

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
TO PROVIDE INVESTMENT CONSULTING SERVICES  
ISSUED BY THE DELAWARE STATE TREASURY**

**I. Overview**

The Office of Finance and Treasury Services (“OFTS”) of the Delaware State Treasury (“DST”) is seeking a qualified firm with substantial public fund experience to provide investment consulting services. The selected firm will serve in a fiduciary capacity and will work closely with OFTS staff on behalf of the State of Delaware (“State”).

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

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

Public Notice	Date: February 28, 2012
Deadline for RFP Queries	Date: March 13, 2012
Response to RFP Queries by OFTS	Date: March 16, 2012
Deadline for Receipt of Proposals	Date: March 30, 2012

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The DST reserves the right to deny any and all exceptions taken to the RFP requirements. Furthermore, DST reserves the right to alter, amend, supplement or withdraw the terms of this RFP at its sole discretion. Failure to respond to any request for information required by this RFP may result in rejection of the proposing firm’s submission.

## **II. Scope of Services**

OFTS is seeking a qualified firm with substantial public sector experience to provide investment consulting services to DST. The selected firm will serve in a fiduciary capacity and will work closely with OFTS staff.

### **Description of Portfolio:**

As of the date of this RFP, DST currently utilizes five (5) investment managers and a total of seven (7) investment accounts. The State's investment portfolio size managed by the DST was approximately \$1.8 billion as of January 31, 2012. All holdings are fixed income securities and held by a custodian. There are two (2) types of accounts, as follows:

- Liquidity accounts (with investment horizon of up to two years): safety of principal is the chief investment criterion.
- Intermediate accounts (with investment horizon of up to ten years): safety and return on investment are the chief investment criteria.

In accordance with the CMPB (as defined hereafter), 50% of the total portfolio must reside in liquidity accounts and the remaining 50% must reside in intermediate accounts. All of the above accounts must be in compliance with The Statement of Objectives and Guidelines for the Investment of State of Delaware Funds which are established by the Cash Management Policy Board ("CMPB") and administered by the DST. A copy of the CMPB guidelines shall be available upon request.

The selected firm will be expected to provide the following services:

### **Initial Report**

- Evaluation of the State's investment policy and asset allocation with recommendations for potential modifications, including alternatives outside the fixed income market;
- Development of both investment and risk management strategies;
- Development of criteria to objectively judge investment manager performance and risk;
- Historical analysis and comparison of the State's investment portfolio to other states having a similar portfolio size and/or credit rating; and
- Evaluate investment manager performance on a historical basis.

**NOTE: The DST reserves the right to contract for the "Initial Report" study only. Please price this service separately from the following "Continuing Services."**

### **Continuing Services**

- Monitor and evaluate investment manager performance;
- Preparation of appropriate quarterly reports in a timely manner evaluating both overall portfolio performance, individual investment manager performance and asset class performance;

- Periodic meetings with OFTS staff and investment managers to review performance;
- Preparation of periodic reports regarding current conditions and changes in financial markets, including detailed economic forecasts; and
- Appear as requested, to represent DST at legislative subcommittee meetings, the CMPB or any other venues.

### III. Required Information

The following information shall be provided in each proposal in the order listed below:

#### A. Minimum Requirements

1. Delaware business license:  
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Insurance:  
Meet the insurance requirements set forth in Section IV (and upon request, provide evidence of such insurance).
3. Proposal Format  
Proposals should be prepared in accordance with the specifications of the RFP. Proposals should be prepared on standard 8.5 x 11-inch letter-size paper, one side per page, in Times New Roman 11 font. The maximum number of pages in the proposing firm's submission is fifteen (15) pages (excluding sample reports requested in this RFP). Proposals should be comprised of the following sections in the order given:
  - **Cover letter.** This may contain general and supplemental information.
  - **Schedule of fees.** All investment consulting fees should be detailed in either charges for "one-time services" or in annual charges for "continuing services."
  - **Sample of reports requested in this RFP.**
  - **Requested information responses** (in the following Section III (B) of this RFP.)
4. Meet the requirements of Section IV

#### B. Requested Information

1. Overview of the history of your firm, including ownership and structure.
2. Provide a summary of the qualifications of your firm's management and staff. Provide biographies of key personnel who would be

assigned to this relationship. Also, provide address and contact information for the office that would service DST.

