State of Delaware

Volkswagen Environmental Mitigation Trust Fund Project

Request for Proposal

Contract No. NAT19001-VWEMTFP

January 28, 2019

- Deadline to Respond -
Thursday, March, 28, 2019
4:00 PM (Local Time)

Updated: July 7, 2017
ALL VENDORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" for Volkswagen Environmental Mitigation Trust Fund Project. The proposal consists of the following:

Contents:

I. INTRODUCTION
II. SCOPE OF WORK
III. FORMAT FOR PROPOSAL
IV. PROPOSAL EVALUATION PROCEDURES
V. MANDATORY PREBID MEETING
VI. DEFINITIONS AND GENERAL PROVISIONS
VII. PROPOSAL REPLY SECTION

ATTACHMENTS
Appendix A – STATEMENT OF WORK AND TECHNICAL SPECIFICATIONS
Appendix B – Scope of Work Application
Appendix C - Certificate of Destruction
Appendix D - Quarterly Report

** Ctrl+Click on the headings above will take you directly to the section.**

In order for your proposal to be considered, the Proposal Reply Section shall be executed completely and correctly and returned in a sealed envelope clearly displaying the contract number and vendor name by Enter Deadline to Respond at _4_:00 PM (Local Time) to be considered.

Proposals must be mailed to:

Department of Natural Resources and Environmental Control Name
Division of Air Quality
State Street Commons
100 W. Water Street, Suite A
Dover, DE 19904

Please review and follow the information and instructions contained in the General Provisions and this Request for Proposal (RFP). Should you need additional information, please call Deanna Morozowich at (302)739-9402 or email Deanna.morozowich@delaware.gov.
I. INTRODUCTION

A. PURPOSE

The purpose of this Request for Proposal is to obtain sealed proposals for Volkswagen Environmental Mitigation Trust Fund Projects that:

a. reduce NOx and other emissions;
b. are cost-effective; and
c. provide environmental benefits to communities disproportionately impacted by air pollution.

It is the goal of this Request for Proposal to identify a vendor(s) and execute a contract to improve and protect ambient air quality by implementing eligible mitigation projects that will achieve significant and sustained reductions in NOx emission exposure from the Transportation sector.

1. COMPETITIVE SEALED PROPOSAL

It has been determined by Department of Natural Resources and Environmental Control, pursuant to Delaware Code Title 29, Chapter 6924 (a) that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not practical and/or not in the best interest of the State. The use of competitive sealed proposals is necessary to:

• Use a contract other than a fixed-price type; or
• Conduct oral or written discussions with vendors concerning technical and price aspects of their proposals; or
• Afford vendors an opportunity to revise their proposals through best and final offers; or
• Compare the different price, quality and contractual factors of the proposals submitted; or
• Award a contract in which price is not the determining factor.

2. CONTRACT REQUIREMENTS

This contract will be issued to vendors whose projects provide the most environmental and cost benefit to the State of Delaware.

3. AGENCY USE CONTRACT

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

4. MULTIPLE SOURCE AWARD

The Agency reserves the right to award this contract to more than one vendor pursuant to 29 Del.C. §6926. The basis for such selection shall be: the communicated ability of any one or more vendors to best meet the Agency needs as defined in this RFP.

5. 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.

6. CONTRACT PERIOD

Each Vendor’s contract shall be valid for a one (1) year period from August 1, 2019 through August 30, 2020 through negotiation between the Vendor and Department of Natural Resources and Environmental Control. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

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.

B. KEY RFP DATES/MILESTONES

The following dates and milestones apply to this RFP and subsequent contract award. Vendors are advised that these dates and milestones are not absolute and may change due to unplanned events during the bid proposal and award process.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Availability to Vendors</td>
<td>Monday, January 28, 2019</td>
</tr>
<tr>
<td><strong>Mandatory</strong> Pre-bid Conference</td>
<td>Wednesday, February 13, 2019 at 10:00 am</td>
</tr>
<tr>
<td>Written Questions Due No Later Than (NLT)</td>
<td>Friday, March 4, 2019</td>
</tr>
<tr>
<td>Written Answers Due/Posted to Website NLT</td>
<td>Wednesday, March 13, 2019</td>
</tr>
<tr>
<td>Proposals Due NLT</td>
<td>Thursday, March 28, 2019</td>
</tr>
<tr>
<td>Public Proposal Opening</td>
<td>Monday, April 1, 2019</td>
</tr>
<tr>
<td>Proposal Evaluation/Presentations as required</td>
<td>Friday, May 31, 2019</td>
</tr>
<tr>
<td>Vendor Best &amp; Final Discussions, as required</td>
<td>Friday, May 31, 2019</td>
</tr>
<tr>
<td>Contract Award</td>
<td>Will occur within 90 days of bid opening *</td>
</tr>
<tr>
<td>Quarterly Reports</td>
<td>Project Status updates completed every quarter</td>
</tr>
<tr>
<td>Project Complete</td>
<td>1-year from date of contract execution</td>
</tr>
<tr>
<td>Annual report</td>
<td>1-year from date of mitigation project</td>
</tr>
</tbody>
</table>

* Note – Awards made with DERA funds will not be made until October 2019.

C. INQUIRIES & QUESTIONS

We welcome your interest in working with us, and we will be pleased to answer any questions you may have in formulating your response to this Request for Proposal.

All questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this RFP must be received in writing by Friday, March 4, 2019. All questions will be answered in writing by Wednesday, March 13, 2019 and posted on [http://bids.delaware.gov/](http://bids.delaware.gov/) website as well as the Department of Natural Resources and Environmental Control VW Website ([http://www.dnrec.delaware.gov/air/Pages/VWMitigationPlan.aspx](http://www.dnrec.delaware.gov/air/Pages/VWMitigationPlan.aspx)) All questions must make specific
reference to the section(s) and page numbers from this RFP where applicable. Oral explanations or instructions will not be binding.

D. RFP DESIGNATED CONTACT

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Deanna M. Cuccinello  
Department of Natural Resources and Environmental Control  
Division of Air Quality  
100 W. Water Street, Suite 6A  
Dover, DE 19904  
Deanna.Morozowich@state.de.us

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

E. CONTACT WITH STATE EMPLOYEE

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.

II. SCOPE OF WORK

A. OVERVIEW

The Vendor(s) shall provide all equipment, materials, and labor to supplement the State of Delaware’s need for Volkswagen Environmental Mitigation Trust Fund Projects as described herein. The contract will require the Vendor(s) to cooperate with the ordering agency to insure the State receives the most current state-of-the-art material and/or services.

B. BACKGROUND

The U.S. Justice Department and the Volkswagen Corporation and its subsidiaries (collectively VW) reached, through a series of partial consent decrees (CDs), agreements regarding the installation and use of emissions testing defeat devices in over 500,000 vehicles sold and operated in the U.S. As part of these agreements, VW is required to establish an environmental mitigation trust (Trust) to fund certain eligible mitigation actions to mitigate the excess NOx emissions caused by the offending VW vehicles.

The State of Delaware expects to receive approximately $9.6 million from the Trust. The Department of Natural Resources and Environmental Control (DNREC); Division of Air Quality (DAQ) will administer the Volkswagen Environmental Mitigation Trust Fund Program. Delaware has historically had difficulty meeting National Ambient Air Quality Standards (NAAQS). The NAAQS were set by the US EPA to protect human
health. The transportation sector is the largest contributor to nitrogen oxides (NOx) and carbon dioxide emissions. To improve air quality into healthy ranges and to meet Clean Air Act requirements, Delaware has had to implement a number of control programs that impacted industry, governments, and transportation planning efforts. Reducing emissions from the transportation sector is critical to achieving Delaware’s air quality goals.

This Request for Proposals (RFP) announces the Volkswagen Environmental Mitigation Trust Fund Program. The Department of Natural Resources and Environmental Control plans to award approximately $3.2 million in 2019 utilizing Volkswagen Environmental Mitigation Trust funds.

