

**REQUEST FOR PROPOSALS FOR PROFESSIONAL
SERVICES TO PROVIDE A UTILIZATION REVIEW PROGRAM
TO THE DELAWARE DEPARTMENT OF LABOR, DIVISION OF
INDUSTRIAL AFFAIRS - WORKERS' COMPENSATION UNIT**

I. Overview

The State of Delaware Department of Labor (DDOL) seeks companies to provide a utilization review program for the Division of Industrial Affairs – Workers’ Compensation Unit. 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: June 18, 2012 |
| Deadline for Receipt of Proposals | Date: July 2, 2012 |
| Notification of Award | Date: July 19, 2012 |

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

a. DELAWARE DEPARTMENT OF LABOR PROFILE

The Delaware Department of Labor serves the entire State of Delaware, which encompasses 1,955 square miles, with a diverse population of approximately 900,000 residents. The DDOL has four divisions: Division of Industrial Affairs, Division of Unemployment Insurance, Division of Employment and Training and Division of Vocational Rehabilitation. With an annual budget of \$58.3 million, the DDOL employs 479 full time employees.

b. WORKERS’ COMPENSATION PROFILE

The mission of the Office of Workers’ Compensation is:

To foster, promote and develop the welfare of the wage earners of the State of Delaware, to improve their working conditions and to advance their opportunities for profitable employment by:

- promoting economic stability to injured workers and their families by providing partial income maintenance; protecting workers from unfair and/or unsafe working conditions through the enforcement of labor standards laws, civil rights laws and apprenticeship laws; and
- ensuring safe and healthy working conditions by identifying workplace hazards and collecting statistical data relating to workplace injuries, illnesses and fatalities.

II. Scope of Services

UTILIZATION REVIEW

The Health Care Advisory Panel (“HCAP”), pursuant to 19 Del.C. §2322F(j), is mandated to develop a utilization review program. Specifically, such a utilization review program shall provide references for employers, insurance carriers, and health care providers for evaluation of health care and charges. In addition, the utilization review program shall provide services for the prompt resolution of issues related to treatment and/or compliance with the health care payment system or practice guidelines for those claims, which have been acknowledged to be compensable. The selected vendor(s) conducting a utilization review program shall be required to certify compliance with the Workers’ Compensation Utilization Management Standards or Health Utilization Management Standards of URAC (formerly known as “Utilization Review Accreditation Council”) sufficient to achieve URAC accreditation.

SERVICES TO BE PROVIDED

The following is a description of the required services for DDOL’s Workers’ Compensation Utilization Review Program (“UR”):

Pursuant to the requirements of SB1, 19 Del. C. § 2322F(j), administer Utilization Review for the Delaware Department of Labor as follows:

- Review treatment to determine whether or not the following health care treatment adheres to the Delaware Workers’ Compensation Health Care Payment System (HCPS) and/or the Delaware Workers’ Compensation Health Care Practice Guidelines (PGs):
 - Medical Treatment;
 - Chiropractic;
 - Diagnostic tests;
 - Hospitalization;
 - Outpatient Procedures;
 - Physical Therapy and other physical treatment modalities;
 - Surgery. • Provide service requests within the applicable time standards and provided medical advice as warranted.
- All proposed, concurrent, and retrospective utilization review requests must be reviewed and a determination made within 3 working days from receipt of information, but not to exceed 15 calendar days from receipt of information, or less if set forth in URAC guidelines.
- Provide certified, non-certified, and part-certified determinations using a uniform format as specified by DDOL.
- Use “like specialists” to review and issue non-certification determinations. The “like specialists” will meet the following criteria, which is slightly different than URAC’s WCUM-14 standard:
 - a. Are appropriate *health professionals*;

- b. Are qualified, as determined by the *medical director* or *clinical director*, to render a clinical opinion about the medical condition, procedures, and treatment under review;
 - c. Hold a current and valid professional *license* to practice in the contiguous United States:
 - i. In the same licensure category as the *ordering provider* or
 - ii. In the same licensure category as the *treating provider*,
- Refrain from providing “expert” testimony in matters that involve specific Delaware Office of Workers’ Compensation cases.
- Offer peer-to-peer conversation.
 - a. Health professionals that conduct the peer clinical review are available to discuss via telephone their review determinations with the treating health care provider who is under review.
 - b. The goal of the peer-to-peer conversation is to allow the treating health care provider an opportunity to discuss the utilization review, particularly to coordinate which part of the health care practice guidelines was used to guide the treatment, **prior to issuing the final determination.**
 - c. The purpose of the peer-to-peer conversation is to obtain any necessary clarification prior to issuing the final determination in order to avoid an appeal later in the process.
 - d. If this peer-to-peer conversation results in the production of additional records, such additional records must be submitted to the UR payer at the same time as the UR reviewer.