3. Provide an overview of your firm's list of public and large institutional clients. Detail your background with these clients and provide three specific client references.
4. Provide evidence of registration and good standing with the Securities and Exchange Commission ("SEC") under the 1940's Investment Advisor's Act.
5. Describe your firm's investment policy evaluation methodology.
6. Provide an example of an investment policy evaluation and recommendations report provided to a public or large institutional client (exclusive of confidential or other restricted information).
7. Describe your firm's experience and capability for calculating investment performance. How does the firm ensure accuracy in the performance calculations? Describe your due diligence procedures.
8. How are benchmarks for investment performance (including investment manager performance) chosen or developed? Can custom benchmarks be provided?
9. Explain how risk is measured and monitored and how it is used in evaluating performance.
10. Does your organization have access to a database(s) containing a universe of investment portfolio returns based on asset class?
11. Provide an example of a quarterly performance report. Is customization of this report possible?
12. Does your firm provide on-line resources for clients? If so, please describe in detail.
13. What are your standard fees for providing (i) an "Initial Report" and (ii) continuing investment consulting service meeting the requirements set forth in Section II?

NOTE: Due to the unique nature of the requested advisory services, no subcontract arrangements will be permitted during the engagement period.

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

### **A. RFP Issuance**

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

This RFP is available in electronic form only and may be found at the following websites:

- Delaware State Treasury's website at <http://treasury.delaware.gov/>
- National Association of State Treasurers at <http://www.nast.net/rfps.htm>
- Delaware Office of Management and Budget at <http://www.bids.delaware.gov/>
- Such other website or venue deemed appropriate by DST.

Paper copies of this RFP will not be available.

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

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

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

Firms with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten (10) days prior to the deadline for receipt of proposals (as defined hereafter).

#### **4. RFP Designated Contact**

All requests, queries, or other communications about this RFP shall be made in writing to DST. Address all communications to the person listed below. Communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the firm. Firms should rely only on written statements issued by the following RFP designated contact ("Designated Contact):

Mr. Stephen W. McVay  
Delaware State Treasury  
820 Silver Lake Boulevard, Suite 100  
Dover, Delaware 19904  
Phone: (302) 672-6711  
Email: [stephen.mcvay@state.de.us](mailto:stephen.mcvay@state.de.us)

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

**5. Consultants and Legal Counsel**

DST may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the firms' responses. Bidders shall not contact such consultant or legal counsel on any matter related to this RFP.

**6. Contact with State Employees**

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

**7. Firms Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including, any subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to this RFP. Also, any firm proposing to perform the material obligations relating to the services contemplated under this RFP by or through the use of a subcontractor or similar arrangement.

**8. Exclusions**

The Proposal Evaluation Team (as defined hereafter) reserves the right to refuse to consider any proposal from a firm who:

- a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Has been convicted under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or federal antitrust statutes;
- d) Has violated contract provisions such as:
  - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

- 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

## **B. RFP Submissions**

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

By submitting a bid, each firm 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 four (4) paper copies and one (1) electronic copy sent to the email address of the Designated Contact in Microsoft Word 2007 or higher and PDF formats.

All properly sealed and marked proposals are to be sent to the Designated Contact and may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand to (with attention to the Designated Contact):

Delaware State Treasury  
820 Silver Lake Boulevard, Suite 100  
Dover, Delaware 19904

Any proposal submitted by U.S. Mail shall be sent by either certified or registered mail. All proposals must be received at the above address no later than **4:00 PM EST** on March 30, 2012. Any proposal received after such date and time shall not be considered. The proposing firm 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 firm proposals, each firm 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 firms 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**

DST will not pay any costs incurred by any firm associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at a firm's conference, system demonstrations or negotiation process.

