

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
CONSULTANT - 800MHz PUBLIC SAFETY COMMUNICATIONS SYSTEM UPGRADE
ISSUED BY GOVERNMENT SUPPORT SERVICES
CONTRACT NUMBER GSS16771-800MHz_UPGRD**

I. Overview

The State of Delaware Department of Government Support Services seeks professional services for a qualified team of consultants with the multiple resources to support the State of Delaware’s Division of Communications in the upgrade of the State’s existing 800 MHz public safety communications system. 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: April 7, 2016
Deadline for Questions	Date: April 14, 2016
Response to Questions Posted by:	Date: April 22, 2016
Deadline for Receipt of Proposals	Date: May 5, 2016 at 1:00 PM (Local Time)
Estimated Notification of Award	Date: July 18, 2016

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

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

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A mandatory pre-bid meeting has been scheduled for April 21, 2016 @ 10am at 303 Transportation Circle, Dover, DE 19903, Second Floor Large Conference Room. **This is a mandatory meeting.** If a Vendor does not attend this meeting, they shall be disqualified and shall not be considered for further evaluation.

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II. Scope of Services

The purpose of this Request for Proposals (“RFP”) is for the engagement of a qualified team of consultants with the multiple resources to support the State of Delaware’s Division of Communications in the upgrade of the State’s existing 800 MHz public safety communications system. The knowledge, skills, and abilities of the proposed consulting team should represent all of the technologies normally associated with 800 MHz public safety land mobile radio (“LMR”), console, and backhaul communications. The primary duty of the consulting team will be to assist the State in its anticipated eight-year upgrade of the existing Motorola Smartzone radio system.

The detailed Scope of Work is provided in Attachment B, and made part of this Request for Proposals.

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. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.
2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section D, Item 7, subsection g (insurance).
5. Provide response to Employing Delawareans Report (Attachment 9)

B. General Evaluation Requirements

1. Experience and Reputation
2. Expertise
3. Capacity to meet requirements (size, financial condition, etc.)
4. Demonstrated ability
5. Pricing
6. ACA Safe Harbor Fee

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

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

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2. Obtaining Copies of the RFP

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

3. Assistance to Vendors with a Disability

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

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to 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 vendor. Vendors should rely only on written statements issued by the RFP designated contact.

**DENNIS J SMITH
GOVERNMENT SUPPORT SERVICES
100 ENTERPRISE PLACE, SUITE 4
DOVER, DE 19904
Dennis.Smith@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 State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

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

7. Organizations Ineligible to Bid

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

8. Exclusions

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

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

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each 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 two (2) paper copies and one (1) electronic copy on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00 PM (Local Time) on May 5, 2016**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Dennis J Smith
Government Support Services
100 Enterprise Place, Suite 4
Dover, DE 19904**

Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. GSS16771-800MHz_UPGRD” on the outside of the bid submission package.

Any proposal received after the Deadline for Receipt of Proposals 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.

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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 State of Delaware 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 December 31, 2016. The State of Delaware 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 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 Vendor.

The Agency will conduct a public opening of proposals and complete a public log of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

8. Non-Conforming Proposals

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

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9. 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.

10. Realistic Proposals

It is the expectation of the State of Delaware 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 State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

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

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, [29 Del. C. § 10001, et seq. \("FOIA"\)](#). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a proposal is received by the State of Delaware and a decision on contract award is made, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

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

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

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

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

12. Price Not Confidential

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

13. Multi-Vendor Solutions (Joint Ventures)

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

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

a. Primary Vendor

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

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

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

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

b. Sub-contracting

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

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

c. Multiple Proposals

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

14. Sub-Contracting

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

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

15. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify 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 vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

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

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than April 14, 2016. All questions will be consolidated into a single set of responses and posted on the State's website at

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www.bids.delaware.gov by the date of April 22, 2016. Vendor 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

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

16. 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 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 State of Delaware may deem necessary in the best interest of the State of Delaware.

17. 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 vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor'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.

18. 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 vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

19. Potential Contract Overlap

Vendors 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 vendors during

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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.

20. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by 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.

21. 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, contractor or its agents.

22. 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.

23. 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 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 State of Delaware 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.

a. 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 vendor 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 vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

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

24. Cooperatives

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

C. RFP Evaluation Process

An evaluation team composed of representatives of 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 vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981](#) and [6982](#). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Director, Government Support Services, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982](#), to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor'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 contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

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

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- 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](#).

Criteria Weight

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

Criteria	Weight
The qualifications and experience of the persons to be assigned to the project. Experience and reputation of the company.	20
Demonstrated Ability - Familiarity and experience creating and running similar projects, including the ability to perform the work in a timely manner, company oversight and on-going project support and maintenance.	30
Capacity to meet requirements. Company size, financial condition, available expertise at multiple levels as demonstrated by leadership resumes.	15
References	15
Potential income projection, substantiated by prior project management of similar scope and content.	20
Pricing Proposed	25
ACA Safe Harbor Additional Fee	5
Total	120

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

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3. Proposal Clarification

The Evaluation Team 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 Evaluation Team 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 State of Delaware 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 State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

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

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

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

D. Contract Terms and Conditions

1. Mandatory Contract Use

REF: Title 29, Chapter [6911\(d\)](#) Delaware Code. All Covered Agencies as defined in 29 Del. C. [§6902\(6\)](#) 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, school districts, and the Legislative Branch are specifically exempted from the mandatory use requirements of this subchapter. In addition, the Delaware Transit Corporation is exempt from the entire procurement chapter. Pursuant to 29 Del. C. [§6904\(l\)](#) and (n) respectively, the Department of Elections and the Board of Pension Trustees have certain exemptions from the procurement chapter which may or may not apply to this Request for Proposals.

