

**REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL SERVICES  
PAY FOR PERFORMANCE ENVIRONMENTAL REMEDIATION  
ISSUED BY STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL  
CONTRACT NUMBER NAT14002-PFPRemed**

This Packet contains a “Request for Proposals for Professional Services, Pay for Performance Environmental Remediation.” The RFP consists of the following documents:

Request for Proposals for Professional Services, Pay for Performance Environmental Remediation

Attachment 1 – No Proposal Reply Form

Attachment 2 – Non-Collusion Statement

Attachment 3 – Exception Form

Attachment 4 – Confidential Information Form

Attachment 5 – Business References Form

Attachment 6 – Subcontractor Information Form

Attachment 7 – Employing Delawareans Report

Attachment 8 – Office of Supplier Diversity Certification Application

Appendix A – Minimum Mandatory Submission Requirements

Appendix B – Pay for Performance Conditions

Appendix C – Milestone Attainment Payment Information

Appendix D – DNREC-TMS Minimum Requirements for Reporting

Appendix E – Pay for Performance Proposal Form

Appendix F – Milestone Attainment Request Form: Payment Option A

Appendix G – Milestone Attainment Request Form: Payment Option B

**I. Overview**

The State of Delaware Department of Natural Resources and Environmental Control (DNREC), seeks professional services for Pay for Performance (PFP) type Environmental Remediation (Contract NAT14002-PFPRemed). Although this contract is intended primarily for State-lead leaking underground storage tank sites, it may be applied to any other State-lead environmental remediation project in DNREC. This request for proposals (RFP) is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

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

Public Notice	Date: April 15, 2014
Deadline for Questions	Date: May 6, 2014
Response to Questions Posted by:	Date: May 16, 2014
Deadline for Receipt of Proposals (Time)	Date: May 27, 2014 at 1:00 PM (Local Time)
Estimated Notification of Award	Date: June 16, 2014

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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.

Following DNREC's receipt of proposals in response to the RFP, DNREC intends to select multiple qualified vendors to enter into contracts with DNREC to provide specified professional services through a Pay for Performance contract. Once selected, the vendor will be asked to submit a list of prices which will become part of the contract and apply during the contract period as deemed necessary pursuant to Payment Option B as detailed in Appendix C of this RFP. The selection of qualified vendors through the RFP process for this contract does not commit the vendors or DNREC to perform professional services on any site-specific project proposals. The selected vendors will be asked to enter into a contract with DNREC which will permit them to receive, during the contract period, notice of requests by DNREC for proposals to perform specified professional services on site-specific project proposals. The site-specific project proposals shall be based on the list of prices that are made part of the contract, as applicable. The proposal process and site-specific project proposals scope of work will be provided to the vendor on a site-specific project basis. Whenever DNREC designates a site-specific project for which it requires a vendor to provide professional services, it shall notify the vendor of such designation, provide it with a defined scope of work, and invite the vendor to provide a proposal to perform professional services on the project. DNREC may request more than one vendor to submit proposals on any site-specific project. When DNREC selects the site-specific project proposal of a vendor, it will invite the vendor to enter into negotiations to conclude an agreement to provide services for that project. If DNREC and the vendor are able to reach an agreement on a site-specific project proposal it shall be set forth in an addendum which shall be attached to this contract and made a part hereof.

**MANDATORY PREBID MEETING**

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

**II. Scope of Services**

- A. Appendix B, Pay for Performance Conditions, describes the types of professional services and payment structure specific to this contract. Whenever DNREC designates a site-specific project for which it requires a contractor to provide services, it shall notify the qualified contractor(s) of such designation, provide contractor(s) with a defined Scope of Work, and invite the contractor(s) to submit a proposal to provide services for that site-specific project. The Scope of Work will be part of an all-encompassing Site Data Package that will include all of the current site-specific information for the selected site, including designated cleanup goals. The contractor shall inform DNREC, in writing, within thirty (30) days of its receipt of DNREC's site-specific project proposal request, of its intent to submit such a proposal, or, submit a NO PROPOSAL REPLY FORM (Attachment 1).

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If the contractor informs DNREC that it will submit a site-specific project proposal, it shall provide DNREC, within sixty (60) days of DNREC's proposal request, with a priced proposal for the services called for in the Site Data Package.

The proposal shall be submitted in the form of the PFP Proposal Form (Appendix C). In some cases, DNREC may allow for multiple proposals from the qualified contractors to optimize the remedial technology implemented. Such allowance will be included in the Site Data Package. If multiple proposals are submitted by a single qualified contractor without solicitation by DNREC, all proposals submitted by that contractor will be rejected for that site.

If DNREC and the contractor are able to reach an agreement, DNREC will sign the PFP Proposal Form to which will be incorporated via amendment to this contract and initiate a purchase order (PO) for the agreed upon amount. Payment for the contract will be in accordance with Appendix C, Milestone Attainment Payment Information. All other bidders will be notified, in writing, that their bid was not selected.

In negotiating the costs proposed by the contractor(s) for each site, DNREC's goal will be to obtain qualified services at a reasonable price without compromising the integrity of the environmental services. The winning proposal will be a function of several parameters including, but not limited to, price, time to completion, remedy selection, community impact and current and future land use. A team will be comprised to select the optimum remedy and proposal. The team may consist of a Project Manager, Section Manager, and Section Planner. Any site specific restrictions or requirements for remediation will be addressed in the Site Data Package.

**III. Required Information**

In response to this RFP, 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) or certification(s) necessary to perform services as identified in the scope of work.

Prior to receiving an award, 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. Insurance including Professional Liability Insurance:

Provide evidence of professional liability insurance in the amount of \$1,000,000.00/\$3,000,000.00.

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Proof of insurance and amount of insurance shall be furnished to the Agency and shall be no less than as identified in the bid solicitation.

5. Provide response to Employing Delawareans Report (Attachment 7)

**B. General Evaluation Requirements**

1. Proposals will be evaluated using criteria provided in Part IV.C.2 of this RFP.

**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 Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) . Paper copies of this RFP will not be available.

**2. Public Notice**

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

**3. Assistance to Vendors with a Disability**

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

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the 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.

**Christopher L. Brown, P.G.**  
**Hydrologist**  
**DNREC-TMS**  
**391 Lukens Drive**  
**New Castle, DE 19720**  
**[christopher.brown@state.de.us](mailto:christopher.brown@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. Vendors 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.

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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 Submit Proposals**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to submit proposals. 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:

- 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 proposal, 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 five (5) paper copies and one (1) electronic copy on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00 PM (Local Time) on May 27, 2014**. The Proposals

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may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Delaware Department of Natural Resources and Environmental Control  
Tank Management Section  
391 Lukens Drive  
New Castle, DE 19720  
Attn: Christopher L. Brown, P.G.**

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 **1:00 PM (Local Time) on May 27, 2014**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

**3. Proposal Modifications**

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

**4. Proposal Costs and Expenses**

The 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 June 14, 2019. 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.

