

# STATE OF DELAWARE



## Department of State

Request for Proposals for Professional Services

Related to Unclaimed Property

Voluntary Disclosure Agreement Consulting Services

**Proposal Number:** STA-16101-VDA

**Proposal Closing:** **Tuesday, July 26, 2016; 4:00 PM EST**

Carvel State Office Building, 4<sup>th</sup> Floor  
820 N. French Street  
Wilmington, DE 19801

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
TO PROVIDE UNCLAIMED PROPERTY VOLUNTARY  
DISCLOSURE AGREEMENT SERVICES  
ISSUED BY DELAWARE DEPARTMENT OF STATE**

**I. Overview**

Pursuant to *12 Del. C. §1177*, the State of Delaware Department of State (“DOS” or “State”) seeks consulting services as detailed below in the “Scope of Services” to assist DOS with Unclaimed Property Voluntary Disclosure Agreements (such services denoted as “VDA Consulting Services and/or VDA Consultant”).

This request for proposals (“RFP”) is issued pursuant to *29 Del. C. §§ 6981 and 6982*.

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

Public Notice	June 28, 2016
Deadline for Receipt of Proposals	July 26, 2016, 4:00 PM ET Office of the Secretary of State Carvel State Office Building, 820 N. French Street, 4 <sup>th</sup> Floor Wilmington, DE 19801
Interview Process	August 8 - 19, 2016 (subject to change)
Notification of Award	Within 30 Days of Receipt (subject to change)

The proposal must conform to the requirements of the Proposal Procedures and the Required Information Sections of the RFP. The State specifically reserves the right to waive any informalities or irregularities in the proposal format.

**Each proposal must be accompanied by a cover letter that briefly summarizes the proposing Vendor’s interest in providing the required professional services.** The cover letter must also clearly state and justify any exceptions to the requirements of the RFP which Vendor may have taken in presenting the proposal. Exceptions shall also be listed on Attachment 1. Only those exceptions listed on Attachment 1 will be considered. The State reserves the right to deny any and all exceptions taken to the RFP requirements.

The State reserves the right to modify and/or cancel this solicitation at any time during the RFP process. This RFP does not constitute an offer by the State. A Vendor's participation in this process may result in the State selecting that 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 to execute a contract nor to continue negotiations. The State may terminate negotiations at any time and for any reason, or for no reason.

## **II. Scope of Services**

Pursuant to *12 Del. C. §1177*, the Delaware Secretary of State is authorized to administer an unclaimed property voluntary disclosure agreement ("VDA") program. The objective of this program is to bring as many companies ("holders") as possible into full and ongoing compliance with the provisions of *12 Del. C. Chapter 11*.

This RFP solicits the engagement of a professional services provider with background and experience related to unclaimed property services. The services requested are related to review and analysis of voluntary disclosure proposals from holders of unclaimed property and working with holders and their advocates for a resolution of its VDA. Below is a list of anticipated services which will be required but may not be exhaustive of all services required in the performance of this contract.

See ***Section III.B General Evaluation Requirements*** for details on expected qualifications and credentials associated with each of the criteria below:

- Experience/Technical Expertise in the field of unclaimed property and associated accounting, statistical sampling, estimation and extrapolation. Experience working with holders and transactions in various and significant industries which are typical holders of unclaimed property. Experience with Settlement Negotiations.
- Project Management Experience and associated tools used by the Vendor's organization.
- Quality Control/Risk Management infrastructure which can be utilized to manage and monitor the VDA process.
- Performance Metrics/Status Updates which will be utilized by the Vendor to inform DOS of the engagement status, benchmarks, issues, concerns, etc.
- Data Security and Confidentiality protocols available to ensure the integrity and security of the data and the confidentiality of data by both the Vendor and the VDA engagement team.

### **III. Required Information**

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

#### **A. Minimum Requirements**

##### **1. Delaware Business License**

Provide evidence of a current Delaware business license issued by the Delaware Division of Revenue or evidence of an application to obtain a business license filed with the Delaware Division of Revenue.

##### **2. Costs**

All contract costs must be as detailed as possible in the Vendor's cost proposal. In addition to the fees, information should be provided with regard to any anticipated expenses and associated estimate of these expenses.

No charges/expenses other than as specified in the proposal shall be allowed without the written consent of the State.

*The rate per hour per each level of personnel working on the engagement must be identified along with an estimate of any anticipated expenses.*

If a Vendor determines additional items are necessary for the completion of this engagement, including more detail to demonstrate their engagement process, the Vendor may include these in their proposals as separate line items. Any additional items will be considered individually and removed from the total cost when comparing the cost sections of proposals.

If applicable, for any legal services performed, the Vendor must comply with the Delaware Department of Justice's "Outside Counsel Billing Policy," and any amendments thereto, attached hereto as Appendix A. Under no circumstances will any costs or fees be billed by Vendor for a Vendor's consultation with the Delaware Department of Justice or any duplicate costs or fees billed for any documents Vendor creates and then produces to DOS per DOS's request.

### **3. Non-Collusion Statement**

The form, located at *Appendix B*, **must** be completed and signed and notarized by an authorized representative of the Vendor.

### **4. Insurance**

Provide documentation that the Vendor has appropriate insurance as detailed in Section D.5.f.

### **5. Conflicts**

Identify any potential and/or perceived conflicts of interest. Include a statement indicating how any such potential conflicts and/or perceived conflicts would not prevent the Vendor from fully performing its responsibilities, if awarded a contract.

## **B. General Evaluation Requirements**

The following criteria will be utilized by DOS to evaluate the proposals.

### **Experience/Technical Expertise**

- Describe length of existence of the Vendor, general and specific practice areas that the Vendor believes are relevant to resolving unclaimed and abandoned property voluntary compliance settlement agreements. Experience(s) working with the State of Delaware, or other states, in an outsourcing engagement and/or consulting capacity.
- Unclaimed property technical experience and/or experience with other related and/or relevant accounting issues.
- Experience with the analysis of companies with various sizes, industries and accounting functions/property types, specifically identify experience related to financial services, retail, and any other industries vendor believes is relevant.
- Learning experiences from other engagements (including non-unclaimed property engagements) which can be utilized by the Vendor in this capacity.
- Experience with statistical sampling and identify any team members who may be considered subject matter experts in this area.
- Describe the technical training and/or professional certifications your business and/or engagement team members possess.
- Describe any relevant accomplishments for your organization and/or team members, provide team member biographies as deemed appropriate.

