



DSCYF
Department of Services for
Children, Youth & Their Families

RFP# CYF 24-07

**Request for Proposals
For Professional Services
Bid under Title 29 Chapter 69 Section 6981**

SERVICE COMPONENTS

Behavioral Health Treatment and Supportive Services

INFORMATIONAL BIDDERS CONFERENCE: NONE

SUBMISSION DEADLINE: **Thursday, November 14, 2024, by 2:00 pm Eastern Time**

The RFP schedule is as follows:

Submit questions to H. Ryan Bolles, DSCYF Procurement Administrator, at herbert.bolles@Delaware.gov Questions received close to the deadline may not receive a response. The State of Delaware reserves the right to determine if there is enough time to answer submitted questions. NOTE: **ALL currently contracted providers, whether proposing the same services or to add to their current service array, who wish to be considered for a re-award must respond to this RFP to be considered.**

None

There is **no** bidders' conference scheduled for this RFP.

**11/14/2024
by 2:00 PM
ET**

For this RFP DSCYF will accept your proposal by email as described below. Please submit the **minimum number** of email attachments as possible keeping potential attachment size limitations. A single proposal attachment is preferred, but not mandatory.

**PROPOSAL
DELIVERY:**

Proposals must be received by email by **11/14/2024** by **2:00 PM** ET.

Emailed proposals arriving with a **State of Delaware** system date/time stamp after 2:00 pm local time on the stated due date will not be accepted. DSCYF is not responsible for undelivered or delayed emails for any reason. If you experience any problem, please reach out to Ryan Bolles at herbert.bolles@delaware.gov **as soon as possible**.

Please submit your agency's proposal to DSCYF_Bids_Submission@delaware.gov NOTE: the State of Delaware is not responsible for undelivered or delayed emails for any reason. **Submission email must have a date/time stamp when received by the State of Delaware in compliance with the stated due date/time. You are advised NOT to wait until the last minute to submit your proposal.**

The contents of any proposal shall not be disclosed by the Stat to competing entities during the negotiation process.

As soon as possible

The Department will work diligently to complete the proposal review and selection process in an expeditious fashion. While DSCYF reserves the right to contact bidders for additional information proposals are expected to be able to stand alone based upon the written information submitted.

As soon as possible

Decisions are expected to be made and awards announced as soon as possible. Initial notification to all bidders will be by email.

Table of Contents

<u>TOPIC</u>	<u>PAGE</u>
Introduction	3
Who We Serve	3
Scope of Services	5
DPBHS' Current Service Array	6
Psych Under 21 Requirements	8
Proposal Content	9
Bidder Qualifications	9
Compensation	10
Scoring of Proposals	11
Submission Content	11
Award Process	12
Current/Former State Employee Bidders	12
APPENDIX A – Additional Bidder Information	13

Treatment and Treatment Support Services

I. Introduction

The Delaware Department of Services for Children, Youth and Their Families (DSCYF) is responsible for providing and managing a range of services for children who have experienced abandonment, abuse, neglect, adjudication, and mental health and substance use conditions. DSCYF's mission is to engage families and communities to promote the safety and well-being of children, families and communities through prevention, intervention, treatment, and rehabilitative services. DSCYF is comprised of four operating divisions: Division of Youth Rehabilitative Services which serves youth involved with the juvenile justice system; Division of Family Services which promotes the safety and well-being of children through prevention, protection and permanency; Division of Management Support Services which provides human resources, information technology, facilities management and fiscal services; and the Division of Prevention and Behavioral Health Services (DPBHS) which provides a range of statewide voluntary behavioral health prevention, early intervention and treatment programs and services for youth. The Department's core values include safety, compassion, respect, and collaboration. DSCYF is committed to providing services within a *System of Care* framework that requires staff and providers to work together using the following principles:

- Services are individualized and include strength-based solutions
- Services are appropriate in type and duration
- Services are child-centered, and family focused
- Services are primarily community-based and least restrictive
- Services are culturally competent
- Services are provided within and across a seamless system
- Services are planned and managed within a team-framework which includes the child, the family, and natural and professional supports that are available to them.

Who We Serve

DPBHS develops, maintains and supports a system of high quality, accessible behavioral health, prevention, early intervention and treatment services to ensure that children and families are served within a coordinated system of care. Youth eligible for DPBHS behavioral health treatment services must be under age 18, residents of the state of Delaware, Medicaid-covered or uninsured and require intensive behavioral health treatment beyond traditional office-based outpatient therapy. For eligible children and families, DPBHS provides a continuum of behavioral health treatment services that vary in level of intensity.

