

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
Delaware State System of Assessment - Content Development
for Science and Social Studies
ISSUED BY DELAWARE DEPARTMENT OF EDUCATION
CONTRACT NUMBER DOE2024-05**

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I. Overview

The State of Delaware Department of Education, seeks professional services to design, develop, and implement innovative science and/or social studies assessment items and forms aligned with our vision of balanced assessment. Assessment items and forms are intended to measure student learning of the Next Generation Science Standards (NGSS) and/or the Delaware Social Studies Content standards. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ [6981 and 6982](#).

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

Public Notice	Date: <u>October 26, 2023</u>
Deadline for Questions	Date: <u>November 30, 2023</u>
Response to Questions Posted by:	Date: <u>December 7, 2023</u>
Deadline for Receipt of Proposals (Time)	Date: <u>January 16, 2024</u> at 2:00 PM (Local Time)
Estimated Notification of Award	Date: <u>March / April 2024</u>

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposed firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the

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applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public State of Delaware data outside of the United States. For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A pre-bid meeting has not been established for this Request for Proposal.

II. Scope of Services

See Appendix B - Scope of Work and Technical Requirements for all details.

III. Required Information

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

A. Minimum Requirements

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section V, Item G, subsection 7 (insurance).

B. General Evaluation Requirements

1. Experience and Reputation.
2. Expertise as illustrated through responses requested throughout RFP solicitation.
3. Clarity and focus of responses requested through RFP solicitation.
4. Ability and willingness to collaborate with a partner vendor of DDOE's choosing to complete the project.

5. Cost-effectiveness.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. **Public Notice**

Public notice has been provided in accordance with 29 *Del. C.* [§ 6981](#).

2. **Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov . Paper copies of this RFP will not be available.

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

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

4. **RFP Designated Contact**

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

Erika Martine-Duquette
DE Department of Education, Finance Office
401 Federal Street, Ste. 2
Dover, DE 19901
Email: Erika.Martine-Duquette@doe.k12.de.us

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

5. **Consultants and Legal Counsel**

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

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. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

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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 vendor who:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
 - 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.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

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

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with **Two (2)** paper copies and **One (1)** electronic copy on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **2:00 PM (Local Time) on January 16, 2024**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Erika Martine-Duquette
DE Department of Education, Finance Office
401 Federal Street, Ste. 2
Dover, DE 19901

Email: Erika.Martine-Duquette@doe.k12.de.us

Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. DOE2024-05” on the outside of the bid submission package.

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery and any costs for returned proposals. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

3. Proposal Modifications

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

4. Proposal Costs and Expenses

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

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through one year from bid due date. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals

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

7. Proposal Opening

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

There will be no public opening of proposals, but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

8. Non-Conforming Proposals

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

9. Concise Proposals

The State 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.

10. Realistic Proposals

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

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

11. Confidentiality of Documents

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 vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure, or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

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

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the vendor's legal counsel describing the documents in the envelope, representing in good

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faith that the information in each document is not “public record” as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

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

12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the “**prime 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 Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor 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 summary. 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 vendor will be responsible for the management of all subcontractors.

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

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

b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting

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assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

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

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Subcontracting vendors may participate in multiple joint venture proposals.

13. Sub-Contracting

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

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

14. Discrepancies and Omissions

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

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

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be posted on DDOE's website at: <https://bids.doe.k12.de.us/#home>, and received no later than **November 30, 2023**. All questions will be consolidated into a single set of responses and posted on both DDOE's website, as well as the State's website at www.bids.delaware.gov by **December 7, 2023**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

- Section number
- Paragraph number

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- Page number
- Text of passage being questioned

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

15. State's Right to Reject 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 product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

16. State's Right to Cancel Solicitation

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

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

17. 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 vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

18. Potential Contract Overlap

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

19. Supplemental Solicitation

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

20. Notification of Withdrawal of Proposal

Vendor 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

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date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

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

21. 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 www.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.

22. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

23. Business References

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

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

Notice in writing to a vendor 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 vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

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

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

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

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

25. Cooperatives

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

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

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

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981 and 6982](#). Professional services for this solicitation are considered under 29 *Del. C.* § 6982(b). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Department of Education, Director of Finance, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982\(b\)](#), to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

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

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.

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- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* § [6986](#). Such selection will be based on the following criteria:
 - (list criteria for multiple vendor award selection)

Criteria Weight

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

Criteria	Weight
Experience and Reputation	15
Expertise as illustrated through responses requested throughout RFP solicitation	25
Clarity and focus of responses requested through RFP solicitation.	10
Ability and willingness to collaborate with a partner vendor of DDOE's choosing to complete the project	25
Cost-Effectiveness	25
Total	100%

Vendors 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 vendor's capabilities so the responding vendor should be detailed in their proposal responses.

3. Proposal Clarification

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

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of

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comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

V. Contract Terms and Conditions

A. Contract Use by Other Agencies

REF: Title 29, Chapter [6904](#)(e) Delaware Code. If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

B. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

C. General Information

- 1.** The term of the contract between the successful bidder and the State shall be for **Five (5)** years with **One (1)** optional extension for a period of three (3) years.
- 2.** As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 3.** The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State

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contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.

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

5. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

6. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor 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 Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

7. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

8. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.

9. Vendors are not restricted from offering lower pricing at any time during the contract term.

D. Collusion or Fraud

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

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

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

E. Lobbying and Gratuities

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

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

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

F. Solicitation of State Employees

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

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

G. General Contract Terms

1. Independent Contractors

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

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may

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provide working space and sufficient supplies and material to augment the Contractor's services.