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**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.

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

**11. Confidentiality of Documents**

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

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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 vendor's 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).

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.



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**b. Sub-contracting**

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

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

**c. Multiple Proposals**

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

**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 site-specific project 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 must be submitted by May 6, 2014. All questions will be consolidated into a single set of responses and posted on the State's website at [www.bids.delaware.gov](http://www.bids.delaware.gov) by May 16, 2014. 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.

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Section number

Paragraph number

Page number

Test 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 (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](http://www.bids.delaware.gov) . The State of

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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.

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 of the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the 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.

**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.

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

**1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team will negotiate with a sufficient number of vendors to meet the needs of DNREC. The Team will negotiate with the qualified firm designated 1<sup>st</sup> on the preference list and go down the list of qualified firms until contracts are agreed to with a sufficient number of vendors to meet the needs of DNREC. The Team shall make a recommendation regarding the multiple vendor award to the DNREC-TMS Program Manager II, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

**2. Proposal Selection Criteria**

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

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

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

**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:

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<b>Criteria</b>	<b>Points</b>
<p><u>Introductory Letter to Accompany Proposal</u> Brief (no more than two page) introductory letter that includes at a minimum:</p> <ul style="list-style-type: none"> <li>• the company’s number of years in business,</li> <li>• number of years providing professional environmental services,</li> <li>• the company’s experience with PFP contracting,</li> <li>• a brief description of the company’s capabilities and resources,</li> <li>• a narrative discussion on the financial stability and strength of the company</li> <li>• office locations, business address, phone, fax, email, and other pertinent information.</li> <li>• the signature of a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware.</li> </ul>	<b>50</b>
<p><u>Section 1 of Proposal</u> Table of Contents with page numbers for each of the required components.</p>	<b>10</b>
<p><u>Section 2 of Proposal</u> Professional qualifications of the company, including information on licensed professional engineers and geologists, environmental knowledge of staff, and general project experience. The company shall have on its staff at least one Delaware Licensed Professional Engineer (P.E.) with an educational background or strong experience in environmental remediation projects. The company shall also have on staff at least one Delaware Licensed Professional Geologist (P.G.) with an educational background or strong experience in environmental remediation projects. Professional licenses from other states will be accepted at DNREC’s discretion as long as the other states are identified and licenses numbers are supplied.</p>	<b>90</b>
<p><u>Section 3 of Proposal</u> Experience and capabilities of proposed team members. Include the entire company’s resources including equipment stock.</p>	<b>200</b>
<p><u>Section 4 of Proposal</u> Detailed written comments demonstrating an understanding of scope and type of work involved in the cleanup of LUST sites. Please include the company’s experience with the installation, maintenance and monitoring of various remedial technologies. If available, list all petroleum remediation sites in Delaware; include type of remedial technology used, start date, and date site cleanup was achieved (if applicable) – if site cleanup was not achieved, state the reason(s) why (this can be done in tabular form). In addition, tabulate separately the same information for non-Delaware remediation sites for which you have achieved closure in the last three years on sites which required ACTIVE remediation. (Note: preference will be given to companies with Delaware experience.) Discuss experience and success with PFP contracting (preference will be given to firms with PFP contracting experience – this does not need to be Delaware-specific)</p>	<b>250</b>

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Criteria	Points
<u>Section 5 of Proposal</u> Include a statement on the company's experience in performing feasibility testing and applying performance measures on remedial technologies. Include a statement on the ability to perform corrections on in-place technologies to increase performance. Include an example of a remedial design report.	<b>200</b>
<u>Section 6 of Proposal</u> Demonstrate familiarity and understanding of contaminant fate and transport in soil and groundwater. Include the company's understanding of vapor transport, natural attenuation and the use of related models such as Domenico, MODFLOW, and Johnson & Ettinger. Please include samples of Tier II and III type modeling reports.	<b>100</b>
<u>Section 7 of Proposal</u> Provide a narrative discussion on the health and safety practices / programs of the company, including a description of the company's safety record for the last five (5) years.	<b>50</b>
<u>Appendices to Proposal</u> <ul style="list-style-type: none"> <li>• Resumes of key personnel on the team (1 page/person); include only personnel that may work on DE sites.</li> <li>• Copies of applicable certifications, licenses, and/or forms, such as professional engineering/geologist certificates</li> <li>• State of Delaware Business License</li> <li>• Certificate of Insurance and/or copies of insurance policies. Minimum insurance coverage requirements are detailed in Section 5.f of the RFP.</li> </ul>	<b>50</b>
<b>Total</b>	<b>1,000 points</b>

**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 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.

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**D. Contract Terms and Conditions**

**1. General Information**

- a. The term of the contract between the successful bidder and the State shall be for five (5) years with two (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 a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- g. For any site-specific projects where Federal Funds are used, the vendors will be required to comply with all Federal requirements regarding the use of Federal Funds, and by submitting any necessary information required as part of their site-specific Addendum.

**2. Collusion or Fraud**

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

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had

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no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

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

**3. Lobbying and Gratuities**

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

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the 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, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

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

**5. General Contract Terms**

**a. Independent contractors**

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



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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 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.

**d. Notice**

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

**Project Manager  
DNREC-TMS  
391 Lukens Drive  
New Castle, DE 19720**

**e. Indemnification**

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**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.

**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.

**f. Insurance**

- 1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
- 2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

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

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a.	Comprehensive General Liability	\$1,000,000 per occurrence and \$3,000,000 aggregate
b.	Pollution Liability	\$1,000,000 per occurrence and \$3,000,000 aggregate

And at least one of the following, as outlined below:

c.	Medical or Professional Liability	\$1,000,000/\$3,000,000
d.	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
e.	Product Liability	\$1,000,000/\$3,000,000

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

And, automotive insurance covering all automotive units used in the work as outlined below:

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

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance. Certificates of Insurance shall be filed with the State to the following address:  
 DNREC-TMS  
 Contract# NAT14002-PFPRemed  
 391 Lukens Drive  
 New Castle, DE 19720

**g. Performance Requirements**

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

1. Performance Bond Requirement

Vendors awarded site-specific project contracts are required to furnish a Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of DNREC with surety in the amount of 100% of the site-specific project award, or such other amount as DNREC deems appropriate. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted in the form of good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware. If the DNREC Bond Form is not utilized, the substituted bond form must reflect the minimum conditions specified in the DNREC Bond Form.

