

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
RECOVERY AUDIT CONTRACTORS (RAC's) FOR MEDICAID
ISSUED BY DHSS/DMMA
RFP NUMBER HSS-15-024**

I. Overview

The State of Delaware Department of Health and Social Services-Division of Medicaid and Medical Assistance, seeks professional services to Recovery Audit Contractor as Mandated by CMS . 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: 04/20/2015
Deadline for Questions	Date 05/04/2015
Response to Questions Posted by:	Date: 05/11/2015
Deadline for Receipt of Proposals	Date: 06/01/2015 at 11:00 AM (Local Time)
Estimated Notification of Award	Date: 06/15/2015

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 that no activity related to this proposal contract will take place outside of the United States. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A mandatory pre-bid meeting has not been established for this Request for Proposal.

II. Scope of Services

DMMA is interested in enhancing and expanding its current and on-going Medicaid claims and encounter review and auditing process. The focus of the expansion will be a post-payment review of Medicaid claims and encounters from providers in the following high risk areas for overpayments, such as:

- Dental Services
- Hospice
- Pharmacy
- Outpatient
Hospital Services
Inpatient Hospital

STATE OF DELAWARE
DHSS DMMA

Services Nursing
Homes

- Physical Therapy/Occupational Therapy
- Durable Medical Equipment
- Home Health Services

The retroactive period for reviewing claims and encounters will be three years from the date of the onset of the review.

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.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

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 capacity to meet requirements (size, financial condition, etc.)
3. Location (geographical)
4. Demonstrated ability
5. Familiarity with public work and its requirements
6. Distribution of work to individuals and firms or economic considerations
7. Other criteria necessary for a quality cost-effective project

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

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

STATE OF DELAWARE
DHSS DMMA

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.

Linda Murphy
1901 N. DuPont Highway
Lewis Bldg. New Castle, DE 19720
Linda.Murphy@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:

STATE OF DELAWARE
DHSS DMMA

- 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 6 electronic copy on CD or DVD media disk,. 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 **11:00 AM (Local Time) on 6/1/2015**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Kieran Mohammed
Delaware Health and Social Services
Herman M. Holloway Sr. Campus
Procurement Branch
Main Administration Bldg., Sullivan Street
Second Floor, Room #257
1901 N. DuPont Highway, New Castle, DE 19720**

Vendors are directed to clearly print “BID ENCLOSED” and “RFP NO. HSS-15-024” 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

STATE OF DELAWARE
DHSS DMMA

delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

3. Proposal Modifications

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

4. Proposal Costs and Expenses

The 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 07/01/2018 . 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 only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

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

STATE OF DELAWARE
DHSS DMMA

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.

STATE OF DELAWARE
DHSS DMMA

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

STATE OF DELAWARE
DHSS DMMA

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.

13. 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.

14. 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 **05/04/2015**. All questions will be consolidated into a single set of responses and posted on the State's website at www.bids.delaware.gov by the date **05/11/2015**. 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.

15. 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

STATE OF DELAWARE
DHSS DMMA

(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.

16. 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.

17. 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.

18. 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.

19. Revisions to the RFP

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

20. Exceptions to the RFP

Any exceptions to the RFP, or the 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.

21. 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.

STATE OF DELAWARE
DHSS DMMA

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.

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.

22. 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 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 Stephen Groff, Director, 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.

STATE OF DELAWARE
DHSS DMMA

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.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* §[6986](#). Such selection will be based on the following criteria:
 - N/A

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.	30
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
References	20
Potential income projection, substantiated by prior project management of similar scope and content.	20
Total	100%

STATE OF DELAWARE
DHSS DMMA

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.

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. Contract Use by Other Agencies

REF: Title 29, Chapter 6904(e) Delaware Code. If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

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

STATE OF DELAWARE
DHSS DMMA

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 3 years with 2 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.

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 employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

STATE OF DELAWARE
DHSS DMMA

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 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.

STATE OF DELAWARE
DHSS DMMA

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.

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.

STATE OF DELAWARE
DHSS DMMA

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:

**DHSS DMMA
1901 N. DuPont Highway
Lewis Bldg., New Castle, DE 19720
Linda Murphy**

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

STATE OF DELAWARE
DHSS DMMA

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 outlined in the attached DHSS Contract Boilerplate, Appendix C.
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.

STATE OF DELAWARE
DHSS DMMA

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. 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%).

j. Penalties

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

k. Termination of Contract

The contract resulting from this RFP may be terminated as follows by DHSS DMMA.

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.

STATE OF DELAWARE
DHSS DMMA

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.

I. 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.

m. 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.

n. 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.

o. 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

STATE OF DELAWARE
DHSS DMMA

proposal by completing Attachment 6, and are subject the approval and acceptance of DMMA.

p. 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.

q. Fair Background Check Practices

Pursuant to 29 Del. C. [§6909B](#) and effective November 4, 2014 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.

r. 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://desexoffender.dsp.delaware.gov/SexOffenderPublic/>

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

STATE OF DELAWARE
DHSS DMMA

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.

s. 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.

t. 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.

u. 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.

v. 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

STATE OF DELAWARE
DHSS DMMA

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.

w. 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.

x. 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.

y. 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.

z. 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.

