

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**  
**Agency Lean Management Services**  
**ISSUED BY Department of Natural Resources and Environmental Control**  
**CONTRACT NUMBER NAT17002-LMS**

**I. Overview**

The State of Delaware Department of Natural Resources and Environmental Control (“DNREC”), seeks professional services for agency process improvement consulting and support as part of a comprehensive Lean Management Strategy. The purpose of this RFP is to develop a prequalified list of vendors to assist with organizational and business process design/improvements through end-to-end consolidation, facilitation, and/or training and coaching support. This request for proposals (“RFP”) is issued pursuant to 29 Del. C. §§ [6981](#) and [6982](#)

DNREC seeks to align, standardize, and improve agency work practices; to establish common processes that deliver business efficiencies; to coach and train agency staff for ensuring sustainability, internal competency growth, and continued performance enhancement; and to maximize the value of forthcoming information technology redesign.

The purpose of the solicitation is to select a sufficient number of qualified vendors to facilitate process improvement reviews and events, provide training and coaching, and consulting services that deliver business efficiencies.

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

Public Notice	Date: March 22, 2017
Deadline for Questions	Date: April 5, 2017
Response to Questions Posted by:	Date: April 17, 2017
Deadline for Receipt of Proposals	Date: April 28, 2017 at 1:00 PM (Local Time)
Estimated Notification of Award	Date: June 1, 2017

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

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

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

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**MANDATORY PREBID MEETING**

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

**BACKGROUND**

In order to deliver cost effective and efficient services and to succeed in our mission, DNREC is committed to delivering the highest possible value to its customers while protecting and managing the state's vital natural resources, protecting of public health and safety, and providing quality outdoor recreation to the citizens of the First State.

Beginning in 2005, DNREC subjected a number of our permitting programs to Lean reviews with the assistance of the regulated community to achieve reduced air permitting turnaround times of 50% (and eliminate backlog), and reduced brownfield remediation process time by nearly 45%. Additionally other agency programs have experienced performance improvements through the use of Lean tools and Kaizen-based improvement projects since 2005.

DNREC now recognizes a focus on Lean tools alone will not lead to sustained performance improvement over time. Our agency must address the underlying management systems and organizational competencies that define desired values, behaviors, and results. Agency leaders and staff are working together to develop a more lean, agile and responsive agency. Improvement initiatives include expanding our lean strategy, updating document management, modernizing information technology and providing a modern and fully responsive web site. All these efforts focus on "*[Making Things Better](http://dnrec.alpha.delaware.gov/improving-dnrec/)*" for our customers (<http://dnrec.alpha.delaware.gov/improving-dnrec/>).

In developing more mature Lean management system, DNREC intends to advance our continuous improvement efforts by acquiring professional process improvement facilitation and consultation services aligned with training and coaching to build internal capacity and ensure improvements as sustained.

Continued improvements for both business processes and information management are essential to enable DNREC to provide timely, predictable and cost effective business services (e.g. permitting and licensing, concessions, land management, laboratory services, compliance assessment, enforcement, etc.); implement data driven strategies; respond effectively to environmental threats; and make the wealth of environmental information that is collected more transparent and accessible to the public.

DNREC, with professional consults under this contract, will engage stakeholders, who utilize other DNREC services, to gain their perspectives on helping guide process improvement projects. Anticipated benefits and improved efficiencies include:

- Quicker turnaround of environmental data and policy analysis requests;
- More certainty and less concern for businesses by reducing the time between application submission and permit decision;
- A higher percentage of DNREC processes streamlined and more information available for businesses, partner agencies and the public;
- Improved ability to solicit, receive, review and publish public comments;

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- Standardized processes and increased information available for the public, researchers, partner agencies, municipalities, and others;
- Improved efficiency in environmental complaint follow-up and inspections;
- Increased reuse/consolidation of information technology architecture and services to maximize the value of technology investments; and
- Reduced burden on DNREC staff while improving business processes.

As we continue to face increased demand for services with limited resources, DNREC will eliminate activities that add no value. We will align, standardize and improve essential work practices across programs and business functions.

DNREC anticipates awarding multiple contracts as a result of this solicitation. Successful awardees must be willing to partner with officials from DNREC as well as other contractors (as identified by DNREC) in order to develop a standardized enterprise-wide approach.

