

DEPARTMENT OF TECHNOLOGY AND INFORMATION
REQUEST FOR PROPOSALS



**ADDENDUM 1 – SUBMISSION DATE IN
PROCUREMENT SCHEDULE REVISED TO READ:**

Thursday, February 7, 2019

**ADDENDUM 2 – PAGE 5, PROPOSAL REQUIREMENTS SECTION,
ITEM VII., J. REVISED.**

RFP Number: **DTI190006-DATA_CNTR**

DATA CENTER COLOCATION SERVICES

Submission Due Date/Time: **Thursday, February 7, 2019 at 2:00 P.M. Local Time**

Five (5) year Term with five (5) possible two-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 physical and virtual data center colocation services to meet the needs of DTI and various state agencies.

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

PROJECT DESCRIPTION

The State of Delaware Department of Technology and Information (DTI) is seeking qualified Firms to provide data center colocation sites and professional services to enable the Department to provide space for systems and IT hardware that cannot be housed within the primary DTI data center due to agency requirements. DTI requires secure, fault tolerant, concurrently maintainable data centers, preferably with minimum Uptime Tier III certification (<https://uptimeinstitute.com/resources/asset/tier-standard-topology>) or equivalent, within a 160 mile radius of Dover, Delaware, possessing diverse and redundant connectivity to major Internet Service Providers (ISP). DTI is also interested in leveraging available Infrastructure as a Service (IaaS), and Platform as a Service (PaaS) capabilities and services at the colocation sites to fulfill agency needs.

PROJECT REQUIREMENTS

- I. Colocation Facility and Infrastructure:
 - A. The colocation data center should be located within a 20-mile minimum and 160 mile maximum radius of Dover, Delaware.
 - B. Colocation providers must have one or more of the Internet Service Providers currently on State contract: GSS17442-INTERNET, Internet Service Provider found here:

<http://contracts.delaware.gov/>

- C. The Firm must offer cross-connect capabilities to Cloud and carrier providers.
 - D. The Firm will provide a tour of the facility to the RFP evaluation team, upon request.
 - E. The data center should be concurrently maintainable. All electrical, mechanical, and other critical infrastructure should employ N+1 or 2N configuration throughout to ensure scheduled and unscheduled component outages do not impact IT services.
 - F. The Firm will provide 24x7x366 monitoring by on-site staff trained in security and environmental monitoring.
 - G. Provide maintenance contracts on all infrastructure supporting the offered service(s). At a minimum, service level agreements with maintenance vendors should include 24x7x366 coverage with the ability to get a certified service tech on-site within 4-6 hours.
 - H. Firm is expected to enforce documented IT service management policies and procedures governing Incident Management, Change Management, and Configuration Management.
 - I. The Firm should provide all options available for segregating State of Delaware equipment from that of other customers to prevent unauthorized physical access to state equipment and to promote data security.
- II. Virtual Colocation and Infrastructure as a Service (IaaS)
- A. The Firm may offer virtual colocation or Infrastructure as a Service (IaaS) solutions within their data center, which enable State agencies to deploy systems on Firm servers and Storage Area Network(s) (SANs).
 - B. The offering should provide a virtual environment for remote access by State systems administrators. State agencies would be responsible for providing all software and managing their virtualized systems.
 - C. The Firm will confirm that any systems or software, which are accessed by or which access the systems being utilized by the State, meets or exceeds the Top 20 Critical Security controls located at <https://www.cisecurity.org/controls/>.
- III. Security:
- A. The data center should require multiple points of authentication for server room access, including but not limited to photo ID validation and signature verification.
 - B. The site should employ physical access controls and video surveillance systems both internally and externally for the facility.
- IV. Other Support:
- A. The Firm may provide Remote Hands or Smart Hands services.
 - B. Ability to facilitate off-site tape shipping and receiving as well as maintenance of audit records and Firm verified transaction receipts. Firms must coordinate these services with awarded State Mandatory Use contract vendors. The current contract for reference, GSS17406-DATA_STOR, Offsite Data Storage can be found here: http://contracts.delaware.gov/contracts_detail.asp?i=4515
 - C. On-site access to colocation customers is required 24x7x366.
- V. Service Levels Expected:
- A. 99.9% uptime minimum for all services supporting State of Delaware systems
 - B. The Firm should provide monthly reports that show uptime for all services that support State of Delaware systems
 - C. Communication for all outage, changes, and issues affecting services
 - 1. Two week advance of scheduled changes which could potentially impact State systems, including facility and infrastructure maintenance;
 - 2. Open and close notifications for unscheduled/emergency service impacting changes and incidents.