STATE OF DELAWARE
DHSS DMMA

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. **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.
8. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number HSS 14-058 on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
9. **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.

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

STATE OF DELAWARE
DHSS DMMA

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
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C-Standard DHSS Contract Boilerplate

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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 DMMA. 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.

AGENCIES MAY NOT REMOVE SUBCONTRACTING 2ND TIER REPORTS –
Reporting is required by Executive Order.

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

STATE OF DELAWARE
DHSS DMMA

during the covered periods shall result in a report even if the contract has expired by the report due date.

STATE OF DELAWARE
DHSS DMMA

Attachment 1

NO PROPOSAL REPLY FORM

Contract No. RFP# HSS 15-024

Contract Title: Recovery Audit Contract

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.**

CONTRACT NO.: RFP# HSS 15-024
CONTRACT TITLE: Recovery Audit Contract
DEADLINE TO RESPOND: 05/18/2015 at 11:00 AM (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, DMMA

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, DMMA.

COMPANY NAME _____ Check one)

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

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

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 _____

STATE OF DELAWARE
DHSS DMMA

Note: use additional pages as necessary.

STATE OF DELAWARE
DHSS DMMA

Note: use additional pages as necessary.

STATE OF DELAWARE
DHSS DMMA

Attachment 5

Contract No. HSS 14-058

Contract Recovery Audit Contract

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:	

STATE OF DELAWARE
DHSS DMMA

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.

Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. HSS 14-058	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 X No 4e. Minority Business Enterprise <input type="checkbox"/> Yes X No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes X No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes X No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes X No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		

STATE OF DELAWARE
DHSS DMMA

6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor

STATE OF DELAWARE
DHSS DMMA

Attachment 8

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																		
Subcontracting (2nd tier) Quarterly Report																		
Prime Name:							Report Start Date:											
Contract Name/Number							Report End Date:											
Contact Name:							Today's Date:											
Contact Phone:							*Minimum Required		Requested detail									
Vendor Name*	Vendor TaxID*	Contract Name/ Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran /Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id		

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorusage@state.de.us

STATE OF DELAWARE
DHSS DMMA

Attachment 9

RFP# HSS 15-024
Contract Title: Recovery Audit Contract

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.
NO BID RESPONSE PACKAGES WILL BE ACCEPTED BY THE OSD.**

STATE OF DELAWARE
DHSS DMMA

**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. Six (6)) 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. Six (6)) 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).

STATE OF DELAWARE
DHSS DMMA

APPENDIX B
SCOPE OF WORK AND TECHNICAL REQUIREMENTS

Requirements:

A. Required components of the analysis, audit and recovery process

The contractor must address the following components in the analysis, audit and recovery process:

- Policy review process, including validation of results;
- Process for data mining to target providers and claims/encounters for review, identify potential coding and billing errors, and to provide trends and patterns analysis;
- Provider medical record request process that must include the process for submission of electronic records;
- Aspects of clinical and coding review of medical records including medical necessity;
- Reporting of results;
- Process for communication of results to providers and resolution of disputes prior to the appeals process;
 - Describe the bidder's provider dispute/appeal process proposed for this Contract;
- Provide data, as well as witness testimony if required, for any investigation, appeal or court proceedings emanating from a review of a Medicaid provider by the contractor;
- Process that includes how the provider/claims/encounters review will be conducted, support recovery of overpayments and how provider appeals will be forestalled;
- All written material, including but not limited to reports and letters must be approved by the State;

DMMA reserves the rights to limit, control, or exclude certain categories of recovery, recipients, and/or medical services from the Contractor's work.

Bidder submission requirements for analysis audit and recovery process:

The bidder shall be required to describe the approach that they would take to identify and audit the high risk claims/encounters with the potential for Medicaid overpayment collections. The description of the approach shall include at a minimum all required components that are listed above. The bidder shall also submit examples of audit templates, protocols and time frames for this process. The bidder shall describe how it will conduct the provider/claims/encounters review, support recovery of overpayments and forestall provider appeals.

The description should also include an estimation of the number of on-site audits and desk reviews it could complete within the 12-month period following the start-up phase and a list of criteria by which the Contractor would identify candidates for provider on-site audits and desk reviews.

B. Provider Education and Customer Service Requirements

Contractor shall maintain quality customer service to the providers throughout the Contract.

1. Contractor shall have subject matter experts available to talk directly with providers regarding any issues or questions about the recovery demand letters they receive.
2. DMMA and Contractor shall identify trends or pervasive provider issues that require a broader educational effort statewide. Contractor shall assist the DMMA in developing fraud, misuse and waste-specific educational materials that may be published in the Medicaid Quarterly Bulletin through the fiscal agent. All educational material developed shall be the property of the DMMA.
3. Contractor shall participate in in-person and/or teleconference meetings with provider groups, health care associations and others as designated by DMMA to review the Contractor's methodologies, results and recommendations. Meetings shall be scheduled at the DMMA's discretion, with reasonable efforts made to accommodate any scheduling requests from Contractor
4. Contractor shall maintain a, toll-free telephone number for providers to access during the Contract and run out periods, during the hours of 8 am to 5 p.m. Eastern Standard Time on all weekdays, except on national and state holidays recognized and observed by the State of Delaware.