**5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through September 30, 2012. DST 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, firm 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**

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

There will be no public opening of proposals but a public log will be kept of the names of all firms that submitted proposals. The contents of any proposal shall not be disclosed to competing firms 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 with DST.

**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 that firms 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 firm'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 firm's proposal will be deemed confidential during the evaluation process. Proposals will not be available for review by anyone other than the State (including, but not limited to the Proposal Evaluation Team) or its designated agents. There shall be no disclosure of any firm's information to a competing firm prior to award of the contract.

The State 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 State records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Firm(s) is advised that once a proposal is received by the State and a decision on a 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.

Firm(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 to permit a contract to be written without reference to any proprietary information. If a firm 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. Firm(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number# OEO121INVCONSULT. The envelope must contain a letter from the Firm's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not

“public record” as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

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

**12. Discrepancies and Omissions**

Firm 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 firm. Should the firm find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the firm shall notify the Designated Contact, in writing, no later than the deadline prescribed for RFP Queries. 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, pursuant to the terms set forth herein.

**a. RFP Question and Answer Process**

The State will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State’s websites at <http://treasury.delaware.gov/> and <http://www.bids.delaware.gov/> by 12:00 PM on March 16, 2012. Firms’ names will be removed from queries in the responses released. Queries 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 shall be formatted in Microsoft Word.

**13. 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 firm’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.

**14. 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 firm.

This RFP does not constitute an offer by the State. The Firm'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.

**15. Notification of Withdrawal of Proposal**

A firm may modify or withdraw its proposal by written request, provided that both proposal and request is 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.

**16. Revisions to the RFP**

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

**17. 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 proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**18. 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 firm(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

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

**a. RFP Award Notifications**

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

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

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

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

**C. RFP Evaluation Process**

An 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 firms. Firms 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 (the "Proposal Evaluation Team") shall be comprised of representatives of the State. The Proposal Evaluation Team shall determine which firms meet the minimum requirements pursuant to the selection criteria of the RFP and the procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team shall make a recommendation regarding the award to the Delaware State Treasurer, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful firm in the best interests of the State.

**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 firm’s proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all 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 Proposal Evaluation Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team’s consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Proposal Evaluation Team.

The Proposal Evaluation Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all firms during the contract review and negotiation.
- Negotiate any aspect of the proposal with any firm and negotiate with more than one firm at the same time.
- Select more than one firm pursuant to 29 Del. C. §6986. Such selection will be based on the following criteria:

**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 proposals:

<b>Criteria</b>	<b>Weight</b>
Qualifications and experience of professional staff	<b>25%</b>
Public funds asset management experience	<b>25%</b>
Report(s) format/layout	<b>25%</b>
Fee structure	<b>15%</b>
Organization, size and structure of firm	<b>10%</b>
<b>Total</b>	<b>100%</b>

**3. Proposal Clarification**

The Proposal Evaluation Team may contact any firm 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 Proposal Evaluation Team may contact any customer of the firm, whether or not included in the firm'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 firm personnel. If the firm is involved in such site visits, the State will pay travel costs only for State personnel for these visits.

**5. Oral Presentations**

Selected firms may be invited to make oral presentations to the Proposal Evaluation Team. The firm 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 firm's costs associated with participation in oral discussions and system demonstrations conducted for the State are the firm's responsibility.