C. STATEMENT OF NEEDS

The State of Delaware will award approximately $3.2 million from the Environmental Mitigation Trust Funds for the projects that reduce NOx emissions from the transportation sector. It is a priority to fund sizeable projects designed to achieve the greatest emission reduction for the dollar (i.e., capital cost effectiveness in dollars/ton). The funds are set aside for the State of Delaware, as a Beneficiary. If the funds are not spent, the State of Delaware will lose the funds and the funds will be appropriated to beneficiaries in other states.

D. DETAILED REQUIREMENTS

The technical requirements of this RFP are stated in Appendix A. Vendors must complete the Application listed in Appendix B.

III. FORMAT FOR PROPOSAL

A. INTRODUCTION

This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each Vendor must provide every component listed in the order shown in this RFP, using the format prescribed for each component. A proposal may be rejected if it is incomplete or conditional.

B. PROPOSAL RESPONSE

The Request for Proposal may contain pre-printed forms for use by the vendor in submitting its proposal. The forms required by this solicitation shall be considered mandatory, prevailing documents.

When preprinted forms are used, the forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, as applicable.

The Vendor's proposal shall be written in ink or typewritten on the form provided, and any corrections or erasures MUST be initialed by vendor's representative completing the bid submission.

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

Vendors’ proposal must respond to each and every requirement outlined in the RFP criteria in order to be considered responsive. Proposals must be clear and concise.
C. 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.

D. 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.

E. COVER LETTER

Each proposal will have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the Vendor's ability to provide the services specified in the RFP. The cover letter shall be signed by a representative who has the legal capacity to enter the organization into a formal contract with Department of Natural Resources and Environmental Control.

F. TABLE OF CONTENTS

Each proposal must include a Table of Contents with page numbers for each of the required components of the proposal.

G. DESCRIPTION OF SERVICES AND QUALIFICATIONS

Each proposal must contain a detailed description of how the Vendor will provide the goods and services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the Vendor will provide that are not mentioned in this RFP.

H. DISCOUNT

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 into unit bid price(s).

I. SAMPLES OR BROCHURES

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

J. 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.

K. BID BOND REQUIREMENT

The Bid Bond requirement has been waived.
L. PERFORMANCE BOND REQUIREMENT

The Performance Bond requirement has been waived.

M. NUMBER OF COPIES WITH MAILING OF PROPOSAL

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with __1__ paper copy and __1__ electronic copy on CD or DVD media disk. The paper copy shall be marked “Master Copy” and will contain original signatures in all locations requiring a vendor signature. CD or DVD media disk must also contain the completed Appendix B and all required attachments.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than __4:00__ PM (Local Time) on _________Thursday, March 28, 2019___. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Department of Natural Resources and Environmental Control
Division of Air Quality – State Street Commons
100 W. Water Street, Suite 6A
Dover, DE 19904

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Any proposal received after the date and time deadline referenced above 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.

The State reserves the right to award the proposed contract to multiple Vendors if the Head of the Agency determines that such an award is in the best interest of the State.

N. PROPOSAL EXPIRATION DATE

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through _________December 31, 2020_________. Delaware reserves the right to ask for an extension of time if needed.

O. WITHDRAWAL OF PROPOSALS

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

P. PROPOSAL MODIFICATIONS

Any changes, amendments or modifications to a submitted proposal requires that the original proposal be withdrawn, prior to the time set for the submission of the proposal, and a new proposal submitted prior to the deadline for submission of proposals.
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.

Q. 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.

R. ADDENDA TO THE REQUEST FOR PROPOSAL (RFP)

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

S. INCURRED EXPENSES

The State will not be responsible for any expenses incurred by the vendor in preparing and submitting a proposal.

T. ECONOMY OF PREPARATION

Proposals should be prepared simply and economically, providing a straight-forward, concise description of the Vendor’s offer to meet the requirements of the RFP.

U. DISCREPANCIES AND OMISSIONS

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

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

V. EXCEPTIONS

Bidders may elect to take minor exception to the terms and conditions of this RFP by completing Attachment 3. Government Support Services shall evaluate each exception according to the intent of the terms and conditions contained herein, but Government Support Services must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening.
Exceptions must be submitted utilizing Attachment 3 to be considered. Exceptions listed elsewhere in the Vendor’s proposal will not be considered. Department of Natural Resources and Environmental Control maintains sole discretion to reject any vendor exceptions that are submitted.

W. BUSINESS REFERENCES

Business references are to be provided via Attachment 6.

X. DOCUMENT(S) EXECUTION

All vendors must complete and submit with its proposal the non-collusion statement that is enclosed with this Request for Proposal labeled as Attachment 2. The awarded vendor(s) will be presented with the contract form for signature and seal, if appropriate. Both of these documents shall be executed by a representative who has the legal capacity to enter the organization into a formal contract with Department of Natural Resources and Environmental Control.

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

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

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

Y. SUBCONTRACTS

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal using Attachment 7.

Z. CONFIDENTIALITY

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

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

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

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

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

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

**AA. PRICE NOT CONFIDENTIAL**

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

**BB. ATTACHMENTS**

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Company Profile and Capabilities
- Attachment 5 – Confidentiality and Proprietary Information
- Attachment 6 – Business References
- Attachment 7 – Subcontractor Information Form
- Attachment 8 – Monthly Usage Report
- Attachment 9 – Subcontracting (2nd Tier Spend) Report
- Attachment 10 – Office of Supplier Diversity Certification Application
- Attachment 11 – Bid Bond Form
- Attachment 12 – Performance Bond Form
- Attachment 13 – Proposal Reply Requirements
- Appendix A – Scope of Work
- Appendix B – Scope of Work Application, includes Pricing Form(s) and Instructions
- Appendix C – Certificate of Destruction
- Appendix D – Quarterly Report Form
IV. PROPOSAL EVALUATION PROCEDURES

A. GENERAL ADMINISTRATION

1. STATE’S RIGHT TO REJECT PROPOSALS

Department of Natural Resources and Environmental Control reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever is determined to be the most advantageous to the State of Delaware. Vendors submitting proposals may be afforded an opportunity for discussion. Vendors may be requested to provide a best and final offer during the negotiation process. Negotiations may be conducted with responsible Vendors who submit proposals found to be reasonably likely to be selected for award. The contents of any proposal shall not be disclosed so as to be available to competing vendors during the negotiation process.

2. 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.

3. FORMAL CONTRACT AND/OR PURCHASE ORDER

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, telephone call, email, fax, or State credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

4. DELIVERY OF PROPOSALS

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

Department of Natural Resources and Environmental Control Name
Division of Air Quality
State Street Commons
100 W. Water Street, Suite A
Dover, DE 19904
All proposals will be accepted at the time and place set in the RFP. Vendor bears the risk of delays in delivery. Proposals received after the time set for public opening will be returned unopened.

5. PUBLIC OPENING OF PROPOSALS

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

Only the vendor’s name and address will be read aloud during the bid opening process.

6. DISQUALIFICATION OF VENDORS

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

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

b. Evidence of collusion among vendors.

c. Unsatisfactory performance record as evidenced by past experience with the State of Delaware or on a State of Delaware central contract.

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

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

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

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

1. AUTHORITY OF AGENCY

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

2. OR EQUAL (PRODUCTS BY NAME)

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

B. RESPONSIVENESS AND RESPONSIBILITY OF VENDOR
Department of Natural Resources and Environmental Control shall award this contract to the most responsible and responsive vendor who best meets the terms and conditions of the proposal.

1. Rejection of individual proposals. -- A proposal may be rejected for 1 or more of the following reasons:
   a. The person responding to the solicitation is determined to be nonresponsive or non-responsible;
   b. It is unacceptable;
   c. The proposed price is unreasonable; or
   d. It is otherwise not advantageous to the State.