Bidder requirements for provider education and customer service:

The bidder must describe processes that will be used to communicate methodologies, results and recommendations to provider groups, health care associations and others.

C. Provider Experience

The contractor shall have experience performing data analysis and audits.

The contractor shall have experience performing onsite and desk reviews for at least one other State or Federal Agency client over the past three years.

The bidder requirements to demonstrate experience with data analysis and audits:

The bidder must provide an in depth description of its':

- i. Understanding of state Medicaid programs, preferably the Delaware Medicaid program;
- ii. Understanding of Medicaid program integrity issues and risk areas for waste, fraud and abuse;
- iii. Experience / Success in Medicaid data analysis to identify Medicaid overpayments and improper billings;
- iv. Experience / Success in auditing Medicaid claims/encounters and reviewing medical records to determine overpayments and/or improper payments;
- v. Experience / Success in overpayment recovery; and

STATE OF DELAWARE
DHSS DMMA

- vi. Experience / Success in negotiating with providers and defending recovery actions in the appeals process.

The bidder must provide examples of a summary of Health Care provider on-site and desk audits it has completed for at least one other State or Federal Agency client over the past three years. These summaries should include: Type of provider reviewed; reason for selecting the provider; scope of the review (time frame, type of claim/encounters and services audited); and dollars recovered as a result of the review.

The bidder will state the number of years' prior experience your firm has in addressing Medicaid program integrity issues and auditing Medicaid claims/encounters. Describe in detail your firm's experience relevant to any projects of the type, size, and scope of that described in this RFP.

D. Staffing Requirements

The contractor must staff this project with or have access to qualified professional including but not limited to clinicians experience in the provider types to be reviewed , registered nurses, auditors, certified coders, and health care analysts. The contractor must have access to physicians, dentists, other health care professionals and subject matter experts for claims review and to determine medical necessity.

Key personnel requirements for this project include the following:

Project Director: Individual with relevant experience in managing complex projects, systems and personnel for at least ten (10) years, and relevant experience in conducting health care audits for at least five (5) years. Experience and working knowledge in managing and conducting audits of Medicaid providers is preferred. The Project Manager shall possess a Bachelor's degree or higher. General knowledge of the Medicaid program, particularly coverage and payment rules are required. A Certified Public Accountant in good standing is preferred. The project director must have a working knowledge of the Generally Accepted Government Auditing Standards.

Audit Manager: Individual with relevant experience personally conducting audits of health care providers for at least ten (10) years and directly supervising the work of other health care auditors for at least five (5) years. The Audit Manager shall have detailed knowledge of the Generally Accepted Governmental Auditing Standards and have at least three (3) years' experience in conducting audits under those standards. The Audit Manager shall have working knowledge of the Medicaid program and have detailed knowledge of Medicaid coverage, reimbursement, policies and regulations. A Bachelor's degree or higher in Accounting or Auditing is required. The Audit Manager shall be a Certified Public Accountant in good standing.

STATE OF DELAWARE
DHSS DMMA

Medical Director: Individual with relevant Medicaid experience in the health insurance industry, with a utilization review firm or a health care claims processing organization in a role that involved developing coverage or medical necessity policies and guidelines. The Medical Director must also meet the following requirements:

- Education resulting in receipt of a doctor of medicine or doctor of osteopathy degree;
- A current, active, and unrestricted license (in one or more United States licensing jurisdictions) to practice medicine as a doctor of medicine or doctor of osteopathy;
- Board-certification in a medical specialty and at least three (3) years of medical practice as a board-certified physician;
- Prior work experience in the health insurance industry, a utilization review firm, or another health care claims processing organization in a role that involved developing coverage or medical necessity policies and guidelines;
- Public relations experience, preferably working with physician groups, beneficiary organizations, and/or congressional offices; and
- General knowledge of the Medicaid program, particularly the coverage and payment rules.

Medical Review/Utilization Manager: Individual with recent and relevant supervisory experience in medical utilization review.

Education (required): The Medical Review Manager shall possess a bachelor's degree in nursing and/or social or health service with an active Registered Nurse license. A working knowledge of conducting Medicaid provider audits is necessary. The MR/U Manager shall possess the ability and skills to appropriately interpret State Medicaid regulations and policies. A minimum of three (3) years' experience is required.

Statistician: Individual with relevant and recent experience in the use of statistics to support corporate business information needs; experience in the use of statistics to detect fraud, the use of fuzzy logic, the development of mathematical models, neural networks and data mining methods of analysis. Knowledge of health care information and claims data (ICD-9 codes (and all successors), physician specialty codes, survey and certification data etc.) is also required.

Technical Point of Contact for Information Technology: Individual with relevant IT experience who can initiate, focus, and facilitate ongoing communications and information exchange with regard to telecommunications. This individual should have Medicaid systems experience such as Medicaid Management Information Systems (MMIS) or have experience working with a Medicaid claims data system (three (3) years-experience preferred).

Bidder submission staffing requirements:

The bidder shall describe how it obtains subject matter experts for reviews and how it intends to staff this project, including the number and professional certifications of each

STATE OF DELAWARE
DHSS DMMA

individual who will be involved and must indicate whether the individual is working on this project on a part time or full time basis.

