Department of Natural Resources and Environmental Control
Watershed Stewardship

State of Delaware

Cedar Posts and Salt Treated Posts

Invitation to Bid

Contract No. NAT16000-POSTS

October 14, 2016

- Deadline to Respond -
November 15, 2016
3:00 p.m. EST

CONTRACT NO. NAT16000-Posts

ALL BIDDERS:

The enclosed packet contains an "INVITATION TO BID" for NAT16000-Posts. The invitation consists of the following:

I. DEFINITIONS and GENERAL PROVISIONS
   - A – GENERAL PROVISIONS
   - B – AWARD AND EXECUTION OF CONTRACT
   - C – GENERAL AUTHORITY
   - D – EQUAL OPPORTUNITY

II. SPECIAL PROVISIONS

III. TECHNICAL SPECIFICATIONS

IV. BID QUOTATION REPLY SECTION

SAMPLE REPORTS

1 – MONTHLY USAGE REPORT SAMPLE
2 – SUBCONTRACTING (2ND TIER) QUARTERLY REPORTING SAMPLE

ATTACHMENTS

A – PROPOSAL REPLY REQUIREMENTS and BID QUOTATION
B – NO BID REPLY FORM
C – NON-COLLUSION STATEMENT AND ACCEPTANCE
D – BID BOND **(Not Required**)
E – SUBCONTRACTOR INFORMATION FORM
F – BUSINESS REFERENCES
G – ITB EXCEPTIONS
H – CONFIDENTIAL AND PROPRIETARY INFORMATION
I – OFFICE OF SUPPLIER DIVERSITY (OSD) APPLICATION

Both appendixes are made part of this solicitation and are available for download at the following site:

http://bids.delaware.gov/

In order for your bid to be considered, the bid quotation reply section shall be executed completely and correctly and returned in a sealed envelope clearly displaying the contract number, by November 15, 2015 at 3:00 p.m. EST.

Bids shall be submitted to:

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship
Attn: Contract: NAT16000-Posts
901 Pilottown Road
Lewes, DE 19958

Please review and follow the information and instructions contained in the general and special provisions section of the invitation. Should you need additional information, please contact Kathy Millman, Kathy.Millman@state.de.us
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Resources Department of Natural, Watershed Stewardship

I. DEFINITIONS AND GENERAL PROVISIONS

The attached Definitions and General Provisions apply to all contracts and are part of each invitation to bid. The requirement to furnish a bid bond and performance bond is applicable unless waived in the Special Provisions. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Bidders or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

DEFINITIONS

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

STATE: The State of Delaware

AGENCY: State Agency as noted on cover sheet.

BIDDER OR VENDOR: Any individual, firm, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

BIDDER'S DEPOSIT: The security designated in the proposal to be furnished by the bidder as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to the bidder.

BID INVITATION: The "bid invitation" or "invitation to bid" is a packet of material sent to vendors and consists of General Provisions, Special Provisions, specifications, and enclosures.

BOND: The approved form of security furnished by the Vendors and its surety as a guaranty of good faith on the part of the Vendor to execute the work in accordance with the terms of the contract.

CONTRACT: The written agreement covering the furnishing and delivery of material or work to be performed.

CONTRACTOR: Any individual, firm, or corporation with whom a contract is made by the Agency.

DESIGNATED OFFICIAL: The agent authorized to act for the Agency.

GENERAL PROVISIONS: General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

ITB: Invitation to Bid.

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time

PROPOSAL: The offer of the bidder submitted on the approved form and setting forth the bidder's prices for performing the work or supplying the material or equipment described in the specifications.

SPECIAL PROVISIONS: Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

SURETY: The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the contractor's payments of all debts pertaining to and for its acceptable performance of the work for which its has contracted.

SECTION A - GENERAL PROVISIONS

1. BID INVITATION

See "Definitions".

2. PROPOSAL FORMS

The invitation to bid shall contain pre-printed forms for use by the vendor in submitting its bid. The forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, etc.

