paragraph, the Department reserves the right to disregard the proposal, terminate the contract, or consider the Firm in default.

The selected Firm 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.

w. 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.

x. Assignment Of Antitrust Claims

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

y. 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.

z. Affirmation

The Firm 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.

aa. Audit Access to Records

The Firm 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 Firm agrees to preserve and make available to the Department, upon request, such records for a period of five (5) years from the date services were rendered by the Firm. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Firm agrees to make such records available for inspection, audit, or reproduction to any official Department representative in the performance of their duties under the Contract. Upon notice given to the Firm, representatives of the Department 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 Firm's financial records will be borne by the Firm. Reimbursement to the Department for disallowances shall be drawn from the Firm's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

bb. 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** – The Department 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 the Department.
5. **Status Reporting** – The selected Firm 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 the Department.
9. **Billing** – The successful Firm 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.
10. **Payment** – The Department reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Firms are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
11. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DTI180023-BRBND_NET on

all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

12. Purchase Card – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Firms shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.

13. Additional Terms and Conditions – The Department reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

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

The Department will not prohibit or otherwise prevent the awarded Firm(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Firm 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. Firms must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

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