**II. Scope of Services**

**1. Lean Management Services**

Vendors will work closely with Department leadership on the specific organizational process design and development needs of various divisions. The needs of each division will depend on their specific situation and business processes in need of review, which will be determined after this contract is in effect. However, we anticipate that this effort will likely include, but may not be limited to, the following:

<b>Service</b>	<b>Description</b>
Organizational assessment	Interviews, data collection, review of documentation.
Strategic organizational and workforce planning	Identification of strategic goals, values, optimal workflows and aligned talent needs.
Organizational and process design	Identify optimal work and business process flows, align organizational structure with optimal work flows, talent needs, strategic goals, and values.
Talent Management	Identify needed competencies, assess existing talent against needs, create development plans for existing talent
Change Management – Ramp up to Implementation	Lead the implementation of organizational and process redesign, and talent development, including risk management, communication, and stakeholder work.
Change Management – Ongoing Implementation	Continued intermittent support through the 6 mo- 1 year following initial implementation.

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The Department welcomes alternatives and additional recommendations to this approach that will most effectively provide the services required. We are seeking the subject-matter best practices on all relevant themes detailed above.

**2. Course of Action**

The anticipated Course of Action (COA) for this LMS Contract(s) is as follows:

2.1 Develop a repeatable methodology for conducting improvements to business processes, and conduct the event(s) for the process/processes to be improved as identified by the agency and further defined in future Project Task Orders (“Project”) under this contract (**Attachment 12**). From this contract award, specific Project quotes will be solicited from qualified vendors.

The major milestones/deliverables for 2.1 are as follows:

- a. Provide a clearly defined and reproducible methodology (and associated tools, templates, etc.) for improvements of agency processes;
- b. Facilitate DNREC’s selection of potential Projects
- c. Provide any initial and on-going coaching and/or training needed for the appropriate DNREC personnel (ranging from senior staff to frontline personnel) so that they can be effective leaders/participants in implementing and sustaining these improvement efforts; and
- d. Conduct the Project event(s) with selected DNREC programs.

2.2 Recommend a pathway for DNREC to continue improving agency processes.

The major milestone deliverables for 2.2 are as follows:

- a. Review the methodology(s) used, and the outcomes achieved for Project events that were improved in order to identify what worked well and what changes should be made as the agency improves its remaining processes;
- b. Develop a recommended pathway for using the methodology on remaining agency processes including prioritization of tasks, project timelines, and cost estimates in both staff time and future consultant expenses.

**3. Project Stages and Deliverables**

The Contractor will be required to perform all the Project stages listed below for each COA. Since activities will be done closely together or in parallel, some Project deliverables could be combined as appropriate and agreed upon in advance by the Contractor and DNREC.

3.1 Project Orientation requires the Contractor to:

- a. Participate/host Project kick-off meeting to introduce Project principals, review Project goals, and discuss roles, responsibilities, baseline assumptions, and expectations at a high level;
- b. Start the refinement of the Project plan, including all deliverables within and at the end of each Project phase or segment as described in the Contractor’s proposal;
- c. Create an initial Project plan with a baseline that will be maintained and updated throughout the life of the Project and available to the DNREC Project Manager at all times at all levels of detail;
- d. Identify additional tasks or deliverables needed or recommended. Present the templates/samples that will be used to track and record Project performance, workload, and Project status that will be reviewed at each weekly status meeting.

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Identify any other reports that will be provided and identify their scheduled delivery in the Project plan; and

- e. Establish meeting schedules in advance and identify key topics to be reviewed during key meeting dates for scheduling purposes and team preparation. Draft success indicators to measure Project success.

The deliverables for 3.1: At a minimum, the Contractor must accomplish each task listed in the Project orientation stage.

3.2 Project Assessment requires the Contractor to:

- a. Conduct weekly meetings with DNREC Project personnel to determine and verify requirements and technical issues. Meetings and weekly status documentation with program staff shall be conducted in lay terms appropriate for the target audiences;
- b. Facilitate stakeholder feedback/input session, making adjustments as authorized by DNREC Project principals.; and
- c. Finalize success factors to measure Project success.

The deliverables for 3.2: At a minimum, the Contractor must accomplish each task listed in the Project assessment stage.

3.3 Project Closure requires the Contractor to:

- a. Produce a post-Project evaluation document;
- b. The report will provide an overview on each COA, the analysis that was conducted, the recommendations and the pathways for success and any roadblocks to implementation; and
- c. Prepare final invoice for payment, consisting of 10% hold back for each phase of the Project.

The deliverables for 3.3: At a minimum, the Contractor must accomplish each task listed in the Project closure stage. The Contractor must deliver a post-Project evaluation document and summary report.

**4. Baseline Assumptions and Considerations:**

- 4.1 DNREC will provide a primary point of contact (LMS Project Manager: Carla M. Cassell-Carter) for all Project communications.
- 4.2 DNREC will assign one or more Project principal contacts (as needed) that will act as the conduit to its internal programs for Project communications and coordination of required information to be supplied for any Project(s) under this contract.
- 4.3 DNREC will provide the awarded Contractor(s) with any existing information the agency has relating to organization structure, mission, strategic plan, and core competencies; existing standards; policies and procedures; data/content infrastructure and any associated applications; process and workflow diagrams and other program information available and relative to the scope of this Project.
- 4.4 DNREC will review all deliverables submitted for acceptance and either responded with feedback, or accept within five (5) business days unless otherwise stated by DNREC Project Manager/Principals (identified in each Project Task Order) at the time of submission.
- 4.5 DNREC will provide adequate workspace, network connections, and phone access for the Contractor's Project Manager and others that are assigned to perform Project tasks.