3. INTERPRETATION OF ESTIMATES

The attention of bidders is called to the fact that, unless stated otherwise, any quantities given in the proposal form are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract.

An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

4. SILENCE OF SPECIFICATIONS

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

5. EXAMINATION OF SPECIFICATIONS AND PROVISIONS

The bidder shall examine carefully the proposal and the contract forms for the material contemplated. The bidder shall investigate and satisfy itself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of the Special Provisions and the contract. The submission of a proposal shall be conclusive evidence that the bidder has made examination of the aforementioned conditions.

6. PREPARATION OF PROPOSAL

a. **The bidder's proposal shall be written in ink or typewritten** on the form provided.

b. If items are listed with a zero quantity, bidder shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The proposal shall show a total bid price for each item bid and the total bid price of the proposal excluding zero quantity items.

7. PRICES QUOTED

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract.

All prices must be quoted in U.S. Dollars.

8. DISCOUNT

No qualifying letter or statements in or attached to the proposal, or separate discounts will be considered in determining the low bid except as may be otherwise herein noted. Cash or separate discounts should be computed and incorporated into unit bid price(s).

9. SAMPLES OR BROCHURES

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

10. PROPOSAL GUARANTY; BID BOND

Unless waived, each bidder shall submit with its proposal a guaranty in sum equal to at least 10% of the total value of its bid, according to Delaware Code Title 29, Section 6927(a).

This bid bond 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, to the State of Delaware for the benefit of the Agency, or a certified check drawn on a reputable banking institution and made payable to the Agency in the requirement amount. If Agency bond form is not utilized, the substituted bond forms must conform to the minimum of conditions specified in the Agency bond form.

11. DELIVERY OF PROPOSALS

Proposals shall be delivered in sealed envelopes, and shall bear on the outside the name and address of the bidder as well as the designation of the contract. Proposals forwarded by U.S. Mail shall be sent first class to the address listed below. Proposals forwarded by delivery service other than the U.S. Mail or hand delivered must be delivered to the address listed below. All bids must clearly display the bid number on the envelope.

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship
Attn: NAT16000-Posts
901 Pilottown Road
Lewes, DE 19958

All proposals will be accepted at the time and place set in the advertisement. Bidder bears the risk of delays in delivery. Proposals received after the time set for public opening will be returned unopened.

12. WITHDRAWAL OF PROPOSALS

A bidder may withdraw its proposal unopened after it has been deposited, if such a request is made prior to the time set for the opening of the proposal.

13. PUBLIC OPENING OF PROPOSALS

The bids shall be publicly opened at the time and place specified by the Agency. Bidders or their authorized representatives are invited to be present.

14. PUBLIC INSPECTION OF PROPOSALS

If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

15. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of its proposal or proposals:

a. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.

b. Evidence of collusion among bidders.

c. Unsatisfactory performance record as evidenced by past experience.

d. Any suspension or debarment of the parent company, subsidiary or individual involved with the vendor by federal, any state or any local governments within the last five (5) years.

e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.

f. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

g. Non-attendance of mandatory pre-bid meetings may be cause of disqualification.

16. ADDENDA TO THE INVITATION TO BID (ITB)

If it becomes necessary to revise any part of this ITB, revisions will be posted at http://bids.delaware.gov/ . By submitting an offer to the State, vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Invitation to Bid.

17. 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 ITB or the award of a contract resulting from this ITB shall have their proposal immediately rejected and shall be barred from further participation in this ITB.

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 ITB 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 ITB 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 ITB shall be conducted in strict accordance with the manner, forum and conditions set forth in this ITB.

18. 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.

19. INDEPENDENT CONTRACTORS

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

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period.

20. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

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

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

SECTION B - AWARD AND EXECUTION OF CONTRACT

1. CONSIDERATION OF BIDS

a. After the proposals have been opened, the bids will be tabulated and the results will be made available to the public. Tabulations of the bids will be based on the correct summation of items at the unit price bid.

b. The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. MATERIAL GUARANTY

Before any contract is awarded, the successful bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

3. CONTRACT AWARD

Within thirty days from the date of opening proposals, the contract will be awarded or the proposals rejected.