- Describe the financial and analytical resources available to enable the Vendor to collect and assess complex corporate books, records, data, disclosures and financial statements.
- Describe relevant accomplishments and/or experiences of Vendor in leading major complex contract and/or settlement negotiations.
- Demonstrated ability to perform the services referred to herein.

### **Project Management**

- Describe experience managing multiple projects simultaneously and how Vendor is able to do so successfully.
- Describe project management tools your organization utilizes and how these tools might be utilized in this engagement.
- Describe the handling of sensitive technical issues and communication of such to DOS.
- Describe Vendor's perception of the deliverable to the State for each VDA when it is considered closed.
- Describe tools and communication efforts which will be utilized by Vendor with DOS (especially if the Vendor is located out of state).
- Describe how each of the VDA analysis for a holder will be staffed by Vendor by level of personnel in your organization. Provide an estimate of the time (number of hours) involved for each level of staff along with associated fees. While each VDA is different, Vendors are encouraged to use estimates based upon your experience for the determination of staffing to be utilized and time requirements. Any assumptions utilized in determining these estimates should be disclosed in the proposal.

### **Quality Control/Risk Management**

- Describe procedures in place and monitoring of activity so team members cannot cross over into other functional areas (e.g., represent a holder and/or perform audit functions).
- Describe procedures to be implemented for consistency.
- Describe procedures for reviewing and approving the work of the team members.
- Describe how quality control and risk management procedures would be documented.

### **Performance Metrics/Status Updates**

- What tools does your organization utilize to manage the status of projects?
- Provide information related to any performance metrics which can be tracked with Vendor's project management tools?
- If applicable, can Vendor provide sample(s) of project status reports which can be provided weekly, documenting each week's performance and the identification of any issues or concerns.

### **Data Security and Confidentiality**

- Describe infrastructure in place to store and safeguard data?
- How is access limited to this data? How is the access to the data monitored?
- Describe systems that are in place for the transfer of data securely via email and/or other means with the holders/advocates?

### **Fees and Expenses:**

- Include the current billing rates for each member of the engagement team and all information concerning any anticipated expenses.
- The Department of State will also accept proposals for alternative billing arrangements that enhance the value and efficiency of the services to be provided. Vendor may submit a statement not to exceed one page describing any alternative pricing proposals.
- To the extent any professional services include legal services, compliance with the Delaware Department of Justice Outside Counsel Billing Policy, and any amendments thereto, attached hereto as Appendix A. Under no circumstances will any costs or fees be billed by Vendor for a Vendor's consultation with the Delaware Department of Justice or any duplicate costs or fees billed for any documents Vendor creates and then produces to DOS at DOS's request.

Total potential points to be earned shall equal 100 points pursuant to the Criteria Weighting as shown in Section IV.C.2.a below of this RFP.

## **IV. Professional Services RFP Administrative Information**

### **A. RFP Issuance**

#### **1. Obtaining Copies of the RFP**

This RFP is available in electronic form only through the State's Bid Solicitation Directory website at <http://bids.delaware.gov>.

#### **2. Public Notice**

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

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

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

**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made in writing to the Designated Contact. Address all communications to the person listed below; communications made to other State 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:

Alison J. Iavarone  
Delaware Department of State  
Carvel State Office Building  
820 N. French Street  
4<sup>th</sup> Floor  
Wilmington, DE 19801  
Alison.Iavarone@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.

**6. Contact with State Employees**

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

**7. Organizations Ineligible to Provide a Proposal**

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

**8. Exclusions**

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

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as:
  - i. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - ii. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the State determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

## **B. RFP Submissions**

### **1. Acknowledgement of Understanding of Terms**

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

### **2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with five paper copies in a sealed envelope conspicuously

labeled “sealed proposal - State of Delaware – Unclaimed Property VDA Services.”

All properly sealed and marked proposals are to be sent to the State and received no later than **4:00 PM ET** on July 26, 2016. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Alison Iavarone  
Delaware Department of State  
Carvel State Office Building, 4<sup>th</sup> floor  
820 North French Street  
Wilmington, DE 19801**

Any proposal submitted by U.S. Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **4:00 PM ET** on July 26, 2016. Any proposal received after this deadline shall not be considered and shall be returned unopened. The proposing Vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

**3. Proposal Modifications**

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

**4. Proposal Costs and Expenses**

The State will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at Vendor’s conference, system demonstrations or negotiation process.

**5. Proposal Expiration Date**

This proposal and prices quoted in this proposal shall remain fixed and binding on the Vendor for at least twelve months from the date this proposal has been submitted. The State reserves the right to ask for an extension of time if needed.

**6. Late Proposals**

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

**7. Proposal Opening**

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

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

**8. Non-Conforming Proposals**

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

**9. Concise Proposals**

The State 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's interest is in the quality and responsiveness of the proposal.

**10. Realistic Proposals**

It is the expectation of the State of Delaware that Vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of

inflation and any economic or other factors that are reasonably predictable.

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

#### **11. Confidentiality of Documents**

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

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all of the State'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 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 identify such information on Attachment 2 and 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 a "public record" as defined by 29 *Del. C.* § 10002(1), and briefly stating the reasons that each document meets the said definitions.

Due to the nature of the information requested in "Data Security and Confidentiality," section III.B of this RFP, the State will agree in advance that these responses are confidential and should be handled pursuant to the above criteria.

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

Further, Vendor and their VDA team are responsible for maintaining the confidentiality of all engagement documents pursuant to *12 Del. C. § 1141(b)*.

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

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

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

**a. Primary Vendor**

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

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

Nothing in this section shall prohibit the State from the full exercise of its options under Section IV.B.18 regarding multiple source contracting.

**b. Sub-Contracting**

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

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

**13. Conflicts of Interest**

In general, if a conflict of interest arises, the Vendor should be willing to continue to serve in the capacity under the RFP and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than DOS, but does not expect to waive any other conflicts. DOS reserves the right, in its sole discretion, to select another approved individual to serve on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall complete a conflicts check for the State and its agencies in connection with its proposal in response to the RFP. Each Vendor shall identify any conflicts of interest which exist or may arise shall describe in its Proposal how it proposes to deal with such conflicts.