2. Temporary Personnel are Not State Employees Unless and Until They are Hired.

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

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

3. Work Performed in a State Building

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees. For clarity, State buildings are those owned or leased by the State.

4. ACA Safe Harbor

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act ("ACA"). Therefore, the State seeks to utilize the "Common-law Employer Safe Harbor Exception" under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an "Additional Fee" with respect to the employees electing to obtain health coverage from the Vendor.

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The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

5. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C. § 2502*.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

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

6. Notice

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

**DELAWARE DEPARTMENT OF EDUCATION
FINANCE OFFICE, RM. 279
401 FEDERAL STREET, SUITE 2
DOVER, DE 19901
ATTN: ERIKA MARTINE-DUQUETTE**

7. Indemnification

a) General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together

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with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract.

b) Proprietary Rights Indemnification

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

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

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

7. Insurance

- a) Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
- b) The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
- c) As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

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(1) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

(2) Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.

(3) 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:

(a) \$1,000,000 combined single limit each accident, for bodily injury;

(b) \$250,000 for property damage to others;

(c) \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;

(d) \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and

(e) Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

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

(1) Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate

(2) Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate

(3) Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

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

f) 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 herein, shall be filed with the State. The certificate holder is as follows:

**DELAWARE DEPARTMENT OF EDUCATION
Contract No: DOE2024-05
State of Delaware
401 Federal Street, Suite 2
Dover, DE 19901**

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

h) To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

i) In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

j) The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s).

k) The State of Delaware shall not be named as an additional insured.

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

8. Performance Requirements

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

9. BID BOND

There is no Bid Bond Requirement.

10. PERFORMANCE BOND

There is no Performance Bond requirement.

11. Vendor Emergency Response Point of Contact

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even

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if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

12. Warranty

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

13. Costs and Payment Schedules

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

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

14. Liquidated Damages

The State of Delaware may include in the final contract liquidated damages provisions for non-performance.

15. Dispute Resolution

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

16. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section V.G.15 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

17. Termination of Contract

The contract resulting from this RFP may be terminated as follows by Delaware Department of Education

a) Termination for Cause

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

b) Termination for Convenience

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

c) Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring

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the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

18. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree 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 vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

19. Covenant against Contingent Fees

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

20. Vendor Activity

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

21. Vendor Responsibility

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of Delaware Department of Education.

22. Personnel, Equipment and Services

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those

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subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

23. Fair Background Check Practices

Pursuant to 29 Del. C. [§ 6909B](#), the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§ 711\(g\)](#) for applicable established provisions.

24. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:
<https://sexoffender.dsp.delaware.gov/>

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

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

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

25. Drug Testing Requirements for Large Public Works

Pursuant to 29 Del.C. [§6908\(a\)\(6\)](#), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that

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will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. [§6962](#).

Final publication of the identified regulations can be found at the following:
[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

26. Work Product

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

27. Contract Documents

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

28. Applicable Law

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

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

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

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

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

29. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

30. Assignment of Antitrust Claims

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

31. Technology Standards

The selected vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by it, its subcontractors and its and their principals, officers, employees and agents under this Agreement. Vendor shall provide system diagrams in accordance with State Architecture requirements at <https://dti.delaware.gov/about-dti/boards-and-committees/arb-templates/>. In performing the specified services, vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/information/standards-policies.shtml>, and as modified from time to time by DTI during the term of this Agreement. Vendor will integrate all delivered services and systems with the DDOE Identity Management System and Single-Sign On system. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by vendor's failure to ensure compliance with DTI standards.

32. Accessibility Standards

If services or products provided by selected vendor utilize Electronic and Information Technology ("EIT") for information delivery, support, or reporting, vendor shall be responsible for ensuring that any such technology satisfies the Department's Accessibility requirements. In general, all EIT systems must be free of errors and warnings for Level AA of the WCAG 2.0 standard. A complete Statement of Accessibility Requirements for the Department is available at <https://education.delaware.gov/community/accessibility/>. EIT is defined at FAR

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2.101, which is available at <https://www.acquisition.gov/browsefar>. Please note that EIT includes Information Technology, also defined at FAR 2.101.

Vendor must supply a Voluntary Product Accessibility Template ("VPAT") for any EIT supplied, furnished, or created for or on behalf of DDOE by the vendor in the execution of this contract, including any equipment, software, services, or commercial products. An existing VPAT is acceptable as long as it corresponds to the make, model, and revision (in the case of hardware) or major version number (in the case of software) of the relevant EIT. A sample VPAT template is found here: <https://www.itic.org/policy/accessibility/vpat>. DDOE reserves the right to request an updated VPAT if vendor makes a significant change in hardware, software, or service provider during the term of this Agreement. All VPATs must be approved by DDOE prior to production deployment of EIT.

If any service, product or deliverable furnished pursuant to this Agreement does not conform with the Department's accessibility standards, vendor shall, at its expense and option either (1) modify it to conform, or (2) provide a mechanism for equally effective alternative access. In the case of (2), vendor must submit an Equally Effective Alternative Access Plan ("EEAAP"), which must be approved by the Department. A sample EEAAP template is included as an attachment to this RFP. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by vendor's failure to ensure compliance with the Department's [published accessibility standards](#).

33. Scope of Agreement

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

34. Affirmation

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

35. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost

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and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

36. IRS 1075 Publication (If Applicable)

1. Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

The contractor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

2. Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns

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or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually

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thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. Inspection

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

37. Other General Conditions

- a) **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- b) **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- c) **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- d) **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- e) **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- f) **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- g) **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
- h) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- i) **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
- j) **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt

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of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.