4. EXECUTION OF CONTRACT

The bidder to whom the award is made shall execute a formal contract and bond within twenty days after date of official notice of the award of the contract.

If the successful bidder fails to execute the required contract and bond, as aforesaid, within twenty days after the date of official notice of the award of the contract, its proposal guaranty shall immediately become forfeited as liquidated damages. Award will then be made to the next lowest qualified bidder of the work or re-advertised, as the Agency may decide.

5. REQUIREMENT OF CONTRACT PERFORMANCE BOND

Successful bidders shall furnish bond, **unless bond(s) have been waived as noted in the Special Provisions**, simultaneously with the execution of the formal contract, to the State of Delaware for the benefit of the Agency with surety in the amount of 100% of the total contract award or as otherwise provided in the Special Provisions. Said bonds shall be conditioned upon the faithful performance of the contract.

The bond forms shall be provided by the Agency and the surety shall be acceptable to the Agency.

6. WARRANTY

The successful bidder(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

7. THE CONTRACT(S)

The contract(s) with the successful bidder(s) will be executed with the Department of Natural Resources, Watershed Stewardship.

8. RETURN OF BIDDER'S DEPOSIT

The deposits shall be returned to the successful bidder upon the execution of the formal contract. The deposits of unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or rejection of their bids.

9. INFORMATION REQUIREMENT

The successful bidder's shall be required to advise the Department of Natural Resources, Watershed Stewardship of the gross amount of purchases made as a result of the contract.

10. CONTRACT EXTENSION

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months.

SECTION C – GENERAL AUTHORITY

1. AUTHORITY OF AGENCY

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Agency shall be final and binding.

2. LAWS TO BE OBSERVED

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall indemnify and save harmless the State of Delaware, the Agency, and all Officers, Agency and Servants thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by itself or by its employees.

3. APPLICABLE LAW AND JURISDICTION

This bid, any resulting contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Bidder submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this bid, and any resulting contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

4. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the contractor at its own expense.

5. PATENTED DEVICES, MATERIAL AND PROCESSES

a. The contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner, and shall file a copy of this agreement with the Agency.

b. The contractor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

6. EMERGENCY TERMINATION OF CONTRACT

a. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.

b. In the event the contractor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

7. TAX EXEMPTION

a. Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.

b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the contractor. Each bidder shall take its exemption into account in calculating its bid for its work.

8. OR EQUAL (PRODUCTS BY NAME)

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified.

9. BID EVALUATION AND AWARD

The Department of Natural Resources, Watershed Stewardship will award this contract to the lowest responsible bidder(s) which in their judgment best serves the interest of the State of Delaware in accordance with Delaware Code Title 29, Section 6923(k). Personnel with experience and technical background may be utilized by the Department of Natural Resources, Watershed Stewardship in making judgment. In case of error in price extension, the unit price(s) shall prevail.

10. INVOICING

After the awards are made, the agencies participating in the bid may forward their purchase orders to the successful bidder(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an invoice from the vendor.

11. 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.

12. ASSIGNMENT OF ANTITRUST CLAIMS

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

SECTION D - EQUAL OPPORTUNITY

1. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

a. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

b. During the performance of this contract, the contractor agrees as follows:

1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to

employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin."

c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

II. SPECIAL PROVISIONS

1. CONTRACT REQUIREMENTS

This contract will be issued to cover the posts needed to secure the sand fence requirements for the Department of Natural Resources, Watershed Stewardship.

2. AGENCY USE CONTRACT

Pursuant to 29 Del. C. §6904(e) respectively, if no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

3. CONTRACT PERIOD

Each vendor's contract shall be valid from November 15, 2016 through November 14, 2017. Each contract may be renewed for three (3) additional one (1) year extension periods through negotiation between the contractor and the Department of Natural Resources, Watershed Stewardship. Negotiation must be initiated no later than ninety (90) days prior to the termination of the current agreement.