2. Vendors whose proposals are rejected as non-responsive shall be notified in writing about the rejection.

3. Responsibility of vendors. -- It shall be determined whether a vendor is responsible before awarding a contract. Factors to be considered in determining if a vendor is responsible include:
   a. The vendor's financial, physical, personnel or other resources, including subcontracts;
   b. The vendor's record of performance and integrity;
   c. Any record regarding any suspension or debarment;
   d. Whether the vendor is qualified legally to contract with the State;
   e. Whether the vendor supplied all necessary information concerning its responsibility; and
   f. Any other specific criteria for a particular procurement which an agency may establish.

4. If a vendor is determined to be non-responsible, the vendor shall be informed in writing.

5. The State reserves the right to waive minor irregularities, or request additional information before determining the responsiveness of the Vendor. All Vendors will be afforded the same or similar opportunities, as necessary, and will be treated with equal regard before such determinations are finalized.

C. PROPOSAL EVALUATION COMMITTEE

The Proposal Evaluation Committee (“Committee”) is comprised of representatives of the State of Delaware.

The Committee 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. §6926. Such selection will be based on the following criteria:
  - Projects must result in quantifiable and verifiable reductions in NOx emissions in Delaware.
  - The applicant and project team must demonstrate the experience and capacity necessary to complete the project.
  - The project must demonstrate that it will produce results that could be readily replicated by others in Delaware and elsewhere.
The applicant must be willing to destroy the existing engine/vehicle being replaced at the end of their contract and complete a “Certificate of Destruction”.

Award recipients must submit data reports to the Department of Natural Resources and Environmental Control DNREC Division of Air Quality on a quarterly basis for a period of one (1) year after project completion. Data reports may include hours of operation, gallons of fuel used, etc. Data report format and content will be mutually agreed upon by DNREC and award recipient and will be defined in the contract.

All projects must be located and operated in the State of Delaware.

All project proposals must have a robust calculation of the estimated amount of emission reductions using the US EPA Diesel Emission Quantifier (DEQ), which can be found at: https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq.

The Applicant must demonstrate that the proposed project budget is reasonable, applicable, and eligible for funding. There will be an evaluation of the proposed budget as part of the evaluation process.

All applicants must have a physical presence in the State of Delaware. The applicant for each project must be either a Delaware-based Government (county/municipal/state agency, academic institution, or be under contract with an academic institution), or be a non-government, private entity or business.

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

D. REQUIREMENTS OF THE VENDOR

The purpose of this section is to assist the Proposal Evaluation Committee to determine the ability of the organization to provide the materials and services described in the application. The proposal response should contain at a minimum the following information:

- A complete application (Appendix B)
- Copies of business license and insurance certificates
- Copies of State of Delaware Title/registration for each vehicle being replaced

Each vendor will be expected to address each criteria and scoring item in their application. The Department of Natural Resources And Environmental Control reserves the right to award funds that maximize geographic distribution, technology diversity and to limit the number of awards given to any applicant submitting multiple applications.

E. CRITERIA AND SCORING
## EVALUATION CRITERIA

<table>
<thead>
<tr>
<th>EVALUATION CRITERIA</th>
<th>PERCENTAGE</th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Measurable, verifiable reduction in NOx emissions</strong></td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>- The project will produce a net reduction in NOx emissions in the State and result in a measurable, verifiable reduction in NOx per ton of emissions using the Diesel Emission Quantifier.</td>
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<tr>
<td>- Projects must meet eligibility requirements of the VW Mitigation Plan</td>
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<tr>
<td>2. <strong>Project Budget</strong></td>
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<tr>
<td>- The proposed budget is thorough, robust, realistic, and cost effective.</td>
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<tr>
<td>- The applicant must show a detailed budget with all cost shares explained.</td>
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<tr>
<td>3. <strong>Proposed Project Location</strong></td>
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<tr>
<td>- The project is sited near a major highway or transportation corridor, shipping route, or near a shipping logistics center.</td>
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<tr>
<td>- This project will address an environmental justice (EJ) area or related location that receives a disparate proportion of environmental impacts.</td>
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<tr>
<td>- The project avoids environmentally sensitive areas or areas containing critical habitats.</td>
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<tr>
<td>- Priority will be given to projects in non-attainment and air quality maintenance areas.</td>
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<tr>
<td>4. <strong>Project Timeline</strong></td>
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<tr>
<td>The proposed project must define when the project will commence and will end.</td>
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<tr>
<td>5. <strong>Ability to be Replicated throughout the State</strong></td>
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<td>10</td>
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<tr>
<td>- The proposed project has the ability to be replicated throughout the state.</td>
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<tr>
<td>6. <strong>Collaboration with other Entities in the State</strong></td>
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<td>10</td>
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<tr>
<td>- The project includes collaborative efforts between the applicant and project team (an anchor fleet or fleets, utility/fuel provider, vehicle dealer, or manufacturer).</td>
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<tr>
<td>7. <strong>Economic Development</strong></td>
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<td>5</td>
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<tr>
<td>- The project creates and/or retains local jobs for Delawareans.</td>
<td></td>
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<tr>
<td>- The project serves as an economic development engine for local Delaware based companies.</td>
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</tr>
<tr>
<td><strong>TOTAL SCORE</strong></td>
<td>100%</td>
<td>100</td>
</tr>
</tbody>
</table>

Procurement Evaluation Committee members will assign up to the maximum number of points listed for each of the criteria listed above. For items having quantitative answers, points will be proportionate to each proposal’s response. Items with qualitative answers will receive the average of points assigned by Proposal Evaluation Committee members.

### F. BEST AND FINAL OFFERS
Once the proposals have been evaluated and negotiations have been held with the vendor(s) determined to be likely to receive an award, the Procurement Evaluation Committee issue a request for Best and Final Offers from the vendor(s).

G. REFERENCES

The Committee 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.

H. ORAL PRESENTATIONS

Selected vendors may be invited to make oral presentations to the Committee. 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.

V. MANDATORY PREBID MEETING

A mandatory pre-bid meeting has been scheduled for Wednesday, February 13, 2019 at 10 am EST in the DAQ Training Room – 100 W. Water Street Dover, DE. **This is a mandatory meeting.** If a Vendor does not attend this meeting, they shall be disqualified and shall not be considered for further evaluation.

VI. DEFINITIONS AND GENERAL PROVISIONS

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

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

**STATE:** The State of Delaware

**AGENCY:** State Agency as noted on cover sheet.

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

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

**CONTRACT:** The written agreement covering the furnishing and delivery of material or work to be performed.
DESIGNATED OFFICIAL: The agent authorized to act for an Agency.

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

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time

OPPORTUNITY BUY: A special offer from a supplier that is usually associated with a limited time to respond.

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

RFP: Request for Proposal.

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

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

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

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

Any Contract specific definitions should be included in Appendix A., Scope of Work

B. GENERAL PROVISIONS

1. INTERPRETATION OF ESTIMATES/QUANTITIES

   a. Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.

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

   c. Vendor usage reports for previous awards, if applicable, may be found by accessing the applicable contract award page at: http://contracts.delaware.gov/. Past usage shall not be considered a guaranteed future volume.

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

3. EXAMINATION OF SPECIFICATIONS AND PROVISIONS

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

4. PRICES QUOTED

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

All vendors that maintain a core list of products under this contract shall maintain the appropriate
negotiated prices on their core list. Vendors shall routinely offer to add to the core list materiel that has
been identified as necessary. The Vendors are expected to routinely update any changes to the core
list with the appropriate discounts listed.

Any adjustments to a core list must receive prior written approval from the State before a core list can
be changed by the Vendor. Changes include but are not limited to the migration of items on and off the
core list as well as any price adjustments from the original agreed upon pricing.

5. PUBLIC INSPECTION OF PROPOSALS

All documents submitted as part of the vendor’s proposal will be deemed confidential during the
evaluation process. Vendor proposals will not be available for review by anyone other than the State of
Delaware/Proposal Evaluation Committee or its designated agents. There shall be no disclosure of any
vendor’s information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the
Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware’s
records are public records (unless otherwise declared by law to be confidential) and are subject to
inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the
State of Delaware and a decision on contract award is made, its contents will become public record and
nothing contained in the proposal will be deemed to be confidential except proprietary information.

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

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

6. LAWS TO BE OBSERVED

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

7. APPLICABLE LAW AND JURISDICTION

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

8. 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.

9. PERMITS AND LICENSES

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

10. PATENTED DEVICES, MATERIAL AND PROCESSES

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

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

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

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

12. TAX EXEMPTION

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

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

13. INVOICING

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

14. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

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

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

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

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

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

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

15. PRICES

Prices and/or rates shall remain firm for the initial ___1___ year term of the contract, unless further negotiations are deemed necessary by the State.

The pricing policy that you choose to submit must address the following concerns:

a. The structure must be clear, accountable, and auditable.

b. It must cover the full spectrum of services required.

c. Costs and compensation must be consistent with the rates established or negotiated as a result of this RFP or P.O. issued based on this contract.

16. 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.

17. PRICE ADJUSTMENT

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

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

18. SHIPPING TERMS

FOB Destination, freight prepaid.
19. ELECTRONIC CATALOG

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

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

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

20. INDEPENDENT CONTRACTORS

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the 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.

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

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

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

The State and its utilizing agencies is 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.

23. FUNDING OUT or NON-APPROPRIATION

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

24. MANDATORY INSURANCE REQUIREMENTS

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

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

and

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

or

c. Miscellaneous Errors and Omissions - $1,000,000 per occurrence/$3,000,000 aggregate,

or

d. Product Liability - $1,000,000 per occurrence/$3,000,000 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 other,
f. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

All contractors must carry (a), (e), and (f), and at least one of (b), (c), or (d), depending on the scope of work being delivered.

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

State of Delaware  
Department of Natural Resources and Environmental Control  
Division of Air Quality  
State Street Commons  
100 W. Water Street, Suite A  
Dover, DE 19904

Note: The State of Delaware shall not be named as an additional insured.

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

25. STATE OF DELAWARE BUSINESS LICENSE

Prior to receiving an award, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required. 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: 302-577-8778.  
http://revenue.delaware.gov/services/BusServices.shtml

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

26. INDEMNIFICATION

a. 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.

b. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or
action by any third party against the State of Delaware, the State of Delaware shall promptly notify
the vendor in writing and vendor shall defend such claim, suit or action at vendor’s expense, and
vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability
arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee
time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used
or furnished by the vendor (collectively “Products”) is or in vendor’s reasonable judgment is likely
to be, held to constitute an infringing product, vendor shall at its expense and option either:

1. Procure the right for the State of Delaware to continue using the Product(s);
2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the
   contract; or
3. 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.

27. NON-PERFORMANCE

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

28. FORCE MAJEURE

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

29. VENDOR NON-ENTITLEMENT

State of Delaware Vendors for Materiel and for Services shall not have legal entitlement to utilize any
Central Contract held by the State of Delaware. The Vendors may not seek business from another
Vendors’ Central Contract for the purpose of preparing a bid or proposal to the State of Delaware.
Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective
contract unless they are considered a “Covered Agency” as defined by Title 29 Chapter 69 of the
State Procurement Code or otherwise permitted by law.

This is not a prohibition from any Vendor choosing to work with another Vendor who holds a State
Central Contract for private business.

30. OPPORTUNITY BUYS

27
The Director for the Department of Natural Resources and Environmental Control can waive use of a contract pursuant to 29 Del. C. §6911(d). A process has been developed to permit any vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a contract. See Opportunity Buy Flowchart. The Director will afford any vendor on an existing contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted vendor prior to a waiver being granted.

31. 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 8) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to Deanna.morozowich@state.de.us, with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15th will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with “no spend.” Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

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

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment 9.

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

32. ORDERING PROCEDURE
Successful vendors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Vendor and received by a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, email, fax, or computer on-line systems.

33. PURCHASE ORDERS

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number NAT19001-VWEMTFP on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.

34. BILLING

The 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. The Vendor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Vendors shall be required to report semi-annually opportunities to enhance the discounts achieved.

35. METHOD OF PAYMENT

a. For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor’s billing, the amount which is legitimately earned by the Vendor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Vendor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

b. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.

c. The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. 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. While it is the State’s intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ACI or check. Should a Vendor wish to provide a financial incentive to not process payment by P-Card in their proposal, they are to prepare their proposals to clearly outline any incentives for alternative payment methods the Vendor is willing to accept.

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

If a substitution is granted by the state, the Vendor must update its core list and maintain said list in a timely manner.

37. SCHEDULE FOR PERFORMANCE OF WORK

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, the State of Delaware shall be the sole judge of the term “reasonable.” If the Vendor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated and the State will forthwith proceed to collect for nonperformance of work.

38. 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 7, and are subject the approval and acceptance of Department of Natural Resources and Environmental Control.

39. VENDOR- OWNED RENTAL EQUIPMENT AND SUPPLIES REMOVAL

The awarded Vendor shall remove all rental equipment and supplies from the event location(s) no later than an agreed to date once all contract obligations by the Vendor have been met.

40. ENVIRONMENTAL PROCUREMENT REQUIREMENTS

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

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

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

Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: Environmentally Preferred Purchasing Policy

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

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

c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 7 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 7 must be approved in writing by the State.

42. 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.

43. VENDOR BACKGROUND CHECK REQUIREMENTS

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State’s on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:
• Delaware Sex Offender Central Registry at: https://sexoffender.dsp.delaware.gov/

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

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

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

44. 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

45. MINIMUM WAGE RATES

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

46. PREVAILING WAGE

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

47. 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.

48. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

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

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

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

49. TERMINATION OF CONTRACT

The contract awarded as a result of this RFP may be terminated as follows by Department of Natural Resources and Environmental Control.

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

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

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

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

## 50. CHANGES

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

## 51. INTEREST OF VENDOR

The vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The vendor further covenants, that in the performance of this contract, no person having any such interest shall be employed.

## 52. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the State agrees not to use any design or engineering plans prepared by the vendor for anything other than their intended purpose under this Contract. The Vendor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State’s support shall be given in the publication.

## 53. RIGHTS AND OBLIGATIONS

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been
approved by the Secretary of Finance, and all procedures of the Department of Finance have been
complied with. A separate purchase order shall be issued for every project or order.

54. 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.

55. TESTING AND INSPECTION

The State of Delaware reserves the right to conduct any test or inspection it may deem necessary to
insure equipment, materials, and services conform to contract requirements.

56. COVENANT AGAINST CONTINGENT FEES

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure
this contract upon an agreement or understanding for a commission, percentage, brokerage, or
contingent fee, excepting bona fide employees. For breach or violation of this warranty, the State shall
have the right to annul this contract without liability or in its discretion to deduct from the contract price
or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or
contingent fees.

57. GRATUITIES

a. If it is found, after notice and hearing, by the State that gratuities (in the form of entertainment, gifts,
or otherwise) were offered or given by the Vendor or any agent of the State with a view toward
securing a contract, or securing favorable treatment with respect to the awarding, amending, or the
making of any determinations with respect to the performance of this contract, the State may, by
written notice to the Vendor, terminate the right of the Vendor to proceed under this contract and/or
may pursue such other rights and remedies provided by law or under this agreement; provided that
the existence of the facts upon which the State makes such findings shall be in issue and may be
reviewed in proceedings pursuant to the Remedies clause of this contract; and

b. In the event this contract is terminated pursuant to subparagraph “a”, the State shall be entitled (i) to
pursue the same remedies against the Vendor, and (ii) to exemplary damages, as a penalty in
addition to any other damages to which it may be entitled by law, in an amount which shall be not
less than three, nor more than ten, times the costs incurred by the Vendor in providing any such
gratuities to any such officer or employee. The amount of such exemplary damages shall be in the
sole discretion of the State.

58. 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.

59. 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.