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DNREC-TMS  
391 Lukens Drive  
New Castle, DE 19720

**h. Warranty**

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

**i. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the 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 for Cause**

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

**l. 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 under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so

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provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

**m. Non-discrimination**

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

**n. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the 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 Activity**

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

**p. Work Product**

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

**q. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the 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.

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**r. Applicable Law**

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

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

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

If any vendor fails to comply with (1) through (5) of this paragraph, the 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.

**s. Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**t. 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.

**u. 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.

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- 2) **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- 3) **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- 4) **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- 5) **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- 6) **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- 7) **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. Definitions of Requirements**

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

**3. Production Environment Requirements**

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

**F. Attachments**

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

- Attachment 1 – No Proposal Reply Form



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- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exception Form
- Attachment 4 – Confidential Information Form
- Attachment 5 – Business References Form
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Employing Delawareans Report
- Attachment 8 – Office of Supplier Diversity Application
- Appendix A – Minimum Mandatory Submission Requirements
- Appendix B – Pay for Performance Conditions
- Appendix C – Milestone Attainment Payment Information
- Appendix D – DNREC-TMS Minimum Requirements for Reporting
- Appendix E – Pay for Performance Proposal Form
- Appendix F – Milestone Attainment Request Form: Payment Option A
- Appendix G – Milestone Attainment Request Form: Payment Option B

*[balance of page is intentionally left blank]*

**IMPORTANT – PLEASE NOTE:**

- Attachments 2, 3, 4, 5 and 7 must be included in your proposal
- Attachment 6 must be included in your proposal if subcontractors will be involved

*[balance of page is intentionally left blank]*

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**Attachment 1**

NO PROPOSAL REPLY FORM

Contract No. NAT14002-PFPRemed    Contract Title: Pay for Performance Environmental  
Remediation

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.:** NAT14002-PFPRemed  
**CONTRACT TITLE:** Pay for Performance Environmental Remediation  
**OPENING DATE:** May 27, 2014, 1:00 PM (Local Time)

**NON-COLLUSION STATEMENT**

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

It is agreed by the undersigned Vendor that the signed delivery of this bid represents the Vendor's acceptance of the terms and conditions of this Request for Proposal 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, Department of Natural Resources and Environmental Control, Enter Agency Name

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 \_\_\_\_\_

	(circle one)	(circle one)	(circle one)
COMPANY CLASSIFICATIONS: CERT. NO. _____	<u>Women Business Enterprise</u> (WBE)	<u>Minority Business Enterprise</u> (MBE)	<u>Disadvantaged Business Enterprise</u> (WBE)
	Yes No	Yes No	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 BE SIGNED, NOTARIZED AND RETURNED WITH YOUR PROPOSAL TO BE CONSIDERED**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_





Contract No. NAT14002-PFPRemed  
Contract Title: Pay for Performance Environmental Remediation

**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 list the contract.

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

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

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

**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. NAT14002-PFPRemed	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OMWBE Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
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



Contract No. NAT14002-PFPRemed  
Contract Title: Pay for Performance Environmental Remediation

**EMPLOYING DELAWAREANS REPORT**

As required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> 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>



**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](mailto:osd@state.de.us)  
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

**APPENDIX A  
MINIMUM MANDATORY SUBMISSION REQUIREMENTS**

The response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 2 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. Five (5) paper copies of the vendor proposal paperwork. The 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 to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria identified.
3. One (1) electronic copy of the vendor proposal saved to CD or DVD media disk, or USB memory stick. Copy of electronic price file shall be separate from all other files on the electronic copy.
4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK** – 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 7)
10. One (1) complete OMWBE application (see link on Attachment 8) – 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.

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Department of Natural Resources and Environmental Control  
**APPENDIX B**  
**PAY FOR PERFORMANCE CONDITIONS**

1. INTRODUCTION

1.1. The text of this agreement will clearly define the policies and bounds of the Pay for Performance (PFP) Program offered by the Delaware Department of Natural Resources and Environmental Control's (DNREC) Tank Management Section (the Department).

1.2. The purpose of PFP contracting is to achieve site cleanup goals more efficiently by expediting remedial activities while lowering total project costs. The ultimate result will be enhanced protection of human health, safety and the environment.

1.3. A PFP contract is a performance-based and shared risk/reward contracting arrangement, which includes a total cost of cleanup that will be distributed incrementally over a specified time limit. The distributions will be based on remedial milestones such as; remedial system startup, attainment of interim cleanup goals, and attainment of final cleanup goals (closure).

1.4. The format of a PFP contract, or agreement, will consist of the contract provisions contained within the body of this document that detail the program as well as the attached appendices that will be used for site-specific information, baseline and milestone calculations, point of compliance identification etc.

1.5. The PFP Program will apply to contaminated properties that are ready to enter the remedial phase of Delaware's Risk-Based Corrective Action Program (DERBCAP), however, the concepts and structure of the program may be used for any site that requires remediation regardless of the source of funds or the party responsible for cleanup.

1.6. If, after reading the provisions of the contract, a party is interested in becoming an eligible Contractor in order to receive site-specific bid requests, it shall respond to the Request for Proposals section as outlined in Section III. Once selected via award of this RFP, the Contractor will then be eligible to receive site-specific bid requests to cleanup sites under the provision of the PFP contract. The Department will request bids in the form of a Site Data Package.

2. GENERAL PFP PROVISIONS

2.1. The Contractor agrees to perform the site cleanup activities in accordance with Appendix C. The Contractor also agrees that the site characterization is complete based on the information contained within the Site Data Package submitted during the Site-Specific Proposal Request. Additional investigation to optimize a remedial approach or to determine the cause of a failed remedial approach will be at the sole cost of the Contractor.

2.2. The Contractor agrees to perform all services under this Agreement in accordance with Chapter 74 of the Delaware Code and all federal and state statutes, rules, regulations, procedures, and guidance (hereafter referred to as the "Regulations") applicable to this cleanup.

2.3. All submissions that include geologic interpretations shall be signed/stamped by a Delaware-licensed Professional Geologist (PG) and for all engineering interpretations shall be signed/stamped by a Delaware licensed Professional Engineer (PE). The Department reserves the right to accept submissions signed/stamped by PG's and PE's licensed in other states.

2.4. The State of Delaware's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the Legislature does not provide an appropriation to support this

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Agreement, then the Contractor's obligation to perform under this Agreement will be terminated. Such a termination shall not be considered as failure to perform by the contractor and shall be handled in accordance with paragraph 3.5.5.2.

2.5. The Department reserves the right to stop work under this Agreement if it is in the best interest of the State. Any delay in the cleanup schedule caused by such order shall be handled in accordance with paragraph 3.5.5.1 .