4. PRICES

Prices shall remain firm for the term of the contract. All prices shall be quoted in U.S. Dollars.

5. NUMBER OF COPIES WITH MAILING OF PROPOSAL

To be considered, all proposals must be submitted in writing and respond to the items outlined in this ITB. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 3 paper copies and 1 electronic copies on CD or DVD media disk. One of the copies shall be marked "Master Copy" and will contain original signatures in all locations requiring a vendor signature. The remaining copies do not require original signatures. CD or DVD media disk must also contain the completed Appendix B Excel sheets, in Excel format.

6. 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.

7. POTENTIAL CONTRACT OVERLAP

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

8. PRICE ADJUSTMENT

The Vendor is not prohibited from offering a price reduction on its services or materiel offered under the contract. The State is not prohibited from requesting a price reduction on those services or materiel during the initial term or any subsequent options that the State may agree to exercise.

If agreement is reached to extend this contract beyond the initial 1 year period, the Division of Watershed Stewardship shall have the option of offering a determined price adjustment and shall not exceed the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

9. SHIPPING TERMS

F.O.B. destination; freight pre-paid.

10. QUANTITIES

The attention of bidders is called to the fact that, unless stated otherwise, the quantities given in the proposal are best estimates and are given as a basis for the comparison of bids. Quantities ordered may be increased or decreased by any eligible agency as deemed necessary during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.

11. ELECTRONIC CATALOG

At the discretion of the Department of Natural Resources, Watershed Stewardship, the successful vendor(s) may be required to submit their items list in an electronic format designated by the State.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

12. FUNDING OUT

The continuation of this contract is contingent upon funding appropriated by the legislature.

13. BID BOND REQUIREMENT

The Bid Bond requirement has been waived.

14. PERFORMANCE BOND REQUIREMENT

The Performance Bond requirement has been waived.

15. MANDATORY INSURANCE REQUIREMENTS

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage.

a. Commercial General Liability - $1,000,000 per occurrence/$3,000,000 aggregate,

and

b. Product Liability - $1,000,000 per occurrence/$3,000,000 aggregate,

and

c. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than $100,000 each person and $300,000 each accident as to bodily injury and $25,000 as to property damage to others.

and

d. 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.

All contractors must carry (a), (b), (c) and (d).

Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Administrator, Department of Natural Resources, Watershed Stewardship
Contract No. NAT16000-POSTS
State of Delaware
901 Pilottown Road
Lewes, DE 19958

Note: The State of Delaware shall <u>not</u> be named as an additional insured.

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

16. BASIS OF AWARD

The Department of Natural Resources, Watershed Stewardship shall award this contract to the lowest responsible and responsive bidder(s) who best meets the terms and conditions of the bid. The award will be made on basis of price, product evaluation, and prior history of service and capability.

The Department of Natural Resources, Watershed Stewardship reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

17. STATE OF DELAWARE BUSINESS LICENSE

Prior to receiving an award, the successful vendor shall either furnish the Department of Natural Resources, Watershed Stewardship 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 19899-8750 or by telephone to one of the following numbers: (302) 577-8201 - Public Service, (302) 577-8205 - Licensing Department.

Information regarding the award of this contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

18. HOLD HARMLESS

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

19. OWNERSHIP OF INTELLECTUAL PROPERTY

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the State of Delaware. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the State to evidence the State's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

20. NON-PERFORMANCE

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with Special Provisions, Item labeled "TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS" below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of the contract prices for reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State's invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

21. FORCE MAJEURE

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

22. CONTRACTOR NON-ENTITLEMENT

State of Delaware Contractors for Materiel and for Services shall not have legal entitlement to, nor seek business from another Contractors' Central Contract. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract as they are not a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code.