- k) **W-9** - The State of Delaware requires completion of the [Delaware Substitute Form W-9](#) through the Supplier Public Portal at <https://esupplier.erp.delaware.gov> to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record.
- l) **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- m) **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- n) **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

VI. RFP Miscellaneous Information

A. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

B. Definitions of Requirements

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

C. Production Environment Requirements

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

VII. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Office of Supplier Diversity Application
- Attachment 8 – Delaware Department of Education Standard Contract Template
- Attachment 9 - Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements

[balance of page is intentionally left blank]

IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, and 5 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachment 9 – Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement Form – **required** for all Technology related RFPs.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

In accordance with [Executive Order 49](#), the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov).

NO PROPOSAL REPLY FORM

Contract No. **DOE2024-05**

Contract Title: **Delaware State System of Assessment -
Content Development for Science and Social Studies**

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- _____ 1. We do not wish to participate in the proposal process.
- _____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

- _____ 3. We do not feel we can be competitive.
- _____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- _____ 5. We do not wish to sell to the State. Our objections are:

- _____ 6. We do not sell the items/services on which Proposals are requested.
- _____ 7. Other: _____

FIRM NAME

SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services.**

_____ We wish to be deleted from the Vendor's List **for these goods or services.**

PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.

CONTRACT NO.: DOE2024-05

CONTRACT TITLE: Delaware State System of Assessment - Content Development for Science and Social Studies

DEADLINE TO RESPOND: January 16, 2024 at 2:00 PM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Education.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Education.

COMPANY NAME _____ Check one)
NAME OF AUTHORIZED REPRESENTATIVE _____
(Please type or print)

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

STATE OF DELAWARE
LICENSE NUMBER _____

FEDERAL E.I. NUMBER _____

COMPANY CLASSIFICATIONS: CERT. NO.:	Certification type(s)	Circle all that apply	
		Minority Business Enterprise (MBE)	Yes
	Woman Business Enterprise (WBE)	Yes	No
	Disadvantaged Business Enterprise (DBE)	Yes	No
	Veteran Owned Business Enterprise (VOBE)	Yes	No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No

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

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

Contract No. DOE2024-05
**Contract Title: Delaware State System of Assessment - Content Development
for Science and Social Studies**

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1. Contact Name & Title: Business Name: Address: Email: Phone # / Fax #: Current Vendor (YES or NO): Years Associated & Type of Work Performed:	

2. Contact Name & Title: Business Name: Address: Email: Phone # / Fax #: Current Vendor (YES or NO): Years Associated & Type of Work Performed:	

3. Contact Name & Title: Business Name: Address: Email: Phone # / Fax #: Current Vendor (YES or NO): Years Associated & Type of Work Performed:	

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

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Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. DOE2024-05	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

*** Use a separate form for each subcontractor**



**The Office of Supplier Diversity (OSD) has moved to the
Division of Small Business (DSB)**

Supplier Diversity Applications can be found here:
<https://business.delaware.gov/osd/>

Completed Applications can be emailed to: OSD@Delaware.gov

For more information, please send an email to OSD:
OSD@Delaware.gov or call 302-577-8477

Self-Register to receive business development information here:
<https://business.delaware.gov/directory-of-certified-businesses/>

New Address for OSD:

Office of Supplier Diversity (OSD)
State of Delaware
Division of Small Business
820 N. French Street, 10th Floor
Wilmington, DE 19801

Telephone: 302-577-8477 Fax: 302-736-7915
Email: OSD@Delaware.gov
Web site: <https://business.delaware.gov/osd/>

Dover address for the Division of Small Business

Local applicants may drop off applications here:

Division of Small Business
99 Kings Highway
Dover, DE 19901
Phone: 302-739-4271

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

Delaware Department of Education Contract

Delaware State System of Assessment - Content Development for Science and Social Studies RFP#DOE2024-05

This Agreement ("Agreement") is effective only upon the execution of a State of Delaware Purchase Order and will end on _____, **20**____, by and between the State of Delaware, Department of Education, hereafter referred to as DDOE or "Department", and VENDOR, (VENDOR).

WHEREAS, DDOE desires to obtain certain services to _____; and

WHEREAS, VENDOR desires to provide such services to DDOE on the terms set forth below;

WHEREAS, DDOE and VENDOR represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, DDOE and VENDOR agree as follows:

1. **Services.**

1.1 VENDOR shall perform for DDOE the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) DDOE's request for proposals, attached hereto as Appendix C; and (c) VENDOR's response to the request for proposals, attached hereto as Appendix D. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 DDOE may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of DDOE. When DDOE desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify VENDOR, who shall then submit to DDOE a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 VENDOR will not be required to make changes to its scope of work that result in VENDOR's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. **Payment for Services and Expenses.**

2.1 The Services contemplated in this Agreement shall be completed no later than _____, **20**_____.

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2.2 DDOE will pay VENDOR for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix A.

2.3 DDOE's obligation to pay VENDOR for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$TBD. It is expressly understood that the work defined in the appendices to this Agreement must be completed by VENDOR and it shall be VENDOR's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. DDOE's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in DDOE's purchase order(s) to VENDOR.

2.4 VENDOR shall submit monthly invoices to DDOE in sufficient detail to support the services provided during the previous month. DDOE agrees to pay those invoices within thirty (30) days of receipt. In the event DDOE disputes a portion of an invoice, DDOE agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR a detailed statement of DDOE's position on the disputed portion of the invoice within thirty (30) days of receipt.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by VENDOR. If an Appendix specifically provides for expense reimbursement, VENDOR shall be reimbursed only for reasonable expenses incurred by VENDOR in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 DDOE is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 DDOE shall subtract from any payment made to VENDOR all damages, costs and expenses caused by VENDOR's negligence, resulting from or arising out of errors or omissions in VENDOR's work products, which have not been previously paid to VENDOR.

