



Delaware State Treasury

Request for Proposal

For

Professional Services

March 21, 2013

**RFP13-CPA-01**

by

State of Delaware  
Delaware State Treasury  
820 Silver Lake Blvd, Suite 100  
Dover, Delaware 19904

**Deadline to Respond: 3 p.m. (EST), Wednesday, April 10, 2013**

Delaware State Treasury  
Request for Proposal

Table of Contents

- I. Introduction
- II. Proposal Process
- III. Term of Engagement
- IV. Nature of Services Required
  - A. Engagement Cycle
  - B. Engagement Standards
  - C. Deliverables
  - D. Retention and Access to Engagement Documentation
- V. Description of the Entity
  - A. Engagement Contact
  - B. Background Information
- VI. Time Requirements
  - A. Proposal Calendar
  - B. Contract Deliverables
  - C. Entrance Conference
  - D. Progress Reporting and Exit Conference
  - E. Reports
    - 1. Draft Reports
    - 2. Final Reports
- VII. Proposal Content
  - A. Technical Proposal
    - 1. Transmittal Letter
    - 2. Table of Contents
    - 3. Mandatory Criteria
    - 4. Technical Criteria
  - B. Cost Proposal
- VIII. Evaluation Process
  - A. Review of Proposals

Delaware State Treasury  
Request for Proposal

- B. Evaluation Criteria
  - 1. Technical Qualifications
  - 2. Cost
- C. Reservation of Rights
- D. Confidentiality of Documents

IX. Contract Conditions

- A. Term
- B. Compensation
- C. Non-Appropriation
- D. Notice of Termination
- E. Formal Contract and Purchase Order
- F. Indemnification
- G. Compliance
- H. Insurance
- I. Data Release Agreement
- J. Confidentiality of Information
- K. Breach Notification
- L. Use of Work Product
- M. Non-Discrimination
- N. Covenant Against Contingent Fees
- O. Contract Documents
- P. Applicable Law
- Q. Scope of Agreement

X. Additional Services

XI. Manner of Payment Notice

Appendices

- A. Sample Schedule of Professional Fees and Expenses
- B. Non-Collusion Statement Form
- C. Data Release Agreement

# Delaware State Treasury Request for Proposal

## I. Introduction

The Delaware State Treasury (the “DST”) is distributing this Request for Proposal (RFP) to, and requesting proposals from, qualified certified public accounting firms to perform an engagement in accordance with Section IV for each of the following calendar years:

- December 31, 2012
- December 31, 2013

There is no expressed or implied obligation for DST to reimburse firms for any costs or expenses incurred in preparing proposals in response to this request. DST will **not** pay any costs or expenses incurred by any firm associated with any aspect of responding to this RFP, including proposal preparation, printing, delivery, or the negotiation process. Additionally, no indirect reimbursements (e.g., in the form of credits or reductions to any agreed upon compensation) must be made to any responding firm by DST for any such costs or expenses.

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

## II. Proposal Process

**All inquiries concerning this RFP must be submitted in writing and must be received by the DST by 5:00pm EST on Friday, March 29, 2013 via US Mail or via e-mail directly to:**

Delaware State Treasury  
Attn: Dan Kimmel  
820 Silver Lake Blvd, Suite 100  
Dover, DE 19904  
Daniel.Kimmel@state.de.us

**All questions and answers will be posted by Friday, April 5, 2013.**

**Direct contact with State of Delaware or DST employees other than the above-referenced contacts regarding this RFP is expressly prohibited without prior consent.**

Firms contacting the State of Delaware or DST employees risk elimination of their proposal from further consideration.

**To be considered, the proposal must be submitted via US Mail or via e-mail and be received by the DST by 3:00 p.m. on Wednesday, April 10, 2013. Please address all proposals directly to:**

# Delaware State Treasury Request for Proposal

Delaware State Treasury  
Attn: Dan Kimmel  
820 Silver Lake Blvd, Suite 100  
Dover, DE 19904  
Daniel.Kimmel@state.de.us

The DST reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. DST reserves the right without prejudice to reject any or all proposals.

By submitting a bid, each proposer 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.

Once the selection of a firm is completed, all proposers will be notified and the executed contract will be completed reasonably thereafter.

### III. Term of Engagement

The contract period is for three years, with the option to renew the contract at DST's request for one additional one-year term (subsequent calendar year) subject to the satisfactory negotiation of terms (including a cost acceptable to both DST and the selected firm) and the annual availability of an appropriation by the Legislature.

### IV. Nature of Services Required

#### A. Engagement Cycle

The proposer shall compile annual financial data from each of the State of Delaware 403(b) Plan (the "Plan") vendors to produce annual financial statements for the Plan. The calendar year financial statements shall contain information for each vendor, for each investment class, for each investment choice, and for the Plan in total. The financial statements shall include information such as opening balance, contributions, investment gains or losses, incoming and outgoing rollover or exchange volume by type, outgoing distributions by type, fees, adjustments or reconciling items, and closing balances, among other summary and statistical Plan data.

# Delaware State Treasury Request for Proposal

## B. Engagement Standards

To meet the requirements of this RFP, the compilation engagement must be performed in accordance with [Standards for Accounting and Review Services](#) established by the American Institute of Certified Public Accountants.

## C. Deliverables

### **Deliverable #1**

The firm will be required to submit a recommendation to the DST specifying whether GASB or FASB standards apply to the engagement, which shall include citations in support of the recommended standards. The DST shall make a final decision on (i) the standards that will be applied to the engagement and (ii) the financial statement format with draft footnote disclosure. The draft financial statements and related note disclosures are not expected to have financial estimates or numbers, and are solely for the purpose of ensuring sufficient information for DST's plan monitoring and administration.

### **Deliverable #2**

A detailed engagement plan that includes a draft of the financial statement format and related note disclosures format **must** be submitted to DST staff for review and approval before the compilation work can begin. These draft formats are not expected to have financial estimates or numbers, and are solely for the purpose of ensuring sufficient information is available and audited for DST's ongoing plan monitoring and management of the State's plans.

### **Deliverable #3**

Once Deliverable #1 & #2 are reviewed and approved by DST, the firm will ensure any updates to the engagement planned along with change orders, if required, are submitted to DST for approval. The firm will be required to produce the requisite financial statements for the period under compilation on a schedule to be determined jointly and approved by DST.

The firm will need to give consideration to the number of vendors – 14 as of December 31, 2012 – in the construction of its proposal. The DST will provide representatives and contact information for each of the vendors.

Irregularities and illegal acts. All situations or transactions that come to the firm's attention that could be indicative of fraud, abuse, illegal acts, material errors,

## Delaware State Treasury Request for Proposal

defalcations, or other irregularities must be promptly reported to DST. The DST will determine the appropriate course of action.

### D. Retention and Access to Engagement Documentation

A copy of engagement documentation that supports the final compilation report must be submitted to DST in preparation for the audit of the financial statement. The firm will keep a copy of these records and retain them, at the firm's expense, for a minimum of three (3) years, unless the firm is notified in writing by DST of the need to extend the retention period. The firm will be required to make engagement documentation available, upon request, to the DST or its designees.

In addition, the firm must respond to the reasonable inquiries of successor firms and allow the firms to review engagement documentation relating to matters of continuing engagement significance.

## V. Description of the Entity

### A. Engagement Contact

Delaware State Treasury  
Attn: Dan Kimmel  
820 Silver Lake Blvd, Suite 100  
Dover, DE 19904  
(302) 672-6733  
Daniel.Kimmel@state.de.us

### B. Background Information

The State of Delaware (the State) 403(b) Plan (the Plan), a defined contribution plan, was established in the 1970s and was administered at a local level until June 30, 2007 when plan administration became the responsibility of the Delaware State Treasurer and the Deferred Compensation Council. The purpose of the Plan is to provide a vehicle through which all education employees of the State may, on a voluntary basis, provide for additional retirement income security by deferring a portion of their current earnings. The active plans subject to this compilation can be found at <http://treasury.delaware.gov/defined-contributions/>.

### **Contributions**

Under Plan provisions, employees of the State, the Delaware Department of Education and State of Delaware sponsored education organizations are eligible to contribute into the Plan through payroll deductions. There were 19,926 and 19,573 employees eligible to participate in the plan as of December 31, 2011 and 2010,

## Delaware State Treasury Request for Proposal

respectively. In accordance with Section 457 of the Internal Revenue Code (IRC), the Plan limits the amount of an individual's annual contribution to 100% of annual gross includable compensation, not to exceed \$16,500 for calendar year 2011 and \$17,000 for calendar year 2012. Special "catch-up" rules may permit an additional annual deferral up to \$5,500 for calendar years 2011 and 2012 in certain circumstances.

Amounts contributed by employees are deferred for federal and state income tax purposes until benefits are paid to the employees. The State does not make any contributions to the Plan. The State also offers a section 457(b) Deferred Compensation Plan.

Contributions are recognized when amounts are withheld from employees.

Contributions are credited by the applicable investment carrier upon receipt.

### **Participant Accounts**

Employees electing to participate in the Plan may contribute to any of the following options:

- Various fixed earnings investments
- Variable earnings investments consisting of various publicly-traded mutual funds
- Annuity payout options administered by AXA, VALIC, Horace Mann, Great American and Security Benefit Corp.

### **Payment of Benefits**

Employees may withdraw the value of the funds contributed to the Plan upon termination of employment with the employer, retirement, death, or financial hardship. Employees, or their beneficiaries, may select various payout options which include lump sum or periodic payments.

Distributions are recorded when due and payable under the Provisions of the Plan.

## VI. Time Requirements

### A. Proposal Calendar

- Request For Proposal issued
- *Written inquiries due by Friday, March 29, 2013 at 5:00pm EST*

## Delaware State Treasury Request for Proposal

- Responses to inquiries will be posted by Friday, April 5, 2013
- Proposals due by Wednesday, April 10, 2013

### B. Contract Deliverables

A detailed Technical Proposal that includes a preliminary engagement plan and program(s) must be submitted to the DST no later than Friday, May 3, 2013. The DST will review and provide comments, if necessary, within 10 business days.

The engagement records are expected to be available for review shortly after Contractor and DST agree to contract terms.

### C. Entrance Conference

An entrance conference must be held with the DST each fiscal year. At the entrance conference, the firm must provide the DST with a time schedule for the engagement and a listing of all information required. The entrance conference may be held at one of the Treasury's office locations (Dover, DE or Wilmington, DE), or via conference call.

### D. Progress Reporting and Exit Conference

The firm must keep DST updated on the progress of the engagement. After the engagement has been completed, an exit conference must be held with DST at one of the Treasury's office locations or via conference call.

### E. Reports

1. Draft Reports – Prior to obtaining management's response but after going through a supervisory and technical review, the draft report will be submitted via email to the DST. The DST requires a minimum of 10 business days for review and to return any comments to the firm.
2. Final Reports – The final report must be emailed in both word and an unsecured searchable PDF format to the DST.

## VII. Proposal Content

### A. Technical Proposal

There must be **no dollars or total costs** included in the technical proposal document. Inclusion of such information will result in disqualification of the proposal. The Technical Proposal **must** address all the points outlined in the RFP in the following format:

## Delaware State Treasury Request for Proposal

1. Transmittal Letter - The signed transmittal letter must briefly discuss the following: RFP subject, reference number, the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why the firm believes it is best qualified to perform the engagement, and a statement that the proposal is a firm and irrevocable offer for one month after the due date of proposal. The transmittal letter must also clearly state and justify any exception to the requirements of the RFP that the applicant may have taken in presenting the proposal.
2. Table of Contents - A table of contents must clearly identify each section by page number.
3. Mandatory Criteria  
**No proposal will move forward for full technical review and scoring unless the mandatory items are fully addressed as requested in this section.**
  - a. Independence

The firm **must** provide an affirmative statement that it is independent of the 403(b) plan administrators.

The firm **must** also list and describe the firm's professional relationships involving the engagement entity for the past five years, together with a statement explaining why each such relationship does not constitute a conflict of interest relative to performing the proposed engagement. If the firm has had no relationships within the last five years, the proposal **must** include a declarative statement.

In addition, the firm **must** give the engagement entity and DST immediate written notice and obtain approval from the DST of any professional relationships before they are entered into during the period of this agreement.
  - b. License to Practice in Delaware & Delaware Business License

The applicant **must** provide (i) a copy of valid Delaware CPA licenses or authorization to practice in the State of Delaware from the National Association of State Board of Accountancy (NASBA) for the engagement partner and manager/supervisor in-charge, and (ii) a copy of a current Delaware State business license for the firm.
  - c. Firm Qualifications, Experience and References

The proposer **must** state the size of the firm, the size of the firm's staff, the location of the office from which the work on this engagement is to be performed, the number and nature of the professional staff to be employed

Delaware State Treasury  
Request for Proposal

in this engagement on a full-time basis, and the number and nature of the staff to be employed on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium **must** be separately identified and the firm that is to serve as the principal auditor must be noted, if applicable.

The proposer **must** provide three (3) current references, two (2) of which must be governmental clients, including each client's name, contact person, address, phone number, contract inception date, and type of services performed.

d. Suspension and Debarment

The firm **must** certify that it has not been suspended or debarred from performing engagements or other government activity. In addition, the firm must certify that it has not been the subject of any disciplinary action or inquiry in any jurisdiction during the past three years.

Any firm ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

e. Insurance

The firm as an independent contractor to the State and **must** provide a copy of insurance for claims under the 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 copy of insurance **must** demonstrate that it currently carries insurance of minimum limits as follows:

Commercial General Liability	\$1 million per claim/ \$3 million aggregate
Professional Liability	\$1 million per claim/ \$3 million aggregate

f. Partner, Supervisor, and Staff Qualifications and Experience

The firm **must** identify the engagement team; engagement partners, managers, supervisors, staff, and specialists. For each person, the firm must indicate whether the person is registered or licensed to practice as a certified public accountant in the State of Delaware; provide information on the person's government auditing experience, including information on relevant continuing professional education for the past three years and membership in professional organizations relevant to the performance of

## Delaware State Treasury Request for Proposal

this engagement; and discuss whether or not that person, within the past three years, has been the subject of any disciplinary action or inquiry in any jurisdiction.

The proposer must identify the extent to which staff to be assigned to the engagement reflect the State of Delaware's commitment to Affirmative Action.

Engagement partners, managers, and supervisory staff may be changed if those personnel leave the firm, are promoted, or are assigned to another office, or for other reasons with the express prior written permission of DST. However, in either case, DST retains the right to approve or reject replacements and the replacements must have substantially the same or better qualifications or experience.

Consultants and firm specialists mentioned in response to this RFP can only be changed with the express prior written permission of DST, which retains the right to approve or reject replacements.

- g. Statement on Subcontracting & Third Party Service Providers  
A statement that the work will not be subcontracted and that none of the work products will be subjected to a third party service provider.
- h. Non-Collusion Statement  
The form, located at Appendix B, must be completed and signed by an authorized representative of the firm.

#### 4. Technical Criteria

- a. Similar Engagements  
For the firm's office that will be assigned responsibility for the engagement, the firm must list the most significant engagements (maximum of 5) performed in the last three years that are similar to the engagement described in this RFP and demonstrate the applicable accounting experience. These engagements must be ranked on the basis of total staff hours and must indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.
- b. Specific Engagement Approach  
The proposal must set forth a work plan including but not limited to the following as applicable:
  - (1) Proposed steps for the engagement.

## Delaware State Treasury Request for Proposal

- (2) Level of staff and number of hours to be assigned to each proposed segment of the engagement **without dollars**.
- (3) Sample methodology and the extent to which sampling is to be used in the engagement.
- (4) Extent of software to be used in the engagement.
- (5) Processes to ensure quality of engagement.
- (6) Approach to manage the engagement process and ensure appropriate time and staff commitments to meet DST deadlines.
- (7) Firms that were members of the AICPA's Government Audit Quality Center (GAQC) during the review must disclose such information. If a firm has joined since the last peer review, they must disclose the membership date.

### B. Cost Proposal

The cost proposal will include a transmittal letter with the name of the firm and certification that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with DST.

The cost proposal must contain all cost information relative to performing the engagement as described in this RFP and present in the format at Appendix A.

Out-of-pocket expenses for firm personnel (e.g., travel, lodging, and subsistence) will be reimbursed at the prevailing rates used by the State of Delaware for its employees. A statement **must** be included in the cost proposal stating the firm will accept reimbursement for travel, lodging, and subsistence at the prevailing rate used by the State of Delaware for its employees.

## VIII. Evaluation Process

During the evaluation process, DST reserves the right to request additional information or clarification from proposers, or to allow corrections of errors or omissions. Additionally, DST may request the firm or firms to make oral presentations as part of the evaluation process. Not all firms may be asked to make such oral presentations. All costs associated with participation in oral presentations conducted for the State of Delaware are the firm's responsibility.

The Evaluation Committee may negotiate with one or more of the qualified firms during the same period and may, at its sole discretion, terminate negotiations with any and all firms at any time.

## Delaware State Treasury Request for Proposal

### A. Review of Proposals

Proposals that do not meet or comply with the instructions of this RFP may be considered non-conforming, deemed non-responsive, and be subject to disqualification at the sole discretion of the Evaluation Committee.

The Evaluation Committee will use a point formula during the review process to score technical proposals. All assignments of points must be at the sole discretion of the Evaluation Committee. Each member of the Technical Evaluation Committee will first score each technical proposal by each of the criteria described in Section VIII. The Technical Evaluation Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at an average technical score for each firm. At any point a firm may be eliminated from further consideration for unacceptably low technical scores.

### B. Evaluation Criteria

Only firms meeting the mandatory criteria and all the must requirements of the RFP will have their proposals evaluated and scored for both technical qualifications and cost.

#### 1. Technical Qualifications: (Maximum Points: 90)

Technical criteria will include, but are not limited to, staffing qualification, prior experience, DST's prior experiences with the firm, use of specialist, engagement approach and innovation, and realistic time estimates.

#### 2. Cost: (Maximum Points: 10)

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

### C. Reservation of Rights

The Evaluation Committee reserves the right to:

- Select for contract or for negotiations a proposal other than that with the lowest costs.
- Reject any and all proposals or portions of the 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 proposal from any or all contractors during the review and negotiation.

## Delaware State Treasury Request for Proposal

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

The Evaluation Committee reserves the right to reject any proposal as represented throughout this document and from a firm who:

- 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;
- Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- Has violated contract provisions such as:
  - Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
  - Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
  - Has violated ethical standards set out in law or regulation;
  - 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 debarment by another government entity for cause listed in the regulations.

#### D. 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 DST and the Evaluation Committee or its designated agents. There must be no disclosure of any firm's information to a competing firm 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., c. 100. Under the law, all the State of Delaware's records are public records, unless otherwise declared by law to be confidential, and are subject to inspection and reproduction by any person. Vendors are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

## Delaware State Treasury Request for Proposal

Firms must 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 firm feels that it cannot submit its proposal without including proprietary information, it must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. The firms must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. 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.

### IX. Contract Conditions

The firm awarded the contract will be required to enter into a written agreement with DST. DST reserves the right to incorporate standard State of Delaware contractual provisions into any contract negotiated as a result of a proposal submitted in response to an RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by DST. The firm must be referred to as "Contractor" in the agreement.

The selected firm will be expected to enter negotiations with DST, which will result in a formal agreement between the parties. Procurement will be in accordance with the subsequent contracted agreement. This RFP and the selected firm's response to this RFP will be incorporated as part of any formal agreement.

If the firm to whom the contract is awarded fails to enter in the agreement as herein provided, the award will be annulled and an award may be made to another firm. Such firm must fulfill every stipulation embraced therein as if they were the party to whom the first award was made.

The selected firm under this RFP must be subject to contractual provisions, in a form substantially similar to the following, as well as those agreed to by the parties and not specifically described herein.

#### A. Term

The term of the contract between the successful firm and DST must be determined by DST. The agreement may be terminated by DST at any time by giving written notice to the Contractor of such termination. Upon such termination, the Contractor will be paid for the hours of work actually completed.

In the event the successful firm materially breaches any obligation under this Agreement, the Contractor must not be relieved of any liability to the State of

## Delaware State Treasury Request for Proposal

Delaware for damages suffered by it by virtue of any such breach. DST may withhold any payments to Contractor for the purpose of set off for such damages.

**B. Compensation**

DST agrees to pay Contractor compensation calculated solely on the amount of engagement work performed by firm's staff, based on actual hours billed and hourly rates as set forth in Appendix A herein, as well as approved out-of-pocket expenses.

Contractor agrees to bill DST only for actual work performed and out-of-pocket expenses incurred during its performance of the engagement. Contractor must submit all invoices in writing or electronic format to DST for approval and accept electronic payment via ACH. Invoices must include the name of the staff who performed the work, the nature of work performed, the date(s) work was performed, the number of hours worked and the corresponding hourly rate, in addition to the amounts, descriptions and dates of all out-of-pocket expenses for which reimbursement is requested. If approved, DST will make payment via electronic ACH.

**C. 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 in part, the agreement must be terminated, as to any obligation of the State of Delaware 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.

**D. Notice of Termination**

Any notice to DST required under this Agreement must be in writing and sent by regular mail and registered mail to:

Delaware State Treasury  
Attn: Defined Contributions  
820 Silver Lake Blvd, Suite 100  
Dover, DE 19904

**E. Formal Contract and Purchase Order**

The successful firm must promptly execute an agreement incorporating the terms of this RFP within twenty business days after the award of the contract. No bidder is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Division of Accounting and the (Agency) where applicable. The purchase order must serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful firm.

Delaware State Treasury  
Request for Proposal

F. Indemnification

By submitting a proposal, the proposing firm agrees that in the event it is awarded a contract, the Contractor must defend, indemnify and save harmless the State from and against all liability, damages, costs or expenses, causes of actions, suites, judgments, losses, and claims including reasonable attorney's fees, brought against the State arising out of or resulting from the performance of the auditing services by Contractor under the Agreement resulting from this RFP to the extent caused by Contractor's negligence or arising from any breach or default Contractor under such Agreement. The foregoing obligation of Contractor to defend, indemnify and hold harmless the State must not extend or apply to any claim alleging that the State's financial statements are inaccurate or incomplete or were not prepared in accordance with generally accepted accounting principles. Further, in no event will Contractor indemnify and hold harmless the State from any claims or liabilities resulting from the acts of the State.

G. Compliance

In performance of the contract the firm is required to comply with all applicable federal, state and local laws, regulations, policies, guidelines and requirements of the jurisdiction in which the Agreement is performed, as well as all applicable professional conduct rules and guidelines. The cost of permits and other relevant costs required in the performance of the contract must be borne by the successful firm. The firm **must** be properly licensed and authorized to transact business in the State of Delaware as provided in Section 2502 of Title 30 of the Delaware Code and other applicable statutes and regulations.

H. Insurance

The firm recognizes that it is operating as an independent contractor (and not an employee of the State of Delaware) 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 Contractor's negligent performance under this contract, and particularly without limiting the forgoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this contract.

The firm **must** certify that it must 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 the Agreement. The firm is an independent contractor and is not an employee of the State of Delaware.

The firm **must**, at its expense, carry insurance of minimum limits as follows:

## Delaware State Treasury Request for Proposal

Commercial General Liability	\$1 million per claim/ \$3 million aggregate
Professional Liability	\$1 million per claim/ \$3 million aggregate

The firm **must** provide a certificate of insurance as proof that the firm has the required insurance.

I. Data Release Agreement

The Contractor will ensure that there is no inappropriate use of State of Delaware information at any time. At no time will any information obtained for the purposes of this engagement be used in any transaction that does not include the DST. The vendor may not use any personal information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. The Contractor must agree to the terms specified in Appendix C – Data Release Agreement prior to the commencement of the engagement.

J. Confidentiality of Information

Any reports, information, data, etc. given to, prepared, or assembled by the Contractor under this Contract shall not be released or made available to any individual or organization by the Contractor without the prior written approval of DST. All information must be properly secured to prevent unauthorized access in accordance with Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies. Notwithstanding the foregoing, the Contractor is authorized to disclose any information related to this Contract when required to by law, legal process, or applicable professional standards.

At the end of the engagement the Contractor must destroy all requested data in all of its forms, disk, CD / DVD, backup tape, paper, for example. 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 must be provided to the State of Delaware.

K. Breach Notification

The Contractor must inform the State of Delaware of any security breach or detection of any suspicious intrusion that is or has occurred that jeopardizes the State of Delaware data, information, or processes. This notice must be given to the State of Delaware within 24 hours of its discovery. Full disclosure of the assets that might have been jeopardized must be made. In addition, if the breach requires public notification, all communication shall be coordinated with the DST. The vendor will cover the costs of response and recovery from a data breach.

Delaware State Treasury  
Request for Proposal

L. Use of Work Product

All reports developed under this Contract are the sole and exclusive property of the State, and the State has the exclusive right to their use.

M. Non-Discrimination

In performing the services subject to this RFP, the firm agrees that it will not discriminate against any employee or applicant for employment because of race, creed, age, marital status, religion, color, sex, genetic information, national origin, or disability. The successful firm must 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.

N. Covenant Against Contingent Fees

The successful firm warrants 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 bidder for the purpose of securing business. For breach or violation of this warranty, DST must have the right to annul the contract without liability or at its discretion to deduct from the contract cost or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

O. Contract Documents

The RFP, the Purchase Order and the executed Agreement between DST and the successful firm must constitute the Contract between DST 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: Agreement, Purchase Order, and RFP. No other documents must be considered. These documents contain the entire agreement between DST and the firm. Firm agrees to be bound by the terms of this RFP pending final execution of the Agreement by the parties.

P. Applicable Law

The laws of the State of Delaware must apply, except where federal law has precedence. The successful firm consents to exclusive jurisdiction in the State of Delaware and agrees that any litigation relating to this Agreement must be filed and litigated in a court in the State of Delaware.

Q. Scope of Agreement

If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision must 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

## Delaware State Treasury Request for Proposal

such provisions of the Agreement must not thereby fail, but the scope of such provisions must be curtailed only to the extent necessary to conform to the law.

### X. Additional Services

If, during the course of the engagement, the firm 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 firm must notify DST immediately. DST and the firm will discuss the issues and develop a solution for completing the engagement.

If it must become necessary for DST to request the firm to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work must be performed only if set forth in an addendum to the Agreement between DST and the firm. Any such additional work agreed to between DST and the firm must be performed at the same rates set forth in the schedule of fees and expenses included in the cost proposal.

### XI. Manner of Payment Notice and Payment Method

Progress payments may be made no more frequently than 30, 60, and 90 percent completion based on the hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's cost proposal and not less than a calendar month.

The invoice must include the following: (1) name of engagement entity/engagement; (2) amount and if it's a progress or final invoice; and (3) a breakdown of staff and hours for each. Ten percent of the contract amount will be retained until the Exit Conference has been held and the final reports have been reviewed and accepted by DST.

Contractor agrees to bill DST only for actual work performed and out-of-pocket expenses incurred during its performance of the engagement. Contractor **must** submit all invoices in writing or electronic format for DST approval and accept electronic payment via ACH. Any additional work outside the contract or for additional fees related to the contract is not permitted without the DST Liaison's knowledge and approval. Invoices must include the name of the person who performed the work, the nature of work was performed, the date(s) work performed, the number of hours worked, and the corresponding hourly rate, in addition to the amounts, descriptions, and dates of all out-of-pocket expenses for which reimbursement is requested. If approved, DST will make payment via ACH.

Delaware Office of Auditor of Accounts  
Request for Proposal

Appendix A

Schedule of Professional Fees and Expenses  
For the Audit of the Department of XYZ  
For Fiscal Years 20\_\_ - 20\_\_

	<u>Hours</u>	<u>Hourly</u> <u>Rates</u>	<u>Total</u>
Partner	10	\$ 180	\$ 1,800
Manager	15	\$ 150	\$ 2,250
Supervisor	63	\$ 125	\$ 7,875
Senior	-	\$ -	\$ -
Staff	49	\$ 87	\$ 4,263
Other (travel, lodging, meals, etc.)		\$ -	\$ 665
Total	<u>137</u>		<u>\$ 16,853</u>

Delaware Office of Auditor of Accounts  
Request for Proposal

Appendix B

Non-Collusion 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 sub-contractor 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 XXX.

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

Check One:  Corporation       Partnership       Individual

Company Classifications: [This information is used for statistical purposes only.]

(circle one)

Women Business Enterprise (WBE)	Yes	No
Minority Business Enterprise (MBE)	Yes	No
Disadvantaged Business Enterprise (DBE)	Yes	No

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

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

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

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

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

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

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

Delaware Office of Auditor of Accounts  
Request for Proposal

Appendix C – Data Release Agreement

State of Delaware  
Data Release Agreement for Audit Engagement (FY 2013)  
MMM DD, YYYY

1	The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract.
2	The Contractor will ensure that there is no inappropriate use of State of Delaware information at any time. To this end, the firm shall comply with the following conditions: At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include the State of Delaware. Contractor may not use any personal information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
3	Contractor will account for all copies of the State of Delaware data.
4	Contractor must inform the State of Delaware of any security breach or detection of any suspicious intrusion that is or has occurred that jeopardizes the State of Delaware data or processes. This notice must be given to the State of Delaware within 24 hours of its discovery. Full disclosure of the assets that might have been jeopardized must be made. In addition, If the breach requires public notification, all communication shall be coordinated with the State of Delaware. Contractor will cover the costs of response and recovery from a data breach.
5	Contractor must encrypt all data in transit via Secure FTP.
6	Only assigned Contractor staff / auditors will have access to the State of Delaware Data and assigned Contractor staff / auditors may be required to be cleared through the State’s Security Clearance Program prior to the review of State’s data.

Contractor:

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Print Name	Title	Signature	Date
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State of Delaware:

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Print Name	Title	Signature	Date
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