Youth served by DPBHS present with a range of behavioral health conditions including but not limited to suicidal/homicidal ideation or behavioral, physical and/or verbal aggression, non-suicidal self-injurious behavior, substance use, and difficulty initiating and maintain healthy and supportive relationships. In addition, youth served by the division have varying treatment histories. Some youth will be entering treatment for the first time or have had limited prior treatment history or have not demonstrated improvement in outpatient services, while others previously received intensive treatment, including psychiatric hospitalization. Some of the youth we serve are those

experiencing foster care, which involves coordinating with multiple parties including case workers and foster parents. Youth served by DPBHS often have trauma histories including abuse (sexual, physical, and verbal), neglect and witnessing traumatic event(s) in the home (i.e., domestic violence) or community (i.e., shootings or gang related activities). DPBHS is committed to the use of trauma informed care and provision of evidence-informed interventions delivered in the least restrictive environment.

DPBHS is accredited by CARF (Commission on Accreditation of Rehabilitation Facilities) and prefers network providers to be accredited by a behavioral health accrediting body. Bidders must indicate if they are currently accredited and, if not, if they plan to pursue accreditation with a timeframe for doing so. Providers who are not accredited must comply with the CARF unaccredited provider standards [[CARF standards](#)].

All behavioral health treatment authorized by DPBHS and provided to youth and families is managed by DPBHS care coordination teams. Contracted treatment service providers are required to work collaboratively with the family's assigned DPBHS staff to develop a shared understanding of the youth and family's strengths, needs and goals, as well as work together to support the achievement of established goals. DPBHS authorizes, manages, and facilitates the youth's transitions between providers and across levels of care, in addition to the scope and intensity of services. Decisions about level of care are made collaboratively with families and providers utilizing a variety of data sources, such as behavioral health assessments, level of care criteria, the American Society for Addiction Medicine (ASAM) criteria and the Child & Adolescent Service Intensity Instrument (CASII).

This is a non-binding RFP. Distribution of this RFP does not guarantee that DSCYF will award contracts for any proposals or any element of proposals that are received. DSCYF anticipates that successful bidders can anticipate a one to three-year contract as a result of this RFP process. Contracts are subject to annual funding reauthorization within this period, and contingent upon satisfactory performance, and continued need for services. DSCYF reserves the right to extend contracts for an additional two years on the same basis.

Trauma Informed Care

DSCYF has committed to a trauma-informed approach in our work with children, families, staff and our partners. To guide our trauma-informed work, DSCYF has adopted the Substance Abuse and Mental Health Services Administration Concept of Trauma and Guidance for a Trauma-Informed Approach (<https://store.samhsa.gov/product/samhsas-concept-trauma-and-guidance-trauma-informed-approach/sma14-4884>). Consistent with SAMHSA's framework, DSCYF is working to ensure that service recipients, service providers and DSCYF staff are knowledgeable about the prevalence of exposure and opportunities for resilience, healing and recovery for children, families and communities served. DSCYF encourages the use of strategies to build the capacity of staff and providers to recognize and respond to trauma exposure, including the use of trauma screening and assessment, trauma-specific treatment interventions, trauma training for staff, and trauma informed supervision practices. DSCYF is committed to actively resisting the re-traumatization of service recipients and staff and supports the incorporation of trauma informed principles into all aspects of organizational policy and practice (e.g., environments that promote a sense of physical and psychological safety, practices that promote collaboration with and

empowerment of service recipients). This trauma informed framework is consistent with DSCYF's commitment to the Systems of Care principles. DSCYF reserves the right to give preference to bidder or bidders who demonstrate having adopted a Trauma Informed Care model in its service delivery practices.

Scope of Services

DPBHS contracts with providers to deliver effective, accessible, and culturally sensitive services for Delaware's children and families. The objective of this Request for Proposals (RFP) is to improve accessibility to and the array of local, high quality, community-based and residential mental health, substance use, and co-occurring treatment services of varying intensities to produce the best outcomes possible for youth and their families. DPBHS is interested in responses which include an array of services developed by a single provider or through established partnerships among providers allowing flexible service delivery, varying levels of intensity, and the use of treatment support services to meet the unique needs of each child and family.

The proposed services must be geographically accessible to a child's family and community with the intent to support family involvement in treatment. **DPBHS is particularly interested in expanding treatment access in Kent and Sussex counties.** Proposed services must include specific references to the segment(s) of the populations to be served including exclusion criteria if applicable. DPBHS is particularly interested in adding providers who can deliver services directly to families **whose primary language is Spanish or Creole.** Treatment services must meet the needs and schedules of families and be available in evenings, weekends, and holidays. Community based services are primarily provided outside of school hours. Successful bidders are expected to have emergency coverage outside normal operating hours.

DPBHS is particularly interested in contracting with providers who offer integrated treatment for co-occurring mental health and substance use disorders **as well as co-occurring behavioral health and intellectual and/or other developmental disabilities.** Bidders proposing to deliver substance use specific treatment must indicate the ASAM level corresponding to each service proposed. DPBHS is interested in providers interested in delivery of therapeutic summer camp programming. DPBHS is also interested in providers who serve youth with problem sexual behavior.