2.8 Invoices shall be submitted to: _____

3. Responsibilities of VENDOR.

3.1 VENDOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by VENDOR, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, VENDOR shall follow practices consistent with generally accepted professional and technical standards. VENDOR shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, VENDOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by VENDOR's failure to ensure compliance with DTI standards.

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3.2 Accessibility requirements – Any electronic or information technology developed for or on behalf of DDOE shall have no errors or warnings for WCAG 2.0 Level AA success criteria unless has an exception in writing. Reviewable issues are permitted. VENDOR may be asked to provide documentation to show that delivered work product satisfies all applicable accessibility criteria. DDOE reserves the right to audit the work product at any time for accessibility compliance, and any issues found will be the responsibility of VENDOR to remediate.

3.3 It shall be the duty of VENDOR to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. VENDOR will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.4 Permitted or required approval by DDOE of any products or services furnished by VENDOR shall not in any way relieve VENDOR of responsibility for the professional and technical accuracy and adequacy of its work. DDOE’s review, approval, acceptance, or payment for any of VENDOR’s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DDOE caused by VENDOR’s performance or failure to perform under this Agreement.

3.5 Prior to performing any work under this Agreement, VENDOR and VENDOR’s employees and agents shall submit to any criminal history or other background checks that may be requested by DDOE. DDOE may refuse access to any DDOE facility or to any sensitive information possessed or controlled by DDOE for any person whose criminal history or background check results are not acceptable to DDOE, in its sole and absolute discretion. The positions anticipated include:

Project	Team	Title	% of Project Involvement
---------	------	-------	--------------------------

3.6 Designation of persons for each position is subject to review and approval by DDOE. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, VENDOR will notify DDOE immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DDOE. If VENDOR fails to make a required replacement within 30 days, DDOE may terminate this Agreement for default. Upon receipt of written notice from DDOE that an employee of VENDOR is unsuitable to DDOE for good cause, VENDOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.7 VENDOR shall furnish to DDOE’s designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.8 VENDOR agrees that its officers and employees will cooperate with DDOE in the performance of services under this Agreement and will be available for consultation with DDOE at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.9 VENDOR has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of the State.

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3.10 VENDOR will not use DDOE's name, either express or implied, in any of its advertising or sales materials without DDOE's express written consent.

3.11 The rights and remedies of DDOE provided for in this Agreement are in addition to any other rights and remedies provided by law.

3.12 Fair Background Check Practices - Pursuant to 29 *Del. C. § 6909B* and effective November 4, 2014 the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by State and/or Federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 *Del. C. § 711(g)* for applicable established provisions.

Pursuant to 31 *Del. C. §309*, any vendor, employee or contractor of a vendor, or independent contractor, that, as a result of this solicitation has regular direct access to children, or provides services directly to a child or children, must complete a background check. This mandatory check will consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children, Youth and Their Families (DSCYF). No work can begin until these requirements have been successfully met.

3.13 By signing this contract, any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors certify they are not currently debarred or suspended by another governmental entity.

If placed on any debarment or suspension list, VENDOR must immediately notify the Delaware Department of Education.

4. Time Schedule.

4.1 A project schedule is included in Appendix A.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by DDOE.

4.3 In the event that VENDOR fails to complete the project or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by DDOE, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, DDOE shall suspend the payments scheduled as set forth in Appendix B.

5. State Responsibilities.

5.1 In connection with VENDOR 's provision of the Services, DDOE shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 DDOE agrees that its officers and employees will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

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5.3 The services performed by **VENDOR** under this Agreement shall be subject to review for compliance with the terms of this Agreement by DDOE's designated representatives. DDOE representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform **VENDOR** by written notice before the effective date of each such delegation.

5.4 The review comments of DDOE's designated representatives may be reported in writing as needed to **VENDOR**. It is understood that DDOE's representatives' review comments do not relieve **VENDOR** from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 DDOE shall, without charge, furnish to or make available for examination or use by **VENDOR** as it may request, any data which DDOE has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

VENDOR shall return any original data provided by DDOE.

5.6 DDOE shall assist **VENDOR** in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 **VENDOR** will not be responsible for accuracy of information or data supplied by DDOE or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 DDOE agrees not to use **VENDOR**'s name, either express or implied, in any of its advertising or sales materials. **VENDOR** reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

Applicable provision will be checked.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by **VENDOR** for DDOE relating to the services to be performed hereunder shall become the property of DDOE and shall be delivered to DDOE's designated representative upon completion or termination of this Agreement, whichever comes first. **VENDOR** shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by DDOE. DDOE shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 [Reserved]

OR:

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6.2 VENDOR retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with DDOE's rights to the materials, information and documents developed in performing the project. Upon final payment, DDOE shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which VENDOR retains title, whether individually by VENDOR or jointly with DDOE. Any and all source code developed in connection with the services provided will be provided to DDOE, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 [Reserved]

OR:

6.3 In no event shall VENDOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, VENDOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 [Reserved]

OR:

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by VENDOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of VENDOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DDOE's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001-10007, and as required by 11 *Del. C.* § 4322 and other state and federal laws pertaining to confidentiality the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 VENDOR warrants that its services will be performed in a good and workmanlike manner. VENDOR agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

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8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by VENDOR for DDOE in connection with the provision of the Services, VENDOR shall pass through or assign to DDOE the rights VENDOR obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 VENDOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of VENDOR, its agents or employees, or (B) VENDOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) VENDOR shall have been notified in writing by DDOE of any notice of such claim; and (ii) VENDOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If DDOE notifies VENDOR in writing of a third party claim against DDOE that any Deliverable infringes a copyright or a trade secret of any third party, VENDOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against DDOE. VENDOR will not indemnify DDOE, however, if the claim of infringement is caused by (1) DDOE's misuse or modification of the Deliverable; (2) DDOE's failure to use corrections or enhancements made available by VENDOR; (3) DDOE's use of the Deliverable in combination with any product or information not owned or developed by VENDOR; (4) DDOE's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in VENDOR's opinion is likely to be, held to be infringing, VENDOR shall at its expense and option either (a) procure the right for DDOE to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute DDOE's sole and exclusive remedies and VENDOR's entire liability with respect to infringement.