2.6. The Contractor shall hold harmless and indemnify the site owner, the Department and the State of Delaware against any third party liability from damage caused by the Contractor. The parties hereby agree that \$10.00 of the total compensation paid under this Agreement is consideration for this indemnity Agreement. This indemnification is provided in addition to the insurance requirements as specified in the Special Provisions listed above.

2.7. This Agreement is an exclusive contract for services and may not be assigned in whole or in part without the written approval of the Department. The Contractor shall not sublet more than 75% of the dollar volume of work under this Agreement without the prior written consent of the Department.

2.8. The Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the timely payment of all monies due under any subcontract.

2.9. The Contractor agrees that the Department shall not be liable to any vendor or subcontractor for any expenses or liabilities incurred under the subcontract. The Contractor shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

2.10. Pursuant to Section 216.2815, F.S., all records in conjunction with this Agreement shall be public record and shall be treated in the same manner as other public records are under general law. This Agreement may be unilaterally canceled by the Department for refusal by the Contractor to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the Contractor in conjunction with this Agreement.

2.11. The Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The Department, the State, or their authorized representatives, shall have access to such records for audit purposes during the term of this Agreement and for three years following Agreement completion. In the event any work is sublet, the Contractor shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. It is not the Department's intention to use these audits to seek cost recovery of over-payments, but rather to use these audits to revise and refine the Department's cost estimating policies and procedures. However, cost recovery will be pursued if there is evidence of fraud or other illegal activity.

2.12. All utilities and permitting are responsibility of the contractor.

2.13. The Contractor shall be responsible for payment of all utilities necessary to complete the cleanup, including but not limited to electricity, propane, sanitary sewer and telephone.

2.14. The Contractor shall be responsible for obtaining all applicable local, state and federal permits and shall be responsible for payment of all applicable permit fees. The Contractor shall be responsible for satisfying all permit requirements.

2.15. The Department shall be notified at least five (5) days in advance of any field activities.

2.16. All equipment purchased will belong to Contractor post closure. However;

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2.16.1. The Department has the option of retaining ownership of any equipment purchased through a State-lead remediation contract for use on a State-lead site. Upon completion of site remediation activities, the Contractor shall submit an inventory of equipment purchased for the State-lead site to the Department for review. The Department has the option of retaining or waiving ownership of any or all inventoried remediation equipment. Any remediation equipment purchased for use at the Site for which the Department waives ownership shall become the sole property of the Contractor following site closure.

2.16.2. The Contractor is responsible for all maintenance and/or repairs required during the course of the Agreement. Any maintenance and/or repairs performed on the remedial system during the duration of the agreement shall be at the sole cost of the Contractor.

2.16.3. The Contractor shall conduct field work according to Site-Specific Health and Safety Plans meeting all applicable federal, state and local regulations and requirements. Upon the Department's request, supply copies of Health and Safety Plans for review. Upon request complete DNREC Division of Waste and Hazardous Substance Health & Safety Questionnaire.

### 3. PAY-FOR-PERFORMANCE SITE SPECIFIC PROVISIONS

#### 3.1. Cleanup Goals and Milestones

3.1.1. Appendix A provides the framework for establishing Cleanup Goals and payment structure for milestone attainment. Cleanup Goals are assigned by the Department's Project Officer and will be in accordance to Delaware's Risk-Based Corrective Action Program (DERBCAP) and other applicable referenced Standards. The specific Cleanup Goals will be specified in the Site Data Package.

3.1.2. Attainment Wells will be selected by the Department and will be identified in the Site Data Package. They will be selected based on the site characterization and the extent of the plume. The selection of attainment wells will satisfy DERBCAP by being protective of affected or potentially affected receptors.

3.1.3. Unless otherwise approved by the Department, attainment wells shall not be an active component of the remediation system.

3.1.4. The Contractor shall notify the Department at least ten (10) business days in advance of any sampling event that will be used to verify attainment of a cleanup milestone.

3.1.5. A Milestone Attainment Request (MAR), Appendix D, shall be submitted to the Department for review and approval once the Contractor determines a milestone has been attained. The MAR may be attached during any reporting period of the project. The Department will have thirty (30) days from the receipt of a MAR to notify the Contractor of one of the following:

3.1.5.1. The Department agrees that the milestone has been achieved;

3.1.5.2. The Department disagrees that the milestone has been achieved; or

3.1.5.3. The Department will require confirmatory sampling of key monitoring wells if the Department was not present during the milestone attainment sampling. If the Department chooses to confirm the milestone results, then the Department will have an additional sixty (60) days to inform the Contractor whether the Department agrees that the milestone has been achieved.

3.1.6. The Department reserves the right to collect, or arrange to collect through a third party, confirmatory split samples of groundwater and soil to verify sampling results at milestone attainment events. Such sampling will be performed at the Department's sole cost and discretion unless milestone attainment is not demonstrated based on the corresponding laboratory data. If the split sampling event was improperly designated a milestone

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attainment event by the Contractor, then costs incurred by the Department through collection of split samples will be subtracted from the next milestone payment.

3.1.7. In the event a MAR is submitted for a sampling event where the Department was not notified or present, the Department may collect or arrange to collect through a third party, confirmation samples within fifteen (15) days of receipt of the MAR. The Department will provide the Contractor a minimum of five (5) days notification of such sampling activities. Should the Contractor choose to observe such field activity, all costs incurred by the Contractor for such participation shall be borne solely on the Contractor.

3.1.8. The Department reserves the right to reject any sampling results when proper notification is not provided.

3.1.9. The Department reserves the right to install additional wells and sampling borings, at its sole cost and discretion, during the remedial process in order to minimize uncertainty by filling in spatial data gaps. In such an event, it may be necessary to “re-open” negotiations with the contractor (see section 3.5.6). The Department will provide the contractor a minimum of five (5) days notification of such activity. Should the contractor choose to observe such field activity, all costs incurred by the Contractor for such participation shall be borne solely on the Contractor.

3.1.10. The Contractor shall achieve the contamination reduction milestones within the schedule specified in the Statement of Goals section of the Remedial Action Work Plan (3.3.1). If the milestone is not achieved by the specified date, then the Contractor shall take corrective action to restore the cleanup schedule or explain the delay to the Department’s satisfaction. Such corrective action may include a modification of the existing remedial approach in accordance with the terms of the Contract. The Department reserves the right to extend the timeframe for the milestone based upon a demonstration that the delay was not due to any act or omission by the Contractor. Furthermore, the Department reserves the right to extend the timeframe for any subsequent milestones for which attainment may be delayed as a consequence of the delay of the previous milestone. In no event shall the extension of time result in an increase in the price of this contract or an increase in the time estimated for final closure. Continual, repeated or prolonged failure of the Contractor to restore the cleanup schedule shall be considered failure to perform by the contractor and handled in accordance with section 3.5 of this contract.