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**III. Required Information**

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

**A. Minimum Requirements**

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work. Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.
2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the Service Requirements below.
3. Vendor shall provide all equipment, materials, supplies and tools, etc. for any off-site Project tasks.
4. Pricing and cost information must be sealed and separate from the rest of the proposal.
5. Complete all appropriate attachments and forms as identified within the RFP.
6. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section IV-D, Item 7, subsection g (insurance).
7. Provide response to Employing Delawareans Report (Attachment 9)
8. Meet the State's Terms and Conditions – if Cloud or SaaS services are utilized as part of any Project covered by this contract.

<https://dti.delaware.gov/pdfs/pp/CloudandOffsiteHostingPolicy.pdf>

The type of data will determine which of the following standards will be required prior to the start of any given Project:

<http://dti.delaware.gov/pdfs/pp/CloudandOffsiteHostingTemplatePublic.pdf>

<http://dti.delaware.gov/pdfs/pp/CloudandOffsiteHostingTemplateNonPublic.pdf>

**B. Service Requirements**

**1. Scope**

Contracts will be established to provide Lean Management Services through facilitating, consulting, training, and coaching as described in Section II.

- 1.1 It is the intent of DNREC to deploy an enterprise-wide Lean Management Strategy which incorporates the elements listed in Section II, Part 1. There is no stated or implied guarantee of any Project Task Order to be issued to any contractors.

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- 1.2 The lean management services provided under this RFP will emphasize the behaviors methods and practices required to sustain a structured approach to engaging an entire organization in daily, incremental performance improvement.
- 1.3 The scope of a Contractor's proposal (which will also be a preliminary Project Plan) must include, at a minimum:
  - 1.3.1 The Contractor's methodology, tools, and techniques proposed to perform the course of action, complete each Project stage and meet the deliverables, as outlined in Section II Scope of Services Parts 1, 2 and 3.
  - 1.3.2 Identification of Contractor Personnel expected to work on this Project, identified by their Project role(s); and
  - 1.3.3 Resumes for all proposed key Contractor Project team members with the skills needed to successfully provide the services requested in this solicitation.

## **2. Pricing**

- 2.1 The pricing information must be submitted on a fixed price basis. The pricing proposal must be itemized. Please complete the pricing sheet provided in Attachment 11.
- 2.2 The cost information must be sealed and separate from the rest of the proposal. Costs for activities that are not specifically identified in the Contractor's price proposal will not be compensated under any contract awarded pursuant to this RFP.

## **3. Contractor References and Qualifications**

- 3.1 DNREC is seeking a Contractor(s) that can deliver the outcomes sought in an impartial, comprehensive, relevant and timely manner. The successful Contractor(s) should demonstrate this capability by providing examples of:
  - 3.1.1 Experience with analyzing government agency/business processes for changes/standardization needed to facilitate major, enterprise-wide improvements;
  - 3.1.2 Experience facilitating requirements for gathering with multiple stakeholders in order to identify agency/business process changes;
  - 3.1.3 Experience providing the training/orientation needed for agency/business staff in order to accomplish business process improvement/streamlining efforts;
  - 3.1.4 Experience with customer service, environmental and/or natural resource programs and systems to improve agency business practices, and related competencies;
  - 3.1.5 Experience with complex workflow processes, data models, and business process re-engineering;

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- 3.1.6 Experience with continuous improvement processes that may include, but are not limited to, LEAN, Kaizen, Six Sigma, and Value Stream Mapping, within government organizations and in non-governmental organizations;
- 3.1.7 Experience assisting agencies and businesses with planning for the implementation and success-measure tracking of process improvement implementation;
- 3.1.8 Experience with applying Project Management Body of Knowledge (PMBOK) methodologies;
- 3.1.9 Experience with the agency-process components of complex IT Projects; and
- 3.1.10 Contractor certifications and/or industry recognitions.

3.2 Contractors must provide at least three (3) references for work performed that is similar in nature to the scope of this RFP. It is strongly recommended that at least two of the references be a governmental entity (state, local or federal). In responding to this question Contractors should provide: Reference Company Name (company/agency name), Contact Person, Address, Phone number: Fax number, E-mail address, and a description and dates of services provided. Contractors should anticipate that phone contact with the reference would be made during the reference check period. The DNREC PET may deem the Contractor non-responsive and/or the Contractor's Proposal non-responsive if a provided reference does not meet the PET's full satisfaction.