Proposals for services shall include the following information:

- An overview of your company’s experience in providing UR services for local, state or federal governmental entities and other clients;
- Minimum of three professional references;
- List of physicians/nurses who will be performing UR services, along with resumes;
- The experience and training of UR staff;
- Your company’s average turn-around time for UR requests;
- Fee options and how fees are calculated;
- Sample reports documenting claims review and action taken;
- Description of workflow and the method of gathering information and exchange between medical providers and your company in performing UR services;
- Copy or description of written quality control policies/procedures regarding the review and the determination, to include the process your company uses to resolve issues.
- Any distinguishing or unique qualifications that your company possesses or any other information that more fully documents your ability to provide UR services;
- Proof of financial viability;
- Data regarding your corporate structure, number of employees and other pertinent information regarding your business;

- Evidence of accreditation by URAC (formerly known as “Utilization Review Accreditation Council”) in “Workers’ Compensation Utilization Management Standards” or “Health Utilization Management Standards” of URAC, or statement of ability and intent to achieve URAC accreditation.

III. Required Information

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

A. Minimum Requirements

1. Delaware business license:
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Professional liability insurance:
Provide evidence of professional liability insurance in the amount of \$1,000,000.00.
3. Evidence of accreditation by URAC (formerly known as “Utilization Review Accreditation Council”) in “Workers’ Compensation Utilization Management Standards or Health Utilization Management Standards of URAC sufficient to achieve URAC accreditation, or statement of ability with the intent to obtain URAC accreditation before providing services under any contract with the State of Delaware. This URAC accreditation must be maintained throughout the term of the contract. If a vendor(s) does not maintain URAC accreditation, such lack of URAC accreditation will be deemed a material breach of the contract.
4. Confirmation that only URAC standards will be used to perform utilization reviews.

B. General Evaluation Requirements

1. Experience and Reputation
The vendor’s past performance on projects of similar scope and size, including experience and the number of years in performing such services, examples of clients, and identification of references.
2. Expertise in UR
Provide the vendor’s general approach and plans to meet the requirements of this RFP, including the scope of services. These plans and approaches should be described in sufficient detail to permit the Department to

evaluate them fairly and within a minimum of possible misinterpretation. Further, the vendor should describe the effort and skills necessary to complete the project.

3. **Demonstrated Ability**

This section shall contain all pertinent information relating to the vendor's organization, personnel and experience that would substantiate its qualifications and capabilities to perform the services required by the scope of this RFP. Specifically detailing the vendor ability to implement the Utilization Review Program by August 1, 2012, and complete the State of Delaware Utilization Review approved forms.

4. **Familiarity with workers compensation**

5. **Other criteria necessary for a quality cost-effective project**

6. **Costs for Services Performance**

Fee structure; overall cost to the Department of the proposed services

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware, Department of Labor website at www.delawareworks.com.

2. Public Notice

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

3. Assistance to Vendor(s) with a Disability

Vendor(s) 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(s).
Vendor(s) should rely only on written statements issued by the RFP designated contact.

| | |
|----------------------|---|
| NAME | Donna Forrest |
| DEPARTMENT | Division of Industrial Affairs, Office of Workers' Compensation |
| ADDRESS | 4425 N. Market Street Wilmington, DE 19802 |
| EMAIL ADDRESS | donna.forrest@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 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. Vendor(s) 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(s) who:

- a)** Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b)** Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of

business integrity or business honesty that currently and seriously affects responsibility as a State contractor;

- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension, disqualification 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(s) 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 five (5) paper copies and three (3) electronic copies on CD.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **3:00 PM EST** on July 2, 2012. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

| | |
|-------------------|--|
| NAME | Donna Forrest |
| TITLE | Medical Component Manager, Office of Workers' Compensation |
| DEPARTMENT | Division of Industrial Affairs |

ADDRESS 4425 N. Market Street
 Wilmington, DE 19802

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **3:00 PM EST** on July 2, 2012. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor(s) bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor(s) 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 **September 7, 2012**. 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 Vendor(s).

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

8. Non-Conforming Proposals

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

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 estimate accurately the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the 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.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are

subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

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

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

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 vendors' 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(s) of responsibility for the professional and technical accuracy and adequacy of the work, or the statutory requirement of URAC approval. Further, vendor(s) 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).

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

b. Sub-Contracting

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

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

c. Multiple Proposals

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

13. Sub-Contracting

The vendor(s) 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, subcontractors must be identified by name, and must meet all the requirements of the vendor including but not limited to the production of all required information as set forth in Section III of this Request for Proposal. Any sub-contractors must be approved by State of Delaware in writing.

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, no later than 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 will be consolidated into a single set of responses and posted on the State's website at www.delawareworks.com by 12:00 PM each Friday. Vendors' 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

Question

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 (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 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 highlighted and included in writing in the proposal. 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.

Notice in writing to a vendor(s) 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(s) 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(s) who submits the lowest bid or the vendor(s) who receives the highest total point score, rather the contract will be awarded to the vendor(s) 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(s) will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

C. RFP Evaluation Process

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

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

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the Department of Labor and/or the Health Care Advisory Panel. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. §§ 6981 and 6982. **The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors.** The Team shall make recommendations regarding the awards to the Secretary of Labor, 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(s) in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all 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.

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 |
|--|---------------|
| 1. Experience and Reputation | 25% |
| 2. Expertise in UR | 25% |
| 3. Demonstrated ability | 20% |
| 4. Familiarity with workers compensation | 20% |
| 5. Other criteria necessary for a quality cost-effective project | 10% |
| Total | 100% |

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

Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor(s) 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)'s costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor(s)'s responsibility.

D. Contract Terms and Conditions

1. General Information

- a. The term of the contract between the selected vendor(s) and the State shall be for one (1) year with the possibility of two (2) extensions for a period of one (1) year for each extension.
- b. The selected vendor(s) 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)'s response to this RFP will be incorporated as part of any formal contract.
- d. The successful vendor(s) shall promptly execute a contract incorporating the terms of this RFP. No vendor(s) is to begin any service prior to receipt of a letter on State of Delaware Department of Labor letterhead, requesting a utilization review and signed by an authorized representative of the Delaware Department of Labor. All vendors will directly submit their bills to the party requesting the utilization review as designated on the utilization review request "form." The "letter" 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(s).
- e. If the vendor(s) 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(s) shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- f. The successful vendor(s) shall be required to provide the Department statistical information directly related to the vendor(s)'s utilization review performance.

2. **Collusion or Fraud**

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

By responding, the vendor(s) shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor(s)

submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor(s) 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)'s proposal preparation.

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

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor(s) 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.

4. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor(s), its affiliates, actual or prospective contractors, or any person acting in concert with vendor(s), without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor(s) may result in rejection of the vendor(s)'s proposal.

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

5. General Contract Terms

a. Independent contractors

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

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

b. Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

c. Licenses and Permits

In performance of the contract, the vendor(s) 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(s). The vendor(s) 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(s) 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(s) to applicable fines and/or interest penalties.

d. Notice

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

| | |
|-------------------|---|
| NAME | Donna Forrest |
| DEPARTMENT | Division of Industrial Affairs, Workers' Compensation Unit |
| ADDRESS | 4425 N. Market Street, Wilmington, DE 19802 |

e. Indemnification

1. General Indemnification.

By submitting a proposal, the proposing vendor(s) 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 agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor(s) 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(s) in writing and vendor(s) shall defend such claim, suit or action at vendor(s)'s expense, and vendor(s) 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(s) (collectively "Products") is or in vendor(s)'s reasonable judgment

is likely to be, held to constitute an infringing product, vendor(s) 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.

f. Insurance

1. Vendor(s) 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)'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(s) in their negligent performance under this contract.
2. The vendor(s) 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(s) is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the vendor(s) shall, at its own expense, carry insurance minimum limits as follows:

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

If the contractual service requires the transportation of departmental clients or staff, the vendor(s) shall, in addition to the

above coverages, secure at its own expense the following coverage:

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

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

g. Performance Requirements

The selected Vendor(s) will warrant that its 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.

h. Warranty

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

i. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor(s)'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(s) 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 for Cause.

If for any reasons, or through any cause, the Vendor(s) fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor(s) violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor(s) 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(s) under the contract shall, at the option of the State of Delaware, become its property, and the Vendor(s) shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

I. Termination for Convenience

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

m. Non-discrimination

In performing the services subject to this RFP, the vendor(s) will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor(s) shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory

employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees

The successful vendor(s) 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(s) 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.

o. Vendor(s) 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(s). The vendor(s) must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

p. Work Product

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

q. Contract Documents

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

r. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor(s) 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(s) in default.

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

s. Scope of Agreement

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

t. Other General Conditions

- (1) **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- (2) **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- (3) **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.

- (4) **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- (5) **Status Reporting** – The selected vendor(s) 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) **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

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

2. RFP Reference Library

The State of Delaware has made every attempt to provide the necessary information within this RFP. The State of Delaware will make the reference library available only to the selected vendor(s).

3. Definitions of Requirements

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

4. 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 at least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

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