3.1.11. The Department of Natural Resources and Environmental Control’s Analytical Laboratory shall have the right of first refusal for ALL analytical work for any State Funded cleanup projects; not including drinking water analysis. Analytical rates/costs will be issued with the Site Data Packages. The Contractor is responsible for all scheduling with the Laboratory including handling samples. The phone number for the Environmental Laboratory, located in Dover, DE, is 302-739-9942.

## 3.2. Final Milestone Attainment & Closure

3.2.1. The final milestone payment of the PFP contract will be awarded for attaining the established cleanup goals within the time frame specified in the Bid Form and maintaining such concentrations for four consecutive sampling quarters once all remedial activities have ceased. In addition, all system decommissioning and site restoration (3.2.3) shall be completed as well. The Department will evaluate, on a case by case basis, any concentration “spikes” that exceed final cleanup goals during post remedial monitoring.

3.2.2. If the cleanup goals have not been met within the specified timeframe, the Contractor may continue the cleanup or monitoring of the site by requesting, in writing, for “extended time”. Extended time will not increase the contract price. If, at the end of the “extended time” the cleanup goals have not been achieved, the Contractor may be released from any further obligation under this Contract and the payment for any unachieved milestones shall not be due to the Contractor.

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3.2.3. Upon successful completion of post remedial monitoring, the Site shall be restored to the condition it was in prior to remediation activities as nearly as practicable. All dismantling of equipment and site restoration, including the abandonment of all monitoring, and remediation wells, shall be the responsibility of the Contractor. All wells and treatment points shall be abandoned in accordance with the Delaware Regulation Governing the Construction and Use of Wells by a Delaware licensed well driller. Upon Department approval of the Closure Report, as described in section 3.3.3, the Department will issue a Site Remediation Completion Letter along with the final payment.

### 3.3. Reporting Requirements & Submissions

3.3.1. The Contractor shall submit a Remedial Action Work Plan (RAWP) to the Department within sixty (60) days upon being awarded the contract. Refer to Appendix B for the minimum requirements for the RAWP including remedial system design plans. The milestone attainment time estimates and schedule provided in the Statement of Goals section of the RAWP will be the timeframes used for measuring performance (3.1.10).

3.3.2. The Contractor shall submit a Quarterly Monitoring Report within thirty (30) days of sampling activities. Refer to Appendix B for the minimum requirements for the Quarterly Monitoring Reports.

3.3.3. The Contractor shall submit a Site Closure Report following all site decommissioning and restoration activities. The Site Closure Report will be the final milestone attainment request for the project. Refer to Appendix B for the minimum requirements for the Closure Reports.

3.3.4. Any reports submitted to the Department may include a Milestone Attainment Request (MAR) in accordance with Section 3.1.5.

### 3.4. Invoicing and Payment

3.4.1. All milestone payments will be based upon the approval of the MAR in accordance with Section 3.1.5.

3.4.2. Upon approval of the MAR, the Department agrees to authorize payments in accordance with Appendix A. The Department shall have a minimum of thirty (30) days to process the approved request for payment.

### 3.5. Contract Termination and Renegotiations

3.5.1. Reimbursement under this Agreement may be terminated at any time for failure of the Contractor to perform in accordance with the terms and conditions contained within this agreement. The Department will provide written notice to the Contractor describing the violated term and/or condition. The Contractor will be provided thirty (30) days to correct all identified deficiencies.

3.5.2. In the event of an imminent hazard, the Department will notify the Contractor as soon as practicable, but may act immediately to abate the hazard. If the Contractor created the hazard and the Department shall act to abate, then the Contractor agrees to indemnify and reimburse the costs incurred by the Department.

3.5.3. If the Contractor abandons the project prior to attainment of all milestone, or does not correct deficiencies (see Section 3.5.1 ), then the Department considers that the Contractor has breached the terms of this Agreement and will be prohibited from doing any future State-lead work for the Department for a period of three (3) years. This includes both new State-lead work for the Department and work that is ongoing, including work that is not under this contract.

3.5.4. In the event the contract is breached, the Department will collect payment of the performance bond for this site.

### 3.5.5. Breach and Cure Provisions



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3.5.5.1. In the event that the cleanup schedule is delayed for more than 60 calendar days and such delay is due to circumstances beyond the control of the Contractor, then the time for the performance of the cleanup shall be extended and the Contractor may request an intermediate milestone payment for work performed prior to the cessation of work. However, any such delay shall not be cause for an increase in the price of this Agreement. In the event that the cleanup scheduled is delayed for more than 120 calendar days, then this Agreement may be renegotiated or terminated by either party. Termination pursuant to this paragraph shall not be considered as failure to perform by the Contractor and handled in accordance with paragraph 43.5.5.2.

3.5.5.2. In the event that this Agreement is terminated and such termination is not due to failure to perform by the Contractor then, the Contractor shall not receive payment for unattained milestones. However, the Contractor shall be paid a prorated amount of the next milestone payment based upon their relative progress towards that milestone. The Contractor may also be paid on a time and materials basis for demobilization but such costs shall not exceed 5% of the total amount of this Agreement. Any such payments made shall completely satisfy the Department's obligation to the Contractor under this Agreement.

3.5.5.3. In the event that this Agreement is opened for renegotiation, failure to resolve such negotiations to the satisfaction of the Department and the Contractor shall result in termination of this Agreement. If the reason for the renegotiation was beyond the control of the Contractor, then such termination shall not be considered as failure to perform by the Contractor and shall be handled in accordance with paragraph 3.5.5.2.

### 3.5.6. Re-Openers and Scope Changes

3.5.6.1. The specific scopes of work and contract price are intended to cover only the contamination identified in the Site Data Package submitted during the Bid Request. Therefore, the contract price will not be subject to change unless one or more of the following occur (with each of the following hereinafter referred to as a "Re-opener"):

3.5.6.1.1. The Department will allow for the renegotiation of this Agreement if a "New Condition" is encountered. New Conditions are deemed to include:

- a new documented tank, line and/or dispenser failure, that impacts soil, sediments, surface water and/or groundwater;
- the discovery of unknown underground storage tanks and/or lines and associated equipment;
- the detection of measurable non-aqueous phase product in wells or other areas where it has not been detected for the past two years and is not the result of: (1) plume migration over time of a previously identified NAPL plume, or (2) mobilization of a previously identified NAPL plume due to remedial efforts under this contract;
- the detection of measurable non-aqueous phase product in wells or other areas that have never had detections of such product, and where the new NAPL condition is not the result of: (1) plume migration over time of a previously identified NAPL plume onsite, or (2) mobilization of a previously identified NAPL plume due to remedial efforts under this contract;
- the detection of any dissolved regulated substances not previously detected;
- increases in one or more COC or other regulated substance that exceed 130% of the maximum concentration of such COC or other regulated substance measured during the previous two years of monitoring that is not the result of: (1) migration over time of a previously identified plume onsite, or (2) mobilization of a previously identified plume due to remedial efforts under this contract;
- following a formal written request by the Contractor; any other unidentified condition that the Department approves as a "New Condition".