This contract shall be accessible to any School District, Political Subdivision, Municipality, Volunteer Fire Company or higher education entity receiving state funds. Furthermore, this contract shall be accessible to all other entities as identified by Del. Code, Chapter 69, Title 29 § 6910.

2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State

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Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

3. General Information

- a. The term of the contract between the successful bidder and the State shall be for two (2) years with six (6) optional extensions for a period of one (1) year for each extension.
- b. The selected vendor will be required to enter into a written agreement with 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. 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 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 vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a 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.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- g. 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.

4. Collusion or Fraud

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

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

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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.

5. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a 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 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, 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.

6. 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.

7. General Contract Terms

a. Independent Contractors

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

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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 Contractor's services.

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

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

c. ACA Safe Harbor

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act ("ACA"). Therefore, the State seeks to utilize the "Common-law Employer Safe Harbor Exception" under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an "Additional Fee" with respect to the employees electing to obtain health coverage from the Vendor.

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The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

d. 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.* § [2502](#).

Prior to receiving an award, the successful vendor 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 vendor to applicable fines and/or interest penalties.

e. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Government Support Services
100 Enterprise Place, Suite 4
Dover, DE 19904
DENNIS J SMITH**

f. 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, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions,

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claims or liabilities are based upon acts or failures to act attributable, whole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware 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 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 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.

g. 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, also carry insurance minimum limits as follows:

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

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

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

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

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

4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

h. 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.

i. Performance Bond

Contractors 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 Government Support Services with surety in the amount of 100% of the specific award. 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 11.

j. Vendor Emergency Response Point of Contact

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of 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

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services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

k. Warranty

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

l. 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 State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

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

m. Penalties

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

n. Dispute Resolution

At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), 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, OMB 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 OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding

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arbitration. OMB 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.

o. Termination of Contract

The contract resulting from this RFP may be terminated as follows by Government Support Services.

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

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

2. **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 Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
3. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of 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.

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p. Non-discrimination

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

q. 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 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.

r. 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.

s. Vendor Responsibility

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

t. Personnel, Equipment and Services

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

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u. Fair Background Check Practices

Pursuant to 29 Del. C. [§6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

v. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the 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 vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

w. Drug Testing Requirements for Large Public Works

Pursuant to 29 Del.C. [§6908\(a\)\(6\)](#), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. [§6962](#).

Final publication of the identified regulations can be found at the following:

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[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

x. Work Product

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

y. Contract Documents

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

z. 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 State of Delaware 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.

aa. 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

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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.

bb. Assignment Of Antitrust Claims

As consideration for the award and execution of this contract by the State, the Vendor 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 Vendor 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 Vendor shall meet and confer about coordination of representation in such action.

cc. 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.

dd. Affirmation

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

ee. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to 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 Vendor 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 Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

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ff. Other General Conditions

1. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
4. **Prior Use** – The 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.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
8. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
9. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS16771-800MHz_UPGRD on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
10. **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
11. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. 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.

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

2. Definitions of Requirements

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

3. Production Environment Requirements

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.

F. Attachments

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

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2nd Tier Spend) Report
- Attachment 9 – Employing Delawareans Report
- Attachment 10 – Office of Supplier Diversity Application
- Attachment 11 – Performance Bond
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C – Pricing Structure
- Appendix D – Professional Services Agreement

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IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5 and 9 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment 7) shall be furnished in an **Excel format and submitted electronically**, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to vendorusage@state.de.us. Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.

Accurate 2nd tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@state.de.us on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

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Attachment 1

NO PROPOSAL REPLY FORM

Contract No. GSS16771-800MHZ_UPGRD
Contract Title: CONSULTANT - 800MHZ PUBLIC SAFETY COMMUNICATIONS SYSTEM
UPGRADE

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 unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

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

_____ We wish to remain on the Vendor's List **for these goods or services.**

_____ We wish to be deleted from the Vendor's List **for these goods or services.**

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

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Attachment 2

CONTRACT NO.: GSS16771-800MHz_UPGRD
CONTRACT TITLE: Consultant - 800MHz Public Safety Communications System Upgrade
DEADLINE TO RESPOND: May 5, 2016 at 1:00 PM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Government Support Services

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

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

COMPANY NAME _____ Check one)

	Corporation
	Partnership
	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER _____

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

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

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

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

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Attachment 5

Contract No. GSS16771-800MHz_UPGRD
Contract Title: Consultant - 800MHz Public Safety Communications System Upgrade

BUSINESS REFERENCES

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

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

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	

2.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	

3.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

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Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. GSS16771-800MHz_UPGRD	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company 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**

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Attachment 9

Contract No. GSS16771-800MHz_UPGRD
Contract Title: Consultant - 800MHz Public Safety Communications System Upgrade

EMPLOYING DELAWAREANS REPORT

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

1. Number of employees reasonable anticipated to be employed on the project: _____

2. Number and percentage of such employees who are bona fide legal residents of Delaware:

Percentage of such employees who are bona fide legal residents of Delaware: _____

3. Total number of employees of the bidder: _____

4. Total percentage of employees who are bona fide resident of Delaware: _____

If subcontractors are to be used:

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

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

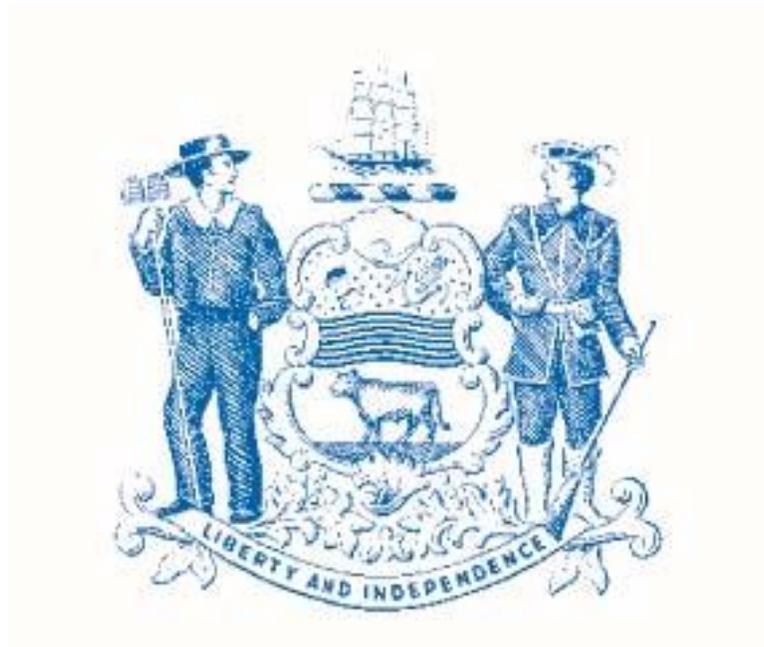
“Bona fide legal resident of this State” shall mean any resident who has established residence of at least 90 days in the State.

State of Delaware
Office of Supplier Diversity
Certification Application

The most recent application can be downloaded from the following site:
<http://gss.omb.delaware.gov/osd/certify.shtml>

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

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



Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)
100 Enterprise Place, Suite 4
Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: osd@state.de.us
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

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

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Attachment 11

STATE OF DELAWARE
OFFICE OF MANAGEMENT AND BUDGET

I. 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 _____ ("**Owner**") (*insert State agency name*), in the amount of _____ (\$ _____), 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 No. _____ 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,

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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.

A. PRINCIPAL

Name: _____

Address: _____

By: _____

Name:
Title:

Witness or Attest:

(SEAL)
Name:

(Corporate Seal)

B. SURETY

Name: _____

Address: _____

By: _____

Name:
Title:

Witness or Attest:

(SEAL)
Name:

(Corporate Seal)

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**APPENDIX A
MINIMUM MANDATORY SUBMISSION REQUIREMENTS**

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. Pricing as identified in the solicitation
4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK**. All other copies may have reproduced or copied signatures – Form must be included.
5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.
9. One (1) complete Employing Delawareans Report (See Attachment 9)
10. One (1) complete OSD application (See link on Attachment 10) – only provide if applicable

The items listed above provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

Vendors shall provide proposal packages in the following formats:

1. Two (2) paper copies of the vendor proposal paperwork. **One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**
2. One (1) electronic copy of the vendor proposal saved to CD or DVD media disk, or USB memory stick. Copy of electronic price file shall be a separate file from all other files on the electronic copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a separate computer disk or media).

APPENDIX B
SCOPE OF WORK AND TECHNICAL REQUIREMENTS

I. Purpose

The purpose of this Request for Proposals (“RFP”) is for the engagement of a qualified team of consultants with the multiple resources to support the State of Delaware’s Division of Communications in the upgrade of the State’s existing 800 MHz public safety communications system. The knowledge, skills, and abilities of the proposed consulting team should represent all of the technologies normally associated with 800 MHz public safety land mobile radio (“LMR”), console, and backhaul communications. The primary duty of the consulting team will be to assist the State in its anticipated eight-year upgrade of the existing Motorola Smartzone radio system.

II. Overview of the State’s communications upgrade project

The State of Delaware’s Division of Communications has recently entered into an eight-year project with Motorola Solutions (“Motorola”) to migrate gradually the current LMR infrastructure to ASTRO25 P25 Phase I technology. The existing system core has already been upgraded to an ASTRO25 Release 7.13 core which controls the remaining Smartzone 3.Z components utilizing Motorola’s SmartX technology. Additionally, the State’s extensive backhaul network will be expanded and migrated to Ethernet technology in support of the new LMR system as an important part of the multi-year project which is expected to be complete in 2024.

As part of the project, over 100 Gold Elite consoles will be replaced with MCC7500 devices. The current three operating cells in Kent, New Castle, and Sussex counties will begin an evolutionary multi-year migration from Quantar to GTR8000 transceivers. The prime sites in each cell will be upgraded with new components, again on an evolutionary basis, to ensure that first responders in each county cell may maintain interoperability and normal LMR public safety communications during the multi-year transition period.

With the exception of the City of Wilmington, the current IntelliRepeaters (“IR”) sites in New Castle County will be replaced by a new and expanded IP-based fifteen (“15”) channel simulcast cell that will negate the need for these devices in the future. One ASTRO25 Standalone Repeater (“ASR”) will replace the existing City of Wilmington IR device. Ethernet technology will be employed to connect all devices to the main core as well as a future back-up core (Dynamic System Resiliency or “DSR”) in a separate physical location from the main system core. The cores will be connected by microwave which shall have the capacity of two OC-3 paths.

In addition to the work described above, Motorola will be providing four new equipment shelters to be installed at existing compounds. The complexity of these installations will necessitate careful construction coordination as well as temporary intercommunications between existing equipment in the current shelters and new hardware that will be installed within the new shelters. During the period of transition, Motorola will provide inter-shelter connectivity through fiber optic cables.