DOS recognizes that Vendors may have conflicts due to previous representations. Conflicts may arise not only from attorneys or firms named on the contract but also from representation of parties involved in the transactions or other matters, by any other member of the Vendor, regardless of whether that attorney is in the same office or a different office of the Vendor. DOS encourages Vendors with conflicts to submit proposals, identify the conflicts and describe recommended resolutions.

**14. Conflict Check System**

The Vendor shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations, and shall report on any conflicts. The description must include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. The Vendor shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

**15. Potential Conflicts**

Prior to entertaining any contract, the Vendor will provide assurances that potential conflicts have been discussed with other existing clients of the Vendor who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.

**16. Discrepancies and Omissions**

The 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 the Vendor. Should the Vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the 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 the 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.

**17. RFP Question and Answer Process**

The State will allow written requests for clarification of the RFP. All questions are due by Tuesday, July 5<sup>th</sup> by 4:00PM EST. Answers will be consolidated into a single set of responses and posted on the State's website at <http://bids.delaware.gov/> on Monday, July 11<sup>th</sup>. Vendors' names will be removed from questions in the responses released.

Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Question

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

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

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

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

The State reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State 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. The Vendor's participation in this process may result in the State 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 to execute a contract nor to continue negotiations. The State may terminate negotiations at any time and for any reason, or for no reason.

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

Pursuant to 29 Del. C. § 6986, the State may award a contract for a particular professional service to two or more Vendors if the agency head makes a determination that such an award is in the best interest of the

State. DOS may make multiple awards in order to have a group of qualified persons from which to make appointments.

**21. Notification of Withdrawal of Proposal**

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

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

**22. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State's website at <http://bids.delaware.gov> . The State is not bound by any statement related to this RFP made by any State employee, contractor or its agents.

**23. Exceptions to the RFP**

Any exceptions to the RFP, or the State's terms and conditions, must be highlighted and included in writing in the cover letter. Acceptance of exceptions is within the sole discretion of the Proposal Evaluation Team.

**24. Award of Contract**

The final award of a contract is subject to approval by the State of Delaware. The State has the sole right to select the successful Vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP. A written contract with any Vendor selected that includes the provision of legal services will be required, which must be approved by the Attorney General of the State of Delaware, Delaware Department of Justice and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507. All billing for legal services must comply with the Delaware Department of Justice's Outside Counsel Billing Policy, and any amendments thereto as well as any billing requirements within this RFP.

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

**a. RFP Award Notifications**

After reviews of the Proposal Evaluation Team’s recommendation, and once the contract terms and conditions have been finalized, as outlined below, the State will award the contract.

The contract shall be awarded to the Vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP and the terms and conditions negotiated.

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

**C. RFP Evaluation Process**

A Proposal Evaluation Team composed of representatives of the State will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

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

**1. Proposal Evaluation Team**

The Proposal Evaluation Team (“Team”) shall be comprised of representatives of the State. The Team shall determine which Vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. §§ 6981 and 6982. The Team may negotiate with one or more Vendors during the same period and may, at its discretion, terminate negotiations with any or all Vendors. The Team shall make a recommendation, based on their evaluation and negotiations of terms and conditions, regarding the award to the Secretary of State who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § 6982, to award a contract to the successful Vendor in the best interests of the State of Delaware.

**2. Proposal Selection Criteria**

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing Vendor’s

proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

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

The Team reserves the right to:

Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

Select more than one vendor pursuant to 29 *Del. C.* § 6986. The State may choose to award this contract to multiple vendors on the basis of ability to provide specific requirements of the contract, including but not limited to rulemaking support, marketing support, financial evaluation support and/or negotiation support. The combination of awards will be made in the best interest of the State to provide all services required.

**a) Criteria Weight**

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Proposal Evaluation Team to evaluate the proposals:

<b>Criteria</b>	<b>Points</b>
<b>Experience/Technical Expertise</b>	40
Project Management	15
Quality Control/Risk Management	15
Performance Metrics/Status Updated	10
Data Security & Confidentiality	10
Fees and Expenses	10
<b>Total</b>	<b>100</b>

Cost **will not** be the primary factor in the selection of any Vendor.

**3. Proposal Clarification**

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

**4. References**

The Team may contact any customer of the Vendor, whether or not included in the Vendor’s reference list, and use such information in the evaluation process. Additionally, the State 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 will pay travel costs only for State personnel for these visits.

**5. Oral Presentations**

Selected Vendors may be invited to make oral presentations to the Proposal Evaluation Team. The Vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the Vendor’s costs associated with participation in oral discussions and system demonstrations conducted for the State are the Vendor’s responsibility.

**D. Contract Terms and Conditions**

**1. General Information**

- a. The term of the contract between the successful Vendor and the State shall be for 2 years from date of execution of the contract with the option, as

determined by the State, of three extensions for a period of one year each for each extension. 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 full term of the contract, as stated above in this paragraph, has been completed.

- b. The selected Vendor will be required to enter into a written agreement with the State of Delaware. The State reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected Vendor or Vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between the parties. Procurement will be in accordance with the subsequent contracted agreement. This RFP and the selected Vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The successful Vendor shall promptly execute a contract incorporating the terms of this RFP. No Vendor is to begin any service prior to receipt of a State purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the RFP specifications and the special instructions, once it is received by the successful Vendor.
- e. If the Vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another Vendor. Such Vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

**2. Collusion or Fraud**

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

By responding, the Vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the Vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no

employee or official of the State of Delaware participated directly or indirectly in the Vendor's proposal preparation.

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

**3. Lobbying and Gratuities**

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

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

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

**4. Solicitation of State Employees**

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

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

The Vendor shall not permit a former State employee, State officer, or honorary State official to represent or assist the firm on State matters related to this contract for a period of two (2) years after termination of employment or appointed status with the State, where that person (a) gave an opinion, (b) conducted an investigation, or (c) were otherwise directly and materially responsible. (29 *Del. C.* §5805(d))

## **5. General Contract Terms**

### **a. Independent contractors**

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

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

### **b. Non-Appropriation**

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

### **c. Licenses and Permits**

In performance of the contract, the Vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful Vendor. The Vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

Prior to receiving an award, the successful Vendor shall either furnish the State with proof of a current 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

Division of Revenue may also be contacted by telephone at one of the following numbers:

(302) 577-8200—Public Service  
(302) 577-8205—Licensing Department

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

**d. Notice**

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

Jeffrey W. Bullock, Secretary of State  
Delaware Department of State  
Carvel State Office Building / 4<sup>th</sup> Floor  
820 North French Street  
Wilmington, DE 19801

**e. Indemnification**

**i. 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.

**ii. 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 shall promptly notify the Vendor in writing and Vendor shall defend such claim, suit or action at Vendor's expense, and Vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

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

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

**f. Insurance**

- i. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of

any act of omission on the part of the Vendor in their negligent performance under this contract.

- ii. 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.
- iii. During the term of this contract, the Vendor shall, at its own expense, carry insurance minimum limits as follows:

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

If the contractual service requires the transportation of departmental clients or staff, the Vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

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

- iv. The Vendor shall provide a certificate of insurance as proof that the Vendor has the required insurance. At no time will the State of Delaware or DOS be named as an additional insured.

**g. Performance Requirements**

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

**h. Warranty**

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less

than one (1) year from the date of system acceptance, as applicable. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

**i. Costs and Payment Schedules**

All contract costs must be as detailed as possible in the cost proposal. No charges or expenses other than those which have been presented in the proposal, and subsequently approved, shall be allowed without written consent of the State. ***The rate per hour per each level of personnel working on the engagement must be identified along with an estimate of anticipated expenses.***

The Cost Section **must** contain all detailed cost information relative to performing the engagement as described in this RFP.

If a Vendor determines additional items are necessary for the completion of this engagement, including more detail to demonstrate their engagement process, the Vendor may include these in their proposals as separate line items. Any additional items will be considered individually and removed from the total cost when comparing the cost sections of proposals.

**j. Manner of Payment Notice**

Invoices are to be issued monthly based on the hours of worked/incurred during the month. Invoice periods should not cross over into other months. Expenses should only be included in the respective month's invoices. Copies of ALL applicable receipts for expenses must be included with the invoice. ***Expenses will be reimbursed in conjunction with the State's reimbursement policy for state employees. Vendors are expected to be familiar with the policy and should provide support to document that the expense(s) falls within the State's reimbursement policy (e.g., support for the hotel room rate). Expenses outside of the State's reimbursement policy will not be paid unless previously approved in writing by DOS. Any approval needs to be attached to the invoice as support for the payment.***

The invoice for each month must include the following:

- Name of engagement entity/engagement;
- Total invoice amount – along with subtotal for fees and expenses;
- Period of time that the invoice covers which should be documented with a beginning and end date of the invoice period (e.g., January

1, 2016 to January, 31, 2016). Invoices are to be issued on a monthly basis;

- Attestation from the engagement partner(s) that the hours reported are actual hours worked as indicated by staff level and category;
- Attestation from the engagement partner(s) that the expenses fall within the scope of agreed upon services and are billed according to the state employee reimbursement policy;
- Summary schedule with a breakdown of each engagement team member hours for the period with the rate per hour and total invoiced for each engagement team member;
- Detail schedule with actual hours for each person for each day by task. Each entry for hours incurred should include a description of the work performed and along with: name of holder, name of document reviewed, persons met with and/or called and/or communicated with, emails or other documents prepared, and/or meetings attended. When warranted, if clarification is needed, additional information may be requested to elaborate on the services performed related to the hours billed. To the extent that legal services are provided, the DOJ's Outside Counsel Billing Policy as denoted in Appendix A must be followed and be invoiced separately.
- It is expected that expenses will be included in the associated month's invoice. Detail associated with expenses includes the amount, description, and dates of all out-of-pocket expenses for which reimbursement is requested. The following should also be included: purpose of the expense, including name of holder and individuals who Vendor has traveled to meet. The date the expense incurred is the date of the actual expense and NOT the date the expense was processed for reimbursement by the team member. Late processing of expenses, if permitted, will need to be invoiced separately and cannot be comingled in another month's invoice. Consequently, late expenses will be billed separately as an addendum to the associated month's invoices.
- An excel spreadsheet detailing the team member, hours worked and description are to be provided along with the hard copy of the invoice for Vendor employees and for any sub-contractors working on the engagement.
- Invoices are to be issued within 30 days after the end of the month along with any associated expenses.

Firms **must** submit all invoices in electronic pdf format for DOS approval. The invoices can be sent via email along with the associated excel schedules.

Any additional work outside the contract or for additional fees related to the contract is not permitted without the DOS' knowledge and written approval.

Firms are **not** to advance bill for work not yet performed. DOS reserves the right to audit the firm's timekeeping records to ensure billing is appropriate and done after-the-fact.

**k. Penalties**

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

**l. Dispute Resolution**

At the option of, and in the manner prescribed by the Department of State (DOS), 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, DOS 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 DOS, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of DOS, to the Secretary of State, for final and binding arbitration. DOS 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.

**m. Termination for Cause.**

If for any reasons, or through any cause, the Vendor fails to fulfil in a timely and proper manner its obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, reports, analyses, recommendations, or other material prepared by the Vendor under the contract shall, at the option of the State, become the State's property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

**n. Termination for Convenience**

The State may terminate the contract at any time by giving written notice 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, reports, analyses, recommendations or other material prepared by the Vendor under the contract shall, at the option of the State, become its property.

**o. Non-discrimination**

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

**p. Covenant against Contingent Fees**

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

**q. Vendor Activity**

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

**r. Work Product**

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

**s. Contract Documents**

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

**t. Applicable Law**

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

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

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

If any Vendor fails to comply with i. through v. of this paragraph, the State reserves the right to disregard the proposal, terminate the contract, or consider the Vendor in default.

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

**u. Scope of Agreement**

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

**v. Supplier Diversity**

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). Additional information regarding Delaware's Office of Supplier Diversity is available at <http://gss.omb.delaware.gov/osd/index.shtml>.

**2. Additional Services**

- a. If, during the course of the engagement, the Vendor suspects that there will be significant delays in the timing of the work due to the actions of the engagement entity, such as not providing requested items in a timely manner or not adhering to the agreed-upon time schedule discussed at the entrance conference, the

Vendor must notify DOS immediately. DOS and the Vendor will discuss the issues and develop a solution for completing the engagement.

- b. If it becomes necessary for DOS to request the Vendor to render any additional services to either supplement the services requested in this RFP or to perform additional work, then such additional work must be performed only if set forth in an addendum to the Agreement between DOS and the Vendor. Any such additional work agreed to between DOS and the Vendor must be performed at the same rates set forth in the schedule of fees and expenses included in the cost section of the proposal.
- c. DOS must approve any additional hours **before** they are incurred.

## **E. RFP Miscellaneous Information**

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

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

### **2. RFP Reference Library**

The State of Delaware has made every attempt to provide the necessary information within this RFP. The State will make the reference library available only to the winning Vendor.

### **3. Definitions of Requirements**

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

### **4. Production Environment Requirements**

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

5. **Funds Provided by the State**

No portion of any funds provided by the State shall be used for any purpose unrelated to the provision of direct services to the Secretary of State in administering the VDA program, including, but not limited to, advocating or lobbying for or against any laws, regulations, rules or other policies and procedures impacting the State's unclaimed property law except as may be directed by the Secretary of State.

**APPENDICIES / ATTACHMENTS**

**Appendix A – Outside Counsel Billing Policy**

**Appendix B – Non-Collusion & Debarment Statement**

**Appendix C – Certificate of Sanitation**

**Appendix D – Non-Disclosure & Data Security Agreement for Vendor**

**Appendix E – Data Owned by the State of Delaware**

**Appendix F – Non-Disclosure & Data Security Agreement for Individual Contractor  
Employees Working on the Engagement**

**Attachment 1 – Exception Form**

**Attachment 2 – Confidential Information Form**

**Attachment 3 – Employing Delawareans Report**

**Attachment 4 – Supplier Diversity**

## **Appendix A: Outside Counsel Billing Policy**

### State of Delaware Department of Justice Outside Counsel Billing Policy

#### **I. Budgeting, billing and staffing**

**a.** Billing rates will be in effect for entire matter as provided for in the outside counsel contract. Any change must be approved by the Coordinating Attorney in writing 60 days in advance of the effective date of the change in a billing rate.

**b.** General Billing practices

**i.** Bills to be rendered monthly within 30 days after end of month for entire month. No carry-over billing (example cannot bill from May 1 – June 15).

**ii.** Details of fees by lawyer, paralegal, number of hours by task, description.

**iii.** Expenses/disbursements detail and charges by category.

**iv.** Block Billing of Services is unacceptable. All bills shall be billed in increments of no less than 0.1 billing hour (6 minutes).

**v.** Time billed for each activity should be identified separately. Do not combine different types of activities in one entry on the invoice. “Block billing” of fees is not acceptable, even if the same individual performed the activities.

**vi.** The description of services or activity should be brief and informative. For example merely listing “Research” is not an acceptable billing entry. An acceptable entry would be "Legal research on statute of limitations issues related to [Insert issue]. Another example would be merely listing “Telephone calls” would not be acceptable, instead "Telephone calls to J. James of [Firm] and M. Smith [of firm] re: motion to dismiss." Be sure to identify the “who, what and where.”

**vii.** No more than 2 outside counsel attorneys at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.

**viii.** No firm paralegals at meetings, depositions, mediations, negotiations, and/or hearings unless pre-approved by the Coordinating Attorney.

**ix.** Billable hours for summer interns/clerks will not be allowed unless pre-approved by the Coordinating Attorney. More than 12 hours per day by one member of outside counsel staff will be closely reviewed.

**x.** Internal conferences accounting for more than 10% total monthly billings closely reviewed. Excessive intra-office conferences between attorneys or paralegals for the purpose of providing instruction or status will be closely reviewed.

**xi.** Excessive number of attorneys performing services in a matter will be closely reviewed, unless prior approval is received from the Coordinating Attorney in writing.

**xii.** Billing for research on general legal issues which should be within the knowledge of the firm and/or associate will be closely reviewed.

**xiii.** Billing of hours for work done by multiple attorneys in the firm for similar work on the same issue will be closely reviewed.

**xiv.** Billing attorney and/or paralegal time for invoice preparation, review, or for corrections to the invoice is not acceptable.

**xv.** Excessive time spent in “file review” will be closely reviewed.

**xvi.** Excessive time spent in “review and revision” of documents that you prepare will be closely reviewed.

**xvii.** Charging attorney time for tasks that should be performed efficiently and effectively at less expense by a paralegal or secretary, or charging paralegal time for tasks that should be performed by clerical workers will be closely reviewed. For example, we do not allow charging attorney time for arranging logistics for a deposition.

**xviii.** Hours charged at a more senior attorney rate when a matter should be handled by a less senior attorney will be closely reviewed.

**xix.** Charging for secretarial time, and or overtime or other staff members is not acceptable.

**c. Expenses/Disbursements**

**i.** Reasonable expenses and fees will be reimbursed. Should you have any questions or concerns whether or not a fee or expense falls within the reasonable

expense range or will be reimbursed please contact your Coordinating Attorney for an approval.

**ii. Examples of non-reimbursable overhead**

- a.** Computer, e-mail, word processing charges
- b.** Conference room charges, rent
- c.** Supplies
- d.** Library use, staff
- e.** Clerks
- f.** Proofreader charges
- g.** Support salaries
- h.** Telephone charges
- i.** Fax charges
- j.** Online research (Westlaw, Lexis)

**d.** Use of Outside Consultants, Experts and Contract Attorneys. There may be instances where the use of consultants, experts and contract attorneys may be required to staff a case. This should be done as part of the case planning in conjunction with your Coordinating Attorney. These fees should be reasonable and necessary and are subject to approval by the Delaware Department of Justice.

## Appendix B – Non-Collusion & Debarment Statement

This is to certify that the undersigned Vendor has not, 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. The undersigned Vendor further certifies that it is not a subcontractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation.

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, Office of the Secretary of State.

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

Authorized Representative: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email address: \_\_\_\_\_

Certification type(s)	Check all that apply
Minority Business Enterprise (MBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Woman Business Enterprise (WBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Veteran Owned Business Enterprise (VOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Service Disabled Veteran Owned Business Enterprise (SDVOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

**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, or Local government suspension or debarment?

YES     NO

If yes, please explain: \_\_\_\_\_

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

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

Notary Public: \_\_\_\_\_ Commission Expires: \_\_\_\_\_

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



Appendix C: Certificate of Sanitization

# State of Delaware Office of the Secretary of State

The Vendor must seek written permission from DOS prior to destroying any VDA-related records.