3.5.6.1.2. Change in applicable law, regulation, guidance or policy, or change in the regulatory interpretation of the same, as they relate to assessment, remediation and/or closure that in any way affects the scope of work for this Agreement.

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3.5.6.1.3. Failure of the Department and the Contractor to gain access to the site or adjacent properties, significant changes in access, significant changes in access agreements, or non-standard access agreements involving attorneys representing third parties.

3.5.6.1.4. Disturbances including, without limitation, destruction, replacement, repair or relocation, of monitoring and/or remedial systems or equipment that is required by or results from activities on the property by the owner or property lessee.

3.5.6.1.5. Changes in property ownership or use that require a remediation standard more stringent than the cleanup goals established in the original Agreement.

3.5.6.1.6. Increases in any individual utility cost or commodity cost in excess of 10%.

3.5.6.1.7. Termination or suspension of monitoring and/or remediation activities by the Department for more than one hundred and twenty (120) days.

3.5.7. The Contractor is responsible for meeting required time and remedial performance goals detailed as stated in the Statement of Goals section of the Remedial Action Work Plan. However, in the event final milestone goals cannot be reached in the prescribed performance timeframe, the Contractor may petition the Department to perform a Tier II Risk Assessment, thereby establishing Site Specific Target Levels (SSTLs) as cleanup goals for the site. The Department has the sole discretion to adjust final milestone cleanup goals to correlate to the SSTLs developed by the Contractor, or to hold the Contractor to the original terms and cleanup goals established in the original Agreement. All costs incurred from the performance of a Tier II Risk Assessment and the development of SSTLs shall be the responsibility of the Contractor and shall not be included in the cost of this Agreement.

### 3.5.8. Resolving Disputes

3.5.8.1.1. Upon the occurrence of one or more of the Re-openers, the Department and the Contractor shall meet and confer in good faith to assess the impact to the Scopes of Work and/or the contract price caused by the Re-opener. The Department has the option to negotiate mutually agreeable changes to the Scopes of Work and/or the contract price with the Contractor or to terminate the Agreement and pay the Contractor the total remedial costs of the Contractor's effort, based on task rates outlined in the site-specific project proposal, to the date of such removal, up to, but not to exceed, the site's contract price.

3.5.9. The Contractor shall immediately notify the Department (within 24hrs) upon discovery of a significant change in site conditions. This notification shall be followed up in writing within fifteen (15) days upon discovery of a significant change. The following are examples of significant changes in site conditions:

- an emergency or imminent hazard which would require the contractor to make changes to the remedial system to mitigate the hazard;
- an increase in total contaminants of concern or free phase product thickness at a monitoring point by over 50% from the last monitoring event, or measurable free-product is found at a monitoring point for the first time;
- the system has shut down for more than a week;
- a sensitive receptor has been impacted, such as elevated VOCs in indoor air, utility lines, and water supply wells.

### 3.5.10. General Assumptions & Contingencies

3.5.10.1. The Contractor shall perform as an independent Contractor and not as an agent, representative, or employee of the Department.

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3.5.10.2. The Contractor shall perform the services in a proper and satisfactory manner as determined by the Department. Any and all such equipment, products or materials necessary to perform these services, or requirements as further stated herein, shall be supplied by the Contractor.

**APPENDIX C  
MILESTONE ATTAINMENT PAYMENT INFORMATION**

1. The final goal of the site-specific bid requests, that will be sent out to the contractors, will be to remediate the core area of the plume (onsite portion of the plume), to reduce total contaminant mass in the source area and reduce dissolved phase petroleum contamination onsite to concentrations that are below Tier 1 Risk Based Screening levels, or, unless specified differently in the Site Data Package.
  - 1.1. Verification that interim corrective action goals have been met will be based upon groundwater samples collected from selected attainment monitoring wells.
  - 1.2. Verification that final corrective action goals have been met will be based upon groundwater samples collected from the same monitoring wells and additional verification wells to be installed at locations designated by DNREC-TMS
2. Historical data will be contained in the Site Data Package submitted to successful contractors during the bid request procedure. Baseline sample results will be determined through the averaging of the most recent round of quarterly monitoring data and the results of a baseline sampling event performed by the Department or the Department's representative within ninety (90) days of the bid request. The bidders may perform their own sampling during the bid preparation at the bidder's own cost and discretion.
3. There are two options for payment structures with this contract. Option A will be the default/required option for those proposals where startup costs do not exceed 40% of the total proposal price. Option B is a selectable option for proposals where startup costs are greater than 40%; however, contractors can utilize Option A for this scenario if it is deemed preferable. The Option selected by the Contractor shall be clear in the PFP Bid Form (Appendix C). For Option B, invoices and documentation for all startup costs shall be submitted for payment in accordance with 3.3 of this Part. At its discretion, the Department may offer an alternative payment structure in a site-specific bid request. The payment breakdown, for Options A and B, is as follows:

**OPTION A – Startup costs less than 40% of total proposal**

- 3.1. Payment of 40% of the contract price will be made within thirty (30) days of the Department's verification of remediation system startup or implementation of corrective action as described in the Price Quotation form. The Department will verify that startup is complete within seven (7) working days of notification of startup. The contractor shall have a representative onsite for the Department's startup verification inspection.
- 3.2. A total payment of 40% of the contract price will be paid out in increments based upon achieving the following percent reductions for interim goals in designated attainment monitoring wells:
  - 3.2.1. Upon 25% reduction of each designated chemical of concern for the site in each attainment monitoring well, 10% of the total contract price will be paid upon verification.
  - 3.2.2. Upon 50% reduction of each designated chemical of concern for the site in each attainment monitoring well, 15% of the total contract price will be paid upon verification.

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- 3.2.3. Upon 75% reduction of each designated chemical of concern for the site in each attainment monitoring well, 15% of the total contract price will be paid upon verification.

NOTE: percent reduction is based upon the decrease of a chemical of concern (COC) as compared to the baseline concentration for that COC in each attainment well. An interim goal is not achieved until each milestone percent reduction is attained for each designated COC in every attainment monitoring well for the site during the same monitoring event.

