



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

February 2, 2011

TO: ALL STATE AGENCIES, SCHOOL DISTRICTS, MUNICIPALITIES, VOLUNTEER  
FIRE COMPANIES AND POLITICAL SUBDIVISIONS

FROM: Roxann M. Parker  
STATE CONTRACT PROCUREMENT OFFICER II  
302-857-4555

SUBJECT: **AWARD NOTICE – Addendum #1 effective March 1, 2011**  
**CONTRACT NO. GSS11489-OFFICESUPPLIES**  
OFFICE SUPPLIES AND ACCESSORIES

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OF  
KEY CONTRACT INFORMATION

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**GOVERNMENT SUPPORT SERVICES – CONTRACTING**  
100 ENTERPRISE PLACE – SUITE 4 – DOVER, DE 19904-8202  
PHONE: (302) 857-4550 – FAX: (302) 739-3779 – GSS.OMB.DELAWARE.GOV

## **KEY CONTRACT INFORMATION**

### **1. MANDATORY USE CONTRACT:**

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**REF: Title 29, Chapter 6911(d) Delaware Code.** Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, Department of Elections, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

### **2. CONTRACT PERIOD:**

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This contract shall be valid through June 30, 2014.

### **3. VENDOR:**

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**Send PO's and Orders to:**  
**STAPLES ADVANTAGE**  
**125 Mushroom Blvd.**  
**Attn: Data Entry**  
**Rochester, NY 14623**  
**FAX: 888-222-8618**

**Remit to:**  
**STAPLES BUSINESS ADVANTAGE**  
**Dept. DC**  
**PO BOX 415256**  
**Boston, MA 02241-5256**

## **State of Delaware Dedicated Customer Care Team Contact Information:**

**Dedicated Customer Care Team:** general questions, order status, returns, credits, etc.  
Phone: 888-334-0328  
Fax: 888-222-8618  
Email: [governmentteam@staples.com](mailto:governmentteam@staples.com)

**Service Consultant:** new user set up, new shipping address, updates, etc.  
Jackie Day  
Phone: 800-270-9710 ext: 2308  
Email: [Jacquelyn.day@staples.com](mailto:Jacquelyn.day@staples.com)

**Account Manager – State Agencies:** program details and special orders  
Steve Berman  
Phone: 800-270-9049  
Email: [steve.berman@staples.com](mailto:steve.berman@staples.com)

**Account Manager – Schools, Higher Ed, Municipalities, Counties, etc.**  
Reid Ringham  
Phone: 800-270-9710 ext: 2232  
Email: [reid.ringham@staples.com](mailto:reid.ringham@staples.com)

**4. SHIPPING TERMS:**

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F.O.B. destination, freight pre paid.

**5. DELIVERY AND PICKUP:**

Vendor shall deliver next business day to specific locations for orders placed by 4:00 p.m. containing Delaware preferred items and meeting the \$35 minimum order requirement.

**6. PRICING:**

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Prices will remain firm for the term of the contract.

**ADDITIONAL TERMS AND CONDITIONS**

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**7. BILLING:**

The Contractor 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. The Contractor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Contractors shall be required to report semi-annually opportunities to enhance the discounts achieved.

**8. PAYMENT:**

- 1) For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor's billing, the amount which is legitimately earned by the Vendor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

- 2) No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.
- 3) The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Contractors 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. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACI or check. Should the Contractor wish to provide a financial incentive to not process payment by P-Card, they are to prepare a proposal to clearly outline any incentives for alternative payment methods the Contractor is willing to accept.

**9. REBATES:**

Staples agrees to apply the five percent (5%) rebate offered through the NJPA Agreement as a reduction in the unit price of those items purchased by the State of Delaware.