10. Employees.

10.1 VENDOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by VENDOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DDOE's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the Delaware Department of Safety and Homeland Security, may be required of any employee of VENDOR who will be assigned to this project.

11. Independent Contractor.

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11.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of DDOE and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save DDOE harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of DDOE, and that they shall not be entitled to any of the benefits or rights afforded employees of DDOE, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. DDOE will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DDOE or any of its officers, employees or other agents.

11.3 VENDOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, VENDOR has no authority to bind or commit DDOE. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Dispute Resolution.

12.1 At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2 If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

13. Remedies.

13.1 Except as otherwise provided in this Agreement, including but not limited to Section 12 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

14. Suspension.

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14.1 DDOE may suspend performance by **VENDOR** under this Agreement for such period of time as DDOE, at its sole discretion, may prescribe by providing written notice to **VENDOR** at least thirty (30) working days prior to the date on which DDOE wishes to suspend. Upon such suspension, DDOE shall pay **VENDOR** its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. **VENDOR** shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from DDOE to resume performance.

14.2 In the event DDOE suspends performance by **VENDOR** for any cause other than the error or omission of **VENDOR**, for an aggregate period in excess of thirty (30) days, **VENDOR** shall be entitled to an equitable adjustment of the compensation payable to **VENDOR** under this Agreement to reimburse **VENDOR** for additional costs occasioned as a result of such suspension of performance by DDOE based on appropriated funds and approval by DDOE.

15. Termination.

15.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

15.2 This Agreement may be terminated in whole or in part by DDOE for its convenience, but only after **VENDOR** is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DDOE prior to termination.

15.3 If termination for default is affected by DDOE, DDOE will pay **VENDOR** that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to **VENDOR** at the time of termination may be adjusted to the extent of any additional costs occasioned to DDOE by reason of **VENDOR**'s default.
- c. Upon termination for default, DDOE may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event **VENDOR** shall cease conducting business, DDOE shall have the right to make an unsolicited offer of employment to any employees of **VENDOR** assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

15.4 If after termination for failure of **VENDOR** to fulfill contractual obligations it is determined that **VENDOR** has not so failed, the termination shall be deemed to have been effected for the convenience of DDOE.

15.5 The rights and remedies of DDOE and **VENDOR** provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

15.6 Gratuities.

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- a. DDOE may, by written notice to **VENDOR**, terminate this Agreement if it is found after notice and hearing by DDOE that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by **VENDOR** or any agent or representative of **VENDOR** to any officer or employee of DDOE with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 15.6.a. hereof, DDOE shall be entitled to pursue the same remedies against **VENDOR** it could pursue in the event of a breach of this Agreement by **VENDOR**.
- c. The rights and remedies of DDOE provided in Section 15.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

16. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. Assignment; Subcontracts.

17.1 Any attempt by **VENDOR** to assign or otherwise transfer any interest in this Agreement without the prior written consent of DDOE shall be void. Such consent shall not be unreasonably withheld.

17.2 Services specified by this Agreement shall not be subcontracted by **VENDOR**, without prior written approval of DDOE.

17.3 Approval by DDOE of **VENDOR**'s request to subcontract or acceptance of or payment for subcontracted work by DDOE shall not in any way relieve **VENDOR** of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

17.4 **VENDOR** shall be and remain liable for all damages to DDOE caused by negligent performance or non-performance of work under this Agreement by **VENDOR**, its subcontractor or its sub-subcontractor.

17.5 The compensation due shall not be affected by DDOE's approval of **VENDOR**'s request to subcontract.

18. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

19. Non-Appropriation of Funds.

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19.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DDOE may immediately terminate this Agreement, and absent such action this 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.

19.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DDOE's obligations under it shall be extinguished at the end of the fiscal year in which the State of Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

20. State of Delaware Business License.

VENDOR and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

21. Complete Agreement.

21.1 This agreement and its Appendices shall constitute the entire agreement between DDOE and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

21.2 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 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 Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

21.3 VENDOR may not order any product requiring a purchase order prior to DDOE's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

22. Global Interoperability Standards

DDOE advocates adoption by all suppliers of applicable open interoperability standards provided by the IMS Global Learning Consortium (IMS), the Ed-Fi Alliance (Ed-Fi) and the Common Education Data Standards (CEDS) project in order to enable safe, flexible and rapid integrations. The aforementioned standards are evolving under the governance of member organizations, which includes a majority of leading educational technology suppliers. The paragraph below describes VENDOR agreement to implement, certify, and stay current with the latest releases of these standards, so that DDOE is not required to communicate on a standard-by-standard basis the availability and requirement to adopt these standards.

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VENDOR agrees that all products DDOE purchases will become certified as compliant with any final version of the aforementioned interoperability standards that are applicable to the products procured within six (6) months of the public release of each standard (or a specific later date if mutually agreed to by the parties), provided that: (a) the proposed modifications to the Product would not create a security, privacy or accessibility compromise; (b) the standard can be implemented with approximately the same amount of development resource as integration approaches of similar scope and thus does not create an undue financial burden on VENDOR; and (c) several other institutions (by direct referral) comparable to DDOE agree that the modifications necessary to the purchased product are desirable. At a minimum, VENDOR agrees to complete an annual technology roadmap session with DDOE.