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III. Desired knowledge, skills, and abilities of the consulting team

The preferred knowledge, skills, and abilities of the desired consulting team include members with experience in the following technical areas:

- A. Motorola Smartzone 3.Z 800 MHz LMR equipment.
- B. Motorola ASTRO25 800 MHz P25 LMR equipment.
- C. Multi-year migration of Smartzone 3.Z to ASTRO25 P25 systems.
- D. Internet Protocol ("IP") standards as used in modern communications systems.
- E. Ethernet technologies as used with microwave backhaul (layer 2 and 3) as well as related system uses.
- F. Alcatel and other microwave systems as used in public safety with a multi-cell Motorola systems.
- G. Experience with the deployment of multiple simulcast cell systems with the capability to aggregate talkgroups for statewide use.
- H. Methods of interoperability with adjoining states and local governments using 700 and 800 MHz P25 and non-P25 technologies as well as National Public Safety Planning and Advisory Committee ("NPSPAC") nationwide interoperability channels (8CALL90 and 8TAC91-94).
- I. Operation of the Inter RF Sub-system Interface ("ISSI") as relates to use of the Motorola ISSI8000 product (associated with release 7.13 and the enhancements associated with releases 7.14 and 7.15).
- J. Operation of the Motorola MCC7500 consoles as used throughout Delaware with particular emphasis on the use of conventional channel gateways ("CCGW") and the impact of these devices as well as other console resources on backhaul and core capacity.
- K. Interconnection of microwave backhaul systems with fiber optic systems under the control of the State of Delaware.
- L. Programming of consolettes, subscriber mobile, and portable radios.
- M. P25 suite of standards as relate to fixed, mobile, control stations, consolettes, and portable radios.
- N. General knowledge of the Part 90 rules of the Federal Communications Commission with emphasis on Sub-chapters R and S as well as the relevant portions of Part 101 as relate to microwave radio operation.
- O. The Computer Assisted Pre-coordination Resource and Database System ("CAPRAD") as relates to 700 and 800 MHz.

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- P. Experience in the operation of regional (at least three counties) public safety LMR radio systems with preference to firms with experience in the development or operation of a statewide LMR system.
- Q. Experience in the understanding of the unique requirements that differentiate state and local government systems with emphasis on meeting Emergency Support Function (“ESF”) requirements for state governments and well as extraordinary support agencies such as the State’s National Guard and others assigned unique ESF duties.
- R. Attendance with a Motorola Trunked User’s Group (“MTUG”) or other Motorola events for consultants; e.g. APCO, IWCE, and consultant seminars to understand the future direction of the company as relates to LMR products. This is particularly important as relates to a multi-year systemwide engagement as the State cannot be surprised by an unforeseen development that affects the integrity or budget of the project.
- S. Knowledge of long term evolution (“LTE”) technology as relates to First Net and operations within Band Class 14 that may affect the State of Delaware with sensitivities to strategies to mitigate any interference from commercial 700 MHz cellular systems
- T. Development of programs of interoperability with adjoining states and/or local governments utilizing P25 systems produced by Harris or other non-Motorola manufacturers; e.g. EF Johnson, Tait, etc.
- U. Ability to draft regulatory filings required by the FCC such as found in 47 CFR §529(b)(2) and all other applicable aspects of FCC 14-172 as may relate to Delaware.
- V. Continual awareness and review of applicable issues publicized by the FCC in publications such as its Daily Digest.
- W. Ability to assist the State in the interoperation of the upgraded Motorola ASTRO25 system and the Harris 700MHz system used by the Department of Correction.
- X. Knowledge of communication shelter installation and R-56 standards.
- Y. Knowledge and experience with radio system coverage testing as defined in TSB-88D or future variants as relates to 800 MHz propagation as well as Motorola’s Hydra testing software.
- Z. Operation of software that provides prediction of radio coverage based upon P25 Phase I technology.

IV. Composition of the consulting team

It is the opinion of the State of Delaware’s Division of Communications that the wide level of skills needed for this engagement as defined in Section III are more than can be found in one individual. The IP-based Motorola ASTRO25 and backhaul systems require persons with multiple specialties. The State favors the submission of RFP responses comprised of multiple persons who may represent one firm or team that possesses

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significant skill sets with internal resources or a team of sub-contractors led by a lead consultant or consulting firm. In the response, the State will evaluate carefully the experience of the proposed respondents with respect to those items identified in Section III (A-Z) of this RFP with emphasis on knowledge, skills, and abilities related to oversight of multi-year statewide (or regional) 800 MHz LMR upgrades.

This is a critical Homeland Security project for the State of Delaware. Members of the proposer's team must be able to pass a standard criminal background history check. Proposed members of the proposer's team who have been convicted of a felony or crime of moral turpitude or are on a watch list maintained by the United States Department of Homeland Security may be excluded from the proposer's team. Any proposed member of the proposer's team with an outstanding criminal warrant related to a felony or crime of moral turpitude may be withheld from project participation until the matter has been adjudicated in the Court of competent jurisdiction in the matter.

V. Level of Required Services

This project is not expected to be a full-time engagement; e.g. less than forty hours per week on a typical basis. It is expected that the team leader responsible for the project will be on site at least one day per week for project meetings with the Division of Communications and Motorola. Other than the anticipated weekly project meetings, the level of support required by the State will vary per week based upon the tasks in the State's Agreement with Motorola and progress of the project.

VI. Length of Consultant Engagement

- A. This RFP shall be awarded in one fiscal year increments; e.g. a base one-year award with the potential of seven one-year extensions. The anticipated first year will be July 1, 2016 until June 30, 2017. The awarded consulting team is expected to provide superior knowledge, skills, and abilities on a continual basis to maintain the contract for the entire anticipated engagement which is through the completion of the project no later than June 30, 2024. Delaware's fiscal year begins on July 1 of a calendar year and ends on June 30 of the following calendar year.
- B. Contract renewals are not automatic. Renewal negotiation shall begin no later than April 1 of each year in which the consulting team has been awarded an initial contract or one year contract extension. Negotiations for an extension of the contract shall conclude on or about June 1 of each year in which the consulting team has an initial contract or extension thereof.
- C. This is a contract of convenience for the State of Delaware and may be cancelled at any time pursuant to the procedures of the State.

VII. Project Financial Issues

- A. The consulting firm will be compensated for services rendered by individuals based upon on their hourly rate as negotiated between the State and the selected proposer. The hourly rate of each individual team member may vary based upon their knowledge, skills, and abilities as relevant to their assigned task(s) and include all travel and related expenses. This format shall be followed for any sub-contractors, engaged in the related project activities including professional

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services, travel, food, and lodging. There is no separate travel reimbursement budget in this RFP. The consultant team shall also budget all expenses for a member to participate in one trip, not to exceed three business days, to the Motorola staging facility in Illinois at a time and date determined by the State of Delaware's Division of Communications.

- B. Respondents should provide a categorical schedule of proposed hourly rates based upon skill or managerial level of the team member for the first year of the project. No less than ninety ("90") calendar days before the commencement of a new fiscal year, the State's Division of Communications and the consulting team's lead representative will negotiate a future work plan for the upcoming fiscal year based upon the anticipated scope of work and develop an annual ("yearly") budget. Each annual fiscal year's budget may be amended as negotiated by the State and consulting team based upon the anticipated work activities of Motorola Solutions and other factors impacting the project. However, the consulting team will provide a "not to exceed" budget based upon the totality of the upgrade project which is eight ("8") fiscal years. If it is necessary for the State and consulting team to amend an annual fiscal plan for services, the consultant shall be aware that the State has no plans to change or increase the not to exceed total budget for the entire eight-year budget.
- C. Any annual adjustments in hourly rates for the entire period of the Agreement are the responsibility of the contractor or lead contractor. There is a fixed "not to exceed" Agreement price for the eight year project and it is the responsibility of the entity with which the State contracts to adjust hourly rates paid to members of the team on an internal basis. Proposed adjustments in annual rates of compensation should be included in contract renewal negotiations so that the State is assured that funding will exist to perform all anticipated consultant duties and stay within the project's total "not to exceed" budget.
- D. If there are unanticipated delays beyond the control of the Division of Communications or State of Delaware, the State may issue to the consulting team a "stop work" order in which no services shall be provided or charged to the project. Services provided prior to the "stop work" order shall be paid pursuant to Delaware regulations.
- E. The State of Delaware is not responsible for the payment of sick days, holiday, or vacation time of the proposer's team. All such costs are the responsibility of the proposer.

VIII. Financial stability of the consulting firm

- A. The State of Delaware is aware of the financial challenges associated with consulting firms in today's professional environment. It is important for respondents to demonstrate not only the professional knowledge, skills, and abilities previously notated in this RFP, but also demonstrate financial soundness over a multi-year period. Regardless of proposed qualifications, the State reserves the right to reject any proposal wherein the proposer cannot demonstrate a sound multi-year record of financial stability or acquire a subcontractor payment bond when teams of independent consultants are compiled for the project.

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Consultancies that have been acquired by parent companies may demonstrate fiscal solvency based upon the acquiring body's financial history.

- B. In the event that an award is made by the State of Delaware and the awardee becomes financially insolvent, Delaware reserves the right to cancel any resulting Agreement upon thirty ("30") days of written notice. Financial insolvency may include, but not be limited to, a filing of bankruptcy by the RFP award recipient with any bankruptcy court of competent jurisdiction, failure to make a scheduled payroll for any non-managerial persons assigned to the project, failure to pay sub-contractors within thirty ("30") days of the State's payment for an invoice covering salaries or sub-contractor payments, or other such condition that demonstrates to the reasonable person that the RFP award recipient is unable to financially support the team of skilled professional persons assigned to this project.
- C. To avoid portions of this financial challenge, when the RFP recipient is comprised of a team of sub-contractors, the State encourages strongly the acquisition of a subcontractor payment bond which is a project specific contractual agreement between a subcontractor and a surety by which the surety guarantees payment for the labor provided on the project.
- D. The RFP award recipient agrees that if the State of Delaware cancels an Agreement resulting from this RFP, the State is free to enter into a new contract, pursuant to State law and administrative procedures, with any persons who were denied compensation due to the award recipient's inability to pay wages or subcontractors in a timely manner.

IX. Scope of Work

- AA. The currently planned scope of work to be performed by Motorola is depicted below in Section IX B. This scope and the years in which services will be performed are subject to the concurrence of the Division of Communications and Motorola. One of the main tasks of the consulting team will be to offer feedback and suggestions to the Division of Communications to ensure that the proposed scope of the work performed by Motorola is consistent with its Agreement with the State of Delaware and equally performed in a manner that ensures reliability of public safety communications to the greatest extent practical during the upgrade period.

In addition to assessing the proposed scope of work by Motorola Solutions, the consultant team will be needed to assist the State in other preparatory work required before any RF sites are changed. This includes but is not necessarily limited to:

- 1. Work with representatives of the Division of Communications to develop a comprehensive understanding of the State's present 800 MHz radio system. This includes developing a comprehensive understanding of the user base and the subscriber issues affecting the Division of Communications.
- 2. Review of the proposed Motorola Solution's Statement of Work. Based upon the developed understanding of the State's current system, work with

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the Division of Communications and the personnel of Motorola to offer recommendations that generally improve the transition of communications components within the eight-year contractual cycle. This task requires a comprehensive understanding of any payments already made and payments to be made to Motorola in future years.

3. Prior to the conversion of the current statewide communications system to the use of the P25 technology, it will be necessary for the State to develop, in conjunction with Motorola, a comprehensive baseline of 800 MHz radio coverage that documents the current performance of the Smartzone system on a statewide basis. This may also include documenting “in-building” performance as determined by the State. The goal of this effort is to ensure that there is no reduction of radio system coverage upon completion of the migration to P25 Phase I technology.
4. Attend weekly project meetings with the Division of Communications and Motorola Solutions to assess the progress of the migration plan and forecast any potential issues affecting the project that should be known to the consulting team based upon proposed documentation from Motorola Solutions or Public Notices issued by the FCC.
5. The consulting team shall provide to the Division of Communications each month a summary report assessing the project’s progress. The Report is due no later than five business days after the first day of each month. The Report should document:
 - a. Identified or potential project schedule issues such as delays and the plans of Motorola Solutions to remedy the notated issue(s).
 - b. Any regulatory concerns affecting the project based upon Public Notices from the FCC or public safety organizations such as the National Public Safety Telecommunications Council (“NPSTC”), Telecommunications Industry Association (“TIA”) or other such national bodies that influence public safety communications.
 - c. The budgetary expenditure rate (“project burn rate”) of the consulting team and its plans to stay within the annual and total budget of the project.
 - d. Any other issues that the consulting team should bring to the attention of the State of Delaware to ensure that the project remains on schedule.

BB. Motorola Solution’s Currently Proposed Statement of Work (text from Motorola)

This Statement of Work (SOW) describes the deliverables to be furnished to the State of Delaware (State). The tasks described herein will be performed by Motorola Solutions, Inc. (Motorola), its subcontractors, and the State to implement the solution described in the System Description. It describes the actual work involved in installation, identifies the installation standards to be followed, and

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clarifies the responsibilities for both Motorola and State during the project implementation.

Specifically, this SOW provides:

- A summary of the phases and tasks to be completed within the project lifecycle.
- A list of the deliverables associated with the projects.
- A description of the responsibilities for both Motorola and the State.
- The qualifications and assumptions taken into consideration during the development of this project.

This SOW provides the most current understanding of the work required by both parties to ensure a successful project implementation. It is understood that this SOW is a working document, and that it will be revised as needed to incorporate any changes associated with contract negotiations, Contract Design Review (CDR), and any other change orders that may occur during the execution of the projects.

Motorola has prepared a phased approach to expand the capacity State of the State's system. A summary of the projects are listed below followed by a detailed breakout of installation related work for each phase. A detailed technical explanation of each of the project phases is available in the System Description. This Statement of Work overview document will apply to each of the eight phases. At the beginning of each contract year Motorola will meet with the State to review the project slated for implementation during that contract year and kick off that year's project. The tasks listed within this SOW will then be repeated to implement the project.

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Summary of Projects by Year

Contract Year	Project	Description
1	<ul style="list-style-type: none"> ▪ Microwave and Console system. ▪ Lifecycle release program. 	<ul style="list-style-type: none"> ▪ Expand existing microwave network. ▪ Provide dispatch console positions: <ul style="list-style-type: none"> ○ Suscom ○ DTC GT ○ Sussex Radio Shop ○ Wilmington DSP ○ Rehoboth Police ○ City of Rehoboth ○ Seaford ○ Dover Fire
2	<ul style="list-style-type: none"> ▪ Microwave and Console system. ▪ Lifecycle release program. 	<ul style="list-style-type: none"> ▪ Continue expansion of existing microwave. ▪ Complete deployment of dispatch console positions. <ul style="list-style-type: none"> ○ Recom ○ DTC Wilmington ○ Newark PD ○ University of Delaware ○ Knotts ○ NC Radio Shop 2 ○ Kentcom ○ SHOC ○ KC Radio Shop ○ DEMA ○ DTC Dover ○ Dover PD

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Contract Year	Project	Description
3	<ul style="list-style-type: none"> ▪ Provide Microwave dishes and waveguide for prime and master sites. This new equipment will be installed in the new building. Provide new base stations and antenna network. ▪ Master Site shelter replacement. ▪ Lifecycle release program 	<ul style="list-style-type: none"> ▪ Complete the expansion of existing microwave network. ▪ Provide GTR 8000 base stations (3600 operation) by replacing three channels each at Sussex, Kent and New Castle simulcast cells. ▪ Replace Shelter at the Master Site (12X60 shelter). ▪ Replace two transmit antennas and one receive antenna for each of the two simulcast co-located sites from New Castle and Kent simulcast cells.
4	<ul style="list-style-type: none"> ▪ Provide new base stations and Prime Site shelters. ▪ Lifecycle release program. 	<ul style="list-style-type: none"> ▪ Provide GTR 8000 base stations (3600 operation) by replacing three channels each at Sussex and Kent and simulcast cells as well as six channels at the New Castle simulcast cell. ▪ Replace Shelters at each Prime Site: Sussex, Kent and New Castle (12X40 shelters).
5	<ul style="list-style-type: none"> ▪ Continue new base station replacement and provide IP (9600) Prime Site equipment. ▪ Lifecycle release program 	<ul style="list-style-type: none"> ▪ Provide GTR 8000 base stations (3600 operation) by replacing three channels at the New Castle simulcast cell. ▪ Provide IP site equipment at Sussex, Kent and New Castle Prime simulcast sites.
6	<ul style="list-style-type: none"> ▪ Provide new base stations. ▪ Begin P25 base station refresh for a statewide P25 overlay. ▪ Simulcast cell antenna network replacement. ▪ Lifecycle release program. ▪ Coverage Testing 	<ul style="list-style-type: none"> ▪ Provide GTR 8000 base stations (3600 operation) by replacing two channels at the New Castle simulcast cell. ▪ P25 refresh of six channels each in Sussex, Kent and New Castle simulcast cells. ▪ Provide transmit and receive antenna at all sites in Sussex, Kent and New Castle simulcast cells. ▪ Coverage testing for Sussex and Kent Simulcast sites.