DPBHS seeks proposals that incorporate the use of evidence-based and innovative approaches to treatment service delivery, which are supported by empirical literature and align with the system of care and trauma informed approaches. The submitted responses must demonstrate the bidder's ability and experience with evidence-based clinical interventions and practices that have been shown to effectively meet the diverse physical, emotional, cognitive, and behavioral needs of the children and their family in their local community. Bidders must identify the specific evidence-based clinical intervention(s) and practice(s) to be used in the proposed level of service(s), as well as how staff is trained in the interventions and how skills are sustained.

Responses must clearly describe the proposed services and the expected outcomes of successful treatment intervention. Examples of positive outcome measures of effective treatment include increased stability in the child or youth's home, school, and/or other settings; reduced problematic behavior; increased functional skill in various settings; absence of substance use and/or criminal activity; avoiding more intense or "deeper end" services; and for non-bed-based services, reducing

episodes of acute care (inpatient hospitalization), crisis intervention utilization, and residential treatment.

A comprehensive list of DPBHS' treatment services is listed below, however, DPBHS does not guarantee the continuation of any service on the list, as it is currently defined or delivered. Any bidder wanting to provide services for DPBHS must respond to this RFP if they wish to be considered. **ALL currently contracted providers, whether proposing the same services or to add to their current service array, who wish to be considered for a re-award must respond to this RFP to be considered.**

DPBHS' Current Service Array:

Below are descriptions of the services in DPBHS' current continuum that providers may want to offer.

1. **Intensive Mobile Outpatient Services** include individual, family, and group therapy typically provided multiple times per week and delivered in home and community settings. DPBHS is particularly interested in providers who will provide mobile outpatient services to youth with substance use or co-occurring disorders.
2. **Therapeutic Support for Families** provides psycho-educational, therapeutic, and supportive services for parents/caregivers and youth in home and community settings. Services are expected to be provided at the times identified by the caregiver including morning, evening, or weekends.
3. **Family Peer Support** provides support from an individual with lived experiencing in supporting a child with behavioral health needs. Some goals of family peer support include identification and linkage to resources and assistance navigating care systems.
4. **Intensive Family-Centered Approaches** are designed to support youth with complex behavioral health needs to remain in their home, school, and local community. Services may be delivered by a multi-disciplinary team. These services include 24-hour availability to respond to crisis and may include sessions on weekends and evenings if needed by the youth and family. Modalities include but are not limited to Multi-Systemic Therapy, Dialectical Behavior Therapy, Functional Family Therapy, and Family Based Services.
5. **Partial Hospital Programs (PHP)** provide support and psychiatric services five days per week to children and youth with severe, complex, or chronic psychiatric disorders requiring high intensity psychiatric medical services. Partial hospital programs provide individual, group and family therapy.
6. **Residential Rehabilitative Services (RRS)** provide a 24 hour a day, supervised, residential program with intensive therapeutic services for children and youth with behavioral health disorders who require more than community-based care but do not require psychiatric residential treatment (described below). The focus of treatment is to resolve the primary presenting problems that necessitated the youth's need for this type

of structured residential treatment service. Individual, group and family therapy as well as medication evaluation and monitoring are provided. RRS provides educational services for youth residing in their facility.

7. **Psychiatric Residential Treatment Facilities (PRTF)** meet criteria defined by the Centers for Medicare and Medicaid Services (CMS) [[PRTF](#)]. PRTF level of care is designed for high-risk youth that have been diagnosed and present with complex conditions that require extended treatment in a structured setting in order to treat their psychiatric and psychosocial needs more adequately. PRTF facilities will be staffed 24 hours a day, 7 days a week, provide treatment under the daily supervision of a physician and provide a high level of nursing and/or specialized staff. PRTF's are required to provide educational services for the youth residing in their facility.
8. **Targeted Case Management** is an approach to providing care coordination guided by wraparound principles which include the following: This is defined under the following value base where planning is:
 - family driven and youth guided
 - team based with a mix of formal and informal supports
 - individualized
 - builds on strengths to meet the youth and family needs
 - is culturally relevant and sensitive
 - focuses on providing care in the least restrictive environments
 - outcomes based
9. **Mobile Response & Stabilization Services** are provided 24/7, 365 days per year to youth whose family requests safety/risk assessment due to concerns related to social, emotional and/or behavioral concerns. Assessments are provided in person or via telehealth based on the preference of the family. Assessment is expected to be initiated within one hour of referral. After assessment, youth who are not admitted to crisis bed or inpatient psychiatric hospital and not currently connected to behavioral health care may remain open for up to 45 days to continue developing safety planning and to connect to continued community-based behavioral health care.
10. **Behavioral Health Transitional Support Services** provide short-term therapy and medication for youth who are not currently connected with a provider to receive those services. This service may be utilized for youth who are being discharged from a residential or inpatient hospital program, or you who are ready to transition from MRSS, but are not yet connected with longer-term behavioral health services. (Note: Provider should have the ability to provide medication management; however, this service would be billed directly to youth's Medicaid Managed Care Organization MCO.)
11. **Inpatient Psychiatric Hospitals** provide an out-of-home, twenty-four-hour per day psychiatric treatment milieu under the direction of a physician. During an inpatient psychiatric hospitalization, modalities including individual, family and group therapy

and medication evaluation and management are provided to stabilize self-harm and high risks behaviors so that youth may return home with continued community-based care.

Psych Under 21 Service Requirements

The Centers for Medicare and Medicaid Services (CMS) Psychiatric Inpatient Under 21 Program (Psych. Under 21):

Psych Under 21 services include inpatient hospitalization and accredited residential treatment centers (see <https://www.medicaid.gov/medicaid/long-term-services-supports/institutional-long-term-care/inpatient-psychiatric-services-individuals-under-age-21/index.html>).

Inpatient treatment services provide an out-of-home, twenty-four-hour psychiatric treatment milieu under the direction of a physician. Within the medical context of an inpatient facility, clients can be safely evaluated, medications can be prescribed and monitored, and treatment interventions can be intensively implemented. Inpatient treatment services represent the most restrictive and intensive intervention available within the DPBHS continuum of services.

A therapeutic milieu with strong psychiatric medical support is central to effective inpatient treatment. Therapeutic interventions, activities, milieu, and educational components must be carefully integrated to create a total ecological treatment regime.

Components of the service include:

- Independent psychiatric assessment within 24 hours of admission,
- A thorough assessment of the medical, psychological, social, familial, behavioral, and developmental dimensions of the client's situation within the context of the client's precipitating symptoms,
- Focused brief treatment and stabilization as medically necessary, including individual and group approaches and problem-specific approaches,
- Therapeutic stabilization of youth in crisis, including physically aggressive minors and minors who are a danger to self or others,
- Safe and secure environment for all minors who are involuntarily admitted, including those who are violent and dangerous to themselves and/or others,
- Involuntary inpatient treatment should be used only in extraordinary circumstances where a minor meets the legal definition for involuntary admission and a parent or legal guardian's signature for voluntary inpatient treatment is unavailable. Treatment is used primarily for acute crisis resolution to address behavior and symptoms, which cannot be addressed at other less restrictive levels of care. When the acute crisis is resolved, the client should continue treatment in a less restrictive context,
- Careful monitoring of psychotropic medications and their effects on the client's behavior,

- High degree of structure, order, and predictability with regards to the routines of daily living, the management of peer group interaction to promote social learning and minimize the negative effects of peer influence,
- Programmed activities for the amelioration of presenting problems, including skill building with an emphasis upon interpersonal and problem-solving skills; self-care/life skills; activity and recreational programming, and
- Brief family therapy with focus upon reintegration into the community within the shortest clinically appropriate period

II. Proposal Content

Proposal narrative, minimum requirements:

Description of the Agency or Practice - Provide an overview of the organization and describe the administrative, clinical, and fiscal infrastructure that can support the volume of business being proposed. Describe how the agency or practice collects and uses data and monitors outcomes. In addition, describe the agency or practice's experience and success in providing the proposed type of service(s). Include experience delivering culturally sensitive services to youth and families from diverse cultural and ethnic backgrounds.

Treatment Philosophy - Explain the philosophy of the organization and how this philosophy is consistent with both trauma informed and Systems of Care frameworks.

Staffing - Describe the staffing patterns of the program and the hiring criteria to be used. Include the relative availability and involvement of clinical and medical staff. If part-time staffing is to be utilized, explain how part-time staff will be supervised. Describe the process of orientation and training of staff, including the minimum topic areas covered. If non-licensed staff will be providing any treatment services, explain how these staff will be supervised by a licensed clinician (e.g., type of license providing supervision, quantity of supervision, how supervision will be documented).

III. Bidder Qualifications

To be considered for a contract award, bidders must possess, or demonstrate the ability to meet, the following mandatory qualifications as applicable:

1. Mental Health Bidders

- Agency Licensure - No specific agency licensure is required by the State for mental health services; however, successful bidders must comply with licensing requirements of all appropriate authorities such as the State, County, or political subdivision having jurisdiction over the type of facilities and services operated by the successful bidder.
- Behavioral health treatment must be provided by a licensed mental health professional at the master's level or above or by an unlicensed master's level or above therapist who is supervised by a licensed mental health professional. Documentation by an unlicensed mental health professional must be signed off by the supervising licensed mental health professional.
- All staff must pass a criminal background check as required by DSCYF.
- Programs function within treatment models supported in current professional literature for age, developmental level and presenting problem.

- Compliance with managed care procedures, requirements, and expectations, as set forth in the most current DPBHS' Provider Manual (see link below).

2. Substance Use and Co-Occurring Mental Health & Substance Use Bidders

- Agency Licensure - Delaware statute requires that any agency that provides treatment services for substance use in Delaware must have a license to do so from the Delaware Division of Substance Abuse and Mental Health (DSAMH). Successful bidders also must comply with licensing requirements of all appropriate authorities such as the State, County, or political subdivision having jurisdiction over the type of facilities and services operated by the Contractor.
- Substance use treatment must be provided by a master's level, or above licensed or certified substance use professional or by an unlicensed master's level or above therapist who is supervised by a licensed mental health professional.
- All staff must pass a criminal background check as required by DSCYF.
- Compliance with managed care procedures, requirements, and expectations, as set forth in the most current DPBHS' Provider Manual (see link below).

Additionally, please refer to the following for the most up to date information on provider qualifications and agreements:

1. DSCYF Operating Guidelines (as posted and periodically updated under Legally Binding Documents) <https://kids.delaware.gov/management-support-services/contracting-information/>
2. DSCYF and DPBHS Policies and Procedures <https://kids.delaware.gov/prevention-and-behavioral-health-services/additional-resources/>
3. DPBHS Treatment Provider Manual <https://kids.delaware.gov/prevention-and-behavioral-health-services/information-for-providers/>
4. DelaCare: Residential Child Care Facilities and Day Treatment Program <https://kids.delaware.gov/occl/providers.shtml>

3. Criminal Background Checks

Pursuant to 31 Del. Code Section 309 all staff providing services in Delaware must pass a DSCYF specific Criminal Background check and Child Abuse Registry check as determined by DSCYF once directed to do so by DSCYF. Out of state provider staff must comply with the appropriate jurisdictional authority. More instructions will be provided to successful Delaware bidders.

IV. Compensation

All successful bidders must agree to accept the compensation set by Delaware Medicaid and agree to invoice Medicaid directly through Delaware Medicaid Enterprise System (DMES). The successful bidders must accept full payment by conventional check and/or other electronic means and/or procurement (credit) card at the State's option, without imposing any additional fees, cost, or conditions.

DPBHS is planning to pilot a value-based payment approach for substance use service providers (i.e., payment above and beyond the Medicaid reimbursement rates)

meeting specific quality measures that reward outcomes and incentivize best practices. Specific benchmarks and payment structure details are being developed, expected to coincide with the establishment of new contracts and contingent on available funds.

V. **Scoring of Proposals**

Proposals will be evaluated and rated by a panel of DSCYF staff. DSCYF reserves the right to also include non-DSCYF staff on the panel. Proposals will be evaluated using the following criteria applying the stated weights:

- a. Philosophy of the practitioner, group practice or organization and degree to which this philosophy guides the organization and is consistent with trauma-informed and Systems of Care principles. (10%)
- b. Understanding of the population to be served and realistic approach to treatment (developmental, clinical, etc.) (15%)
- c. The degree to which the clinical approach follows methods which have been empirically demonstrated to be effective for the target population and demonstration of how the clinical approach is expected to stabilize symptoms (15%)
- d. Demonstrated ability to provide adequate indirect services within the unit cost (15%)
- e. Experience of the individual practitioner, group practice or organization with providing the proposed service(s) (15%)
- f. Adequacy of staffing and scheduling (10%)
- g. Demonstrated employment of a diverse workforce and assurance that the workforce effectively serves a diverse client population including utilization of interpretation services for American Sign Language and non-English speaking youth and families (10%)
- h. Experience with DSCYF or other state agencies and bidder reputation (10%)

MAXIMUM SCORE: Score = 100

NOTE: In addition to submitting a qualifying proposal the bidder **must also** be successfully enrolled in DMES/DMAP to be considered for a contract award but not to submit a proposal. More instruction will follow once a bidder is deemed eligible to be authorized.

VI. **Submission Content**

Each proposal *must* include:

- Bidder Fact Sheet available online where this RFP is posted.
- Narrative – This must respond to all the questions, requested information and spirit of the RFP noted throughout. It must address each topic area to give the review panel a clear picture of the proposed program. There is no page limit to this section, but clarity and brevity will be appreciated.
- *Completed PRTF Program Survey (**ONLY if bidding to provide PRTF services**) available online where this RFP is posted.
- Signed “Assurances” and signed “Certification, Representation, and Acknowledgements” form available online where this RFP is posted.

- Completed “Employing Delawareans Report” form [available online where this RFP is posted](#).
- References – The agency must provide a list of all State and/or Federal contracts currently active or held in the past 3 years along with a contact name and phone number for the State and/or Federal agency.

VII. Award Process

The review and award process has several facets to it. The bidder must first submit a complete proposal described above. DPBHS will review and determine if the bidder is eligible to be authorized. If so, the bidder information is sent to the Delaware Medical Assistance Portal (DMAP) for enrollment as a “Fee for Service Medicaid Provider.” Once DMAP has successfully enrolled the authorized bidder, DPBHS will consider the bidder for a contract award making it eligible to provide services to youth and their families served by DPBHS.

VIII. For Any Former or Current State Employee Who is Interested in Competing for These Contracts:

To ensure compliance with the State's Code of Conduct post-employment law (which provides that former State employees may not work on State projects if they were directly and materially related to their work as State employees), it is required that current State of Delaware employees or those employed within the past two years who respond to this RFP, also contact Deborah Weaver, Esq. (302-739-2399), attorney for the Delaware Public Integrity Commission. Ms. Weaver will assist such individuals in reviewing their situation, determining if a request to the Commission for advice is needed, and in drafting an appropriate letter to the Commission if necessary. Where such a letter is indicated, it must be submitted for consideration by the Commission at its regularly scheduled monthly meeting (see <https://depic.delaware.gov/>).

Individuals wishing to submit a proposal in response to this RFP who receive a pension benefit from the State Employee’s Pension Plan are required to complete Form-SS-8 “Determination of Worker Status” with the Internal Revenue Service. The application and findings from the Internal Revenue Service must be reported to the Delaware Board of Pension Trustees for a determination of the individual meeting the definition of employee within the Plan. For more information visit <http://delawarepensions.com>.

APPENDIX A – Additional Bidder Information

Failure to follow Departmental procedures may disqualify a bidder's organization.

1. FORMAT

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. Videos will not be presented to the review panel. The State reserves the right to reject any non-responsive or non-conforming proposals.

To be considered, bidders must submit a complete response to this RFP. An official authorized to bind the bidder to the proposal must sign proposal documents. The successful bidder must be in compliance with all licensing requirements of the State of Delaware at time of contract execution.

2. QUESTIONS

All questions regarding this request should be directed to H. Ryan Bolles at Herbert.Bolles@Delaware.gov or 302-633-2701 (NOTE: all calls go to voicemail). Questions will be forwarded to the appropriate DSCYF program administrators for a response. Updates and answers to substantive questions will be posted on the State's solicitation web site www.bids.delaware.gov. It is the bidder's responsibility to check the website for updates to this RFP.

3. ASSISTANCE TO BIDDERS WITH A DISABILITY

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

4. CONSULTANTS AND LEGAL COUNSEL

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

5. ETHICS LAW RESTRICTIONS

Neither the Contractor, including its parent company and its subsidiaries, nor any subcontractor, including its parent company and subsidiaries, may engage, directly or indirectly, any person who, while employed by the State of Delaware during two years immediately preceding the date of any Contract entered into as a result of this request for proposals, gave an opinion, conducted an investigation, was directly involved in, or whom otherwise was directly and materially responsible for said service described herein in this request for proposal in the course of official duties as a state employee, officer or official. The Department shall determine, at its sole discretion, whether a person was directly and materially responsible for said program, project, or contract or any other program, project, or contract related to the service described in any contract entered into as a result of this request for proposals.

6. CONTACT WITH STATE EMPLOYEES

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

7. ORGANIZATIONS INELIGIBLE TO BID

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

8. EXCLUSIONS

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a bidder 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) Known 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.

9. PROPOSALS BECOME STATE PROPERTY

All proposals become the property of the State of Delaware and will not be returned to the bidder. Proposals submitted to the State may be reviewed and evaluated by any person other than competing vendors at the discretion of the State. The State has the right to use any or all ideas presented in reply to this RFP. Selection or rejection of the proposal does not affect this right.

10. RFP AND FINAL CONTRACT

The contents of the RFP may be incorporated into the final contract and become binding upon the successful bidder. If the bidder is unwilling to comply with the requirements, terms, and conditions of the RFP, objections must be clearly stated in the proposal. Objections will be considered and may be subject to negotiation at the discretion of the State.

11. PROPOSAL AND FINAL CONTRACT

The content of each proposal will be considered binding on the bidder and subject to subsequent contract confirmation if selected. The content of the successful proposal may be included by reference in any resulting contract. All prices, terms, and conditions contained in the proposal shall remain fixed and valid for one year after the proposal due date. Contract negotiations will include price re-verification if the price guarantee period has expired.

12. MODIFICATIONS TO PROPOSALS

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original proposal 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.

13. NON-CONFORMING PROPOSALS

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

14. CONCISE PROPOSALS

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

15. DISCREPANCIES AND OMISSIONS

Bidder 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 bidder. Should bidder find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, bidder shall notify the State of Delaware's designated contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of bidder's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

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

16. REALISTIC PROPOSALS

It is the expectation of the State of Delaware that bidders 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 of Delaware shall bear no responsibility or increase obligation for a bidder's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

17. LATE PROPOSALS

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

18. PROPOSAL OPENING

The State of Delaware will accept proposals until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel. There will be no public opening of proposals, but a log will be kept of the names of all bidder organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with Executive Order # 31 and Title 29, Delaware Code, Chapter 100.

19. ACKNOWLEDGEMENT OF UNDERSTANDING OF TERMS

By submitting a proposal, each bidder 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.

Any proposal received after the deadline for receipt of proposals shall not be considered. The bidder 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 bidder proposals, each bidder 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 bidders from any obligation in respect to this RFP.

20. COST OF PROPOSAL PREPARATION

The State of Delaware will not pay any costs incurred by any bidder associated with any aspect of responding to this solicitation, including proposal preparation, attendance at vendor's conference, system demonstrations or negotiation process. All costs of proposal preparation will be borne by the bidder. The cost of all necessary permits, licenses, insurance policies, etc., required by local, state or federal laws shall be borne by the bidder at his/her own expense.

21. MULTI-VENDOR PROPOSALS (JOINT VENTURES)

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

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

a. Primary Vendor

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

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

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section 22 regarding multiple source contracting.

b. Sub-contracting

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

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime bidder shall be wholly responsible for the entire contract performance whether or not subcontractors are used. Any sub-contractors must be approved by State of Delaware.

c. Multiple Proposals

Sub-contracting agencies may participate in multiple joint venture proposals.

22. STATE'S RIGHT TO AWARD MULTIPLE SOURCE CONTRACTING

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

23. POTENTIAL CONTRACT OVERLAP

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

24. SUPPLEMENTAL SOLICITATION

The State reserves the right to advertise a supplemental solicitation during the term of any contract resulting from this solicitation if deemed in the best interest of the State.

25. NOTIFICATION OF WITHDRAWAL OF PROPOSAL

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

26. REVISIONS TO THE RFP

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

27. PROPOSAL CLARIFICATION

The Evaluation Team may contact any bidder 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.

28. REFERENCES

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

29. AWARD OF CONTRACT

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful bidder(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 bidder of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no bidder will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP AWARD NOTIFICATION

After reviews of the proposal review committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award/execute the contract which is then subject to the approval of a purchase order by the Secretary of the Department of Finance.

Any resulting contract shall be awarded to the bidder(s) whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

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

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

30. COOPERATIVES

Bidders, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. State of Delaware terms will take precedence.

31. EVALUATION REQUIREMENTS AND PROCESS

The Proposal Review Committee shall determine the bidders that meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. §§ 6982(b). The Committee may interview at least one of the qualified bidders. The Committee may negotiate with one or more bidders during the same period and may, at its discretion, terminate negotiations with any or all bidders. The Committee shall make a recommendation regarding the award to the purchasing Division Director of this RFP, who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § 6981 to award a contract to the successful bidder or bidders in the best interests of the State of Delaware. The Proposal Review Committee reserves the right to award to one or more than one bidder, in accordance to 29 Del. C. § 6986.

The Proposal Review Committee shall assign up to the maximum points as stated previously in this RFP. All assignments of points shall be at the sole discretion of the individual Proposal Review Committee members.

The Proposal Review Committee reserves the right to:

- Recommend for award or for negotiations, a proposal other than that with the lowest costs.
- Accept/Reject any and all 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 bidders during the review and negotiation.
- Negotiate any aspect of the proposal with any bidder and negotiate with more than one bidder at the same time. The Department reserves the right to contract with more than one vendor.
- Submit follow-up questions in response to the proposal to one or more bidders as part of the proposal review process.

All proposals shall be evaluated using the same criteria and scoring process. Bidders may be scheduled to make oral presentations in support of their written proposals. However, proposals are expected to stand on their own merits as written. The Review Panel will assess the strength and clarity of any oral presentation or responses to follow-up questions and combine the evaluations of both written and oral presentations (when applicable) in determining the overall evaluation of the proposal and in making recommendations. A summary of the Panel's recommendations will be available for review upon request.

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

32. REJECTION OF PROPOSALS

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

33. STATE'S RIGHT TO CANCEL SOLICITATION

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

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

34. RESERVED RIGHTS

Notwithstanding anything to the contrary, the Department reserves the right to:

- Reject any and all proposals received in response to this RFP
- Select for contract or for negotiations a proposal other than that with the lowest cost
- Waive or modify any information, irregularities, or inconsistencies in proposals received
- Consider a late modification of a proposal if the proposal itself was submitted on time; and, if the modifications make the terms of the proposal more favorable to the Department, accept such proposal as modified.
- Negotiate as to any aspect of the proposal with any proposer and negotiate with more than one proposer at the same time
- If negotiations fail to result in an agreement within a reasonable period of time, terminate negotiations and select the next most responsive proposer, prepare and release a new RFP, or take such other action as the Department may deem appropriate
- Negotiate a renewal of the contract resulting from this RFP with appropriate modifications.
- SUPPLEMENTAL SOLICITATION: Advertise a supplemental solicitation during the term of resulting contracts from this RFP if deemed in the best interest of the State.

35. STANDARDS FOR SUBCONTRACTORS

The prime contract with the contractor will bind sub or co-contractors to the terms, specifications, and standards of this RFP, resulting prime contracts, and any subsequent proposals and contracts. All such terms, specifications, and standards shall preserve and protect the rights of the Department under this RFP with respect to the services to be performed by the sub or co-contractor. Nothing in the RFP shall create any contractual relation between any sub or co-contractor and the Department.

All sub or co-contractors must be identified in the Contractor's proposal. The proposal's work plan must also state which tasks the sub or co-contractor will perform. Approval of all sub and/or co-contractors must be received from the Department prior to the contract negotiation.

The prime bidder will be the State's primary contractor.

36. CONTRACT TERMINATION CONDITIONS

The State may terminate the contract resulting from this RFP at any time that the Contractor fails to carry out its provisions or to make substantial progress under the terms specified in this request and the resulting proposal.

The State shall provide the Contractor with 30 days notice of conditions which would warrant termination. If after such notice the Contractor fails to remedy the conditions contained in the notice, the State shall issue the Contractor an order to stop work immediately and deliver all work and work in progress to the State. The State shall be obligated only for those services rendered and accepted prior to the date of notice of termination.

With the mutual agreement of both parties, upon receipt and acceptance of not less than 30 days written notice, the contract may be terminated on an agreed date prior to the end of the contract period without penalty to either party.

Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, through the failure of the State of Delaware to appropriate funds or through discontinuance of appropriations from any source, the State of Delaware shall have the right to terminate this contract without penalty by giving not less than 30 days written notice documenting the lack of funding.

37. NON-APPROPRIATION

In the event that the State fails to appropriate the specific funds necessary to continue the contractual agreement, in whole or in 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.

38. FORMAL CONTRACT AND PURCHASE ORDER

The successful firm shall promptly execute a contract incorporating the terms of this RFP within thirty (30) days after the award of the contract. No bidder is to begin any service prior to approval of a State of Delaware Purchase Order by the Secretary of the Department of Finance. The Purchase Order shall serve as the authorization to proceed in accordance with the bid specifications, any special instructions and the Contract terms and conditions.

39. 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 of Delaware, DSCYF, 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, its agents and employees' performance of 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, in whole or in part, to the State, its employees or agents.

40. BUSINESS AND PROFESSIONAL LICENSES

In performance of this contract, the firm is required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of licenses and other relevant costs required in the performance of the contract shall be borne by the successful bidder. The bidder shall be properly licensed and authorized to transact business in the State of Delaware as defined in Delaware Code Title 30, Sec. 2502.

41. INSURANCE

Bidder 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 bidder's negligent performance under any resulting contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the bidder in its negligent performance under any resulting contract.

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

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
 1. \$1,000,000 combined single limit each accident, for bodily injury;
 2. \$250,000 for property damage to others;
 3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. §2118; and
 5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

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

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated therein, shall be submitted to DSCYF. The certificate holder is as follows:

Department of Services for Children, Youth & Their Families
Attn: Contracts Unit
Contract No: **CYF 24-07**
State of Delaware
1825 Faulkland Road
Wilmington, Delaware 19805

Nothing contained herein shall restrict or limit the Bidder's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Bidder procures insurance coverage in amounts higher than the amounts required by this RFP, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

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

42. NON-DISCRIMINATION

In performing the services subject to this RFP the successful bidder, as set forth in Title 19 Delaware Code Chapter 7 Section 711, agrees that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful bidder 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.

43. 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 and/or bona-fide established commercial or selling agencies maintained by the bidder 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 and/or to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

44. CONTRACT DOCUMENTS

The RFP, the purchase order, and the executed contract between the State and the successful bidder(s) shall constitute the contract between the state and the bidder(s). 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, contract amendments, RFP, purchase order and bidder proposal. No other documents unless incorporated by reference in the contract shall be considered. These documents contain the entire agreement between the state and the firm.

45. APPLICABLE LAW

The Laws of the State of Delaware shall apply, except where Federal law has precedence. The successful bidder consents to jurisdiction and venue in the State of Delaware.

46. SCOPE OF AGREEMENT

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

47. CONFIDENTIALITY OF BIDDER DOCUMENTS

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. (“FOIA”). FOIA requires that the State of Delaware’s records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. All proposals are subject to FOIA’s public disclosure obligations.

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

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

Bidder(s) **must** clearly identify which portions of its proposal it considers to be confidential business information. The proposal must include an explanation in good faith that the identified information is not “public record” as defined by 29 Del. C. § 10002, briefly stating the reasons that each designated section of the proposal meets the said definitions. Bidder(s) also have the option of providing a **second** electronic copy of the complete proposal which has had the identified confidential business information redacted.

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