23. Single Sign-On Requirements

All software system applications that use authentication must integrate with the DDOE's Single Sign-On Solution and provide management of user authorization roles within their application. Integration, implementation, and maintenance must be at the expense of VENDOR and at no additional cost to the DDOE.

24. Data Privacy, Ownership and Protection Information

24.1 VENDOR shall adhere to the mandates of federal, state, and local ordinances and statutes, and DDOE policy and regulations, including, but not limited to Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act of 1998 (COPPA), and 15 U.S.C. 6501–6505, with regard to the protection of state data made available by DDOE.

24.2 VENDOR shall carefully select the personnel entrusted with the state data, inform them about all of the legal aspects of state data protection, and oblige them to preserve data secrecy. The obligation shall be made on record and evidence of this shall be provided to DDOE upon its request.

24.3 VENDOR shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the VENDOR stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The VENDOR's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The VENDOR and State of Delaware will negotiate mutually acceptable key location and key management details. Should the VENDOR not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the Terms and Conditions Governing Cloud Services policy.

24.4 Upon DDOE's request or at the latest, upon expiration of the Agreement, VENDOR will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the VENDOR.

When required by the State of Delaware, the VENDOR shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The VENDOR shall provide written [certificates of destruction](#) to the State of Delaware.

24.5 The VENDOR must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted,

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Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's Terms and Conditions Governing Cloud Services policy) by VENDOR or its subcontractors. The VENDOR will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the VENDOR or its contractors be liable for the breach, the VENDOR shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the VENDOR or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a VENDOR harmless.

24.6 DDOE or its designee may monitor VENDOR's compliance with the Agreement as it relates to state data protection. Such monitoring shall only be available upon the receiver of the state data executing a non-disclosure agreement. Additionally, DDOE agrees it will only request additional monitoring if the third-party assessment (ISO/IEC 27001 certification) fails to provide satisfaction of compliance with the Agreement.

24.7 VENDOR must provide clear notice to DDOE before making any material changes to VENDOR's privacy policy.

24.8 DDOE shall be entitled to timely access state data and correct state data held by VENDOR that is factually incorrect in response to a parent/guardian request.

24.9 VENDOR can only utilize the state data for the purposes specifically authorized by DDOE and cannot set up a personal profile of a student unless to support purposes authorized by DDOE.

24.10 VENDOR cannot sell state data or use/share state data for targeted advertising to students.

24.11 VENDOR cannot re-disclose state data to sub-contractors, partners, or other third parties unless expressly authorized by DDOE and subcontractors, partners, or other third parties agree to DDOE's Terms of Use.

24.12 DDOE's confidential information, as provided in Paragraph 7 of this Agreement, and all other confidential information and state data relating to DDOE's business are DDOE's exclusive property, and VENDOR therefore agrees that:

- a. All notes, state data, reference materials, sketches, drawings, memoranda, disks, documentation and records in any way incorporating or reflecting any of the Confidential Information and all proprietary rights in the Confidential Information, including copyrights, trade secrets and patents shall belong exclusively to DDOE;
- b. At all times while this Agreement is in effect, VENDOR will keep secret and will not disclose to any third party, take or misuse any of DDOE's Confidential Information, or any other confidential information VENDOR acquires or has access to because of its provision of services;

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- c. At all times while this Agreement is in effect, **VENDOR** will not use or seek to use any of **DDOE's Confidential Information** for **VENDOR's** own benefit or for the benefit of any other person or business or in any way adverse to **DDOE's** interests;
- d. On **DDOE's** request or on termination of this Agreement, **VENDOR** will return to **DDOE** all its property, specifically including all documents, disks or other computer media or other materials in **VENDOR's** possession or control that contain any of **DDOE's Confidential Information**;
- e. After termination of this Agreement, **VENDOR** will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of **DDOE's Confidential Information**; and
- f. **VENDOR** will advise **DDOE** of any unauthorized disclosure or use of **DDOE's Confidential Information** by any person or entity.

24.13 The State's data ("state data," which will be treated by **VENDOR** as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Agreement Activities; (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Agreement Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Agreement Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Agreement.

24.14 **VENDOR** is provided a limited license to state data for the sole and exclusive purpose of providing the Agreement Activities, including a license to collect, process, store, generate, and display state data only to the extent necessary in the provision of the Agreement Activities. **VENDOR** must: (a) keep and maintain state data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose state data solely and exclusively for the purpose of providing the Agreement Activities, such use and disclosure being in accordance with this Agreement, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available state data for **VENDOR's** own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Agreement.

24.15 As per the Delaware Department of Technology and Information, **VENDOR** shall agree to the following provisions:

- a. The State of Delaware shall own all right, title and interest in its state data that is related to the services provided by this Agreement. **VENDOR** shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of state data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this Agreement, or (iv) at State of Delaware's written request. All information obtained or generated by the **PROVIDER** under this contract shall become and remain

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property of the State of Delaware.

- b. Protection of personal privacy and sensitive state data shall be an integral part of the business activities of VENDOR to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, VENDOR shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:
 - i. All information obtained by VENDOR under this Agreement shall become and remain property of the State of Delaware.
 - ii. At no time shall any state data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by VENDOR or any party related to VENDOR for subsequent use in any transaction that does not include the State of Delaware.

24.16 Upon completion of this agreement, if requested, all state data will be returned in an agreed upon format that is predetermined at Agreement signing.