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Contract Year	Project	Description
7	<ul style="list-style-type: none"> ▪ Complete new base station replacement and IP station conversion to P25 Statewide system. ▪ Lifecycle release program. ▪ Coverage Testing 	<ul style="list-style-type: none"> ▪ Provide GTR 8000 base station (3600 operation) by replacing final four channels Sussex and Kent simulcast cell. ▪ Complete simulcast cell conversion to a Statewide P25 system by refreshing four channels each in Sussex and Kent simulcast cells and eight channels in the New Castle simulcast cell. ▪ Complete antenna network conversion at all simulcast cells ▪ Provide 2 IR sites (Winterthur and Pike Creek) with GTR 8000 base stations (9600) as IP simulcast sub-sites to New Castle simulcast cell and replace its antenna network. ▪ Coverage testing for New Castle
8	<ul style="list-style-type: none"> ▪ IR site conversion to P25 ▪ Provide Fault Management system. ▪ Implement geographically separated Master Site redundancy. ▪ Relocate conventional equipment. ▪ Lifecycle release program. ▪ Perform coverage testing and final system acceptance. 	<ul style="list-style-type: none"> ▪ Provide Wilmington IR Site with GTR 8000 base station (9600) and replace antenna network. ▪ Provide MOSCAD Fault Management system. ▪ Implement Dynamic System Resiliency (DSR) to add geographic redundancy for Master Site. ▪ Implement ISSI 8000 refresh for P25 Interoperability with State of Maryland and Delaware Department of Corrections. ▪ Perform coverage test including in-building testing for up to 300 buildings defined by the State. ▪ Move existing NPSPAC equipment into the new Prime Site shelters.

- Entirety of the proposal of Motorola Solutions

Upon request and after the execution of a non-disclosure agreement (“NDA”), the State of Delaware will provide on electronic media the entire Motorola proposal to interested proposers.

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A. Conflicts of Interest

The RFP proposer and all members of his or her team shall certify that it complies with all provisions of Delaware Code §144. Beyond adherence to this code, the Proposer and all proposed sub-contractors affirm and shall perform at all times in the best interest of the State of Delaware's Division of Communications and with specificity avoid any gifts with a total value of \$25 or more or other forms of remuneration from Motorola Solutions or any of Motorola's principle suppliers or service support shops.

The sole exceptions to this provision relates to staging or special Motorola presentations in which food may be provided for all attendees as well as travel while in the Chicago area from a commercial airport to hotel and staging facility in Illinois.

B. Proposal Evaluation Criterion

Proposals shall be evaluated by the State based upon the written response of offerors. The criteria to be evaluated include and be evaluated based upon the responses of proposers as outlined in RFP Section XII.:

1. Experience in the migration of Motorola Smartzone systems to ASTRO25 P25 technology in a regional (three or more counties or statewide basis). This is defined in Section III A and B of the RFP.
2. The knowledge, skills, and abilities of the proposed team to address comprehensively those issues identified in Section III of the RFP. These skillsets are defined in Section III C through Z and IX B of the RFP.
3. The proposer's overall understanding and the unique administrative challenges associated with a multi-year migration project; e.g. management of budget to ensure that the total "not to exceed" proposed price is not exceeded while ensuring that oversight of Motorola's performance is maintained.
4. The proposed total cost to the State of Delaware and the reasonableness of proposed annual costs in association with the schedule of events to be performed by Motorola in Section IX B. Included within this evaluation element will be demonstrated budget management and forecasting skills.
5. The financial stability of the proposed consulting team.

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C. Proposer Team Submittals

Offerors responding to this RFP shall provide a written response following the format of the document except as noted. Responses shall be neatly prepared with type fonts of no less than twelve ("12") font. The State requests that proposals be prepared economically with the minimization of any marketing information not directly related to the project.

1. In this section the proposer shall introduce his/her firm or high level composition of the project team. This section should identify the address of the lead firm and/or person who will be the principle team contact with the State of Delaware. The principle team contact should be identified by full name, mailing address, email address, work phone telephone number, and cellular telephone contact number. The federal tax identification number shall also be provided as well as commitment to acquire a Delaware business tax license in each year of the project if selected.
2. Based upon Section II of the RFP, the proposer shall describe in detail the experience of the team in supporting multi-year 800 MHz public safety communications systems upgrades on a regional (three or more counties) or statewide basis. Examples or project summations of such projects should be provided in this section. Additionally, resumes of proposed team members and their level of competency and experience shall be included.
3. With respect to Section III of the RFP, the proposer will name the principal team member(s) who will provide expertise in providing the knowledge, skills, and abilities related to each item in III A-Z. The resume of such person shall have been previously provided per XII C.
4. The proposer shall provide information describing how it proposes to support the State on a multi-year basis and remain within the provided "not to exceed" total budget for the eight years of work. The essential element for the State to understand is this proposer's experience in negotiating with Motorola as well as the Division of Communications in the understanding of a multiple year project that requires consultant experience in budget management and the forecasting of consultant resources within annual fiscal years with an emphasis on working within a "not to exceed" project annual budget. The State must be comfortable that the consultant will not unnecessarily front-load hours and then at the conclusion of the project have an insufficient available budget to provide appropriate consulting support.
5. Recognizing that this is an eight year consulting project, the proposer shall demonstrate in detail the financial stability of the proposed firm or team. Financial stability should include, as applicable, multi-year 10-K statements for owning corporations or annual profit and loss statements for non-corporate entities. The proposer shall indicate if it will acquire a payment bond for sub-contractors. The State recognizes that finances are sensitive issues for all potential proposers. Proposers may claim that such information is proprietary so that it is not subject to review by competitors.
6. The proposer shall provide a detailed summation of how it intends to provide the services to the State of Delaware and Division of Communications as specified in RFP Section IX A.

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7. The proposer shall provide a detailed summation of how it intends to provide support to the State of Delaware and Division of Communications in overseeing the work of Motorola in providing the services and products included in their proposal and executed contract with the State. While experience with other manufacturers in similar projects is relevant, the optimal proposer will provide information on the experience of its firm or team in working with Motorola. This section should show an understanding of where it has observed past weaknesses in projects involving Motorola and the value that the firm or team has brought to the client in overcoming any identified weaknesses.
8. The proposal shall affirm that there are no conflicts of interest as described in Section X of the RFP. The RFP response shall affirm that all consulting advice and guidance provided to the Division of Communications shall be offered based upon what is best, in the firm or team's professional opinion, for the State of Delaware.
9. With respect to Section IV of the RFP, the proposer shall identify the firm or individual who accepts responsibility for the project and the acts of all members of the firm or team.