23. EXCEPTIONS

Bidders may elect to take **minor exception** to the terms and conditions of this ITB. The Department of Natural Resources, Watershed Stewardship shall evaluate each exception according to the intent of the terms and conditions contained herein, but the Department of Natural Resources, Watershed Stewardship must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening.

Exceptions must be submitted utilizing Attachment G to be considered. The Department of Natural Resources, Watershed Stewardship maintains sole discretion to reject any vendor exceptions that are submitted.

24. MANDATORY USAGE REPORTING

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

A complete and accurate Usage Report (Sample Report 1) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to Kathy.Millman@state.de.us. Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

Reporting is required by Executive Order.

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

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

25. BUSINESS REFERENCES

In order to have your bid considered, please supply three (3) business references consisting of current or previous customers with your reply. Please include name, address, telephone number, and a contact person.

PLEASE DO NOT UTILIZE STATE OF DELAWARE PERSONNEL AS REFERENCES.

26. ORDERING PROCEDURE

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

27. PURCHASE ORDERS

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **NAT16000-POSTS** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

28. BILLING

The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.

29. PAYMENT

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

30. PRODUCT SUBSTITUTION

All items delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the bid proposal unless specific approval is given by the Department of Natural Resources, Watershed Stewardship to do otherwise. However, awarded vendors are highly encouraged to offer any like substitute product (s); either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In such cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

31. OPPORTUNITY BUYS

The Director for the Department of Natural Resources, Watershed Stewardship can waive use of an agency contract pursuant to 29 Del. C. §6911(d). A process has been developed to permit any vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a contract. See http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity_buy_flowchart.pdf. The Director will afford any vendor on an existing contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted vendor prior to a waiver being granted.

32. I FOUND IT CHEAPER

Director for the Department of Natural Resources, Watershed Stewardship can waive use of an agency contract pursuant to 29 Del. C. §6911(d). A process has been developed to permit any State employee or Vendor to identify a lower price for material and or services for consideration despite the existence of a contract. See http://gss.omb.delaware.gov/contracting/documents/agencyboilers/opportunity_buy_found_cheaper_flowchart.pdf. The Director will afford any Vendor on an existing contact an opportunity to match or to beat the I Found It Cheaper suggestion and if not matched or beaten, approve the purchase via a waiver.

33. BID/CONTRACT EXECUTION

Both the non-collusion statement that is enclosed with this Invitation to Bid and the contract form delivered to the successful bidder for signature **shall** be executed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Enter Agency Name.

The State of Delaware requires completion of the Delaware Substitute Form W-9 to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record. The Taxpayer ID (SSN or EIN) and Applicant (vendor) name are submitted to the Internal Revenue Service for "matching." If the Taxpayer ID and name do not match, the vendor record cannot be approved.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

Any questions about completing this form or specific comments about a form that you have submitted, please contact vendor services by phone at 302-672-5000.

34. VENDOR RESPONSIBILITY

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

35. PERSONNEL, EQUIPMENT AND SERVICES

a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.

b. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment E are considered approved upon award. Changes to those subcontractor(s) listed in Attachment E must be approved in writing by the State.

36. FAIR BACKGROUND CHECK PRACTICES

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

37. VENDOR BACKGROUND CHECK REQUIREMENTS

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:
  https://sexoffender.dsp.delaware.gov/

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

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

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

38. DRUG TESTING REQUIREMENTS FOR LARGE PUBLIC WORKS

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

Final publication of the identified regulations can be found at the following:
4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

39. LIFE CYCLE COSTING

If applicable, the specifications contained within this ITB have been developed through Life Cycle Cost Analysis that will allow the State to realize the lowest total cost of ownership and operation over the useful life of the equipment

40. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the State of Delaware Minimum Wage Rates or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: http://dia.delawareworks.com/labor-law/prevailing-wage.php .

41. PREVAILING WAGE

The prevailing wage law, 29 Del.C.§6960, is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of $500,000 for new construction (including painting and decorating) or $45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed.