24.17 If the procured product is part of an acquisition or sold off, at the request of DDOE, the Agreement will be considered null and void.

25. Miscellaneous Provisions.

25.1 In performance of this Agreement, VENDOR shall comply with all DDOE policies, applicable federal, state and local laws, ordinances, codes and regulations. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

25.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

25.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

25.4 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

25.5 VENDOR acknowledges that DDOE has an obligation to ensure that public funds are not used to subsidize private discrimination. VENDOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, DDOE may declare VENDOR in breach of the Agreement and terminate the Agreement.

25.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage,

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brokerage or contingent fee. For breach or violation of this warranty, DDOE shall have the right to annul this Agreement without liability or at its discretion deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

25.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

25.8 VENDOR shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of DDOE may inspect or audit VENDOR's performance and records pertaining to this Agreement.

25.9 The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

26. Insurance.

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

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- b. Commercial General Liability - \$1,000,000 per person/\$3,000,000 per occurrence, **and**
- 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 person/\$3,000,000 per occurrence, or
- b. Miscellaneous Errors and Omissions - \$1,000,000 per person/\$3,000,000 per occurrence, or
- c. Product Liability - \$1,000,000 per occurrence/ \$3,000,000 general aggregate.

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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 Agreement number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

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

To the extent that VENDOR has complied with the terms of this Agreement and has procured insurance coverage for all vehicles leased and/or operated by VENDOR as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

27. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by the State, VENDOR hereby grants, conveys, sells, assigns, and transfers to DDOE all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Agreement. Upon either DDOE's or the VENDOR notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, DDOE and VENDOR shall meet and confer about coordination of representation in such action.

28. Surviving Clauses.

All indemnification obligations imposed and all licenses and assignments of rights granted under this Agreement shall survive termination

29. Governing Law.

This Agreement shall be governed by or construed under the laws of the State of Delaware, without regard to principles of conflict of laws, except where Federal law has precedence. The laws of the State of Delaware shall govern, in whole or in part, any or all of their rights, remedies, liabilities, powers and duties of the parties, either as provided by law or in the manner specified in this Agreement. VENDOR consents to service of process within the State of Delaware.

30. Notices.

STATE OF DELAWARE
Delaware Department of Education

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

CONTRACTOR: VENDOR
DDOE: Kim D. Klein
 Associate Secretary, Operations Support
 Delaware Department of Education
 John G. Townsend Building
 401 Federal Street, Suite 2
 Dover, DE 19901
 Phone No. (302) 735-4040
 Fax No. (302) 739-7768

DOE Certificated Staff coordinating activity:

Next Page for Signatures.

STATE OF DELAWARE
Delaware Department of Education

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

VENDOR

Delaware Department of Education

(Official of VENDOR)
Project Manager

Associate Secretary, Date
Operations Support (or Designee)

Date

Finance Director Initials

(Official of VENDOR)
Principal Investigator

Team Associate Secretary Date

Date

Date Work Group Director
Initials



STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd., Dover, Delaware 19904

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

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

Contract/Agreement # _____, Appendix _____

between State of Delaware and _____ dated _____

This document shall become part of the final contract.

	Public Data	Non Public Data	
1	✓	✓	<p>Data Ownership: The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware's written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.</p>
2	✓	✓	<p>Data Usage: The PROVIDER 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 PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State's Terms and Conditions Governing Cloud Services and Data Usage Policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information. No party related to the PROVIDER or contracted by the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.</p>
3	✓	✓	<p>Termination and Suspension of Service: In the event of termination of the contract, PROVIDER shall implement an orderly return of State of Delaware data in CSV, XML, or another mutually agreeable format. The PROVIDER shall guarantee the subsequent secure disposal of State of Delaware data.</p> <p>a) Suspension of services: During any period of suspension, contract negotiation, or disputes, the PROVIDER shall not take any action to intentionally erase any State of Delaware data.</p> <p>b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally erase any State of Delaware data for a period of ninety (90) days after the effective date of the termination. All obligations for protection of State data remain in place and enforceable during this 90-day period. After such 90-day period has expired, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally or contractually prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession. Within this 90-day timeframe, the PROVIDER will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> <p>d) Secure Data Disposal: When non-public data is provided by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods after ninety (90) days of the contract termination. The PROVIDER shall provide written certificates of destruction to the State of Delaware.</p>



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

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

Contract/Agreement # _____, Appendix _____

between State of Delaware and _____ dated _____

This document shall become part of the final contract.

	Public Data	Non Public Data	
4		✓	Data Location: The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.
5		✓	Encryption: The PROVIDER shall encrypt all non-public data in transit regardless of the transit mechanism. For engagements where the PROVIDER stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest . The PROVIDER’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2 , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the PROVIDER cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the Terms and Conditions Governing Cloud Services and Data Usage Policy .
6		✓	Breach Notification and Recovery: The PROVIDER must notify the State of Delaware at eSecurity@delaware.gov immediately or within 24 hours of any determination of the breach of security as defined in 6 Del. C. §12B-101(2) resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. The PROVIDER shall send a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach. The PROVIDER will continue to send any and all reports subsequent to the preliminary written report. The PROVIDER shall meet and confer with representatives of DTI regarding required remedial action in relation to any such data breach without unreasonable delay. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans’ Personally Identifiable Information (PII, as defined in Delaware’s Terms and Conditions Governing Cloud Services and Data Usage Policy) by PROVIDER or its subcontractors. The PROVIDER will assist and be responsible for all costs to provide notification to persons whose information was breached without unreasonable delay but not later than sixty (60) days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; or 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State will retain all determining authority for breach accountability and responsibility. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. The PROVIDER shall not issue a media notice without the approval of the State.
7		✓	Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a federally compliant (IRS Pub 1075 2.C.3) criminal background check. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract,