60. REMEDIES

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

61. SUBCONTRACTS

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal (Attachment 7) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

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

62. AGENCY’S RESPONSIBILITIES

The Agency shall:

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

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

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

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

e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete
this form to report concerns with vendors or commodities. Be sure to furnish as much detail as
possible. Corrective Action Report

63. CONTRACT DOCUMENTS

The Definitions and General Provisions and any Special Instructions, Specifications, Request for
Proposal, Proposal, Purchase Order, and Contract shall be a part of and constitute the entire Agreement
entered into by the State of Delaware and any 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
- Request for Proposal
- Specifications or Scope of Work
- Definitions & General Provisions
- Proposal
- Purchase Order
- Special Instruction

64. ASSIGNMENT

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

65. NOTICE

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

Deanna M. Cuccinello
Department of Natural Resources and Environmental Control
Division of Air Quality – State Street Commons
Enter Ag100 W. Water Street, Suite 6A
Dover, DE 19904

66. 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.

67. 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.

C. AWARD AND EXECUTION OF CONTRACT

1. CONSIDERATION OF PROPOSALS

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

2. MATERIAL GUARANTY

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

3. AWARD OF CONTRACT

Within ninety (90) days from the date of opening proposals, contracts will be awarded or the proposals rejected.

4. EXECUTION OF CONTRACT

The Vendor(s) to whom the award is made shall execute a formal contract within twenty (20) days after date of official notice of the award of the contract.

5. WARRANTY

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

   The contract(s) with the successful Vendor(s) will be executed with Department of Natural Resources and Environmental Control acting for all participating governmental entities.

7. **INFORMATION REQUIREMENT**

   The successful vendor’s shall be required to advise and provide Department of Natural Resources and Environmental Control of the gross costs associated with this contract.
VII. PROPOSAL REPLY SECTION

NAT19001-VWEMTFP

Volkswagen Environmental Mitigation Trust Fund Project

Please fill out the attached forms fully and completely and return with your proposal in a sealed envelope clearly displaying the contract number to the State of Delaware, Department of Natural Resources, and Environmental Control by Thursday, March 28, 2019 (Local Time) at which time bids will be opened.

A mandatory pre-bid meeting has been scheduled for Wednesday, February 13, 2019 at 10:00 am. This is a mandatory meeting. If a Vendor does not attend this meeting; they shall be disqualified and shall not be considered for further evaluation.

Proposals must be mailed to:

Department of Natural Resources and Environmental Control
Division of Air Quality
State Street Commons
100 W. Water Street, Suite A
Dover, DE 19904

PUBLIC PROPOSAL OPENINGS

The public proposal opening insures the citizens of Delaware that contracts are being proposed fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the proposals at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the proposal opening is to reveal the name(s) of the Vendor(s), not to serve as a forum for determining the apparent low Vendors. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each proposal has been determined.

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

NOTE: ONLY THE VENDOR'S NAME AND ADDRESS WILL BE READ AT THE OPENING

ATTACHMENTS

The following attachments are required to be included in the final submission package.
NO PROPOSAL REPLY FORM

Contract No.: NAT19001-VWEMTFP  Contract Title: Volkswagen Environmental Mitigation Trust Fund Project

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.
STATE OF DELAWARE

Department of Natural Resources and Environmental Control

Attachment 2

CONTRACT NO.: NAT19001-VWEMTFP
TITLE: Volkswagen Environmental Mitigation Trust Fund Project
DEADLINE TO RESPOND: March 28, 2019 at 4:00 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)

NAME OF AUTHORIZED REPRESENTATIVE ____________________________________________

SIGNATURE ________________________________________ TITLE ________________________

COMPANY ADDRESS ____________________________________________________________

PHONE NUMBER ____________________ FAX NUMBER ________________________________

EMAIL ADDRESS ______________________________ STATE OF DELAWARE

FEDERAL E.I. NUMBER ______________________________ LICENSE NUMBER____________

<table>
<thead>
<tr>
<th>COMPANY CLASSIFICATIONS:</th>
<th>Certification type(s)</th>
<th>Circle all that apply</th>
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<tbody>
<tr>
<td>Minor Business Enterprise (MBE)</td>
<td>Yes</td>
<td>No</td>
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<td>Woman Business Enterprise (WBE)</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Disadvantaged Business Enterprise (DBE)</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Veteran Owned Business Enterprise (VOBE)</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Service Disabled Veteran Owned Business Enterprise (SDVOBE)</td>
<td>Yes</td>
<td>No</td>
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[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME)

ADDRESS __________________________________________________________

CONTACT ____________________________________________________________

PHONE NUMBER ____________________ FAX NUMBER ________________________

EMAIL ADDRESS ____________________________________________________

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment? YES _______ NO _______ if yes, please explain ________________________________________________

THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED

SWORN TO AND SUBSCRIBED BEFORE ME this ________ day of ____________________, 20 ________

Notary Public ________________________________ My commission expires ________________

42
STATE OF DELAWARE  
Department of Natural Resources and Environmental Control

Attachment 3

Contract No.: NAT19001-VWEMP  
Contract Title: Volkswagen Environmental Mitigation Project

EXCEPTIONS FORM

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

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

<table>
<thead>
<tr>
<th>Paragraph # and page #</th>
<th>Exceptions to Specifications, terms or conditions</th>
<th>Proposed Alternative</th>
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Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.
COMPANY PROFILE & CAPABILITIES FORM

Suppliers are required to provide a reply to each question listed below. Your replies will aid the evaluation committee as part of the overall qualitative evaluation criteria of this Request for Proposal. Your responses should contain sufficient information about your company so evaluators have a clear understanding of your company’s background and capabilities. Failure to respond to any of these questions may result in your proposal to be rejected as non-responsive.

1. Briefly describe how your Volkswagen Environmental Mitigation Trust Fund Project benefits the State of Delaware

2. Briefly describe your company’s organization, structure, and philosophy.

3. Briefly describe your ability to perform your Volkswagen Environmental Mitigation Trust Fund Project in the allotted time.
STATE OF DELAWARE
Department of Natural Resources and Environmental Control

Attachment 5

Contract No.: NAT19001-VWEMTFP
Contract Title: Volkswagen Environmental Mitigation Trust Fund Project

CONFIDENTIALITY FORM

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

<table>
<thead>
<tr>
<th>Confidentiality and Proprietary Information</th>
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Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.
List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed
  
  Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please list the contract(s).

<table>
<thead>
<tr>
<th></th>
<th>Contact Name &amp; Title:</th>
<th>Business Name:</th>
<th>Address:</th>
<th>Email:</th>
<th>Phone # / Fax #:</th>
<th>Current Vendor (YES or NO):</th>
<th>Years Associated &amp; Type of Work Performed:</th>
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**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**
## SUBCONTRACTOR INFORMATION FORM

### PART I – STATEMENT BY PROPOSING VENDOR

<p>| | | |</p>
<table>
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<tbody>
<tr>
<td>1. CONTRACT NO.</td>
<td>2. Proposing Vendor Name</td>
<td>3. Mailing Address</td>
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<tr>
<td>NAT19001 - VWEMTFP</td>
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<th>4. SUBCONTRACTOR</th>
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<tbody>
<tr>
<td>a. NAME</td>
<td>4c. Company OSD Classification:</td>
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<td>Certification Number:</td>
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<td>b. Mailing Address:</td>
<td>4d. Women Business Enterprise</td>
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<td>4e. Minority Business Enterprise</td>
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<td>4f. Disadvantaged Business Enterprise</td>
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<td>4g. Veteran Owned Business Enterprise</td>
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<td>4h. Service Disabled Veteran Owned Business Enterprise</td>
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### 5. DESCRIPTION OF WORK BY SUBCONTRACTOR

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<td>6a. NAME OF PERSON SIGNING</td>
<td>7. BY (Signature)</td>
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<tr>
<td>6b. TITLE OF PERSON SIGNING</td>
<td>8. DATE SIGNED</td>
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### PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR

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<td>9a. NAME OF PERSON SIGNING</td>
<td>10. BY (Signature)</td>
<td>11. DATE SIGNED</td>
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<td>9b. TITLE OF PERSON SIGNING</td>
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Use a separate form for each subcontractor
E-mail report to vendorusage@state.de.us no later than the 15th of each month for prior calendar month usage.