3. Notifications should be able to be done via email, phone, or any other electronic means.

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. Deviations from this format will not be accepted.

- Section number
- 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, January 3, 2018 Thursday, February 7, 2019	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:

- I. 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. Alia, IT Procurement Officer
RFP: DTI190006-DATA_CNTR
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.

- II. **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.
- III. **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(I) "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.

- IV. **Submit two (2) copies of the Firm Project Plan, Billing and Pricing Spreadsheet**, to include one (1) in .pdf format and one (1) in Excel Format. Pricing Spreadsheet copies should be submitted separate from proposal copies. And clearly outline the following:
 - A. Pricing for all services offered complete with billing options that are available with breakdowns by server, by rack, by space, by agency, weekly, monthly, yearly, and roll ups, wherever possible.
 - B. The Firm should also describe all electronic methods for delivering billing (i.e. SFTP file transfers, email, connections to billing companies, etc.) and how they support centralized IT models with needs towards charge-back and direct-billing to supported entities.
 - C. Firms are to submit a proposed project plan and timeframe to set up our initial infrastructure. This project plan should include:
 - i. Initial project schedule to establish an account and;
 - ii. Subsequent projects to onboard new work.
 - D. All Professional Services offered should include list Job Titles, Job Descriptions and a Minimum, Median and Maximum Rate for each.
- V. **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. Identify the proposed key staff and from what office location they will be working.
 - C. The location(s), size, number of employees and description of the firm.
 - D. Confirmation that the Firm shall not store or transfer non-public State of Delaware data outside of the United States.
 - E. Availability of personnel for immediate placement/assignment to support services required.
 - 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 and give a brief example of the previous relationship(s).

VI. Firm Financial Viability

A. The Firm must supply five (5) years of annual financial statements as part of their proposal.

VII. Firm Profile and Capability information should be shown by providing responses in numbered order matching the following, while also addressing the Project Requirements Section, Items I. through V. of this RFP:

- A. Note any security and compliance standards that the Firm meets including but not limited to NIST 800-53, IRS Pub. 1075, HIPAA, FISMA.
- B. Proposed Service Level Agreement to include at a minimum: uptime commitment, response time, scheduled and unscheduled maintenance and notification policies, remedies, and exclusions.
- C. Describe your Firm's experience and capabilities relevant to the Project Requirements Section provided in this RFP, including any relevant business partnerships that the Department could leverage.
- D. Describe how your Firm will manage the account with the Department, including customer service, 24x7x365 support, Service Level Agreements, service metrics, and reporting. Provide samples.
- E. Describe the physical location and characteristics of the proposed facility, including office space, storage space, loading dock, and elements that mitigate the risk of natural and man-made hazards. Describe availability and limitations of space for shipping, receiving, and staging State equipment. Describe availability and limitations of office space for use by Department technical staff. Describe availability and limitations of secure or non-secure on-site storage space for State equipment.
- F. Describe the physical security and access control measures employed at the proposed facility for the protection of State systems and data, including the ability to comply with regulations such as, but not limited to, IRS Pub. 1075. Describe process governing 24x7x366 access to the data center for State personnel and vendors.
- G. Describe any IRS, SSA, or other audits that have been conducted at the facility in the last 5 years. Describe any outstanding findings and plans for the resolution of those issues.
- H. Describe the design, age, and capacity of the power, cooling, and fire suppression infrastructure supporting the data center. Describe the maximum supportable rack density. Describe the risk mitigation strategies, fault tolerance and concurrent maintainability characteristics of those systems. Provide industry certifications or assessments that rate the facility against an industry benchmark such as the Uptime Institute's Tier Rating System. Provide details and durations of any service-impacting outages at your Firm's facilities over the last 3 years. Provide life-cycling plans for all critical infrastructure.
- I. Describe the design, capacity, and diversity of the network connections available to the Department in the facility, including meet me room characteristics, list of providers for dark/lit fiber and basic Internet, and any direct connectivity options to cloud providers. Describe the risk mitigation strategies, fault tolerance and concurrent maintainability characteristics of the network. Provide details and durations of any service-impacting outages to the network over the last 3 years. Provide life-cycling plans for all network infrastructure.
- J. Describe any public or private cloud services which may be available to the Department that are directly related to the services your Firm can provide to support services as described in this RFP. Please be aware that this contract will not be utilized for sales of any **of these services that are not part of your proposed offering or conflict with existing State of Delaware contracts for the same primary need.**
- K. Describe available Virtual Colocation and IaaS solutions directly related to the services you are able to provide to customers utilizing your Firm for services as described in this RFP.

- L. Describe how the data center and facility infrastructure are maintained.
- M. Describe how the data center and co-located systems are monitored, including whether the Department would have the ability to monitor remotely or receive automatic electronic notifications of incidents. Describe the use of contractors or vendors in the operation and maintenance of the data center.
- N. Describe the processes governing Incident, Change, Problem, and Configuration Management, including ticketing and reporting systems. Describe the process governing resolution and communication of an unscheduled outage.
- O. Describe the available value-added services offered to the Department directly related to the Data Center Colocation needs of the Department including but limited to, professional services and managed services.
- P. Describe available value-added services such as tape handling, Remote Hands and/or Smart Hands
- Q. Describe the security clearance process for all employees, vendors and contractors that work in the operation and maintenance of the data center.

VIII. **Rating Criteria Support Information Section** may be included limited to four (4) pages on two (2) sheets of paper formatted using Times New Roman, 12pt. font that covers any information that directly relates to your ability to meet the specific rating criteria cited within the RFP document.

Firms are encouraged to review the Rating Criteria section of this RFP and provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a Firm's capabilities so the responding Firm should be detailed in their proposal responses.

- IX. **Provide at least three (3) business references** consisting of current or previous customers of similar scope and value using Attachment 5. 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.
- X. **Required Certification Forms.** All firms responding to the RFP must complete and return the submission forms located in Appendix A of this document.

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	Ability to meet facility and infrastructure needs of the Department	25%
2	Ability to meet maintenance and operations needs of the Department	20%
3	Ability to meet security, physical and data needs of the Department	20%
4	Firm's experience pertaining to required services	20%
5	Pricing	10%
6	Additional value added services available	5 %
TOTAL :		100%

OVERVIEW OF SELECTION PROCESS – IDIQ

This is an indefinite delivery/indefinite quantity agreement utilized for the performance of services for a number of projects under task orders issued on an as-needed basis. There is no guarantee of actual agreement value.

This is a single phase solicitation process with the availability for discussions with the most highly qualified Firms who whose proposal is the most advantageous to the Department. Based upon the listed criteria and evaluation of each Firm's submitted proposal, the Selection Committee may decide if a small sample task and/or discussions will be held. If discussions are held, they will serve to clarify the technical approach, qualifications, and capabilities provided in response to the RFP, after which the committee will determine the ranking of the candidate firms.

Selection Committee members will individually score each firm's submitted proposal which determines individual ranking. The Department's ranking is the combined ranking of all Committee members. Awarded firms, in order of ranking, will have the opportunity to negotiate an agreement with the Department. If the Department cannot reach agreement with the highest ranked firm(s), the Department terminates negotiations and begins negotiations with the next highest ranked firm, and so on until an agreement is reached. The Department notifies via email the awarded firm(s) of the opportunity to enter into an agreement with the Department. This notification also includes information on the next steps for the agreement process.

Rate determination and applicability is subject to audit by the Department. Additionally, candidates should be prepared for the Department to work with your current accounting firm to provide information and backup documentation. Full and immediate cooperation is required to avoid delays in execution of an agreement. Failure to cooperate may result in breaking off negotiations and moving to the next ranked firm.

Selection Committee membership appointments are confidential.

Each specific task order shall be awarded to the selected, qualified Firms through an additional qualifications-based selection procedure, which may include, but does not require, a formal IDIQ RFP;

STANDARD TERMS AND CONDITIONS

Professional Services RFP Administrative Information

1. RFP Issuance

A. Public Notice

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

B. 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.

C. 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.

D. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. 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. Alioa, IT Procurement Officer

RFP: DTI190006-DATA_CNTR

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.

E. Consultants and Legal Counsel

The State of Delaware 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 State's consultant or legal counsel on any matter related to the RFP.

F. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware 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.

G. 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.

H. Exclusions

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

- 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:
- 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 contracted Firm:
- Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes:
- Has violated contract provisions such as;

- Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- Has violated ethical standards set out in law or regulation; and
- Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contracted Firm, including suspension or debarment by another governmental entity for a cause listed in the regulations.

2. RFP Submissions

A. 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.

B. 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.

C. Proposal Costs and Expenses

The State of Delaware 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.

D. Proposal Expiration Date

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

E. 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.

F. Proposal Opening

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

G. 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 State of Delaware.

H. Concise Proposals

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

I. Realistic Proposals

It is the expectation of the State of Delaware 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 State of Delaware 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.

J. Price Not Confidential

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

K. 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 Firm**". The "**Prime Firm**" must be the joint venture's contact point for the State of Delaware 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 State of Delaware, 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 State of Delaware 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.

i. Primary Firm

The State of Delaware expects to negotiate and contract with only the "prime Firm". The State of Delaware 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 the State's Right to Award Multiple Source Contracting section of this RFP.

ii. 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 subcontractors must be approved by State of Delaware.

iii. 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.

L. 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 State of Delaware'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.

M. State's Right to Reject Proposals

The State of Delaware 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 State of Delaware'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 State of Delaware may deem necessary in the best interest of the State of Delaware.

N. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware 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 State of Delaware. Firm's participation in this process may result in the State of Delaware 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 State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

O. State’s Right to Award Multiple Source Contracting

Pursuant to 29 Del. C. [§ 6986](#), the State of Delaware 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.

P. Potential Contract Overlap

Firms shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple 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.

Q. 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 State of Delaware 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 State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

R. 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 State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contracted Firm or its agents.

S. Exceptions to the RFP

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

T. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware 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 State of Delaware 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.

U. RFP Award Notifications

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

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 State of Delaware 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 State of Delaware approvals.

V. 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.

3. RFP Evaluation Process

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

The State of Delaware 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 State of Delaware may deem necessary to make a decision.

A. 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.

B. 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 State of Delaware 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 Firm 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](#).

C. 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.

D. 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 State of Delaware 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 State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

E. Oral Presentations

After initial 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 State of Delaware are the Firm's responsibility.

4. Contract Terms and Conditions

A. Contract Use by Other Agencies

The Department of Technology and Information (DTI) encourages other State of Delaware agencies to piggyback on the resulting contract by requesting a Memorandum of Understanding (MOU) from the Department prior to engaging the awarded Firm. Notification to the Firm will be initiated by DTI for approval of use prior to executing a Participating Addendum between the Firm and piggybacking agency. Please contact the Department's IT Procurement Officer, Shelly K. Alioa in order to attain access to use by email at shelly.alioa@state.de.us.

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.

B. 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 Firm(s).

C. General Information

- i. The selected Firm will be required to enter into a written agreement with the State of Delaware. The State of Delaware 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 State of Delaware. Firms will be required to sign the contract for all services, and may be required to sign additional agreements.
- ii. The selected Firm or Firms will be expected to enter negotiations with the State of Delaware, 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.
- iii. The State of Delaware'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.
- iv. 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.
- v. 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.
- vi. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

D. 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.

E. 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 State of Delaware 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, contracted Firms 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.

F. 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 Firms, or any person acting in concert with Firm, without prior written approval of the State of Delaware's contracting 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 Firm 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.

G. General Contract Terms

i. Independent Contractors

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

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

ii. 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 State of Delaware 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.

iii. Notice

Any notice to the State of Delaware 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**

iv. 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.

3. **Insurance**

- A. 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.
- B. 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.
- C. During the term of this contract, the Firm shall, at its own expense, also carry insurance minimum limits as follows:
 - i. Firm shall in all instances maintain the following insurance during the term of this Agreement.
 - 1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
 - 2. Commercial General Liability
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate.
 - ii. The successful Firm must carry at least one of the following depending on the scope of work being delivered.
 - 1. Medical/Professional Liability
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
 - 2. Miscellaneous Errors and Omissions
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
 - 3. Product Liability
\$1,000,000 per occurrence/\$3,000,000 aggregate
 - iii. 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.
 - 1. 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.
 - 2. Automotive Property Damage (to others) - \$25,000
- D. 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).
- E. The State of Delaware shall not be named as an additional insured.

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

4. **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.

5. **Performance Bond**

Firms awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of the Department of Technology and Information with surety in the amount of One Hundred Thousand Dollars (\$100,000.00). Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted in the form of good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware. If the Government Support Services bond form is not utilized, **the substituted bond form must reflect the minimum conditions specified in Attachment 9.**

6. **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 Firm 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.

7. **Warranty**

The Firm 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 Firm correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

8. **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.

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.

9. **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.

10. **Professional Services Labor Billing Rate Adjustments**

The CPI-U information the Department uses to set allowable annual Professional Services Labor Billing Rate Increases adjustments is based on the CPI region of Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD region (CUURS12BSA0). This region will be used to represent all activity for the Department, regardless of individual consultant office locations. The CPI will be calculated as the change from the averaged index point values of December, February, April, June, August, and October, to the corresponding time period average one year prior.

11. **Liquidated Damages**

The State of Delaware may include in the final contract liquidated damages provisions for non-performance.

12. **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.

13. Termination of Contract

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

A. 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 State 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 State, 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 State.

On receipt of the contract cancellation notice from the State, 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 State provides a written acceptance of the Firm response. If the State does accept the Firm's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Firm must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Firm successfully rectifies the original violation(s). At its discretion the State may reject in writing the Firm's proposed action plan and proceed with the original contract cancellation timeline.

B. Termination for Convenience

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least 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 Firm shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

C. **Termination for Non-Appropriations**

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

14. **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.

15. **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 State of Delaware 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.

16. **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.

17. **Firm Responsibility**

The State will enter into a contract with the successful Firm(s). 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 by completing Attachment 6, and are subject the approval and acceptance of the Department of Technology and Information.

18. **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>

19. **Personnel, Equipment and Services**

- a. The Firm represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
- b. All of the equipment and services required hereunder shall be provided by or performed by the 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.
- c. 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.

20. **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.

21. **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 State'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 as part of this RFP 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.

22. **Work Product**

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

23. **Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful Firm shall constitute the contract between the State of Delaware 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, State of Delaware'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 State of Delaware and the Firm.

24. **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:

- a. the laws of the State of Delaware;
- b. the applicable portion of the Federal Civil Rights Act of 1964;
- c. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- d. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- e. 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 State of Delaware 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.

25. **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.

26. **Assignment of Antitrust Claims**

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

27. **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.

28. **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.

29. **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 State, 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 State representative in the performance of their duties under the Contract. Upon notice given to the Firm, 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 Firm's financial records will be borne by the Firm.

Reimbursement to the State for disallowances shall be drawn from the Firm's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

30. **Other General Conditions**

- a. **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.
- b. **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.
- c. **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.
- d. **Prior Use** – The State of Delaware 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 State of Delaware.
- e. **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.
- f. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- g. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
- h. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- i. **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.
- j. **Payment** – The State 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.
- k. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DT1190006-DATA_CNTR on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
- l. **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.

- m. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

31. **RFP Miscellaneous Information**

A. **No Press Releases or Public Disclosure**

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware 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 State of Delaware.

The State 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.

B. **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.

C. **Production Environment Requirements**

The State of Delaware 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.

5. **TECHNOLOGY AND INFORMATION TERMS**

A. **Personally Identifiable Information**

Information or data, alone or in combination, that identifies or authenticates a particular individual. Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.

Information or data that meets the definition ascribed to the term "Personal Information" under Delaware Code Title 6 § 12B-101 Title 6, §1202C, and Title 29 §9017C or any other applicable State of Delaware or Federal law.

B. **IRS Data**

Any situations involving IRS Data Require adherence to the IRS Safeguarding Contract Language below. Any language conflict in this section with terms in this contract will cause the more stringent to apply in situations involving IRS Data. The IRS or another governing body may impose sanctions referenced in this section.

1. IRS 1075 PUBLICATION: EXHIBIT 7, Contract Language for Technology Services

a. PERFORMANCE

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

- i. All work will be done under the supervision of the Firm or the Firm's employees.
- ii. The Firm and the Firm's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- iii. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the Firm will be prohibited.
- iv. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- v. The Firm certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Firm at the time the work is completed. If immediate purging of all data storage components is not possible, the Firm certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- vi. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Firm will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- vii. All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and

activated to protect against unauthorized use of and access to Federal Tax Information.

- viii. No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.
- ix. The Firm will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office. (10) The agency will have the right to void the contract if the Firm fails to provide the safeguards described above.

b. CRIMINAL/CIVIL SANCTIONS

- i. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- ii. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

- iii. Additionally, it is incumbent upon the Firm to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Firms by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a Firm, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- iv. Granting a Firm access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Firms must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, Firms must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the Firm must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c. INSPECTION

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

Remainder of page intentionally left blank.

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**

If applicable to proposed solutions, the following forms are required:

- **DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT**
- **DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT**

DTI190006-DATA_CNTR
DATA CENTER COLOCATION SERVICES

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. This information will not preclude receipt of future invitations.

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

PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.

**DTI190006-DATA_CNTR
DATA CENTER COLOCATION SERVICES**

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 in the attached Exception Form, 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.

FIRM 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 _____
 FIRM ADDRESS _____
 PHONE NUMBER _____ FAX NUMBER _____
 EMAIL ADDRESS _____
 FEDERAL EIN _____ STATE OF DELAWARE LICENSE NUMBER _____

FIRM CLASSIFICATIONS:	Certification type(s)	Circle all that apply	
	Minority Business Enterprise (MBE)	Yes	No
CERT. 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:
 FIRM 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 _____

**DTI190006-DATA_CNTR
DATA CENTER COLOCATION SERVICES**

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 and Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

Contact Name and Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

Contact Name and Title:

Business Name:

Address:

Email:

Phone # / Fax #:

Number of Years Associated:

Type of Work Performed:

**DTI 190006-DATA_CNTR
DATA CENTER COLOCATION SERVICES**

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING FIRM		
1. CONTRACT NUMBER DTI180023-BRBND_NET RURAL BROADBAND INTERNET NETWORK	2. PRIME FIRM NAME:	3. MAILING ADDRESS
4. SUBCONTRACTOR		
a. NAME	c. FIRM OSD CLASSIFICATION: CERTIFICATION NUMBER: _____	
b. MAILING ADDRESS:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor



STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd., Dover, Delaware 19904

DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data	Cloud Services (CS) Terms
			<p>PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data.</p> <p>Clause CS2 is mandatory for all engagements involving non-public data.</p> <p>Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.</p>
CS1-A		✓	<p>Security Standard Compliance Certifications: The PROVIDER shall meet, and provide proof of, one or more of the following Security Certifications.</p> <ul style="list-style-type: none"> • CSA STAR – Cloud Security Alliance – Security, Trust & Assurance Registry (Level Two or higher) • FedRAMP - Federal Risk and Authorization Management Program
CS1-B		✓	<p>Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a state-approved criminal background checks. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crime of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.</p>
CS1-C		✓	<p>Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.</p>
CS2		✓	<p>Breach Notification and Recovery: The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.</p>

Form Revision Date: 9/28/2018



DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____
 between State of Delaware and _____ dated _____

	Public Data	Non Public Data	Cloud Services (CS) Terms
			<p>PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data.</p> <p>Clause CS2 is mandatory for all engagements involving non-public data.</p> <p>Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.</p>
CS3		✓	<p>Data Encryption: The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy.</p>
CS4	✓	✓	<p>Notification of Legal Requests: The PROVIDER shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. With regard to State of Delaware data and processes, the PROVIDER shall not respond to subpoenas, service of process, and other legal requests without first notifying the State unless prohibited by law from providing such notice.</p>


The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions :

FOR OFFICIAL CS4 (Public Data)
 USE ONLY CS1-A and CS4 (Non-Public Data) OR CS1-B and CS1-C and CS4 (Non-Public Data)
 CS2 (Non-public Data) CS3 (SaaS, PaaS – Non-public Data)

PROVIDER Name/Address (print): _____

PROVIDER Authorizing Official Name (print): _____

PROVIDER Authorizing Official Signature: _____ Date: _____



STATE OF DELAWARE
 DEPARTMENT OF TECHNOLOGY AND INFORMATION
 801 Silver Lake Blvd., Dover, Delaware 19904

DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU1	v	v	Data Ownership	The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware's written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.
DU2	v	v	Data Usage	<p>PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State's <i>Terms & Conditions Governing Cloud Services</i> policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information.</p> <p>Only duly authorized PROVIDER staff will have access to the State of Delaware data and may be required to obtain security clearance from the State. No party related to the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.</p>



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU3	✓	✓	Termination and Suspension of Service	<p>In the event of termination of the contract, the PROVIDER shall implement an orderly return (in CSV or XML or another mutually agreeable format), or shall guarantee secure disposal of State of Delaware data.</p> <p><i>Suspension of services:</i> During any period of suspension or contract negotiation or disputes, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data.</p> <p><i>Termination of any services or agreement in entirety:</i> In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract. After such 90-day period, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data. Thereafter, unless legally prohibited, the PROVIDER shall dispose securely of all State of Delaware data in its systems or otherwise in its possession or control, as specified herein.</p> <p><i>Post-Termination Assistance:</i> The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p>
DU4		✓	Data Disposition	<p>At the end of this engagement, PROVIDER will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the PROVIDER.</p> <p>When required by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware.</p>



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU5		✓	Data Location	The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER may permit its personnel and subcontractors offshore access to the data, as long as the data remains onshore.
DU6		✓	Breach Notification and Recovery	The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see CS 3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU7		✓	Data Encryption	The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services policy</i> .

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR OFFICIAL USE ONLY DU 1 - DU 3 (Public Data Only) OR DU 1 - DU 7 (Non-public Data)

PROVIDER Name/Address (print): _____

PROVIDER Authorizing Official Name (print): _____

PROVIDER Authorizing Official Signature: _____ Date: _____

DEPARTMENT OF TECHNOLOGY AND INFORMATION
PERFORMANCE BOND



Bond Number: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we _____, as principal (“**Principal**”), and _____, a _____ corporation, legally authorized to do business in the State of Delaware, as surety (“**Surety**”), are held and firmly bound unto the **Department of Technology and Information (“Owner”)**, in the amount of One Hundred Thousand Dollars (\$100,000.00), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has been awarded by **Owner** that certain contract known as Contract Number DT1190006-DATA_CNTR dated the _____ day of _____, 20__ (the “Contract”), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse **Owner** sufficient funds to pay the costs of completing the Contract that **Owner** may sustain by reason of any failure or default on the part of **Principal**, and shall also indemnify and save harmless **Owner** from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by **Owner**, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause **Principal** fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

PRINCIPAL

Witness or Attest:

By: _____ (SEAL)

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

(Corporate Seal)

SURETY

Witness or Attest:

By: _____ (SEAL)

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

(Corporate Seal)