42. ENVIRONMENTAL PROCUREMENT PRODUCTS

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

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

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

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

43. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

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

b. Termination for Convenience: The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

c. Termination for Non-Appropriations: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

44. DISPUTE RESOLUTION

At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

45. TERMINATION OF CONTRACT

The contract resulting from this ITB may be terminated as follows by the Department of Natural Resources, Watershed Stewardship.

a. Termination for Cause: If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

b. Termination for Convenience: The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

c. Termination for Non-Appropriations: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

46. CHANGES

Both parties may, from time to time, require changes in the services to be provided by the Vendor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

47. AFFIRMATION

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

48. AUDIT ACCESS TO RECORDS

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to

preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

49. ASSIGNMENT

This contract shall not be assigned except by express prior written consent from the Agency.

50. NOTICE

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

State of Delaware, Department of Natural Resources and Environmental Control
Attn: Watershed Stewardship Administrator, Contract: NAT16000-Posts
901 Pilottown Road
Lewes DE 19958

51. VENDOR EMERGENCY RESPONSE POINT OF CONTACT

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

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

52. SUBCONTRACTS

Subcontracting is permitted under this ITB and contract. However, every subcontractor shall be identified in the Proposal (Attachment E) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the ITB and with all local, State and Federal Laws. The Vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

If a company elects to be a subcontractor for another vendor, the subcontractor may not

independently bid on this solicitation.

53. AGENCY'S RESPONSIBILITIES

The Agency shall:

a. Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.

b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.

c. When an ordering agency first experiences a relatively minor problem or difficulty with a vendor, the agency will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.

d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency or GSS - Contracting must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.

e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with vendors or commodities. Be sure to furnish as much detail as possible. http://gss.omb.delaware.gov/divisionwide/forms.shtml.

54. CONFIDENTIALITY

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

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

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets,

and confidential business information (collectively referred to herein as “confidential business information”). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor’s confidential business information may be lost.

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

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

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

55. PRICE NOT CONFIDENTIAL

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

56. NO PRESS RELEASES OR PUBLIC DISCLOSURE

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

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

III.TECHNICAL SPECIFICATIONS

Cedar Posts
Technical Specifications

The posts shall be 8 feet in length with a diameter of not less than 3 inches and not more than 5 inches. The posts shall be white or red cedar, straight or slightly crooked, and sound with all branches hewn flush to the post. The small end shall be square cut and the large end shall be pointed. The bark need not be removed.

The crook or bend of the post shall be such that a line drawn from the center of each end of the post doesn't fall outside of the center of the post by more than the diameter of the post. Also, the crook or bend shall not be so great so as to interfere with the ability to adequately secure the sand fence to the posts.

Salt Treated Posts
Technical Specifications

The posts shall be 4 inches by 4 inches, 8 feet in length. Lumber shall be surfaced on all sides.

All posts shall be treated with ACQ 0.60 pcf or approved equal. Posts shall bear the grademark, stamp or other identifying marks indicating grades of material and rules or standards under which are produced. Bundle marking will be permitted in lieu of marking each individual piece.

Moisture content of posts at the time materials are delivered and installed shall not exceed 25% for lumber 4 inches or less, nominal thickness. Species and grades shall be listed in NDS-05. Posts grade shall be No. 2 minimum.

NOTE: ALL POSTS NOT MEETING THE SAME SPECIFICATIONS <u>MUST</u> BE REPLACED WITHIN A RESONABLE TIME AS SPECIFIED BY THE DEPARTMENT OF NATURAL RESOURCES, WATERSHED STEWARDSHIP.

IV. BID QUOTATION REPLY SECTION

Contract No. **NAT16000-POSTS**

CEDAR POSTS AND SALT TREATED POSTS

Please fill out the attached forms fully and completely and return with your bid in a sealed envelope clearly displaying the contract number to The Department of Natural Resources, Watershed Stewardship by November 15, 2016 at 3:00 p.m. (Local Time) at which time bids will be opened.