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

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	Public Data	Non Public Data																						
			have no convictions, pending criminal charges, or civil suits related to any crimes of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the PROVIDER's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.																					
8		✓	Security Logs and Reports: The PROVIDER shall allow the State of Delaware access to system security logs that affect this engagement, its data, and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.																					
9		✓	Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.																					
10		✓	Contract Audit: The PROVIDER shall allow the State of Delaware to audit conformance including contract terms, system security, and data centers, as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days advance written notice and shall not unreasonably interfere with the PROVIDER's business. In lieu of performing its own audit, the State may request the results of a third party audit from the PROVIDER or an attestation of compliance.																					
11		✓	<p>Cyber Liability Insurance: An awarded vendor unable to meet the DTI Cloud and Offsite Hosting Policy requirement of encrypting PII at rest shall, prior to execution of a contract, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s). Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract is: [insert appropriate level from the table below]. Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount.</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Level</th> <th>Number of PII records</th> <th>Level of cyber liability insurance required (occurrence = data breach)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1-10,000</td> <td>\$2,000,000 per occurrence</td> </tr> <tr> <td>2</td> <td>10,001 – 50,000</td> <td>\$3,000,000 per occurrence</td> </tr> <tr> <td>3</td> <td>50,001 – 100,000</td> <td>\$4,000,000 per occurrence</td> </tr> <tr> <td>4</td> <td>100,001 – 500,000</td> <td>\$15,000,000 per occurrence</td> </tr> <tr> <td>5</td> <td>500,001 – 1,000,000</td> <td>\$30,000,000 per occurrence</td> </tr> <tr> <td>6</td> <td>1,000,001 – 10,000,000</td> <td>\$100,000,000 per occurrence</td> </tr> </tbody> </table>	Level	Number of PII records	Level of cyber liability insurance required (occurrence = data breach)	1	1-10,000	\$2,000,000 per occurrence	2	10,001 – 50,000	\$3,000,000 per occurrence	3	50,001 – 100,000	\$4,000,000 per occurrence	4	100,001 – 500,000	\$15,000,000 per occurrence	5	500,001 – 1,000,000	\$30,000,000 per occurrence	6	1,000,001 – 10,000,000	\$100,000,000 per occurrence
Level	Number of PII records	Level of cyber liability insurance required (occurrence = data breach)																						
1	1-10,000	\$2,000,000 per occurrence																						
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5	500,001 – 1,000,000	\$30,000,000 per occurrence																						
6	1,000,001 – 10,000,000	\$100,000,000 per occurrence																						



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

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

Contract/Agreement # _____, Appendix _____

between State of Delaware and _____ dated _____

This document shall become part of the final contract.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

- FOR OFFICIAL **1-3 (Public Data)**
- USE ONLY **1-11 (Non-Public Data)**

Provider Name/Address (print): _____

Provider Authorizing Official Name (print): _____

Provider Authorizing Official Signature: _____

Date: _____

Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. Pricing as identified in the solicitation
4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK .** All other copies may have reproduced or copied signatures – Form must be included.
5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.
9. Attachment 9 – Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement Form

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

Vendors shall provide proposal packages in the following formats:

1. **Two (2)** paper copies of the vendor proposal paperwork. **One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**
2. **One (1)** electronic copy of the vendor proposal saved to CD or DVD media disk, or USB memory stick. Copy of electronic price file shall be a separate file from all other files on the electronic copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a separate computer disk or media).

STATE OF DELAWARE
Delaware Department of Education
Appendix B - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

Introduction:

This RFP seeks proposals from qualified bidders to develop and collaboratively deliver NGSS Science Summative and/or Social Studies Through Year and Summative assessments. The goal is to partner with vendors experienced in assessment development, aligned with educational standards. The selected bidder will work closely with an external operational or platform provider to deliver high-quality assessments. The scope includes test question development, formats, and digital delivery methods.

Bidders are invited to submit proposals for science development, Social Studies development, or both. Proposals should underscore a strong commitment to collaborative efforts, maintaining high standards of quality, and ensuring alignment with the specified objectives.

Section II.1—Administration

NGSS Science Summative and Social Studies Through Year and Summative Assessment

This section pertains to the development of both Science and Social Studies tests. Proposals, whether for Science, Social Studies, or both subjects, should comprehensively address each of the specified objectives outlined below.

1.A General Administration

Science Overview

Delaware educators will administer the Science Summative Assessment using an online fixed form for grades 5, 8, and high school biology. Paper and pencil forms will be provided only for students with specific accommodations.

Administration times for grade 5 should be limited to 90 minutes with grades 8 and high school biology limited to 120 minutes (potentially separated into two sections). Teachers will administer the Science Summative Assessment to approximately 10,000 students per grade level.

To ensure proper test security and item longevity, three to four forms are necessary for grades 5, 8, and HS Biology. Item and test form development are the responsibility of the content vendor. Item/test delivery, function, and psychometrics are collaborative efforts between the content vendor and the platform vendor (which may be the same or separate) with content advisory oversight and review being the responsibility of Delaware educators.

Social Studies Overview

Delaware moved to an innovative through system in Grades 4-8 Social Studies in order to help evaluate the instructional materials used to teach standards; provide students an opportunity to go deeper into content; provide just in time data to support classroom instruction; and deliver shorter online tests to students multiple times each school year. These tests are constructed with the highest technical quality of peer-reviewed large-scale assessment systems. A through assessment program is administered multiple times through the course of the school year to emphasize the mastery of standards and measure student academic achievement. