

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
TO PROVIDE CIGARETTE TAX STAMPS AND RELATED MACHINERY AND
SERVICE
ISSUED BY DELAWARE DIVISION OF REVENUE**

**STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE**

Carvel State Building
820 North French Street, 8th Floor
Wilmington, Delaware 19801

Patrick T. Carter, Director
Division of Revenue
(302) 577-8209

_____ Proposer to Place Company Name Here

_____ Proposer's Address

_____ Proposer's Telephone Number

_____ Proposal Number

Cigarette Tax Stamps and Related Machinery/Service Proposal Description

___May 14, 2012_____ Public Notice

___May 28, 2012_____ Proposal Opening Date and Time

___June 15, 2012_____ Notification of Award

I. Overview

The State of Delaware Division of Revenue seeks a vendor to provide Cigarette Tax Stamps of both machine heat or heat iron applied types which are to be mechanically and/or manually applied to cigarette packages as well as packaging stamping machines, associated equipment, service, and staff training. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: May 14, 2012
Deadline for Receipt of Proposals	Date: May 28, 2012
Notification of Award	Date: June 15, 2012

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

Each proposal package shall be placed in a sealed envelope which is clearly marked on the outside of the envelope “**SEALED BID NUMBER 2506010401**”.

II. Scope of Services

The State of Delaware Division of Revenue requires Cigarette Tax Stamps of both machine heat or heat iron applied types which are to be mechanically and/or manually applied to cigarette packages as well as packaging stamping machines, associated equipment, service, and staff training.

III. Required Information

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

A. Minimum Requirements

1. Delaware business license:
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.

2. Professional liability insurance:
Provide evidence of professional liability insurance in the amount of \$1,000,000.00.
3. Bid Security:

Each bidder must submit with his bids the initial Bid Security checked below:

1. _____ Bid Bond 10% of Total Bid or
2. X Certified or Cashier's Check 10% of Total Bid. The security must be made payable to the "State of Delaware".

Such bid security will be returned to all except the successful bidder within five (5) days after awards have been made. The bid security of the successful bidder or bidders will be returned upon receipt of the performance bond if such bond is required under the terms of the award. If no award shall be made within thirty (30) days after the date of the opening of the bids. Bid Security will be returned to any bidder upon demand of the bidder at any time after the 30-day period so long as he has not been notified of the acceptance of his bid. Written notification of the acceptance of any bid will be made to the successful bidder or bidders.

B. General Evaluation Requirements

1. Experience and Reputation
2. Expertise (for the particular project under consideration)
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Familiarity with public work and its requirements
7. Price

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form [only] through the State of Delaware, Division of Revenue website at <http://revenue.delaware.gov> and the State of Delaware Procurement website at <http://gss.omb.delaware.gov/bids.shtml>

Paper copies of this RFP will not be available.

2. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981.

3. Assistance to Vendors with a Disability

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

4. RFP Designated Contact

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

NAME	Deborah Morse
DEPARTMENT	Division of Revenue
ADDRESS	820 N French Street 8th Floor Wilmington, DE 19801
EMAIL ADDRESS	Deborah.morse@state.de.us

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

5. Consultants and Legal Counsel

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

6. Contact with State Employees

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

7. Organizations Ineligible to Bid

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

8. Exclusions

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

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

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules

and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 2 paper copies and 1 electronic copies on CD.

All properly sealed and marked proposals are to be sent to the Division of Revenue and received no later than **2:00 PM EST on May 28, 2012**. The sealed envelope should be clearly marked on the outside: **“SEALED BID NUMBER 2506010401”**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

DEPARTMENT Delaware Division of Revenue
Attn: Deborah Morse
ADDRESS 820 N French Street
Wilmington, DE 19801

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **2:00 PM EST on May 28, 2012**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

3. Proposal Modifications

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

4. Proposal Costs and Expenses

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

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through **JUNE 30th, 2015**. The Division of Revenue reserves the right to ask for an extension of time if needed.

6. Late Proposals

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

7. Proposal Opening

The Division of Revenue will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the Division of Revenue personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

8. Non-Conforming Proposals

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

9. Concise Proposals

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

10. Realistic Proposals

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

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

11. Confidentiality of Documents

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the Division of Revenue/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The Division of Revenue is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the Division of Revenue's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the Division of Revenue and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the Division of Revenue will open the envelope to determine whether the procedure described above has been followed.

12. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies,

omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the Division of Revenue's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

13. State's Right to Reject Proposals

The Division of Revenue 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 Division of Revenue's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the Division of Revenue may deem necessary in the best interest of the Division of Revenue.

14. State's Right to Cancel Solicitation

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

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

15. State's Right to Award Multiple Source Contracting

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

16. Notification of Withdrawal of Proposal

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

17. 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 [Http://www.revenue.delaware.gov](http://www.revenue.delaware.gov). The Division of Revenue is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

18. Exceptions to the RFP

Any exceptions to the RFP, or the Division of Revenue's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

19. Award of Contract

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

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

i. RFP Award Notifications

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

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

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

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

C. RFP Evaluation Process

All proposals submitted in response to the RFP shall be reviewed by the Proposal Review Committee. The Proposal Review Committee will evaluate proposals on a variety of quantitative materials. Neither the lowest price nor highest scoring proposal will necessarily be selected.

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

1. Proposal Review Committee

The Proposal Review Committee shall be comprised of 5 members of the Delaware Division of Revenue/Department of Finance. The Committee shall determine the firm(s) which meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. §§ 6981, 6982. The Committee may negotiate with one or more firms during the same period and may, at its discretion, terminate negotiations with any or all firms. The Committee shall make a recommendation regarding the award to Patrick T. Carter, Director of Revenue, who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § 6982, to award a contract to the successful firm(s) in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Review Committee shall assign up to the maximum number of points as stated in this Section for each Evaluation Item or for each of the proposing firms. All assignments of points shall be at the sole discretion of the Proposal Review Committee.

The proposals all contain the essential information in which the award decision shall be made. The information required to be submitted in response to the RFP has been determined by DOR and the Proposal Review Committee to be essential for use by the Committee in the bid evaluation and award process. Therefore, all

instructions contained in the RFP shall be met in order to qualify as a responsive and responsible contractor and to participate in the Proposal Review Committee’s consideration for award. Proposals which do not meet or comply with instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Committee.

The Committee 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 vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 Del. C. §6986. Such selection will be based on the following criteria:

a. Criteria Weight

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

Criteria	Weight
Experience and Reputation	5%
Expertise (for the particular project under consideration)	5%
Capacity to meet requirements (size, financial condition, etc.)	5%
Location (geographical)	5%
Demonstrated ability	5%
Familiarity with public work and its requirements	5%
Price	5%
Total	35%

3. Proposal Clarification

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

4. References

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

5. Oral Presentations

Selected vendors may be invited to make oral presentations to the Proposal Review Committee. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

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

D. Contract Terms and Conditions

1. General Information

- a. The term of the contract between the successful bidder and the Division of Revenue shall be for 2 years with 3 extension for a period of 12 months for each extension.

- b. The selected vendor will be required to enter into a written agreement with the Division of Revenue. The Division of Revenue 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 Division of Revenue. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected vendor or vendors will be expected to enter negotiations with the Division of Revenue, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The successful vendor shall promptly execute a contract incorporating the terms of this RFP. No vendor is to begin any service prior to receipt 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 vendor.
- e. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

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

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

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

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware 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 vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Division of Revenue shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

4. Solicitation of State Employees

Until contract award, vendors 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 vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms

a. Independent contractors

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

behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

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

b. Non-Appropriation

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.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

Prior to receiving an award, the successful vendor shall either furnish the Division of Revenue 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 vendor to applicable fines and/or interest penalties.

d. Notice

Any notice to the Division of Revenue required under the contract shall be sent by registered mail to:

**Delaware Division of Revenue
Attn: Deborah Morse
820 N French Street
Wilmington, DE 19801**

e. Indemnification

1. General Indemnification.

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

2. Proprietary Rights Indemnification

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

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

- (a) Procure the right for the Division of Revenue 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 Division of Revenue agrees to and accepts in writing.

f. Insurance

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

2. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

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

a.	Comprehensive General Liability	\$1,000,000
b.	Professional Liability/Misc. Error & Omissions/Product Liability	\$1,000,000/\$3,000,000

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

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

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

g. Performance Requirements

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

PERFORMANCE BOND:

The successful bidder or bidders on this bid must furnish a performance bond in the amount of:

X 100% of Bid Award made out to the State of Delaware and prepared on an approved form of Performance Bond as security for the faithful performance of the contract within ten (10) days of his notification that his bid has been accepted. The surety thereon must be such surety company or companies as are acceptable to the State of Delaware and as are authorized to transact business in this state. Attorneys in fact who sign bid bonds must file with each bond a certified copy of their power of attorney to sign said bonds. The successful bidder or bidders, upon failure or refusal to furnish within ten (10) days after his notification the required Performance bond, shall pay to the State of Delaware as liquidated damages for such failure or refusal, an amount in cash equal to the security deposited with his bid.

h. Warranty

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

i. Costs and Payment Schedules

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

The Division of Revenue will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The Division of Revenue may

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

j. Penalties

The Division of Revenue may include in the final contract penalty provisions for non-performance, such as liquidated damages.

k. Termination for Cause.

If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the Division of Revenue shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished tax stamps or other material prepared by the Vendor under the contract shall, at the option of the Division of Revenue, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the Division of Revenue.

l. Termination for Convenience

The Division of Revenue may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished tax stamps or other material prepared by the Vendor under the contract shall, at the option of the Division of Revenue, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the Division of Revenue. If the contract is terminated by the Division of Revenue as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

m. Non-discrimination

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees

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

o. Vendor Activity

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

p. Work Product

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

q. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the Division of Revenue and the successful vendor shall constitute the contract between the Division of Revenue and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, Division of Revenue's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the Division of Revenue and the vendor.

r. Applicable Law

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

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

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

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

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

s. Scope of Agreement

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

t. Other General Conditions

- (1) **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.

- (2) **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.
- (3) **Prior Use** – The Division of Revenue 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 Division of Revenue.
- (4) **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- (5) **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- (6) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the Division of Revenue.
- (7) **Additional Terms and Conditions** – The Division of Revenue reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

Vendors may not release any information about this RFP. The Division of Revenue reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the Division of Revenue with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the Division of Revenue.

2. RFP Reference Library

The Division of Revenue has made every attempt to provide the necessary information within this RFP. The Division of Revenue will make the reference library available only to the winning bidder.

3. Definitions of Requirements

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

requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.