Bids shall be submitted to:

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship
Attn: Contract: NAT16000-Posts
901 Pilottown Road
Lewes, DE 19958

PUBLIC BID OPENINGS

The public bid opening insures the citizens of Delaware that contracts are being bid fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the bids at the time and place specified and the contract shall be awarded within thirty (30) days thereafter. The main purpose of the bid opening is to reveal the name(s) of the bidders(s), not to serve as a forum for determining the apparent low bidders. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each bid has been determined.

After receipt of a fully executed contract(s), the Delaware public and all bidders are invited to make an appointment with the contracting officer in order to review pricing and other non-confidential information.

NOTE: ONLY THE BIDDER'S NAME WILL BE READ AT THE BID OPENING

STATE OF DELAWARE
Enter Agency Name

Sample Report 1

STATE OF DELAWARE
MONTHLY USAGE REPORT

FOR ILLUSTRATION PURPOSES ONLY

State of Delaware - Monthly Usage Report

Ver. 2 8/19/14

Contract Number / Title: _____

See Below for Transaction Detail

E-mail report to **vendorusage@state.de.us** no later than the 15th of each month for prior calendar month usage

Check here if there were no transactions for the reporting period ☐

Supplier Name: _____
Contact Name: _____
Contact Phone:

State Contract Item Sales $ -
Non-State Contract Item Sales $ -
Total Sales $ -

Report Start Date: _____
Report End Date: _____
Today's Date:

Customer Group	Customer Department, School District, or OTHER - Municipaltiy / Non-Profit	Customer Division (State Agency Section name, School name, Municipality / Non-Profit name)	Item Description	Awarded Contract Item YES/NO	Contract Item Number	Unit of Measure	Qty	Contract Proposal Price/Rate	Total Spend (Qty x Contract Proposal Price/Rate)

SAMPLE

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to enter agency email . It shall contain the six-digit department and organization code for each agency and school district.

STATE OF DELAWARE
Enter Agency Name

Sample Report 2

FOR ILLUSTRATION PURPOSES ONLY

State of Delaware

Subcontracting (2nd tier) Quarterly Report

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

SAMPLE

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

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

Attachment A

PROPOSAL REPLY REQUIREMENTS

The response should contain at a minimum the following information:

1. Brief Vendor Cover Letter including an Applicant's experience, if any, providing similar services.

2. One (1) paper copy of the **Appendix A** bid response paperwork.

The Appendix A – Pricing Spreadsheet is available at the following website:

www.bids.delaware.gov

Vendors MUST provide copies of all pricing spreadsheet tabs.

3. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment C).
MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK

4. Bid Bond paperwork (See Attachment D) or certified check as required or remove entire line if bond requirement has been waved.

5. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment E) for each subcontractor – only provide if applicable.

6. One (1) completed Business Reference form (See Attachment F) – please provide references other than State of Delaware contacts. Form must be included.

7. One (1) completed ITB Exception form (See Attachment G) – please check box if no information. Form must be included.

8. One (1) completed Confidential Information form (See Attachment H) – please check box if no information provided will be considered confidential or proprietary. Form must be included.

9. One (1) complete OSD application (see link on Attachment I) – 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.

Attachment A
BID QUOTATION

Contract No.: **NAT16000-POSTS**

Contract Title: **CEDAR POSTS AND SALT TREATED POSTS**

BID QUOTATION

OPTION #1 CEDAR POST BID QUOTATION:

QTY: 1,000 and 2,500

DELIVERY

Ship Stock _____ days ARO

Ship Non-Stock _____ days ARO

NO MINIMUM QTY'S ALLOWED

CONTRACT TOTAL VALUE $_____

COMPANY

_____

_____

_____

DATE _____

VENDOR MAY LIST OTHER QTY AND PRICING OPTIONS AVAILABLE HERE (*HOWEVER THE MINIMUM 50FT PRICING MUST BE INCLUDED FOR CONSIDERATION OF CONTRACT AWARD*):