- 3.2.4. The final 20% of the contract price will be paid upon completion of the following: (1.) verification that concentrations of COCs do not exceed the cleanup goals defined in the Site Data Package for each attainment well for four (4) consecutive quarters of monitoring, (2.) verification that site cleanup goals are met in verification wells installed by the Department, if applicable, (3.) all site restoration work shall be completed including proper abandonment of all onsite monitoring wells, dismantling and removal of remediation system, and restoration of the property to its original condition.

NOTE: For final payment under this contract, the Department may require verification of the removal of contamination. The verification methods used will be determined by the Department and may include additional monitoring well installation(s), soil boring(s), or other methods. The cost of the verification work will be paid by the Department including any costs for the installation and proper abandonment of verification wells.

**OPTION B – Startup costs greater than 40% of proposal**

- 3.3. The Department will reimburse the Contractor for the startup costs not to exceed 80% of the total contract price. The contractor must indicate on the PFP Bid Form the “not to exceed” estimate for all costs associated with system installation and startup. This reimbursement will be performed on a time and materials basis; all applicable documentation must be submitted to the Department for reimbursement of startup costs under Option B including but not limited to invoices for all subcontractors, materials and equipment, and applicable timesheets for personnel (startup reimbursement package). Once system installation and startup are complete the Milestone Attainment Request (MAR) Form and the startup reimbursement package must be submitted to the Department for review and processing. Payment will be made within thirty (30) days of the Department’s verification of remediation system startup or implementation of corrective action as described in the PFP Bid form. The Department will verify that startup is complete within seven (7) working days of notification of startup. The contractor shall have a representative onsite for the Department’s startup verification inspection.

- 3.4. A total payment of 70% of the remaining contract price, after startup costs have been paid, will be paid out in increments based upon achieving the following percent reductions for interim goals in designated attainment monitoring wells:

- 3.4.1. Upon 25% reduction of each designated chemical of concern for the site in each attainment monitoring well, 20% of the total remaining contract price will be paid upon verification.

- 3.4.2. Upon 50% reduction of each designated chemical of concern for the site in each attainment monitoring well, 20% of the total remaining contract price will be paid upon verification.

- 3.4.3. Upon 75% reduction of each designated chemical of concern for the site in each attainment monitoring well, 30% of the total remaining contract price will be paid upon verification.

NOTE: percent reduction is based upon the decrease of a chemical of concern (COC) as compared to the baseline concentration for that COC in each attainment well. An interim goal is not achieved until each

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milestone percent reduction is attained for each designated COC in every attainment monitoring well for the site.

- 3.4.4. The final 30% of the remaining contract price will be paid upon completion of the following: (1.) verification that concentrations of COCs do not exceed the cleanup goals defined in the Site Data Package for each attainment well for four (4) consecutive quarters of monitoring, (2.) verification that site cleanup goals are met in verification wells installed by the Department, if applicable, (3.) all site restoration work shall be completed including proper abandonment of all onsite monitoring wells, dismantling and removal of remediation system, and restoration of the property to its original condition.

NOTE: For final payment under this contract, the Department may require verification of the removal of contamination. The verification methods used will be determined by the Department and may include additional monitoring well installation(s), soil boring(s), or other methods. The cost of the verification work will be paid by the Department including any costs for the installation and proper abandonment of verification wells.

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**APPENDIX D**  
**DNREC-TMS MINIMUM REQUIREMENTS FOR REPORTING**

**Remedial Action Work Plan (RAWP)**

Statement of Goals:

- Provide a schedule, with applicable calculations, as to when cleanup goals and milestones should be achieved (refer to Appendix C and the Site Data Package for cleanup goals and milestones).

Restate the site conditions:

- Geologic and hydrogeologic conditions
- Contaminants of Concern/Contaminant plume
- Site history and current land use
- Receptor (point of exposure) survey within a minimum of 500 ft. and utility information
- Potential pathway analysis
- General site map that includes:
  - north arrow
  - scale
  - legend
  - proposed and existing monitoring well locations
  - supply well locations and distances to receptors
  - sampling locations
  - existing structures
  - sensitive areas
  - contaminated areas of concern
  - utilities

Final Remedial Design and Implementation:

- Site map that includes the layout of the remedial system including; piping, trenching, well locations (existing and proposed), building construction, building location (existing and proposed), source area, additional sampling points, etc.
- Construction details including: potential sub-contractors, type of equipment to be used, materials used in construction, monitoring well design etc.
- Provide details of a pilot study if applicable.
- Provide brief description of applicable permits required for system implementation.

Remedial Selection:

- Supporting documentation and literature for equipment proposed for remediation
- Relevant calculations used in sizing blowers, pumps, wells, piping, other.
- Calculations used in determining flow rates, injection rates, extraction rates, capture zones, pressure etc.
- Relevant calculations used in determining estimated time to closure
- Other technologies that may be considered to supplement primary remedial effort including initial “interim” remedial action measures.

Performance Evaluation:

- Provide a plan on how the remedial system will be evaluated with respect to time and contaminant removal and with respect to the estimated schedule prepared in the Statement of Goals
- Provide a plan on how the remedial system will be evaluated for operation efficiency and down time.
- Provide potential courses of action if selected technology is not meeting expectations

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- Monitoring Plan including but not limited to sampling frequency of all wells, sampling methods, QA/QC, list of analytes per sampling event and the analytical methods used.

#### Subcontractor List

- Names of projected subcontractors and the specific tasks that they will provide
- Qualifications of Subcontractors and experience with the Subcontractor

#### Quarterly Monitoring Report:

##### The Quarterly Monitoring Report shall include, at a minimum:

- Sampling technique and equipment used
- Well purge volumes and recovery rates with well observations and sampling sheets (NAPL, odors, turbidity etc.)
- Water level measurements to the nearest .01 foot from a surveyed point and a map including calculated groundwater flow
- A table documenting historic water levels to date for each well
- Well logs for newly installed wells including well completion reports
- Laboratory analytical reports
- Copies of "chain of custody" forms
- Laboratory QA/QC reports
- Analytical results for all samples, displayed in tabular form, along with historical monitoring results. Results displayed in table shall be listed in numerical form (reporting limits shall be noted instead of Non-Detect (ND)).
- A comparison of the concentration of COCs to applicable RBSLs and/or milestone concentrations for milestone attainment wells
- A statement explaining why there was any deviation in sampling, analytical techniques, equipment or QA/QC
- Calculations of groundwater flow, conductivity, percent reduction of COCs etc.
- A detailed site map that includes, at a minimum, the locations of all monitoring wells and sampling points, groundwater contours and COC concentration gradients, points of exposure, existing structures, parcel boundaries, north arrow, scale and legend.
- Include any deviation to the implemented remedial plan and include any repairs or adjustments to the remedial technology on-site and include reasons and duration for down-time
- Include any suggestions or recommendations related to the above bulleted item, as well as any change to the monitoring plan in general.
- Include the Milestone Attainment Request (MAR) if a milestone has been reached.
- Within the report of the fourth quarterly post-remediation monitoring event, or in separate correspondence prior to decommissioning the remediation system, submit an inventory of all equipment purchased for the project, per Appendix B, "Pay for Performance Conditions," Section 2.16.1.

#### Site Closure Report:

- Summary of remedial activity
- The site Closure Report should include all of the items listed in the Quarterly Monitoring Report as applicable
- Document the disposal and dismantling of all piping and material associated with the remedial activities.
- Include pictures of the facility prior to and after closure activities
- Submit copies off all well abandonment reports and any closure documentation for permits that were obtained during the project.
- Include a Milestone Attainment Request as the final request for payment.

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**APPENDIX E**  
**PAY FOR PERFORMANCE PROPOSAL FORM**

PRICE QUOTATION

The total cost in dollars for \_\_\_\_\_ (insert company name) to complete this site-specific project is:

\$ \_\_\_\_\_

We select the following Payment Option for this contract in compliance with Contract No. NAT14002-PFPRemed (the Contract):

(Circle One)    Option A

Option B -- Startup costs "not to exceed": \$ \_\_\_\_\_  
Startup costs are \_\_\_\_\_% of total contract costs

The above total cost includes the following:

- remediation of the area of concern/plume such that the levels of the chemicals of concern (COCs) do not exceed the cleanup goals defined in the Site Data Package;
- completion of all associated monitoring and post remediation verification;
- preparation of all written plans, reports, and correspondence;
- obtaining and meeting all terms and conditions of any required permits and licenses;
- the design, installation, monitoring, operation, maintenance and when completed, proper abandonment or removal of all assessment and remediation items installed as part of the remedial action;
- costs to provide all other items as required by the Site Data Package for the Site Below:
  - \_\_\_\_\_ [site name] located at \_\_\_\_\_  
\_\_\_\_\_ [site address] in \_\_\_\_\_  
[city], Delaware and,
- all capitol cost, subcontractor costs, rental costs, staff costs, utility cost, and any other costs associated with performing the services requested via this contract at the Site referenced above.

OTHER CRITERIA

In addition to the Price quotation, please attach a proposal that addresses the following:

- The remedial technology(ies) proposed to achieve final cleanup levels as stated in the Site Data Package
- A brief summary of why this technology would be beneficial/successful at this site (i.e. lifecycle cost analysis)
- A conceptual design of how the technology would be implemented (include diagrams of potential well and piping locations)
- The time required to achieve the milestones outlined in the Site Data Package (including all intermediate milestones)
- Estimated startup costs including equipment, material and labor, and thus, the payment Option that will be preferred
- Breakdown of costs, per task, to achieve the milestones in the Site Data Package. This includes, and is not limited to, costs per sampling event, costs per report, costs per month of operation and maintenance, and costs for project management and coordination for each remedial task.
- Additional investigations and sampling points necessary for full system design. NOTE: all additional investigations will be the Contractors responsibility and shall be included in the total cost above.
- Any additional information that would be beneficial in helping the Department chose a remedial approach

If the above items are not addressed, the site-specific project proposal will be rejected. Final system design and details, including time required to achieve milestones, shall be included by the successful contractor in the Remedial Action Work Plan.



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(Pay for Performance Proposal Form continued)

ACCEPTANCE & DELIVERY STATEMENT

In compliance with Contract No. NAT14002-PFPRemed (the Contract) and subject to all the conditions and appendices thereof, the Contractor offers, and agrees to abide with all conditions and terms of the Contract originally attached to this Proposal Form. Note: the fully executed PFP Proposal form shall be attached as an addendum to the Contract and made part thereof.

Site Remediation Contractor \_\_\_\_\_

Principals' Names 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

DEPARTMENT SIGNATURE

The Department of Natural Resources and Environmental Control hereby accepts this bid to remediate the site mentioned above in accordance to Contract No. NAT14002-PFPRemed.

Authorized Signature \_\_\_\_\_ Printed Name and Title \_\_\_\_\_

Date: \_\_\_\_\_

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**APPENDIX F**  
**MILESTONE ATTAINMENT REQUEST FORM: PAYMENT OPTION A**

Facility ID#: \_\_\_\_\_ Date: \_\_\_\_\_

Project ID#: \_\_\_\_\_

Site Name: \_\_\_\_\_ (the 'Site')

Address (Street, City): \_\_\_\_\_

File Code #: \_\_\_\_\_

**Total Contract Price:** \_\_\_\_\_

Milestones Already Achieved and Reimbursed (mark each with an "X"):

- \_\_\_ Startup
- \_\_\_ 25 % reduction of COCs
- \_\_\_ 50 % reduction of COCs
- \_\_\_ 75 % reduction of COCs
- \_\_\_ Project Completion

**Total Reimbursed to Date:** \_\_\_\_\_

Milestone payment applied for in this submittal (mark each with an "X"):

- \_\_\_ Startup
- \_\_\_ 25 % reduction of COCs
- \_\_\_ 50 % reduction of COCs
- \_\_\_ 75 % reduction of COCs
- \_\_\_ Project Completion

**Amount to be Reimbursed** \_\_\_\_\_

NOTE: One or more Milestone payments may be made as long as the goal was achieved. Please include this form with the Monitoring Report or Remedial Action Report so that the claims made on this form are supported.

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**APPENDIX G**  
**MILESTONE ATTAINMENT REQUEST FORM: PAYMENT OPTION B**

Facility ID#: \_\_\_\_\_ Date: \_\_\_\_\_

Project ID#: \_\_\_\_\_

Site Name: \_\_\_\_\_ (the 'Site')

Address (Street, City): \_\_\_\_\_

File Code #: \_\_\_\_\_

**Total Contract Price:** \_\_\_\_\_

Milestones Already Achieved and Reimbursed (mark each with an "X"):

- Startup – (time & materials/not to exceed – reimbursement package attached)
- 25 % reduction of COCs
- 50 % reduction of COCs
- 75 % reduction of COCs
- Project Completion

**Total Reimbursed to Date:** \_\_\_\_\_

Milestone payment applied for in this submittal (mark each with an "X"):

- Startup – (time & materials/not to exceed – reimbursement package attached)
- 25 % reduction of COCs
- 50 % reduction of COCs
- 75 % reduction of COCs
- Project Completion

**Amount to be Reimbursed** \_\_\_\_\_

NOTE: One or more Milestone payments may be made as long as the goal was achieved. Please include this form with the Monitoring Report or Remedial Action Report so that the claims made on this form are supported.