**D. Contract Terms and Conditions**

**1. General Information**

- a. The term of the contract between the successful firm and the State shall be for three (3) years with two (2) extensions for a period of one (1) year for each extension.
- b. **The selected firm will be required to enter into a written agreement with the State. 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. Firms will be required to sign the contract for all services, and may be required to sign additional agreements.**

- c. The selected firm or firms will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected firm's response to this RFP will be incorporated as part of any formal contract.
- d. The State's standard contract will most likely be supplemented with any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful firm shall promptly execute a contract incorporating the terms of this RFP. No firm 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 bid specifications and the special instructions, once it is received by the successful firm.
- f. If the firm 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 firm. Such firm 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 firm(s) and prospective firm(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such firm(s) void.

By responding, the firm shall be deemed to have represented and warranted that its proposal is not made in connection with any competing firm submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the firm 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 participated directly or indirectly in the firm's proposal preparation.

Advance knowledge of information which gives any particular firm advantages over any other interested firm(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. Firms found to be lobbying, providing gratuities to, or in any way attempting to influence a State employee or agent of the State 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 firm 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, firms shall not, directly or indirectly, solicit any employee of the State to leave the State's employ in order to accept employment with the firm, its affiliates, actual or prospective contractors, or any person acting in concert with the firm, without prior written approval of DST. Solicitation of State employees by a firm may result in rejection of the firm's proposal.

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

**5. General Contract Terms**

**a. Independent contractors**

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

**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 firm 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 firm. The firm shall be properly licensed and authorized to transact business in the State as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful firm shall either furnish the State with proof of State Business License or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone at (302) 577-8778.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State licensing requirements may subject the firm 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 such person set forth herein:

**e. Indemnification**

**1. General Indemnification.**

By submitting a proposal, the proposing firm agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State, 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 firm's, its agents or employees' performance, work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, solely or in part, to the State, its employees or agents.

**f. Insurance**

1. Firm 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 firm'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 firm in their negligent performance under this contract.
2. The firm 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 firm is an independent contractor and is not an employee of the State.
3. The firm shall maintain the following insurance during the term of this Contract:
  - A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
  - B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
  - C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; **or**
  - D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, **or**
  - E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
  - F. If required to transport State employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
4. The Firm shall provide forty-five (45) days written notice of cancellation or material change of any policies.

5. Before any work is done pursuant to the contract, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.
6. In no event shall the State be named as an additional insured on any policy required under the contract.

**g. Performance Requirements**

The selected firm will warrant that it possesses, or has arranged 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. Costs and Payment Schedules**

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

**i. Penalties**

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

**j. Termination for Cause**

If for any reasons, or through any cause, the firm fails to fulfill in a timely and proper manner its obligations under the contract, or if the firm 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 firm of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the firm under the contract shall, at the option of the State, become its property, and the firm 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.

**k. 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

twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the firm under the contract shall, at the option of the State, become its property, and the firm shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State. If the contract is terminated by the State as so provided, the firm will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the firm as covered by the contract, less payments of compensation previously made.

**l. Non-discrimination**

In performing the services subject to this RFP the firm 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 firm 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.

**m. Covenant against Contingent Fees**

The successful firm 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 firm 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.

**n. Firm Activity**

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the firm. The firm 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.

**o. Work Product**

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

**p. Contract Documents**

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

**q. Applicable Law**

The laws of the State shall apply, except where federal law has precedence. The successful firm consents to jurisdiction and venue in the State.

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

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

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

The selected firm 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.

**r. 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.

**s. Other General Conditions**

- (1) **Status Reporting** – The selected firm will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final acceptance.
- (2) **Regulations** – All equipment, software and services must meet all applicable local, State and federal regulations in effect on the date of the contract.
- (3) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State.
- (4) **Additional Terms and Conditions** – The State reserves the right to add terms and conditions during the contract negotiations.

**E. RFP Miscellaneous Information**

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

Firms 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 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.

**2. RFP Reference Library**

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

**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. Firms must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

*The Treasury is committed to supporting diversity. As such, the Treasury supports initiatives undertaken by firms that promote and support diversity in the provision of services. The Treasury encourages any selected firm(s) to promote and support diversity when staffing projects undertaken on its behalf.*