OPTION #2 SALT TREATED POST BID QUOTATION:

QTY: 1,000 and 2,500

DELIVERY

Ship Stock _____ days ARO

Ship Non-Stock _____ days ARO

NO MINIMUM QTY'S ALLOWED

CONTRACT TOTAL VALUE $_____

COMPANY

_____

_____

_____

DATE _____

VENDOR MAY LIST OTHER QTY AND PRICING OPTIONS AVAILABLE HERE (*HOWEVER THE MINIMUM 50FT PRICING MUST BE INCLUDED FOR CONSIDERATION OF CONTRACT AWARD*):

Attachment B

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship
901 Pilottown Road
Lewes, DE 19958

NO BID REPLY FORM

Contract No. NAT16000-POSTS **Contract Title: CEDAR POSTS AND SALT TREATED POSTS**

To assist us in obtaining good competition on our Request for Bids, we ask that each firm that has received an invitation, 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 Bidder's List by so indicating below, or do not return this form or bona fide bid.

Unfortunately, we must offer a "No Bid" at this time because:

_____ 1. We do not wish to participate in the bid process.

_____ 2. We do not wish to bid under the terms and conditions of the Request for Bid document. Our objections are:

_____

_____

_____ 3. We do not feel we can be competitive.

_____ 4. We cannot submit a Bid 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 Bids are requested.

_____ 7. Other:_____

_____ _____
FIRM NAME SIGNATURE

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

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

STATE OF DELAWARE
Office of Management and Budget
Government Support Services

Attachment C

CONTRACT NO.: NAT16000-POSTS **TITLE: CEDAR POSTS AND SALT TREATED POSTS**

DEADLINE TO RESPOND: November 15, 2016

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, Watershed Stewardship.

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

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Natural Resources, Watershed Stewardship.

COMPANY NAME _____ (Check one)

	Corporation
	Partnership
	Individual

NAME OF AUTHORIZED REPRESENTATIVE

_____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER_____

EMAIL ADDRESS _____

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

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

The above table is for informational and statistical use only.

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

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

AFFIRMATION: Within the past five (5) 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 FOR YOUR BID TO BE CONSIDERED

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

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

Attachment D

BOND IS WAIVED

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship

Attachment E

SUBCONTRACTOR INFORMATION FORM

Contract No. **NAT16000-POSTS**
Contract Title: **CEDARD POSTS AND SALT TREATED POSTS**

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. NAT16000-POSTS	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b.Mailing Address:	4d. Women Business Enterprise ☐ Yes ☐ No 4e. Minority Business Enterprise ☐ Yes ☐ No 4f. Disadvantaged Business Enterprise ☐ Yes ☐ No 4g. Veteran Owned Business Enterprise ☐ Yes ☐ No 4h. Service Disabled Veteran Owned Business Enterprise ☐ Yes ☐ No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		

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

Use a separate form for each subcontractor

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship

Attachment F

BUSINESS REFERENCES

Contract No. **NAT16000-POSTS**
Contract Title: **CEDAR POSTS AND SALT TREATED POSTS**

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

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

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

1.

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

2.

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

3.

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

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship

Attachment G

ITB EXCEPTIONS FORM

Contract No. **NAT16000-POSTS**
Contract Title: **CEDAR POSTS AND SALT TREATED POSTS**

Proposals must include all exceptions to the specifications, terms or conditions contained in this ITB. If the vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this ITB.

Paragraph # and page #	Exceptions to Specifications, terms or conditions	Proposed Alternative

Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.

STATE OF DELAWARE
Department of Natural Resources, Watershed Stewardship

Attachment H

CONFIDENTIALITY FORM

Contract No. **NAT16000-POSTS**
Contract Title: **CEDAR POSTS AND SALT TREATED POSTS**

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

Confidentiality and Proprietary Information

Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.

Attachment I

State of Delaware

Office of Supplier Diversity
Certification Application

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

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

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

Complete application and mail, email or fax to:

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

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