Note: A copy of the current Usage 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: Deanna.morozowich@state.de.us
State of Delaware

Subcontracting (2nd tier) Quarterly Report

<table>
<thead>
<tr>
<th>Prime Name:</th>
<th>Report Start Date:</th>
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<tbody>
<tr>
<td>Contract Name/Number</td>
<td>Report End Date:</td>
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<tr>
<td>Contact Name:</td>
<td>Today's Date:</td>
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<th>Contact Phone:</th>
<th>*Minimum Required</th>
<th>Requested detail</th>
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<tr>
<th>Vendor Name*</th>
<th>Vendor TaxID*</th>
<th>Contract Name/Number*</th>
<th>Vendor Contact Name*</th>
<th>Vendor Contact Phone*</th>
<th>Report Start Date*</th>
<th>Report End Date*</th>
<th>Amount Paid to Subcontractor*</th>
<th>Work Performed by Subcontractor or UNSPSC</th>
<th>M/WBE Certifying Agency</th>
<th>Veteran/Service Disabled Veteran Certifying Agency</th>
<th>2nd tier Supplier Name</th>
<th>2nd tier Supplier Address</th>
<th>2nd tier Supplier Phone Number</th>
<th>2nd tier Supplier email</th>
<th>Description of Work Performed</th>
<th>2nd tier Supplier Tax ID</th>
<th>Date Paid</th>
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**Note:** A copy of the Usage 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: Deanna.morozowich@state.de.us
State of Delaware
Office of Supplier Diversity
Certification Application

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

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

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

Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)
100 Enterprise Place, Suite 4
Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: osd@state.de.us

THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.
THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.
STATE OF DELAWARE  
Department of Natural Resources and Environmental Control

Attachment 11

BOND HAS BEEN WAIVED

PERFORMANCE BOND

Bond Number: ___________________

KNOW ALL PERSONS BY THESE PRESENTS, that we, ______________________, as principal ("Principal"), and ______________________, a ______________________ corporation, legally authorized to do business in the State of Delaware, as surety ("Surety"), are held and firmly bound unto the ____________________________________ ("Owner") (insert State agency name), in the amount of ______________________ ($___________), to be paid to Owner, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this __________ day of ____________, 20__.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, who has been awarded by Owner that certain contract known as Contract No. ___________ dated the __________ day of ____________, 20__ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse Owner sufficient funds to pay the costs of completing the Contract that Owner may sustain by reason of any failure or default on the part of Principal, and shall also indemnify and save harmless Owner from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

Surety, for value received, hereby stipulates and agrees, if requested to do so by Owner, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause Principal fails or neglects to so fully perform and complete such work.

Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer therefor or of any work to be performed or any monies due or to become due thereunder; and Surety hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to Surety as though done or omitted to be done by or in relation to Principal.

Surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of Surety and its bond.
Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to Surety or Contractor may be mailed or delivered to them at their respective addresses shown below.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day, and year first above written.

**PRINCIPAL**

Name: ________________________________

Witness or Attest: Address: ________________________________  
_________________________  By: ________________________________ (SEAL)

Name: ________________________________  Name: ________________________________  
Title: ________________________________  Title: ________________________________

(Corporate Seal)

**SURETY**

Name: ________________________________

Witness or Attest: Address: ________________________________  
_________________________  By: ________________________________ (SEAL)

Name: ________________________________  Name: ________________________________  
Title: ________________________________  Title: ________________________________

(Corporate Seal)
BOND HAS BEEN WAIVED
(Amend percentage as appropriate) → 10% BOND TO ACCOMPANY PROPOSAL
(NOT NECESSARY IF CERTIFIED CHECK IS USED)

KNOW ALL MEN BY THESE PRESENTS That ______ _____________________________ of _______________________________ of the County of _____________ and State of _________________ principal, and ______ _______________________________ of _______________________________ of the County of ________________ and the State of ______________________ as surety, legally authorized to do business in the State of Delaware, are held and firmly bound unto the State of Delaware in the sum of ____________ Dollars or ________ per cent (not to exceed ____________ Dollars) of amount bid on Contract No. _____________ to be paid to said State of Delaware for the use and benefit of the _________________ of said State, for which payment well (hereinafter referred to as Agency) and truly to be made, we do bind ourselves, our and each of our heirs, executors, administrators, and successors, jointly and severally for and in the whole, firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden principal _____________________________ who has submitted to said Agency of the State of Delaware, a certain proposal to enter into a certain contract to be known as Contract No. ____________, for the furnishing of certain products and/or services within the said State of Delaware shall be awarded said Contract No. ____________, and if said _________________ shall well and truly enter into and execute said Contract No. ____________ and furnish therewith such surety bond as may be required by the terms of said contract and approved by said Agency, said contract and said bond to be entered into within twenty days after the date of official notice of the award thereof in accordance with the terms of said proposal, then this obligation to be void or else to be and remain in full force and virtue.

Sealed with ________________ seal and dated this _______ day of ________________ in the year of our Lord two thousand and _____ (20____).

SEALED AND DELIVERED IN THE
Presence of _________________________________

Name of Bidder (Principal)

Witness

_________________________ BY _________________________ (Seal)

Corporate Seal

_________________________ BY _________________________ (Seal)

Title

_________________________ BY _________________________ (Seal)

Name of Surety

_________________________ (Seal)

Title

Attachment 13
The response should contain the following minimum information:

1. A brief Cover Letter including an Applicant's experience, if any, providing similar projects, or services.

2. Vendor shall provide a detailed description of services to be provided, and shall respond to the Scope of Work identified. Failure to adequately describe the extent of their abilities may affect how the state evaluates and scores the vendor proposal.

Vendors are encouraged to review the Evaluation criteria to see how the proposals will be scored and verify that the response has sufficient documentation to support each scoring criteria identified.

3. One (1) complete, signed, and notarized copy of the Non-Collusion Agreement (Attachment 2). MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK – Form must be included.

4. One (1) completed RFP Exception Form (Attachment 3) – please check box if no information – Form must be included.

5. One (1) completed Profile and Capabilities Form (Attachment 4)

6. One (1) completed Confidentiality Form (Attachment 5) – please check if no information is deemed confidential – Form must be included.

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

8. One (1) complete and signed copy of the Subcontractor Information Form (Attachment 7) for each subcontractor – only provide if applicable.

9. One (1) complete OSD Application (see link on Attachment 10) – optional, only provide if applicable.

10. One (1) complete Scope of Work Application (Attachment B) – All documents and forms must be included

The items listed above provide the basis for evaluating each vendor's proposal. Failure to provide all appropriate information may deem the submitting vendor as “non-responsive” and exclude the vendor from further consideration. If an item listed above is not applicable to your company or proposal, please make note in your submission package.
PROPOSAL REPLY REQUIREMENTS (CONT’D)

Vendors shall compile and provide all documentation noted above, and all other documents as required in the Scope of Work, Appendix A, in the following format(s):

1. **[1]** Paper copy of the vendor proposal.

2. **[1]** Electronic copy of the vendor proposal saved to CD/DVD media disk, or USB memory stick. Any copies of electronic price files shall be included on the same electronic media, but shall be saved separately.
Appendix A – STATEMENT OF WORK AND TECHNICAL SPECIFICATIONS

1. Introduction

The U.S. Justice Department and the Volkswagen Corporation and its subsidiaries (collectively VW) reached, through a series of partial consent decrees (CDs), agreements regarding the installation and use of emissions testing defeat devices in over 500,000 vehicles sold and operated in the U.S. As part of these agreements, VW is required to establish an environmental mitigation trust (Trust) to fund certain eligible mitigation actions to mitigate the excess NOx emissions caused by the offending VW vehicles.

The State of Delaware expects to receive approximately $9.6 million from the Trust. The Department of Natural Resources and Environmental Control (DNREC); Division of Air Quality (DAQ) will administer the Volkswagen Environmental Mitigation Trust Fund Program. Delaware has historically had difficulty meeting National Ambient Air Quality Standards (NAAQS). The NAAQS were set by the US EPA to protect human health. The transportation sector is the largest contributor to nitrogen oxides (NOx) and carbon dioxide emissions. To improve air quality into healthy ranges and to meet Clean Air Act requirements, Delaware has had to implement a number of control programs that impacted industry, governments, and transportation planning efforts. Reducing emissions from the transportation sector is critical to achieving Delaware’s air quality goals.

2. Program Overview

The Division of Air Quality invites public and private fleets and other stakeholders and private businesses to submit projects in order to use the environmental mitigation funds. DNREC is interested in projects that:

a. reduce NOx and other emissions;

b. are cost-effective; and

c. provide environmental benefits to communities disproportionately impacted by air pollution.

Examples of eligible projects include: upgrading aging diesel-powered vehicles, including repowering or replacing certain school, shuttle, and transit buses and freight trucks with newer, cleaner diesel engines or alternative fuels, such as natural gas or electrification. For a complete list of eligible vehicles and cost offsets for non-government owned vehicles, please refer to Appendix D-2\(^1\) of the Consent Decree.

Projects likely to yield cost-effective and significant air quality benefits are those that replace combinations of the following:

- Bigger engines
- Older/less-controlled engines
- Off-road engines

---

\(^1\) Appendix D-2 can be found at the following address: http://www.vwenvironmentalmitigationtrust.com/
STATE OF DELAWARE  
Department of Natural Resources and Environmental Control

- Engines that operate many hours per year and/or remain in service for many years
- Engines that operate in close proximity to people most of the time, especially in communities that are disproportionately impacted by air pollution

All applicants must complete a Volkswagen Mitigation Plan Application (See Appendix B) and comply with the requirements therein. DNREC will award the funds on a reimbursement basis. Government awardees must sign a Memorandum of Understanding (MOU) while non-government awardees must sign a state contract.

3. Definitions

**Airport Ground Support Equipment** - Vehicles and equipment used at an airport to service aircraft between flights.

**Alternate Fueled** - An engine, or a vehicle or piece of equipment that uses a fuel different from or in addition to gasoline fuel or diesel fuel (e.g., compressed natural gas, propane, diesel-electric Hybrid).

**Applicant** - The applicant is the lead point of contact on the proposed project. The applicant will receive all the correspondence and work with the DNREC Division of Air Quality on the deployment of the proposed project.

**Certified Remanufacture System or Verified Engine Upgrade** - Engine upgrades certified or verified by EPA or CARB to achieve a reduction in emissions.

**Class 4-7 Local Freight Trucks (Medium Trucks)** - Trucks, including commercial trucks, used to deliver cargo and freight (e.g., courier services, delivery trucks, box trucks moving freight, waste haulers, dump trucks, concrete mixers) with a Gross Vehicle Weight Rating (GVWR) between 14,001 and 33,000 pounds (lbs.).

**Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)** - Vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 14,001 lbs. used for transporting people.

**Class 8 Local Freight and Port Drayage Trucks (Eligible Large Trucks)** - Trucks with a Gross Vehicle Weight Rating (GVWR) greater than 33,000 lbs. used for port drayage and/or freight/cargo delivery (including waste haulers, dump trucks, concrete mixers).

**DERA** - Refers to the Diesel Emission Reduction Act.

**Drayage Trucks** - Trucks hauling cargo to and from ports and intermodal rail yards.

**Eligible Mitigation Actions** - Eligible Mitigation Actions are projects that are eligible for funding under this RFP announcement. See Section 6 “Eligible Mitigation Actions” for additional information.
Forklift - Non-road equipment used to lift and move materials short distances; generally includes tines to lift objects. Eligible types of forklifts include reach stackers, side loaders, and top loaders.

Freight Switcher - A locomotive that moves rail cars around a rail yard as compared to line-haul engines that move freight long distances.

Generator Set – A switcher locomotive equipped with multiple engines that can turn off one or more engines to reduce emissions and save fuel depending on the load it is moving.

Government - A State or local government agency (including a school district, municipality, city, county, special district, transit district, joint powers authority, or port authority, owning fleets purchased with government funds), and a tribal government or native village.

Gross Vehicle Weight Rating (GVWR) - The maximum weight of the vehicle, as specified by the manufacturer. GVWR includes total vehicle weight plus fluids, passengers, and cargo. Class 1: < 6000 lbs.; Class 2: 6001-10,000 lbs.; Class 3: 10,001-14,000 lbs.; Class 4: 14,001-16,000 lbs.; Class 5: 16,001-19,500 lbs.; Class 6: 19,501-26,000 lbs.; Class 7: 26,001-33,000 lbs.; and Class 8: > 33,001 lbs.

Ineligible Mitigation Action Expenses - Ineligible costs are those costs that do not qualify for funding under this RFP announcement. See Section 8 “Ineligible Mitigation Action Expenses” for additional information.

Port Cargo Handling Equipment - The rubber-tired gantry cranes, straddle carriers, shuttle carriers, and terminal tractors, including yard hostlers and yard tractors that operate within ports.

Repower – To replace an existing engine with a newer, cleaner engine or power source that is certified by EPA and, if applicable, CARB, to meet a more stringent set of engine emission standards. Repower includes, but is not limited to, diesel engine replacement with an engine certified for use with diesel or a clean alternate fuel, diesel engine replacement with an electric power source (grid, battery), diesel engine replacement with a fuel cell, diesel engine replacement with an electric generator(s) (genset), diesel engine upgrades in Ferries/Tugs with an EPA Certified Remanufacture System, and/or diesel engine upgrades in Ferries/Tugs with an EPA Verified Engine Upgrade. All-Electric and fuel cell Repowers do not require EPA or CARB certification.

School Bus – A Class 4-8 bus sold or introduced into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

Tier 0, 1, 2, 3, 4 – Refers to corresponding EPA engine emission classifications for non-road, locomotive and marine engines.

Total Project Costs- Total project costs, including eligible and ineligible costs, associated with the entire project.
Tugs – Dedicated vessels that push or pull other vessels in ports, harbors, and inland waterways (e.g., tugboats and towboats).

4. Project Eligibility

The following requirements **MUST** be met to be eligible to participate in this funding opportunity.

- **a.** In accordance with Appendix D-2 of Mitigation Plan, projects must result in quantifiable and verifiable reductions in NOx emissions in Delaware.
- **b.** The applicant and project team must demonstrate the experience and capacity necessary to complete the project.
- **c.** The project must demonstrate that it will produce results that could be readily replicated by others in Delaware and elsewhere.
- **d.** The applicant must be willing to destroy the existing engine/vehicle being replaced at the end of their contract and complete a “Certificate of Destruction (See Appendix C).
- **e.** Award recipients must submit data reports to the DNREC Division of Air Quality on a quarterly basis for a period of one (1) year after project completion. Data reports may include hours of operation, gallons of fuel used, etc. Data report format and content will be mutually agreed upon by DNREC and award recipient and will be defined in the MOU or final contract (See Appendix D for Quarterly Report).
- **f.** All projects must be located and operated in the State of Delaware.
- **g.** All project proposals must have a robust calculation of the estimated amount of emission reductions using the US EPA Diesel Emission Quantifier (DEQ), which can be found at: [https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq](https://www.epa.gov/cleandiesel/diesel-emissions-quantifier-deq).
- **h.** The Applicant must demonstrate that the proposed project budget is reasonable, applicable, and eligible for funding. There will be an evaluation of the proposed budget as part of the evaluation process.

5. Applicant Eligibility

All applicants must have a physical presence in the State of Delaware. The applicant for each project must be either a Delaware-based Government (county/municipal/state agency, academic institution, or be under contract with an academic institution), or be a non-government, private entity or business operating in the State of Delaware.

6. Eligible Mitigation Actions

Eligible Mitigation Actions are those projects that are eligible for funding under this application. These projects are limited to actual and necessary costs incurred for the purchase of the following
mitigation actions:

a. Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks) – Includes vehicles with engine model year 2009-1992, repowered with any new diesel or alternate fueled engine or all-electric engine, or replaced with any new diesel or alternate fueled or all-electric vehicle, with the engine model year in which the eligible large trucks mitigation action occurs or newer;

b. Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses) – Includes vehicles with engine model year 2009 – 1992, repowered with any new diesel or alternate fueled or all-electric engine, or replaced with any new diesel, alternate fueled, or all-electric vehicle, with the engine model year in which the eligible bus mitigation action occurs or newer;

c. Freight Switchers – Includes Pre-Tier 4 locomotives that operate 1000 or more hours per year repowered with any new diesel or alternate fueled or all-electric freight switcher certified to meet applicable EPA emissions standards;

d. Ferries/Tugs – Includes unregulated, Tier 1 or Tier 2 marine engines on ferries or tugs repowered with Tier 3, Tier 4, alternate fueled, or all-electric engine, or upgraded with an EPA certified remanufacture system or an EPA verified engine upgrade;

e. Ocean Going Vessels (OGV) Shorepower – Includes marine shore power systems or components of such systems that enable a compatible vessel’s main and auxiliary engines to remain off while the vessel is at berth. Components eligible for reimbursement are limited to: cables, cable management systems, shore power coupler systems, distribution control systems, and power distribution. Subject marine shore power systems comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 high voltage shore connection systems or the IEC/PAS 80005-3:2014 low voltage shore connection systems) and are supplied with power sourced from the local utility grid;

f. Class 4-7 Local Freight Trucks (Medium Trucks) – Includes vehicles with engine model year 1992-2009 repowered with a new diesel, alternate fueled, or all-electric engine, or replaced with any new diesel, alternate fueled, or all-electric vehicle, with the engine model year in which the eligible medium trucks mitigation action occurs or one engine model year prior;

g. Airport Ground Support Equipment – Includes Tier 0, Tier 1, or Tier 2 diesel powered airport ground support equipment; and uncertified or certified to 3 g/bhp-hr or higher emissions spark ignition engine powered airport ground support equipment repowered with an all-electric engine, or replaced with the same airport ground support equipment in an all-electric form; and

h. Forklifts and Port Cargo Handling Equipment - Forklifts with greater than 8000 pounds (lbs.) of lift capacity and port cargo handling equipment repowered with an all-electric engine, or replaced with the same equipment in an all-electric form.
7. Cost Share

Each eligible mitigation action and activity is associated with the following cost share:

<table>
<thead>
<tr>
<th>Eligible Mitigation Action</th>
<th>Activity</th>
<th>VW Cost Share</th>
<th>Applicant Cost Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 8 Local Freight Trucks and Port Drayage Trucks (Eligible Large Trucks) &amp; Class 4-7</td>
<td>Engine replacement with new diesel or alternate fueled engine</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Local Freight Trucks (Eligible Medium Trucks) (Model Year 1992 – 2009)</td>
<td>Engine replacement with new all-electric engine</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td></td>
<td>Vehicle replacement with new diesel or alternate fueled vehicle</td>
<td>25% (50% for</td>
<td>75% (50% for Drayage)</td>
</tr>
<tr>
<td></td>
<td>Vehicle Replacement with all-electric vehicle</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Eligible Buses) (Model Year 2009 and</td>
<td>Engine replacement with new diesel or alternate fueled engine</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>older)</td>
<td>Engine replacement with new all-electric engine</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td></td>
<td>Vehicle replacement with new diesel or alternate fueled vehicle</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td></td>
<td>Vehicle Replacement with all-electric vehicle</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>Freight Switchers (Pre-Tier 4)</td>
<td>Engine replacement with new diesel or alternate fueled engine</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td></td>
<td>Engine replacement with new all-electric engine</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td></td>
<td>Locomotive replacement with new diesel or alternate fueled freight switcher that is EPA certified</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td></td>
<td>Locomotive replacement with new all-electric freight switcher</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>Ferries/Tugs (Pre-Tier 3)</td>
<td>Engine replacement with new Tier 3 or 4 diesel or alternate fueled engine</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td></td>
<td>Engine replacement with new all-electric engine</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td></td>
<td>Certified Remanufacture System or Verified Engine Upgrade</td>
<td>40%</td>
<td>60%</td>
</tr>
<tr>
<td>Ocean Going Vessels</td>
<td>Costs associated with shore-side system</td>
<td>25%</td>
<td>75%</td>
</tr>
<tr>
<td>Airport Ground Support Equipment (Pre-Tier 3)</td>
<td>Engine replacement with new all-electric engine</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>Forklifts and Port Cargo Handling Equipment (800+ lbs. capacity)</td>
<td>Equipment replacement with new all-electric equipment</td>
<td>45%</td>
<td>55%</td>
</tr>
</tbody>
</table>
8. Ineligible Mitigation Action Expenditures

Ineligible Mitigation Action Expenditures are those costs that do **not** qualify for funding under Phase 2 of Delaware’s VW Mitigation Plan. The costs include, but are not limited to, the following:

- Labor,
- Administration,
- Fringe Benefits,
- Printing and Supplies,
- Office Equipment,
- Acquisition of real estate property,
- Travel,
- Acquisition of permits,
- Landscaping,
- Energy efficiency projects, or
- Outreach and Education

Operation and maintenance costs of new or existing infrastructure and/or equipment are also not eligible for funding.

9. Diesel Emission Reduction Act Grant

The Department may leverage the projects under this RFP in order to received additional Diesel Emission Reduction Act (DERA)\(^2\) grant funding. Any applicant applying for VW funding will be subject to the requirements of the DERA State Clean Diesel Grant Program, including but not limited to general eligibility, project evaluation criteria, eligible project and administrative expenditures, cost-share, and funding restrictions. The DERA grant for 2019 will span from October 1, 2019 until September 30, 2020.

\(^2\) [https://www.epa.gov/cleandiesel/clean-diesel-national-grants](https://www.epa.gov/cleandiesel/clean-diesel-national-grants). The DERA program is a Congressionally-authorized project that enables the U.S. EPA to offer assistance for actions reducing diesel emissions. States and territories that match the base amount dollar per dollar receive an additional amount of EPA DERA funding to add to the grant (50% of the base amount). VW Environmental Mitigation funds can be used for states or territories non-federal match on a 1:1 basis.
10. Award Notification

The following VW Funding award conditions are listed:

- All funding awardees will be required to sign a State Contract or a Memorandum of Understanding.

- All awards will be made via a Delaware Department of Natural Resources and Environmental Control Contract with associated conditions.

- All awards for this program are granted by reimbursement only. No funds can be spent by an award recipient until a signed purchase order is issued. Funding Award payments will be reimbursed based on actual costs incurred. All receipts are due at the completion of the project for reimbursement. All reimbursements are contingent on the completeness and correctness of the information submitted, as well as complete documentation of the costs incurred (all receipts for equipment will be required). The content and schedule for the payment will be determined in the MOU or final contract.

- All award recipients will be subject to scrappage requirements. A “Certificate of Destruction” will need completed for each vehicle/engine replaced (Appendix B).

- All award recipients will be required to submit quarterly project progress reports for a period of one (1) year after the completion of a project. Generally, progress reports must describe the project implementation success and actual emission reductions resulting from project completion, difficulties encountered during the reporting period, and successes encountered during the reporting period (Appendix C).

- Contracts must be fully executed within 60 days of award notification or risk forfeiture of the funding award. The Division of Air Quality may, at its discretion, extend the time of execution.