3.3 Contractors must include the number of years the organization has been in business and the number of years of experience advising clients on organizational and business process redesign and the various capabilities mentioned above.

3.4 Contractors are also encouraged to provide any relevant information about their experience in projects where the improvement/solution that was part of an enterprise project managing environmental data. Prior experience with complex environmental and natural resource business services (e.g. permitting and licensing, concessions, land management, laboratory services, compliance assessment, enforcement, etc.) is preferred.

**IV. Professional Services RFP Administrative Information**  
**A. RFP Issuance**

**1. Public Notice**

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

**2. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) . Paper copies of this RFP will not be available.

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

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

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to

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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.

**Carla Cassell-Carter**  
**DNREC, State of Delaware**  
**89 Kings Highway**  
**Dover, DE 19901**  
**carla.carter@state.de.us**

To ensure that written requests are received and answered in a timely manner, electronic mail correspondence (e-mail with confirmation of receipt) is acceptable, but other forms of delivery, such as postal and courier services can also be used.

**5. Consultants and Legal Counsel**

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

**6. Contact with State Employees**

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

**7. Organizations Ineligible to Bid**

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

**8. Exclusions**

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

- 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

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- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

**B. RFP Submissions**

**1. Acknowledgement of Understanding of Terms**

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

**2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 2 paper copies and 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 April 28, 2017**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Courtney McCarty  
State of Delaware  
Government Support Services  
Contracting Section  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202**

**Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. NAT17002-LMS” on the outside of the bid submission package.**

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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**

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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 May 31, 2018 with 2 optional extensions for a period of one (1) year for each extension. The State of Delaware reserves the right to ask for an extension of time if needed.

**6. Late Proposals**

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

**7. Proposal Opening**

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

**8. Non-Conforming Proposals**

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

**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.

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

**11. Confidentiality of Documents**

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

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

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

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

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

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of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

**12. Price Not Confidential**

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

**13. Multi-Vendor Solutions (Joint Ventures)**

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

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

**a. Primary Vendor**

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

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

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

**b. Sub-contracting**

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

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly**

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**responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

**c. Multiple Proposals**

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

**14. Sub-Contracting**

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

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

**15. Discrepancies and Omissions**

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

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

**a. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **April 5, 2017**. 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 the date of **April 17, 2017**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

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

**16. State's Right to Reject Proposals**

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same Project or on a modified Project which may include portions of the originally proposed Project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

**17. State's Right to Cancel Solicitation**

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

**18. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* [§ 6986](#), the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

**19. Potential Contract Overlap**

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

**20. Notification of Withdrawal of Proposal**

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

**21. Revisions to the RFP**

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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 Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

**22. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**23. Business References**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

**24. Award of Contract**

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

**a. RFP Award Notifications**

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

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

**25. 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.

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**C. RFP Evaluation Process**

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

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

**1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in *29 Del. C. §§ 6981 and 6982*.

**2. Proposal Selection Criteria**

RFP Responses will be evaluated by a Proposal Evaluation Team (PET) comprised of persons designated within DNREC and the State of Delaware. 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.

Upon receipt of the RFP responses, the PET will:

- a. Screen all RFPs for completeness. A Contractor's response that fails to address the minimum requirements of this RFP will be deemed non-responsive and may be disqualified from further consideration. Should a response be deemed non-responsive, the PET will determine whether or not to request the Contractor to provide the additional information needed to fulfill the minimum requirements of the RFP. Note: Pricing proposals will not be opened at this time, except that an individual who is not a member of the PET will examine the proposals to view the total price.
- b. Score all proposals on content.
- c. Call references listed by the Contractors. The PET will factor in responses from references to overall score.
- d. Open and score pricing proposals.
- e. Invite top Contractors in for final interviews and presentations at the PET's discretion. The highest scoring Contractor will have the first choice of date and time for presentation followed by the next highest, and so on until all finalists are scheduled. The PET will score the interviews and presentations.

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- f. Calculate final score totals, select Contractor(s) and award contract.
- g. Announce selected Contractor(s) on State of Delaware web site.
- h. Schedule debriefings if requested.

For evaluation purposes, the requirements of this RFP have been designated into three types:

- a. Mandatory requirements (examples of this use words such as “must,” “shall,” “will,” “will not,” etc.);
- b. Desirables (examples of this use words such as “may,” “could,” “desirable,” “should,” etc.); and
- c. Additional services/features that are not in the RFP but Contractor believes are necessary in order to have a successful deliverable that is responsive to the RFP.

The goal of this RFP is to accomplish the tasks stated in the Scope of Work/Business Requirements Section (Section II) for the best value. Contractors proposing alternatives which provide substantially better or more cost effective performance than achievable under a stated RFP specification, or Contractors that propose discounts, uncharged services or other benefits in addition to the RFP specifications may receive PET preference or additional points.

The PET will evaluate each response on each requirement and assign merit points according to a numerical rating scale. Points will be awarded using predefined metrics where requirements will be measured in a qualitative manner. For other requirements, points will be awarded based upon the Contractor’s demonstrated strengths, weaknesses, or responsiveness. To the extent that a Contractor’s response to the requirements (Section II-Scope and Section III Requirements) demonstrates technical expertise and competence, the Contractor will earn points. Requirements that allow a Contractor to present a viable alternative will be considered and may also earn points.

The PET will evaluate responses to the specifications designated as desirable and assign points based on how well the response addresses the desired task and demonstrates that the Contractor’s efforts will contribute to the successful completion of the Project in a timely manner.

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 evaluation total score (criteria and weight described below) that meets or exceeds the average total scores received.

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**Criteria Weight**

The PET will consider five evaluation criteria plus the pricing proposal during its review of a Contractor’s proposal. The evaluation criteria, listed below, are organized by order of importance to the PET:

<b>Criteria</b>	<b>Weight</b>
<u>Scope of Work/Business Requirements</u> - The PET will evaluate the Contractor’s proposal to deliver the items specified in the Scope of Work/Business Requirements Section.	<b>25</b>
<u>Project Methodology and Management</u> - The PET will review and assess the diversity and strength of Contractor methods, tools, techniques and management available for successfully completing Project Task Orders.	<b>25</b>
<u>Qualifications and References</u> - The PET will review the Contractor references, considering the Contractor’s ability to meet the requirements of the RFP by reviewing the Contractor’s experience with Projects similar in size and scope; the Contractor’s track record for delivering similar services on time; and the technical qualifications of the Contractor’s Project manager and related staff.	<b>25</b>
<u>Pricing Proposal</u> - The PET will evaluate the pricing proposal. This criterion is based on best overall value to DNREC, based upon a proposal that best satisfies the RFP’s requirements within the specified timelines.	<b>20</b>
ACA Safe Harbor Fee (reference page 26, section c)	<b>5</b>
<b>Total</b>	<b>100%</b>

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

**3. Proposal Clarification**

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

**4. References**

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor’s reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

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**5. Oral Presentations**

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

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

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

**D. Contract Terms and Conditions**

**1. Contract Use by Other Agencies**

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

**2. Cooperative Use of Award**

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

**3. General Information**

- a. The term of the contract between the successful bidder and the State shall be for 1 year with 2 optional extensions for a period of one (1) year for each extension. All engagement for services entered into during the duration of this contract and whose performance and payment time frames extend beyond the duration of the contract shall remain in effect for performance and payment purposes only for a maximum time of six (6) calendar months beyond the final termination date inclusive of renewals and extensions. No new engagements for services under this contract may be executed after the final termination date of this contract.
- b. DNREC Project deployments will be requested under this contract on an as needed basis. Contractor shall have the availability and resources necessary to respond to these requests.
- c. 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

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by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

- d. 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.
- e. 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.
- f. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- g. 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.
- h. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

**4. Collusion or Fraud**

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

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

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

**5. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the

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

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

**6. Solicitation of State Employees**

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

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

**7. General Contract Terms**

**a. Independent Contractors**

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

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

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

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

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

**c. ACA Safe Harbor**

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

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

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**d. Licenses and Permits**

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § [2502](#).

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

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

**e. Notice**

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

**DNREC, Office of the Secretary  
Attention: Carla Cassell-Carter  
89 Kings Highway  
Dover, DE 19901**

**f. Indemnification**

**1. General Indemnification**

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract.

**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")

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is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s);
- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

**g. Insurance**

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

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

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

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

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

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

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

**h. Performance Requirements**

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

**i. PERFORMANCE BOND**

There is no Performance Bond requirement.

**j. Vendor Emergency Response Point of Contact**

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

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

**k. Warranty**

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

**l. Costs and Payment Schedules**

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones in each Project Task Order. Payments for any service 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%).

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**m. Penalties**

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

**n. Dispute Resolution**

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

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

**o. Termination of Contract**

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

**1. Termination for Cause**

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

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

**2. Termination for Convenience**

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

**3. Termination for Non-Appropriations**

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

**p. Non-discrimination**

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

**q. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract

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price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**r. Vendor Activity**

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

**s. Vendor Responsibility**

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

**t. Personnel, Equipment and Services**

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

**u. Fair Background Check Practices**

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

**v. Vendor Background Check Requirements**

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

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

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the

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Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

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

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

**w. Drug Testing Requirements for Large Public Works**

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

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

**x. Work Product**

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

**y. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

**z. Applicable Law**

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

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

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

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

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

**aa. Severability**

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

**bb. Assignment Of Antitrust Claims**

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

**cc. Scope of Agreement**

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto

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consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

**dd. Affirmation**

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

**ee. Audit Access to Records**

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

**ff. Other General Conditions**

1. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer's latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
4. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final acceptance.

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6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
8. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
9. **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.
10. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
11. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number NAT17002-LMS on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
12. **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
13. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

**E. RFP Miscellaneous Information**

**1. No Press Releases or Public Disclosure**

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

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

**2. Definitions of Requirements**

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

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**3. Production Environment Requirements**

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

**F. Attachments**

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

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
- Attachment 9 – Employing Delawareans Report
- Attachment 10 – Office of Supplier Diversity Application
- Attachment 11 – Pricing Form and Instructions
- Attachment 12 – Project Task Order
- Attachment 13 – Sample Professional Services Agreement
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements

**IMPORTANT – PLEASE NOTE**

- **Attachments 2, 3, 4, 5, 9 and 11 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

**REQUIRED REPORTING**

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

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

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

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

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**Attachment 1**

**NO PROPOSAL REPLY FORM**

Contract No. NAT17002-LMS

Contract Title: Agency Lean Management Services

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

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

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3. We do not feel we can be competitive.
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- \_\_\_\_\_ 5. We do not wish to sell to the State. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

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

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

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

**CONTRACT NO.:** NAT17002-LMS  
**CONTRACT TITLE:** Agency Lean Management Services  
**DEADLINE TO RESPOND:** April 28, 2017, at 1:00 PM (Local Time)

**NON-COLLUSION STATEMENT**

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

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

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

COMPANY NAME \_\_\_\_\_ Check one) 

Corporation
Partnership
Individual

  
NAME OF AUTHORIZED REPRESENTATIVE \_\_\_\_\_  
(Please type or print)

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE LICENSE NUMBER \_\_\_\_\_

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

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

PURCHASE ORDERS SHOULD BE SENT TO:  
(COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

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

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

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

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

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

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





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**Attachment 5**

Contract No. NAT17002-LMS  
Contract Title: Agency Lean Management Services

**BUSINESS REFERENCES**

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

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

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

1. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


2. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


3. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


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

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**Attachment 6**

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. NAT17002-LMS	2. Proposing Vendor Name:	3. Mailing Address
<b>4. SUBCONTRACTOR</b>		
a. NAME	4c. Company OSD Classification:  Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<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**



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Attachment 8

**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**

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

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

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

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**Attachment 9**

Contract No. NAT17002-LMS  
Contract Title: Agency Lean Management Services

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(s):  
\_\_\_\_\_
2. Number and percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_  
  
Percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_
3. Total number of employees of the bidder: \_\_\_\_\_
4. Total percentage of employees who are bona fide resident of Delaware: \_\_\_\_\_

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: \_\_\_\_\_
2. Percentage of employees who are residents of Delaware: \_\_\_\_\_

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

**State of Delaware**

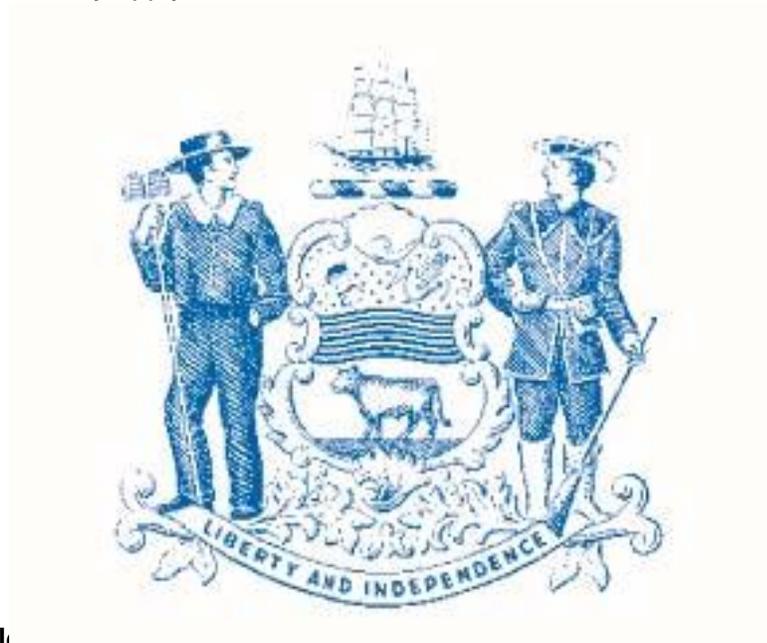
**Office of Supplier Diversity  
Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

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

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



**Completed applications may be submitted 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>

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

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<b>NAT17002-LMS VENDOR PRICING SHEET</b>		<b>Attachment 11</b>
<b>CONTRACT CONTACT PERSON</b>		
<i>Please provide POC information for purposes of this solicitation.</i>		
<b>Vendor Name:</b>		
<b>Contact Person:</b>		
<b>Phone number:</b>		
<b>Email:</b>		
<b>ACCOUNT MANAGER(S)</b>		
<i>Please identify an Account Manager to serve as the POC for project proposals, billing questions, and other day-to-day services.</i>		
<b>(1) Name:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>(2) Name:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>(3) Name:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>County:</b>		
<b>BILL RATES:</b>		
<i>Please identify your job classification inventory (or project roles) and the associated hourly bill rate for each job classification. Bill rate shall include all direct and indirect costs. Vendor shall attached a detailed job description for each classification identified. Individual project proposals shall include the required job classifications and estimated hours per classification in the proposal. DNREC requests resumes for the proposed project team members.</i>		
<b>Job Classification/Project Roles</b>	<b>Hourly Billing Rate</b>	
<b>ACA Surcharge</b>		

**Project Task Order**

To be held under the terms and conditions of the Lean Management Services Contract NAT17002-LMS between the (*Insert Vendor Name*) (“VENDOR”) and the Department of Natural Resources and Environmental Control (“DNREC”) effective June 1, 2017.

**Project Title:**

**DNREC Principal Contact (Contract Manager):**

**DNREC Principal Contact (Project Leader):**

**VENDOR Principal Contact (Project Manager):**

**VENDOR Principal Contact (Technical Lead):**

**Background (Goals, Objectives. And Specific Performance Measurements):**

**Scope of Work:**

**Project Timeline:** The period of performance of this Project Task Order will be from the date of the fully executed purchase order, until (MM/DD/YYYY), unless terminated earlier as provided in the NAT17002-LMS Contract.

- **Begin Date:** \_\_\_\_\_ **[Type date here]**
- **Target End Date:** \_\_\_\_\_ **[Type date here]**

**Payment Total, Schedule, and Milestones:**

<b>Person Responsible</b> →		[Type name here]			[Type name here]			Total Cost
		Cost	Hrs	✓	Cost	Hrs	✓	
<b>↓ Task Description</b>	Time Frame (# of days, weeks, etc.)			□			□	
				□			□	
				□			□	
				□			□	
<b>Cumulative Hours</b> →								

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**Purchase Order Requirement:**

Vendor agrees that no work will be completed, nor costs incurred for this project, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system.

**Invoices shall be sent to:**

VENDOR agrees to provide sufficient and acceptable documentation with all invoices for payment.

**Project Funding Source (check all that apply):**

- State funding will be used. (If yes, provide State funding appropriation.)
- (Insert Federal agency) funding will be used (If Federal funding will be used, applicable Federal terms and conditions must be included in Project Task Order)

CFDA# (if Applicable)

May these funds be used for cost sharing/match purposes?  Yes  No  
If yes, identify the source of cost sharing/match:

**FOR USE WITH FEDERALLY FUNDED/MATCHED PROJECTS ONLY**

VENDOR agrees to comply with all applicable Federal terms and conditions.  
*Insert here or attach as an appendix or provide a link to specific requirements for Federal Sub-Recipients and/or any other Federal Terms and Conditions*

**Debarment, Suspension, and Other Responsibility Matters**

VENDOR certifies by signing this Project Task Order that that neither it nor any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor is presently, or has within the past five years, been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State, or Local government department or agency.

**Approved:**

Vendor	Department of Natural Resources and Environmental Control
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

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**Attachment 13**

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date") and will end on \_\_\_\_\_, 20\_\_, by and between the State of Delaware, Department of \_\_\_\_\_, Division of \_\_\_\_\_, \_\_\_\_\_ ("Delaware"), and VENDOR NAME, a \_\_\_\_\_ corporation, with offices at \_\_\_\_\_ ("VENDOR").

WHEREAS, Delaware desires to obtain certain services to \_\_\_\_\_; and

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

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

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

**1. Services.**

1.1 VENDOR shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, attached hereto as Appendix\_\_\_; and (c) VENDOR's response to the request for proposals, attached hereto as Exhibit \_\_\_\_. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided

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under this Agreement, it shall notify VENDOR, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 VENDOR will not be required to make changes to its scope of work that result in VENDOR's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

**2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

2.2 Delaware will pay VENDOR for the performance of services described in Appendix \_\_\_, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix\_\_\_.

2.3 Delaware's obligation to pay VENDOR for the performance of services described in Appendix \_\_\_, Statement of Work will not exceed the fixed fee amount of \$ \_\_\_\_\_. It is expressly understood that the work defined in the appendices to this Agreement must be completed by VENDOR and it shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to VENDOR. VENDOR agrees that no work will be completed, nor costs incurred to be paid under this agreement, until a fully executed purchase order has been approved by the Department of Finance in Delaware's First State Financial system.

2.4 VENDOR shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR a detailed

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statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle VENDOR to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments should be sent to VENDOR, VENDOR ADDRESS.

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

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to VENDOR all damages, costs and expenses caused by VENDOR's negligence, resulting from or arising out of errors or omissions in VENDOR's work products, which have not been previously paid to VENDOR.

2.8 Invoices shall be submitted to:

**3. Responsibilities of VENDOR.**

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VENDOR, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VENDOR shall follow practices consistent with generally accepted professional and technical standards. VENDOR shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, VENDOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify

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it to conform with DTI standards. VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the VENDOR to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VENDOR will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by VENDOR shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of VENDOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by VENDOR's performance or failure to perform under this Agreement.

3.4 VENDOR shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by VENDOR's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Team	Title	% of Project Involvement
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3.5 Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, VENDOR will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If VENDOR fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of VENDOR is unsuitable to Delaware for good cause, VENDOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

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3.6 VENDOR shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 VENDOR agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 VENDOR has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 VENDOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

**4. Time Schedule.**

4.1 A project schedule is included in Appendix \_\_\_\_.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that VENDOR fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix \_\_\_\_.

**5. State Responsibilities.**

5.1 In connection with VENDOR's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

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5.2 Delaware agrees that its officers and employees will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to VENDOR. It is understood that Delaware's representatives' review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by VENDOR as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

VENDOR shall return any original data provided by Delaware.

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

5.7 VENDOR will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use VENDOR's name, either express or implied, in any of its advertising or sales materials. VENDOR reserves the right to reuse the

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nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

**6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by VENDOR for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. VENDOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 VENDOR retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR retains title, whether individually by VENDOR or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall VENDOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products.

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Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

**7. Confidential Information.**

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

**8. Warranty.**

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

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

**9. Indemnification; Limitation of Liability.**

9.1 VENDOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the VENDOR, its agents or employees, or (B) VENDOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies VENDOR in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of

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any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. VENDOR will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by VENDOR; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by VENDOR; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

**10. Employees.**

10.1 VENDOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

**11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible

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for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 VENDOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VENDOR has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

**12. Suspension.**

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

12.2 In the event Delaware suspends performance by VENDOR for any cause other than the error or omission of the VENDOR, for an aggregate period in excess of 30 days, VENDOR shall be entitled to an equitable adjustment of the compensation payable to VENDOR under this Agreement to reimburse VENDOR

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for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

**13. Termination.**

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

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

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after VENDOR is given:

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

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

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

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

13.5 The rights and remedies of Delaware and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to VENDOR, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR or any agent or representative of VENDOR to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against VENDOR it could pursue in the event of a breach of this Agreement by VENDOR.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**14. 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.

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**15. Assignment; Subcontracts.**

15.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by VENDOR, without prior written approval of Delaware.

15.3 Approval by Delaware of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 VENDOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by VENDOR, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the VENDOR's request to subcontract.

**16. Force Majeure.**

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

**17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the

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end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**18. State of Delaware Business License.**

VENDOR and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

**19. Complete Agreement.**

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

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

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

**20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, VENDOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

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20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 VENDOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare VENDOR in breach of the Agreement, terminate the Agreement, and designate VENDOR as non-responsible.

20.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public

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Records Law, 29 Del. C. Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit VENDOR's performance and records pertaining to this Agreement at the VENDOR business office during normal business hours.

**21. Insurance.**

21.1 VENDOR 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. VENDOR must carry the following coverage depending on the type of service or product being delivered:

A. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

**and**

B. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

**or**

C. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

**or**

D. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

**and**

E. 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**

F. VENDOR shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other

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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.

VENDOR must carry (A), (E), and (F), and at least one of (B), (C), or (D), depending on the type of service or product being delivered.

- 21.2. VENDOR shall provide forty-five (45) days written notice of cancellation or material change of any policies.
- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:
- 21.4. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to 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, relating to the particular goods or services purchased or acquired by the State pursuant to this Contract.

**23. Surviving Clauses**

The following clauses survive the termination of this Contract: Section 9 (fill in all others you wish to survive termination).

**24. Governing Law.**

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

**25. Notices.**

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

TO DELAWARE:

TO VENDOR:

**SIGNATURE PAGE TO FOLLOW**

STATE OF DELAWARE  
Department of Natural Resources and Environmental Control

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

**STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

\_\_\_\_\_  
Witness:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**VENDOR**

\_\_\_\_\_  
Witness:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