<b>CERTIFICATE OF SANITIZATION</b>			
<b>PERSON PERFORMING SANITIZATION</b>			
<b>Name:</b> <a href="#">Click here to enter text.</a>		<b>Title:</b> <a href="#">Click here to enter text.</a>	
<b>Organization:</b> <a href="#">Click here to enter text.</a>	<b>Location:</b> <a href="#">Click here to enter text.</a>	<b>Phone:</b> <a href="#">Click here to enter text.</a>	
<b>MEDIA INFORMATION</b>			
<b>Make/Vendor:</b> <a href="#">Click here to enter text.</a>		<b>Model Number:</b> <a href="#">Click here to enter text.</a>	
<b>Serial Number:</b> <a href="#">Click here to enter text.</a>			
<b>Media Property Number:</b> <a href="#">Click here to enter text.</a>			
<b>Media Type:</b> <a href="#">Click here to enter text.</a>	<b>Source (ie user name or PC property number):</b> <a href="#">Click here to enter text.</a>		
<b>Classification:</b> <a href="#">Click here to enter text.</a>	<b>Data Backed Up:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown		
<b>Backup Location:</b> <a href="#">Click here to enter text</a>			
<b>SANITIZATION DETAILS</b>			
<b>Method Type:</b> <input type="checkbox"/> Clear <input type="checkbox"/> Purge <input type="checkbox"/> Damage <input type="checkbox"/> Destruct			
<b>Method Used:</b> <input type="checkbox"/> Degauss <input type="checkbox"/> Overwrite <input type="checkbox"/> Block Erase <input type="checkbox"/> Crypto Erase <input type="checkbox"/> Other: <a href="#">Click here to enter text.</a>			
<b>Method Details:</b> <a href="#">Click here to enter text.</a>			
<b>Tools Used (include version):</b> <a href="#">Click here to enter text.</a>			
<b>Verification Method:</b> <input type="checkbox"/> Full <input type="checkbox"/> Quick Sampling <input type="checkbox"/> Other: <a href="#">Click here to enter text.</a>			
<b>Post Sanitation Classification:</b> <a href="#">Click here to enter text.</a>			
<b>Notes:</b> <a href="#">Click here to enter text.</a>			
<b>MEDIA DESTINATION</b>			
<input type="checkbox"/> Internal Reuse <input type="checkbox"/> External Reuse <input type="checkbox"/> Recycling Facility <input type="checkbox"/> Manufacturer <input type="checkbox"/> Other ( <i>specify in details area</i> )			

<b>Details:</b> Click here to enter text.	
<b>SIGNATURE</b>	
<b>I attest that the information provided on this statement is accurate to the best of my knowledge.</b>	
<b>Signature:</b>	<b>Date:</b> Click here to enter a date.
<b>VALIDATION</b>	
<b>Name:</b> Click here to enter text.	<b>Title:</b> Click here to enter text.
<b>Organization:</b> Click here to enter text.	<b>Location:</b> Click here to enter text.
	<b>Phone:</b> Click here to enter text.
<b>Signature:</b>	<b>Date:</b> Click here to enter a date.

## Appendix D – Non-Disclosure & Data Security Agreement for Vendor

We, \_\_\_\_\_ (“Vendor” or “We”) agree to perform unclaimed property services under our contract with the State of Delaware (“State”) <sup>1</sup> through the Office of the Secretary of State (“DOS”) captioned as DOS Original Contract Number [Contract Number] (the “Contract”). In that capacity, and in the performance of our related duties, we acknowledge and understand the following:

1. The State shall at all times own all right, title and interest in data and information, regardless of format, as set forth in the Contract. We shall not access State user accounts or State data, except as required by the express terms of the Contract. We acknowledge and agree that we shall have no right, title, or interest in such data and information.
2. We shall protect confidential information<sup>2</sup> and proprietary information to ensure that there is no inappropriate or unauthorized use or disclosure of State information at any time. To this end, we shall safeguard the confidentiality, integrity, and availability of confidential information and proprietary information and comply with the following conditions:
  - a) Personally identifiable information (PII)<sup>3</sup> obtained by us is and shall remain property of the State.
  - b) At no time shall any data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by us for subsequent use in any transaction that does not include the State.
  - c) No use shall be made of any information collected in connection with the services provided under the Contract except as necessary to fulfill the services required under the Contract.
  - d) PII, confidential information, and proprietary information shall be safeguarded from loss, theft, or inadvertent disclosure at all times.
  - e) Desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing PII and/or confidential information and/or proprietary information shall be encrypted and/or password protected.

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<sup>1</sup> “State” as used here (and hereinafter) shall mean the State of Delaware and any agency or instrumentality of the State of Delaware, including, but without limitation, the Delaware Department of State, Department of Finance and any other department within the state.

<sup>2</sup> “Confidential Information” includes, all documents related to the VDA without limitation, tax returns and related information, financial data, company names and addresses, and social security and tax identification numbers and all other information provided and reviewed during the VDA process. See *12 Del. C. § 1141* for additional confidentiality requirements related to the VDA Program.

<sup>3</sup> Personally identifiable information is defined in [6 Del. C. § 12B-101\(4\)](#), and includes a resident’s name in combination with the resident’s Social Security Number, Driver’s License number, Delaware Identification Card number or bank account or credit or debit card numbers.

- f) The disclosure of information and details relating to a PII loss shall be limited to those who need to know for purposes contemplated under the Contract.
  - g) All State, non-public data in transit shall be encrypted, including data that resides on mobile devices.
  - h) Management of our firm (up to and including the engagement partner) is responsible for clarifying what may represent PII or sensitive data/information and how to ensure adequate safeguards are in place to protect such information.
3. State data shall not be stored or transferred outside of the United States except to the extent permitted in the Contract. This includes backup data and data stored at disaster recovery locations.
  4. We shall account for all copies of State data that we obtain during the course of the engagement, and we shall not disclose such data to any person or entity except to the extent the Contractor is permitted to disclose information as provided in the Contract.
  5. We understand our responsibilities under 6 *Del. C.* Ch. 12B (“Computer Security Breach”) and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. We further acknowledge that we have read 6 *Del. C.* § 12B-104 that sets forth the enforcement procedures available to the Attorney General in the event of a violation of Chapter 12B.
  6. Within 24 hours of the discovery of any security breach or suspicious intrusion involving State data, we shall disclose to DOS, in writing, the occurrence of such breach or intrusion and the assets that might have been breached or disclosed.
  7. It is understood we are bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. We further understand that the State may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this agreement. Nothing in this agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. § 6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del. C.* § 305); Health Insurance Profitability and Accountability Act (“HIPAA”) and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to the information covered by this agreement.

8. Without limitation of additional legal bases, pursuant to Delaware Law, the State of Delaware is not at all permitted to agree to any limitation on liability.
9. We understand that we shall promptly contact DOS, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, we shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying DOS, in writing, unless prohibited by law from providing such notice.
10. We understand that our staff may be subject to clearance through the State's Security Clearance Program.
11. We agree to safeguard any password or security codes provided to us during the course of this engagement.
12. We agree to follow the Contractor's security procedures and ensure that all data and information relative to this engagement is properly stored, encrypted on portable devices, and password protected at all times.
13. We understand our liability for any losses experienced by the State or any remediation costs associated with a breach and that the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.
14. We understand that data shall be permanently deleted in accordance with the terms of the Contract and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to the DOS. [See example at Appendix C]
15. The obligations imposed herein do not extend to information or data which:
  - a) is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Contractor;
  - b) is disclosed with the prior written approval of DOS;
  - c) is determined to have been developed by the Contractor independently of disclosures made hereunder; or
  - d) is disclosed pursuant to Court order after prior notification to DOS.
16. If we subcontract with a Service Provider for cloud or offsite hosting of State data, we agree to assume liability for any noncompliance by the Service Provider. Nothing contained herein or in any subcontractor agreement with the Service Provider shall be

construed as creating any contractual relationship between the Service Provider and the State. In addition, we agree to the terms and conditions contained in Appendix E.

Our signature below represents our agreement with the items above for the duration of the Contract and until engagement work papers are properly destroyed under the terms of the Contract. The signature of the authorized representative is of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of State.

Contractor:

          [NOT TO BE COMPLETED UNTIL A FIRM HAS BEEN AWARDED THE CONTRACT]

Print Name  
Date

Title

Signature

**Appendix E – Data Owned by the State of Delaware**

**NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE**

**State of Delaware Cloud and/or Offsite Hosting Specific Terms and Conditions**

Contract # \_\_\_\_\_, Appendix \_\_\_\_\_

between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.                      Exceptions will be considered non-compliant and non-responsive.</b>	
<b>1</b>	<p><b>Data Ownership:</b> The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The Service Provider shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request.</p>
<b>2</b>	<p><b>Data Protection:</b> Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:</p> <ul style="list-style-type: none"> <li>a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware.</li> <li>b) At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware.</li> </ul>
<b>3</b>	<p><b>Data Location:</b> The Service Provider shall not store or transfer non-public State of Delaware data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of Delaware data remotely only as required to provide technical support.</p>
<b>4</b>	<p><b>Encryption:</b></p> <ul style="list-style-type: none"> <li>a) The Service Provider shall encrypt all non-public <b>data in transit</b> regardless of the transit mechanism.</li> <li>b) For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b>. Examples are social security number, date of birth, driver’s license number, financial data, federal/state tax information, and hashed passwords. The Service Provider’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology <a href="#">FIPS140-2</a>, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Cloud and Offsite Hosting Policy</a>. Additionally, where encryption of data at rest is not possible, vendor must describe existing security measures that provide a similar level of protection.</li> </ul>

<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.</b>	
<b>5</b>	<b>Breach Notification and Recovery:</b> Delaware Code requires public breach notification when citizens' personally identifiable information is lost or stolen. Reference: <a href="#">6 Del. C. § 12B-102</a> . Additionally, unauthorized access or disclosure of non-public data is considered to be a breach. The Service Provider will provide notification without unreasonable delay and all communication shall be coordinated with the State of Delaware. When the Service Provider or their sub-contractors are liable for the loss, the Service Provider shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.
<b>6</b>	<b>Notification of Legal Requests:</b> The Service Provider shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Service Provider shall not respond to subpoenas, service of process, and other legal requests related to the State of Delaware without first notifying the State unless prohibited by law from providing such notice.
<b>7</b>	<p><b>Termination and Suspension of Service:</b> In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware data in CSV or XML or another mutually agreeable format. The Service Provider shall guarantee the subsequent secure disposal of State of Delaware data.</p> <p>a) <b>Suspension of services:</b> During any period of suspension or contract negotiation or disputes, the Service Provider shall not take any action to intentionally erase any State of Delaware data.</p> <p>b) <b>Termination of any services or agreement in entirety:</b> In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession or under its control as specified in section 7d) below. Within this 90 day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) <b>Post-Termination Assistance:</b> The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> <p>d) <b>Secure Data Disposal:</b> When requested by the State of Delaware, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State of Delaware.</p>
<b>8</b>	<b>Background Checks:</b> The Service Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.

	<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.</b>
<b>9</b>	<b>Data Dictionary:</b> Prior to go-live, the Service Provider shall provide a data dictionary in accordance with the State of Delaware <a href="#">Data Modeling Standard</a> .
<b>10</b>	<b>Security Logs and Reports:</b> The Service Provider shall allow the State of Delaware access to system security logs that affect this engagement, its data and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.

<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.</b>	
<b>11</b>	<b>Contract Audit:</b> The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State’s expense. Such reviews shall be conducted with at least 30 days advance written notice and shall not unreasonably interfere with the Service Provider’s business.
<b>12</b>	<b>Sub-contractor Disclosure:</b> The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.
<b>13</b>	<b>Operational Metrics:</b> The Service Provider and the State of Delaware shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Examples include but are not limited to: <ul style="list-style-type: none"> <li>a) Advance notice and change control for major upgrades and system changes</li> <li>b) System availability/uptime guarantee/agreed-upon maintenance downtime</li> <li>c) Recovery Time Objective/Recovery Point Objective</li> <li>d) Security Vulnerability Scanning</li> </ul>

**By signing this Agreement, the Service Provider agrees to abide by all of the above Terms and Conditions.**

**Service Provider Name/Address (print):** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Service Provider Authorizing Official Name (print):** \_\_\_\_\_

**Service Provider Authorizing Official Signature:** \_\_\_\_\_

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

**Appendix F – Non-Disclosure & Data Security Agreement for Individual Contractor  
Employees Working on the Engagement**

I, \_\_\_\_\_, am a(n) performing certain professional services on behalf of [Name of Firm] (the “Contractor”) under its contract with the State of Delaware (“State”)<sup>4</sup> through the Office of the Department of State (“DOS”) captioned as DOS Original Contract Number [Contract Number] (the “Contract”) to perform and complete the [Description of Engagement]. In that capacity, and in the performance of my Service - related duties, I acknowledge and understand the following:

1. The State shall at all times own all right, title and interest in data and information, regardless of format, as set forth in the Contract. I shall not access State user accounts or State data, except as required by the express terms of the Contract. I acknowledge and agree that I shall have no right, title, or interest in such data and information.
2. I shall protect confidential information<sup>5</sup> and proprietary information<sup>6</sup> to ensure that there is no inappropriate or unauthorized use or disclosure of State information at any time. To this end, I shall safeguard the confidentiality, integrity, and availability of confidential information and proprietary information and comply with the following conditions:
  - a) Personally identifiable information (PII)<sup>7</sup> obtained by me is and shall remain property of the State.
  - b) At no time shall any data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by me for subsequent use in any transaction that does not include the State.
  - c) No use shall be made of any information collected in connection with the services provided under the Contract except as necessary to fulfill the services required under the Contract.

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<sup>4</sup> “State” as used here (and hereinafter) shall mean the State of Delaware and any agency or instrumentality of the State of Delaware, including, but without limitation, the Delaware Department of State and Department of Finance.

<sup>5</sup> “Confidential Information” includes, all documents related to the VDA without limitation, tax returns and related information, financial data, company names and addresses, and social security and tax identification numbers and all other information provided and reviewed during the VDA process. See *12 Del. C. § 1141* for additional confidentiality requirements related to the VDA Program.

<sup>6</sup> “Proprietary Information” includes, without limitation, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of system, application, network and access information.

<sup>7</sup> Personally identifiable information is defined in [6 Del. C. § 12B-101\(4\)](#), and includes a resident’s name in combination with the resident’s Social Security Number, Driver’s License number, Identification Card number or bank account or credit or debit card numbers.

- d) PII, confidential information, and proprietary information shall be safeguarded from loss, theft, or inadvertent disclosure at all times.
  - e) Desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing PII and/or confidential information and/or proprietary information shall be encrypted and/or password protected.
  - f) The disclosure of information and details relating to a PII loss shall be limited to those who need to know for purposes contemplated under the Contract.
  - g) All State, non-public data in transit shall be encrypted, including data that resides on mobile devices.
  - h) Clarification shall be obtained from the Contractor's management (up to and including the engagement partner) on what may represent PII or sensitive data/information and how to ensure adequate safeguards are in place to protect such information.
3. State data shall not be stored or transferred outside of the United States except to the extent permitted in the Contract. This includes backup data and data stored at disaster recovery locations.
  4. I shall account for all copies of State data that I obtain during the course of the engagement, and I shall not disclose such data to any person or entity except to the extent the Contractor is permitted to disclose information as provided in the Contract.
  5. I understand my responsibilities under 6 *Del. C.* Ch. 12B ("Computer Security Breach") and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. I further acknowledge that I have read 6 *Del. C.* § 12B-104 that sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
  6. Within 24 hours of the discovery of any security breach or suspicious intrusion involving State data, I shall disclose to the Contractor engagement partner and to DOS, in writing, the occurrence of such breach or intrusion and the assets that might have been breached or disclosed.
  7. It is understood I am bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. I further understand that the State may seek any remedy available to it to enforce this agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this agreement. Nothing in this agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. § 6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* § 1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the

release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act (“HIPAA”) and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to the information covered by this agreement.

8. Without limitation of additional legal bases, pursuant to Delaware Law, the State of Delaware is not at all permitted to agree to any limitation on liability.
9. I understand that I shall promptly contact the Contractor engagement partner and DOS, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, I shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the Contractor engagement partner and DOS, in writing, unless prohibited by law from providing such notice.
10. I understand that I may be subject to clearance through the State’s Security Clearance Program prior to the review of any State data.
11. I agree to safeguard any password or security codes provided to me during the course of this engagement.
12. I agree to follow the Contractor’s security procedures and ensure that all data and information relative to this engagement is properly stored, encrypted on portable devices, and password protected at all times.
13. I understand my personal liability for any losses experienced by the State or any remediation costs associated with a breach and that the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.
14. I understand that data shall be permanently deleted in accordance with the terms of the Contract and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to the DOS.
15. The obligations imposed herein do not extend to information or data which:
  - a) is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Contractor;
  - b) is disclosed with the prior written approval of the designated DOS;

- c) is determined to have been developed by the Contractor independently of disclosures made hereunder; or
- d) is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

My signature below represents my agreement with the items above for the duration of my assignment and until engagement work papers are properly destroyed under the terms of the Contract.

Printed Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Signature & Date: \_\_\_\_\_

**[NOT TO BE COMPLETED UNTIL A FIRM  
HAS BEEN AWARDED THE CONTRACT]**





**EMPLOYING DELAWAREANS REPORT**

As required by House Bill # 410 (Bond Bill) of the 146<sup>th</sup> General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: \_\_\_\_\_
2. Number and percentage of such employees who are bona fide legal residents of Delaware:  
\_\_\_\_\_
- Percentage of such employees who are bona fide legal residents of Delaware: \_\_\_\_\_
3. Total number of employees of the bidder: \_\_\_\_\_
4. Total percentage of employees who are bona fide resident of Delaware: \_\_\_\_\_

If subcontractors are to be used:

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

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

## State of Delaware

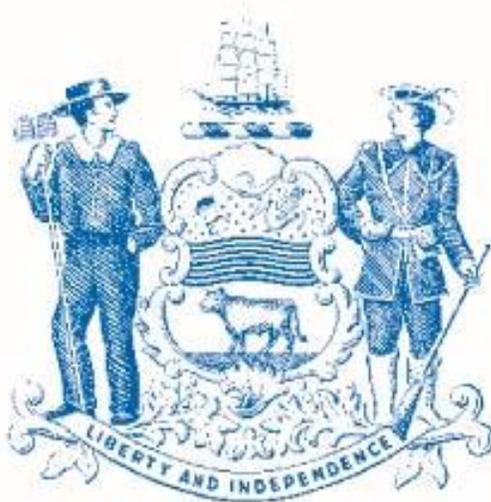
### Office of Supplier Diversity Certification Application

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

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

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

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