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**Appendix C.
Pricing Schedule**

Schedule of Consultant Team Inclusive Hourly Rates

Team Member Names & Role	Summary of Project Responsibilities	Hourly Rate including travel

All expenses incurred in the performance of the services are to be paid by the Vendor. Travel rates not to exceed the Federal Rates established by the U.S. General Services Administration (GSA) available at <http://www.gsa.gov/perdiem> .

Proposed Fiscal Year and Project Not to Exceed Consultant Team Budget

Fiscal Year in Which Services are Delivered	Projected Budget for Fiscal Year
FY 2017	
FY 2018	
FY 2019	
FY 2020	
FY 2021	
FY 2022	
FY 2023	
FY 2024	
Not to Exceed to Total Budget	

Proposed ACA Fees

ACA Surcharge Fee	
ACA Surcharge Basis (\$ or % per hour, % of invoice, etc.)	

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Appendix D
Professional Services Agreement

Appendix D is included with this RFP and provides bidders with an opportunity to review the Professional Services Agreement that will be executed between the awarded vendor(s) and the State.

Appendix D **should not** be included in a respondent's proposal.

Any exceptions a respondent may have to Appendix D must be listed on Attachment 3 of the RFP. Attachment 3 must be included in the respondent's proposal. Exceptions not listed on Attachment 3 will not be considered at any point in the evaluation or award process.

PROFESSIONAL SERVICES AGREEMENT
for
[ENTER CONTRACT NAME]
Contract No. [Enter Contract Number]

This Professional Services Agreement ("Agreement") is entered into as of _____, 20__ (Effective Date) and will end on _____, 20__, by and between the State of Delaware, Department of _____, Division of _____, _____ ("Delaware"), and _____, (the "Vendor"), with offices at _____.

WHEREAS, Delaware desires to obtain certain services to _____; and _____.

WHEREAS, Vendor desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

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FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Vendor agree as follows:

a. **Services.**

- (A) Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- (B) Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix ; and (c) Vendor's response to the request for proposals, attached hereto as Exhibit . The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- (C) Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- (D) Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment

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b. Payment for Services and Expenses.

- (A) The term of the initial contract shall be from _____, 20__ through _____, 20__.
- (B) Delaware will pay Vendor for the performance of services described in Appendix ____, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix ____.
- (C) Delaware's obligation to pay Vendor for the performance of services described in Appendix ____, Statement of Work will not exceed the fixed fee amount of \$_____. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- (D) Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- (E) Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- (F) Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
- (G) Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- (H) Invoices shall be submitted to:

c. Responsibilities of Vendor.

- (A) Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by

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the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

- (B) It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- (C) Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- (D) Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement

- (E) Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- (F) Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- (G) Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- (H) Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

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- (I) Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- (J) The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

d. Time Schedule.

- (A) A project schedule is included in Appendix A.
- (B) Any delay of services or change in sequence of tasks must be approved in writing by Delaware.
- (C) In the event that Vendor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

e. State Responsibilities.

- (A) In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- (B) Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- (C) The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- (D) The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- (E) Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:
 - a. Copies of reports, surveys, records, and other pertinent documents;
 - b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

- (F) Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

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- (G) Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- (H) Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

f. **Work Product.**

- (A) All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- (B) Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- (C) In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- (D) Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

g. **Confidential Information.**

To the extent permissible under 29 *Del. C.* ' 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

h. **Warranty.**

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(A) Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

(B) Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

i. Indemnification; Limitation of Liability.

(A) Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:

- i. the negligence or other wrongful conduct of the Vendor, its agents or employees, or
 - ii. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that
- a. Vendor shall have been notified promptly in writing by Delaware of any notice of such claim; and

(B) If Delaware promptly notifies Vendor in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:

- i. Delaware's misuse or modification of the Deliverable;
 - ii. Delaware's failure to use corrections or enhancements made available by Vendor;
 - iii. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
 - iv. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
 - v. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
- a. Procure the right for Delaware to continue using it,
 - b. Replace it with a non-infringing equivalent,
 - c. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

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j. Employees.

- (A) Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- (B) Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.
- (C) Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of Vendor who will be assigned to this project.

k. Independent Contractor.

- (A) It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.
- (B) Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- (C) Vendor shall be responsible for providing liability insurance for its personnel.
- (D) As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

l. Dispute Resolution.

- (A) At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), 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

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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.

- (B) If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB 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 OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB 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.

m. Suspension.

- (A) Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- (B) In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

n. Termination.

- (A) This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- (B) This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with Delaware prior to termination.

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(C) If termination for default is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

(D) If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

(E) The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

(F) Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

o. **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.

p. **Assignment; Subcontracts.**

- (A) Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- (B) Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.

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- (C) Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- (D) Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- (E) The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

q. **Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

r. **Non-Appropriation of Funds.**

- (A) Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this 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.
- (B) Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

s. **State of Delaware Business License.**

Vendor and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* ' 2502.

t. **Complete Agreement.**

- (A) This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- (B) If the scope of any provision of this Agreement is 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 Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

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- (C) Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

u. Miscellaneous Provisions.

- (A) In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- (B) Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- (C) The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- (D) Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- (E) Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.
- (F) Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract 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.
- (G) This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- (H) Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor's performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

v. Insurance.

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(A) Vendor shall maintain the following insurance during the term of this Agreement:

1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
2. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate, **and**
3. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate; or
4. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate, or
5. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

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

(C) Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

[ENTER AGENCY NAME]
[ENTER AGENCY ADDRESS]
[ENTER AGENCY CONTACT]

(D) In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

w. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor 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 Vendor 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 Vendor shall meet and confer about coordination of representation in such action.

x. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.

y. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

DELAWARE:
(Agency contact address)

STATE OF DELAWARE
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VENDOR:

(Vendor contact address) _____

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE
DEPARTMENT OF _____

Witness

Name

Title

Date

VENDOR

Witness

Name

Title