**10. FORMAL CONTRACT AND/OR PURCHASE ORDER:**

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, email, fax or State of Delaware's credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

**11. MOST FAVORED CUSTOMER:**

If, during the Term, Supplier provides Products to another customer similar to the State of Delaware, with similar volume requirements, order size, quantities and mix of products and services, delivery schedule, and geographic areas as the State of Delaware, and offers similar discounts, rebates, and guarantees as those offered to the State of Delaware under this Agreement, at prices that are lower than the prices set forth in this Agreement, then such lower prices shall be extended to the State of Delaware, effective as of the time they were applicable to such other similar customer as described above. Notwithstanding the foregoing, Supplier reserves the right not to sell any Products below Product Cost. For the purpose of this section, the words "similar customer" shall be defined as any State government, with a single vendor award, with annual spend volumes within ten percent (10%) of the State of Delaware's annual spend volume"

**12. ORDERING PROCEDURE:**

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Contractor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor will only accept orders for items that are included under this contract through the Staples Advantage process. With the exception of provisions for retail outlet purchases provided by the RETAIL OUTLETS clause of this agreement, to the extent possible, the State of Delaware agency orders will be placed via the contractors' electronic online web-based catalog. It is the intent of GSS to limit and reduce the instance or orders for supplies covered by this contract placed by phone, FAX, mail or other means. This clause applies to State of Delaware Executive and Judicial agencies only

Contractor is required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

**13. NEW/DISCOUNTED ITEMS:**

- The State of Delaware is not subject to the New/Discounted Items language under Tab 9, Products/Services Pricing of NJPA RFP# 031210 without prior review and written acceptance by the State of Delaware.
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**14. RETAIL OUTLETS:**

Agencies may desire to purchase items on this agreement at any of the contractor's retail outlets within the State of Delaware. This agreement allows for those parties to the contract to make purchases at the Contractor's retail outlets under the following conditions. Purchases made at retail outlets must be paid for by a Delaware Purchasing Card or a purchasing card of the appropriate jurisdiction or entity. Said Purchasing Card must be registered with the contractor (Staples Contract & Commercial, Inc., operating as Staples Business Advantage ("Staples")) in order to identify the purchase as a "Contract Purchase". In order to register a Purchasing Card with Staples for use at a retail outlet, the Purchasing Card holder must contact Steve Berman and follow Staples' process to register the Purchasing Card prior to making the purchase. Contractor agrees to protect contract pricing for items covered by this contract which are purchases at retail outlets by authorized users in accordance with the above.

**15. RETAIL OUTLET LIMITATIONS:**

The Contractor has no obligation to provide all items covered by this contract at its retail outlets.

**16. PRODUCT LIST:**

A product list for office supplies & accessories is listed in Attachment D. This is a list of "Delaware Preferred Products" as well as a list of products which may be ordered but are not the Preferred choice. These Preferred items are the most cost effective options for basic office supply needs and will be denoted on StaplesLink with a blue bar and the designation "Delaware Preferred Product". Products in Attachment D shall require no additional approvals to process. The product list may be revised periodically to reflect usage. The Contractor shall submit revised core list for approval prior to its availability to using Agencies.

Staples will offer "soft substitutions" to all end users prior to the completion of order placement if a lowers cost alternative is available. "Soft substitutions" are defined as a lower cost alternative product substitution for a similar product request. Soft substitutions shall not be mandated substitutions for original orders. It is understood that Staples is completing a reporting capability to identify agency orders where a soft substitute was suggested but was not agreed upon by the entity placing the order. Staples agrees that upon availability of this reporting functionality they will immediately make this available to the State of Delaware.

When placing an order through Staples-Link the initial search will rank and sort the "Delaware Preferred Products" first.

Staples will make available the availability to "hard substitute items. A "hard substitute" is defined as a basic office supply substitution that will be mandatory to utilize as a lower cost alternative. It will be at the State of Delaware's discretion to enable this feature and may be enabled on a product by product or category basis.