The bidder shall address how it will meet the key personnel requirements in the proposal.

E. Reporting/meeting Requirements

The Contractor will be required to submit the following:

1. Immediate Reporting of suspicions of fraud.
2. Monthly Reporting
Comprehensive report in written and electronic format that includes but is not limited to:
 - Number of provider reviews opened, pending and completed for the current month, year to date, and averages per month,
 - Fraud and/or abuse issues identified,
 - Overpayment amounts identified in the previous month, Contract to date, and average amount per month,
 - Means by which overpayments were identified,
 - Actions taken,
 - Recoupment amount collected in the previous month, Contract to date, and average amount per month,
 - Type of provider education referred to fiscal agent for completion,
 - Number of cases before DMMA awaiting approval,
 - Number of cases recommended for referral to MFCU,
 - Number of appeal notifications received,
Case status of appeals, and
 - Discussion that may include but is not limited to: problems encountered, provider specific or statewide trends noted, and regulation revisions needed.
3. Weekly conference calls
Contractor's Project Manager shall conduct weekly strategy/problem solving conference calls with DMMA's Contract Manager and other designated staff to commence when the Contract is signed. Contractor and DMMA shall mutually agree when conference call schedule shall change.
4. Quarterly Meetings
Contractor shall conduct in conjunction with DMMA quarterly meetings to present the quarterly report, review tracking activities and discuss issues, problems, suggested solutions, relevant findings, trends, special study projects, and enforcement challenges due to regulation or policy weaknesses.
5. Quarterly Reports
Each fiscal quarter, Contractor shall prepare a status report containing summarized data from the monthly reports, as well as any aberrant issues identified. This report shall be presented and discussed at the quarterly meetings.
6. Annual Reports
An annual report shall be submitted to DMMA after the end of the Contract year but no later than 60 days. The annual report shall contain a summary of

STATE OF DELAWARE
DHSS DMMA

the information contained in the monthly and quarterly reports as well as conclusions and recommendations to the Agency. At least 30 days prior to the report due date, the Agency shall provide the Contractor with any other specific requested subject matter to be addressed in the annual report.

7. Final Executive Summary Report
8. Contractor shall prepare an executive summary report. This report shall be provided to the Agency 30 days prior to the final end date of the Contract. The report shall include Contract results to date, status of all activities in progress and a transition plan that shall allow the Agency to continue to operate the recovery program for pending demands and other outstanding issues.
9. Ad Hoc Reports
Agency may periodically require ad hoc reports of the Contractor that will lead to further potential recoveries by the Contractor as part of the contingency fee as stated in the contract. DMMA shall notify the Contractor of requested report content and submission timeframes.

The format for the report will be developed jointly by DMMA and the Contractor. All electronic reports and documents that are submitted by the RAC must be compatible with DMMA's current software.

Bidder submission requirements for Reporting:

Provide examples of reports produced for projects of the type, size, and scope of that described in the RFP.

F. Data/software/hardware requirements

The contractor must have the capacity to upload monthly Medicaid claims data from the MMIS. The contractor must bear all costs associated with this requirement. Contractor shall assume cost of hardware, software, electronic media and/or telecommunications requirements for the Agency's fiscal agent, solely as required by Contractor in the conduct of its work on this contract.

Bidder submission data/software/hardware requirements:

The bidder must describe how it will accomplish this and its ability to upload, maintain, and use MMIS data for the type of data mining and analysis required for this project.

The bidder must give an estimate of the time needed to implement initial up-loads of MMIS claims data and to obtain the other information necessary for the reviews.

The bidder must also describe what other Medicaid systems support it can bring to this project, including whether it has access to external data sources for benchmarking and data modeling. The bidder must describe the type of data analysis it would use to identify potential overpayments that could result from provider activities as described in Item 1.

G. HIPAA and Confidential Personal Information

STATE OF DELAWARE
DHSS DMMA

The contractor is expected to create and maintain a log capable of tracking privacy authorizations applicable to RAC activities. The selected vendor will comply with the standards of privacy set forth in CFR 431.300-306. The selected vendor will also know the HIPAA General Administrative Requirements of 42 CFR Part 160 and to comply with HIPAA's compliance and enforcement provisions. The selected vendor is expected to enter into a HIPAA business associate agreement with DMMA.

H. Internal quality assurance

The contractor shall have an internal quality control process that ensures that results of data analysis, data mining and audit activities are accurate, reliable and valid.

Bidder submission requirements:

The bidder must describe its internal quality control process that meets the requirements.

I. Provider Appeals

Providers will have no appeals on underpayments. The RAC will be responsible for the first two levels of the appeals on overpayments. The Medicaid Director of the RAC will be responsible for the second level of appeal. If the provider is still in disagreement after the second level of appeal, the provider will be notified of the rights available to them through DMMA. The contractor will be responsible for assuring DMMA receives all documents once the appeal has been transferred to DMMA. On reviews, reconsideration of the appealed findings may be requested. On audits where DMMA has accepted the audit and the provider still is not satisfied with findings, the provider may ask for an administrative hearing. The contractor must provide data, as well as live witness testimony, at no cost for any investigation, appeal, or court proceedings emanating from a review of a Medicaid provider by the contractor.