**17. OVERLAPPING PRODUCT LIST:**

The following State contracts may have overlapping items, including subsequent awards. Once identified by Government Support Services, the Contractor shall not provide such identified overlapping items for sale to State agencies without approval from Government Support Services. All items within the categories shall be restricted on the website and routed for approval by Government Support Services before the entire order is submitted for fulfillment by the Vendor should an agency place an order for any item within these categories.

The approval process is available to be viewed at the link below.

<http://gss.omb.delaware.gov/divisionwide/flowcharts.shtml#contracting>

**OVERLAPPING PRODUCT LIST:**

<b>Contract Name</b>	<b>Contract Number</b>
HAND TOOLS - POWERED AND NON-POWERED	GSS10011-HANDTOOLS
AUDIO VISUAL EQUIPMENT AND SERVICES	GSS07015-AUDIO_VISUAL
SPECIALTY/PRINTING PAPER	GSS09016-SPEC_PAPER
ENVELOPES - PLAIN AND PRINTED VIRGIN AND RECYCLED	GSS10025-ENVELOPES
LABORATORY SUPPLIES AND EQUIPMENT	GSS07026-LAB_SUPPLIES
COFFEE AND TEA	GSS10044-COFFEE/TEA
FAX MACHINES	GSS10066-FAX_MACHINE
BUSINESS CARDS	GSS10090-BUSINESS_CARD
COPIERS AND MULTI-FUNCTION PRINTERS	GSS08091-COPIER
DESIGN LAYOUT SERVICES	GSS10483-DESIGN_LAYOUT
DOCUMENT AND PACKAGE SERVICE	GSS09413-DOCUMENT_SRVC
OUTSOURCED PRINTING	GSS09484-OUYSOURCEPRNT
COMPUTER HARDWARE, PERIPHERALS AND ACCESSORIES	GSS09133-COMPUTER
LAUNDRY SUPPLIES AND EQUIPMENT	GSS06161-LAUNDRY
MICROCOMPUTER SOFTWARE	GSS10228-SOFTWARE
BOTTLED WATER	GSS09365-BOTTLE_WATER
CELLULAR AND DATA EQUIPMENT AND SERVICES	GSS10384CELL/DATAEQUIP
CLOTHING, LINENS & TEXTILES, FOOTWEAR AND SCRUBS	GSS08070-CLOTHING
TELECOMMUNICATIONS VOICE SYSTEMS	GSS06455-TELECOMMVOICE
STORAGE BOXES – ACID FREE, DOUBLE WALLED AND DESTRUCTION STORAGE BOXES	GSS08458-STORAGE_BOX
FURNITURE	GSS10479-FURNITURE
PRINTING AND PUBLISHING SUPPLIES	GSS07481-PRINT_SUPPLY
PAINT, SUPPLIES AND LADDERS	GSS09020-PAINT/LADDERS
CARPET, TILES AND CARPET RECLAMATION	GSS06108-CARPET_TILES
PAPER – MULTIPURPOSE COPY	GSS07489A-COPY_PAPER
ELECTRICAL SUPPLY, LAMPS AND BALLASTS	GSS09491-ELECTRICAL
JANITORIAL AND CAFETERIA SUPPLIES	GSS08492JAN/CAFE_SUPPL
TRASH CAN LINERS	GSS08492A-CAN_LINERS
SMALLWARES	GSS10492B-SMALLWARES
KITCHEN CHEMICALS	GSS09549-KITCHEN_CHEM
PERSONAL CARE PRODUCTS	GSS10575-PERSONAL_CARE
INDUSTRIAL SUPPLIES & EQUIPMENT	GSS09577-INDUSTRIAL
AUDIO, VIDEO, WEB CONFERENCING, SECURITY SURVEILLANCE	GSS10584-AUDIO_VIDEO

**Set Aside Contracts (Please note these contracts do not expire)**

Rubber Stamps	GSS10403-RUBBER_STAMPS
Engraving and Promotional Items	GSS10404-ENGRAVING
Remanufactured Toner Cartridges	GSS10412-REMAN_TONER
Document and Mail Preparation Services	GSS09559-DOC/MAIL_PREP

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### **Purchases through special approval only:**

The following categories of products shall not be provided for sale to agencies without prior approval from Government Support Services. All items within the categories shall be grayed out on the website and routed for approval by Government Support Services should an agency place an order for any item within these categories.

#### **Categories**

Coffee and Coffee Supplies  
Tea  
Hot Chocolate  
Water, Soda and Juices  
Paper Products  
Snacks  
Gum and Mints  
Wedding Invitations & Kits  
Invitations  
Coffee Makers  
Microwave and Toaster Ovens  
Vacuum Cleaners  
Water Dispensers & Filtration  
Refrigerators  
Heaters  
A/C's and Dehumidifiers  
Fans and Air Purifiers  
Gifts and Giveaways  
Apparel  
Custom Signs and Banners  
First aid Supplies

To accomplish this, vendor agrees to establish purchasing roles that will make offerings available based on the role assigned within an agency. Vendor also agrees to bring requests to purchase outside of assigned roles to the Contract Administrator for consideration and activation.

### **18. OTHER ITEMS:**

Products that do not fall under the overlapping product list and are not approved as a "Delaware Preferred Product" will be restricted. All items within the category shall be restricted on the website and routed for approval by Government Support Services before the entire order is submitted for fulfillment by the Vendor should an agency place an order for any item within these categories.

The approval process is available to be viewed at the link below.

<http://gss.omb.delaware.gov/divisionwide/flowcharts.shtml#contracting>



**19. AVAILABLE ASSORTMENT:**

Vendor shall provide the State of Delaware a single ordering platform and a single account for each entity ordering under this Contract.

The items available under that account will include:

1. Those items included and designated in Attachment D. These items shall be the "Delaware Preferred Products" and additional products which will be available to all agencies without limitations or additional ordering protocols.
2. Those items identified in number 15, above, as overlapping with existing contracts the State of Delaware has with other suppliers and those items identified in number 16, above, as "Other Items". Items identified in this section shall be available to agencies with the approval of GSS using the process outlined at <http://gss.omb.delaware.gov/divisionwide/flowcharts.shtml#contracting>

Validation that such overlapping products were routed and approved shall be available to both the State of Delaware and Vendor for 90 days after order fulfillment.

Vendor will provide the State of Delaware a quarterly product update for determination as to whether new items should be added to one of the three (3) categories as noted above. The State of Delaware shall provide written approval before the status of any product shall be changed.

**20. ENVIRONMENTAL PROCUREMENT REQUIREMENTS:**

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

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

Contractors shall report all green items procured during the monthly reporting period using the Usage Report that will be provided to the awarded Contractor(s).

Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: <http://gss.omb.delaware.gov/contracting/documents/agencyboilers/espp.pdf>

## 21. **SHIPPING:**

A packing label must be on the outside of each box and include the following information:

- |               |                   |
|---------------|-------------------|
| *Company Name | *Contact          |
| *Address      | *Telephone number |
| *Department   | *Mail Code        |

A packing slip must accompany each shipment including the following information, in no particular order:

- |   |                    |
|---|--------------------|
| *Line item description                          | *Quantity ordered  |
| *Any back ordered items                         | *Quantity shipped  |
| *Unit price                                     | *Number of parcels |
| *Agency name/Dept.                              | *FOB Destination   |
| *All information contained on the packing label |                    |

## 22. **RETURN POLICY:**

In the rare case that you are unsatisfied with your purchase, Staples offers an easy online returns process that is available on the same site as you order your products. You can return all orders online, regardless of how those orders were placed, with no telephone calls required.

Once your return request has been processed, we'll arrange to have the returned item picked up by your Staples delivery driver or original delivery method (UPS, etc.), at no cost to you. You can also call Customer Service anytime with return questions or to process a return. Returned items can be exchanged or credited to your account upon verification of condition.