J. Contractor Compensation Structure:

The Contractor shall submit a monthly invoice by the fifteenth (15) of each month to DMMA for activity in the previous calendar month. The invoice shall include:

1. Overpayments Collected - Identification of each case for which recovery of an overpayment has been obtained for the previous calendar month, the amount of the claim, the amount of the recovery, and the amount of the contingency fee. Overpayment amounts shall only be on this report if the amount has been collected from the Medicaid provider (in summary and detail);
2. Underpayments Identified and Paid to the Provider – Identification of each case for which an underpayment was determined in the previous calendar month, the amount of the underpayment, and the amount of the contingency fee. Underpayment amounts shall only be on this report if the amount has been paid back to the provider by DMMA (in summary and detail).
3. The gross recovery amount (overpayments minus underpayments) must be itemized on each monthly bill. It was the intention of the federal government and

STATE OF DELAWARE
DHSS DMMA

DMMA that the contingency fee amount not be greater than the revenue generated from such reviews; therefore, the majority of the work shall be geared toward the identification and recovery of overpayments;

4. Total amount of payments received by the contractor from DMMA since the previous invoice;
5. Net amount due contractor as of the date of the invoice; and
6. The contract will not receive reimbursement for overpayments identified, only on the amounts actually collected from the Medicaid providers. The collection process can be delayed based on provider appeals.

The Contractor shall be paid a percentage of the actual overpayment recoveries, in addition to, and underpayment contingency fee based on amounts actually paid to a provider for each proceeding month. Actual recoveries are the overpayment amounts refunded to DMMA by the providers, whether by check or through a debit adjustment to their Medicaid reimbursement. If the provider is refunding the overpayment in installments, the Contractor fee will be based on the actual amounts paid as they are received by DMMA. The Contractor payments will only be based on overpayment amounts recovered plus contingency fees on underpayments discovered that are paid to a provider, not on overpayment or underpayments amount identified. Based on the percentage proposed by the Contractor and accepted by DMMA, DMMA will calculate the payment due the Contractor and will remit it to the Contractor on a monthly basis.

If the provider refuses to pay, collection will be handled through DMMA collections process. The Contractor will not be paid until actual funds are collected. On those claims/encounters that are process through DMMA's collection process, the Contractor will receive payment of half of the agreed upon contingency fee. If the provider chooses to pay back the recoupment through adjustments to his Medicaid reimbursement, this would be treated same as cash and payments to the contractor would be made based on the amount credited each month.

The contractor will not receive a contingency fee for claims/encounters that a Medicaid provider identifies as an overpayment to their company. These self-identified claims should be referred to DMMA for review and a determination as to whether an overpayment actually occurred. If during the course of the RAC's review work a provider identifies additional claims/encounters as potential overpayments these claims/encounters should not be referred to DMMA. The RAC will receive the contingency fee for any overpayments identified and collected as part of the RAC's claims/encounters that they identified for review.

Vendors are to propose their compensation rates using the Cost Proposal Form provide in Appendix F of this RFP. No other categories of costs will be considered by DMMA. No additional fees or costs of any sort will be paid under this contract.

STATE OF DELAWARE
DHSS DMMA

**APPENDIX C
STANDARD DHSS CONTRACT**

CONTRACT

A) Introduction

1. This contract is entered into between the Delaware Department of Health and Social Services (the Department), and _____ (the Contractor).
2. The Contract shall commence on _____ and terminate on _____ unless specifically extended by an amendment, signed by all parties to the Contract. Time is of the essence.

B) Administrative Requirements

1. Contractor 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 Contractor'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 Contractor in their negligent performance under this Contract.
2. The Contractor 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 Contractor is an independent contractor and is not an employee of the State.
3. During the term of this Contract, the Contractor shall, at its own expense, carry insurance with minimum coverage limits as follows:

	a) Comprehensive General Liability	\$1,000,000
and	b) Medical/Professional Liability	\$1,000,000/\$3,000,000
or	c) Misc. Errors and Omissions	\$1,000,000/\$3,000,000
or	d) Product Liability	\$1,000,000/\$3,000,000

All contractors must carry (a) and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

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

STATE OF DELAWARE
DHSS DMMA

e) Automotive Liability (Bodily Injury)	\$100,000/\$300,000
f) Automotive Property Damage (to others)	\$25,000

Contractor shall be responsible for providing liability insurance for its personnel.

4. The policies required under Paragraph B3 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.
5. The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance as detailed in Paragraph A 2.
6. Contractor 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:
 - a. The negligence or other wrongful conduct of the Contractor, its agents or employees, or
 - b. Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that
 - i. Contractor shall have been notified promptly in writing by Delaware of any notice of such claim; and
 - ii. Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

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

- a. Delaware's misuse or modification of the Deliverable;
- b. Delaware's failure to use corrections or enhancements made available by Contractor;
- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Contractor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification, or materials provided by Client or any third party. If any Deliverable is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either

STATE OF DELAWARE
DHSS DMMA

- i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

7. The Contractor acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Delaware business license, as applicable and required by law, to engage in business and provide the goods and/or services to be acquired under the terms of this Contract. The Contractor acknowledges and is aware that Delaware law provides for significant penalties associated with the conduct of business without the appropriate license.

8. The Contractor agrees to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Contract. The Contractor shall immediately notify the Department in writing of any change in the status of any accreditations, licenses, or certifications in any jurisdiction in which they provide Service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, the Contractor understands that such action may be grounds for termination of the Contract.

If a contractor is under the regulation of any Department entity and has been assessed Civil Money Penalties (CMPs), or a court has entered a civil judgment against a Contractor or vendor in a case in which DHSS or its agencies was a party, the Contractor or vendor is excluded from other DHSS contractual opportunities or is at risk of contract termination in whole, or in part, until penalties are paid in full or the entity is participating in a corrective action plan approved by the Department.

A corrective action plan must be submitted in writing and must respond to findings of non-compliance with Federal, State, and Department requirements. Corrective action plans must include timeframes for correcting deficiencies and must be approved, in writing, by the Department.

The Contractor will be afforded a thirty (30) day period to cure non-compliance with Section 8(a). If, in the sole judgment of the Department, the Contractor has not made satisfactory progress in curing the infraction(s) within the aforementioned thirty (30) days, then the Department may immediately terminate any and/or all active contracts.

9. Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with all terms, requirements and provisions of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and any other federal, state, or local, law, statute, regulation or applicable policy along with all amendments and revision of these laws, in the performance of this Contract and will not discriminate against any applicant or employee or service recipient because of race, creed, religion, age, sex, color, national or ethnic origin, disability, status as a person in a marriage versus a person in a civil union, veteran's status or any unlawful discriminatory basis or criteria. Contractor agrees to honor the conflict of interest provisions of the Delaware Code of Ethics, 29 *Del. C.* Ch. 58.

STATE OF DELAWARE
DHSS DMMA

10. Contractor 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.
11. Contractor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
12. Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor 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.

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 Contractor for Delaware in connection with the provision of the Services, Contractor shall pass through or assign to Delaware the rights Contractor 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.

13. This Contract may be terminated in whole or in part by the Department upon five (5) calendar days written notice for cause or documented unsatisfactory performance, provided that, in its sole discretion, the Department may impose sanctions in lieu of termination as set forth in Appendix A attached to and incorporated into this Contract.

This Contract 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 Contract through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

This Contract may be terminated in whole or in part by the Department for its convenience, but only after Contractor is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with The Department prior to termination.

If termination for default is effected by the Department, the Department will pay Contractor 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 Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the Department by reason of Contractor's default.
- b. Upon termination for default, the Department may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the Department shall have the right to make an unsolicited offer of employment to any employees of Contractor assigned to the

STATE OF DELAWARE
DHSS DMMA

performance of the Contract, notwithstanding any provisions in this document to the contrary.

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

The rights and remedies of the Department and Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Contract.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, models, maps, photographs, and reports or other material prepared by Contractor under this contract shall, at the option of the Department, become the property of the Department.

In the event of termination, the Contractor, upon receiving the termination notice, shall immediately cease work and refrain from purchasing contract related items unless otherwise instructed by the Department.

The Contractor shall be entitled to receive reasonable compensation as determined by the Department in its sole discretion for any satisfactory work completed on such documents and other materials that are usable to the Department. Whether such work is satisfactory and usable is determined by the Department in its sole discretion.

Should the Contractor cease conducting business, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of, or become subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors, then at the option of the Department, this Contract shall terminate and be of no further force and effect. Contractor shall notify the Department immediately of such events.

14. The Department may suspend performance by Contractor under this Contract for such period of time as the Department, at its sole discretion, may prescribe by providing written notice to Contractor at least 30 working days prior to the date on which the Department wishes to suspend. Upon such suspension, the Department shall pay Contractor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Contractor shall not perform further work under this Contract after the effective date of suspension. Contractor shall not perform further work under this Contract after the effective date of suspension until receipt of written notice from the Department to resume performance.

In the event the Department suspends performance by Contractor for any cause other than the error or omission of the Contractor, for an aggregate period in excess of 30 days, Contractor shall be entitled to an equitable adjustment of the compensation payable to Contractor under this Contract to reimburse for additional costs occasioned as a result of such suspension of performance by the Department based on appropriated funds and approval by the Department.

Any notice required or permitted under this Contract shall be effective upon receipt and may be hand delivered with receipt requested or by registered or certified mail with return receipt requested to the addresses listed below. Either Party may change its address for notices and official formal correspondence upon five (5) days written notice to the other.

STATE OF DELAWARE
DHSS DMMA

To the Department at:

To the Contractor at:

15. In the event of amendments to current Federal or State laws which nullify any term(s) or provision(s) of this Contract, the remainder of the Contract will remain unaffected.

If any term or provision of this Contract 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 Contract, 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.

16. This Contract shall not be altered, changed, modified, or amended except by written consent of all Parties to the Contract.

17. The Contractor shall not enter into any subcontract for any portion of the services covered by this Contract without obtaining prior written approval of the Department. Approval by Delaware of Contractor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

Any such subcontract shall be subject to all the conditions and provisions of this Contract. The approval requirements of this paragraph do not extend to the purchase of articles, supplies, equipment, rentals, leases and other day-to-day operational expenses in support of staff or facilities providing the services covered by this Contract.

18. This entire Contract between the Contractor and the Department is composed of these several pages and the attached:

Appendix A– Divisional Requirements

Appendix B –Contract Budget

Appendix C- Service Description (Scope of Services)

DHSS Request for Proposal (RFP) # HSS-XX-XXX *(if applicable)*

Vendor's Proposal in response to RFP #HSS-XX-XXX *(if applicable)*

This contract and its Appendices shall constitute the entire agreement between The Department and Contractor with respect to the subject matter of this Contract and shall not be modified or changed without the express written consent of the parties. The provisions of this contract supersede all prior oral and written quotations, communications, agreements, and understandings of the parties with respect to the subject matter of this Contract.

STATE OF DELAWARE
DHSS DMMA

Should a conflict arise in the language found among the above-named documents, the documents shall govern in the following order:

- 1) This DHSS Contract
- 2) DHSS Request for Proposal (RFP)# HSS-XX-XXX *(if applicable)*
- 3) Vendor's Proposal in response to RFP # HSS- XX-XXX *(if applicable)*
- 4) Appendix A- Divisional Requirements
- 5) Appendix B- Contract Budget *(use only if #2 and #3 above are not necessary or do not contain a budget)*
- 6) Appendix C- Service Description (Scope of Services) *(use only if #2 and #3 above are not necessary)*

If the scope of any provision of this Contract 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 Contract shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

Contractor may not order any product requiring a purchase order prior to The Department'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 Contract 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.

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

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

20. In the event Contractor is successful in an action under the antitrust laws of the United States and/or the State of Delaware against a vendor, supplier, subcontractor, or other party who provides particular goods or services to the Contractor that impact the budget for this Contract, Contractor agrees to reimburse the State of Delaware, Department of Health and Social Services for the pro-rata portion of the damages awarded that are attributable to the goods or services used by the Contractor to fulfill the requirements of this Contract. In the event Contractor refuses or neglects after reasonable written notice by the Department to bring such antitrust action, Contractor shall be deemed to have assigned such action to the Department.

21. Contractor covenants that it presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that in the performance of this contract, it shall not employ any person having such interest.

STATE OF DELAWARE
DHSS DMMA

22. Contractor covenants that it has not employed or retained any company or person who is working primarily for the Contractor, to solicit or secure this Contract, by improperly influencing the Department or any of its employees in any professional procurement process; and, the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the violation of this provision, the Department shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
23. The Department shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. Contractor shall have no right to copyright any material produced in whole or in part under this Contract. Upon the request of the Department, the Contractor shall execute additional documents as are required to assure the transfer of such copyrights to the Department.
- Contractor 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 Contractor retains title, whether individually by Contractor 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.
- If the use of any services or deliverables is prohibited by court action based on a U.S. patent or copyright infringement claim, Contractor shall, at its own expense, buy for the Department the right to continue using the services or deliverables or modify or replace the product with no material loss in use, at the option of the Department.
24. Contractor agrees that no information obtained pursuant to this Contract may be released in any form except in compliance with applicable laws and policies on the confidentiality of information and except as necessary for the proper discharge of the Contractor's obligations under this Contract.
25. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by authorized representatives of all parties and attached to the original Contract.
26. If the amount of this contract listed in Paragraph C2 is over \$25,000, the Contractor, by their signature in Section E, is representing that the Firm and/or its Principals, along with its subcontractors and assignees under this Contract, are not currently subject to either suspension or debarment from Procurement and Non-Procurement activities by the Federal Government.

C)Financial Requirements

STATE OF DELAWARE
DHSS DMMA

1. The rights and obligations of each Party to this Contract are not effective and no Party is bound by the terms of this contract unless, and until, a validly executed Purchase Order is approved by the Secretary of Finance and received by Contractor, *if required by the State of Delaware Budget and Accounting Manual*, and all policies and procedures of the Department of Finance have been met. The obligations of the Department under this Contract are expressly limited to the amount of any approved Purchase Order. The State will not be liable for expenditures made or services delivered prior to Contractor's receipt of the Purchase Order.
2. Total payments under this Contract shall not exceed \$_____ in accordance with the budget presented in Appendix C. Payment will be made upon receipt of an itemized invoice from the Contractor in accordance with the payment schedule, if any. The contractor or vendor must accept full payment by procurement (credit) card and or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs, or conditions. Contractor is responsible for costs incurred in excess of the total cost of this Contract and the Department is not responsible for such costs.

Contractor 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 Contractor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt.

3. Validity and enforcement of this Contract is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the Department may immediately terminate this Contract, and absent such action this Contract 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.

Notwithstanding any other provisions of this Contract, this Contract shall terminate and the Department's obligations under it shall be extinguished at the end of the fiscal year in which the state of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts, which will then become due.

4. 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.
5. The Contractor is solely responsible for the payment of all amounts due to all subcontractors and suppliers of goods, materials, or services, which may have been acquired by or provided to the Contractor in the performance of this contract. The Department is not responsible for the payment of such subcontractors or suppliers.

Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Contractor. If an Appendix specifically provides for expense reimbursement, Contractor shall be reimbursed only for reasonable expenses incurred by Contractor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

STATE OF DELAWARE
DHSS DMMA

6. The Contractor shall not assign the Contract or any portion thereof without prior written approval of the Department and subject to such conditions and revisions as the Department may deem necessary. No such approval by the Department of any assignment shall be deemed to provide for the incurrence of any obligations of the Department in addition to the total agreed upon price of the Contract.
7. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under this Contract in accordance with generally accepted accounting principles and practices. Contractor shall also maintain the financial information and data used by Contractor in the preparation of support of its bid or proposal. Contractor shall retain this information for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Department shall have access to such books, records, documents, and other evidence for the purpose of inspection, auditing, and copying during normal business hours of the Contractor after giving reasonable notice. Contractor will provide facilities for such access and inspection.
8. The Contractor agrees that any submission by or on behalf of the Contractor of any claim for payment by the Department shall constitute certification by the Contractor that the services or items for which payment is claimed were actually rendered by the Contractor or its agents, and that all information submitted in support of the claims is true, accurate, and complete.

All invoices, reports, documents provided in response to an audit, and any documentation provided to the Department pursuant to any contractual obligation as set forth herein ,including any chart or compilation of data, report, or other document produced by the Contractor for presentment to the Department shall contain, in a prominently displayed location, the following written certification:

“I hereby certify that the information reported herein is true, accurate, and complete. I understand that these reports are made in support of claims for government funds.”

Any certification related to information and documents produced to the Department shall be certified only by the Contractor’s Contract Manager

9. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the Department for disallowances shall be drawn from the Contractor's own resources and not charged to Contract costs or cost pools indirectly charging Contract costs.
10. When the Department desires any addition or deletion to the deliverables or a change in the services to be provided under this Contract, it shall so notify the Contractor. The Department will develop a Contract Amendment authorizing said change. The Amendment shall state whether the change shall cause an alteration in the price or time required by the Contractor for any aspect of its performance under the Contract. Pricing of changes shall be consistent with those prices or costs established within this Contract. Such amendment shall not be effective until executed by all Parties.

D)Miscellaneous Requirements

STATE OF DELAWARE
DHSS DMMA

1. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 46, (PM #46, effective 3/11/05), and divisional procedures regarding the reporting and investigation of suspected abuse, neglect, mistreatment, misappropriation of property and significant injury of residents/clients receiving services, including providing testimony at any administrative proceedings arising from such investigations. The policy and procedures are included as Appendix to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor's procedures must include the position(s) responsible for the PM46 process in the provider agency. The Contractor must maintain documentation of staff training on PM46.
2. *When required by Law*, Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor shall not employ individuals with adverse registry findings in the performance of this contract.
3. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 40 (PM #40, effective 3/10/2008), and divisional procedures regarding conducting criminal background checks and handling adverse findings of the criminal background checks. This policy and procedure are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor's procedures must include the title of the position(s) responsible for the PM40 process in the contractor's agency.
4. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 36 (PM #36, effective 9/24/2008), and divisional procedures regarding minimal requirements of contractors who are engaging in a contractual agreement to develop community based residential arrangements for those individuals served by Divisions within DHSS. This policy and procedure are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes individuals/entities that enter into a contractual arrangement (*contractors*) with the DHSS/Division to develop a community based residential home(s) and apartment(s). Contractors shall be responsible for their subcontractors' adherence with this policy and related protocol(s) established by the applicable Division.
5. All Department campuses are tobacco-free. Contractors, their employees, and sub-contractors are prohibited from using any tobacco products while on Department property. This prohibition extends to personal vehicles parked in Department parking lots.

STATE OF DELAWARE
DHSS DMMA

E)Authorized Signatures:

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

For the Contractor:

19.

Name

Secretary

Title

Date

For the Department:

Rita M. Landgraf

Date

For the Division:

Director

Date

APPENDIX A
DIVISIONAL REQUIREMENTS

Sanctions

STATE OF DELAWARE
DHSS DMMA

- 1) In the event that Contractor 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 may suspend the scheduled payments.
- 2) The Division reserves the right to reduce the number of people a Contractor currently serves, restrict the number of referrals a Contractor may receive, or rescind authorization to operate one or more service sites (e.g., neighborhood home, apartment) or any combination of such measures as sanctions for documented unsatisfactory contract performance as determined by the Division. The Division may impose such sanctions for a period of between 30 to 365 days, with the right to renew the sanctions at the Division's sole discretion.

Vendor Responsibilities *(This clause may be most useful in IT and IT-related contracts and not as useful in other types of contracts.)*

- 1) Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor, its subcontractors, and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Contractor shall follow practices consistent with generally accepted professional and technical standards. Contractor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the applicable standards promulgated by 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, Contractor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Contractor's failure to ensure compliance with DTI standards.
 - a. It shall be the duty of the Contractor 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. Contractor will not produce a work product that violates or infringes on any copyright or patent rights. Contractor shall, without additional compensation, correct or revise any errors or omissions in its work products.
 - b. Permitted or required approval by Delaware of any products or services furnished by Contractor shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Contractor'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 Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Contractor's performance or failure to perform under this Agreement.
 - c. Contractor 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

STATE OF DELAWARE
DHSS DMMA

Contractor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project Name:

Team Title:

% of Project Involvement:

(add additional information as needed)

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, Contractor 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 Contractor 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 Contractor is unsuitable to Delaware for good cause, Contractor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.