### **Credits**

Credits for returned items are issued once the returned item is received back at the Staples fulfillment center. Typically returns are picked up within 1-5 business days and the credit is released within 24-48 hours after the fulfillment center receives and processes them.

### **Staples' Return Policy**

At anytime, you may return any Staples® brand office supply, Sustainable Earth by Staples™ or Diversity Product Solutions by Staples™ product if it doesn't meet your satisfaction.

### **Product Applicable Category Return Period**

Office Supplies ..... 30 Days

Software (unopened) ..... 30 Days

Opened or defective software may be exchanged for the same title and version within 30 calendar days of receiving the software.

Technology and Business Machines .....14 Days

Furniture .....See Below

Custom-Imprinted .....Not returnable unless damaged/defective

Staples will accept returns of a product in saleable condition, within the applicable return period, with its complete and original manufacturer's packaging intact and undamaged, including Universal Product Code (UPC), manuals and parts and a copy of the packing slip (two copies provided with original shipment).

### **Additional Furniture Terms**

**Returns Policy:** Return requests will be accepted within 14 days of delivery. Only products in new condition, unassembled and in original packaging are eligible for return. A 35% restocking fee may apply. Special-order or non stocked furniture is not returnable, unless such products arrive damaged or defective.

### **IMPORTANT NOTES ABOUT ALL RETURNS:**

Non defective dated goods such as forms, batteries, film, toner and ink cartridges are subject to approval and require a Return Authorization for credit.

Calendars cannot be returned after January 31 of the year to which they correspond. For health and safety reasons, food, beverages and first aid and medical products cannot be returned. For similar reasons, janitorial and sanitation products (such as cleaning chemicals) can only be returned in unopened and unaltered original case quantities and packaging. Products purchased in bulk, including those intended to be used during a World Health Organization (WHO) Epidemic or Pandemic alert, are subject to review prior to return.

### **Terms and Conditions**

**Manufacturer Warranty:** Staples will pass through all manufacturers' warranties to the customer. Staples will reasonably assist in coordinating the repair or replacement of the product by the manufacturer.

**Limitation of Liability:** Neither party shall be liable for any consequential, incidental, special or exemplary damages arising out of or in connection with the sale, delivery, use or performance of the product. In no event shall Staples be liable (whether in contract, tort or otherwise) for damages arising out of or relating to a breach of any warranty or the sales, delivery, installation, use or performance of the product that exceed the purchase price of the product.

**Hazardous and Oversized Materials:** Additional charges may be incurred for the shipping and handling of products classified as hazardous or oversized materials. Partial cartons or opened containers of hazardous materials cannot be returned. It is your responsibility to ensure the products are used and disposed of in accordance with all applicable federal, state, county and local laws and regulations, including environmental rules and regulations.

### **23. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS:**

As a central contract, this agreement shall include individual orders from state agencies and other entities authorized by law to procure from this contract. The individual orders may be terminated as follows:

- 1) **Termination for Cause:** If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

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### **23. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS:(Continued)**

- 2) **Termination for Convenience:** The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.
- 3) **Termination for 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. This is not a termination for convenience and will not be converted to such.

#### **24. AUDIT ACCESS TO RECORDS:**

The Contractor 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 Contractor 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 Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor 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 Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the agreed upon or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the Contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

#### **25. REMEDIES:**

Except as otherwise provided in this contract, all claims, counterclaims, disputes, and other matters in question between the State and the Contractor arising out of, or relating to, this contract, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

#### **26. TAX EXEMPTION:**

- 1.) Material covered by this contract is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.
- 2.) Any material which is to be incorporated in the work or any equipment required for the work contemplated in the contract may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Contractor.

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#### **27. HOLD HARMLESS:**

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

**28. NON-PERFORMANCE:**

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

**29. FORCE MAJEURE:**

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

**30. AGENCY'S RESPONSIBILITIES:**

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.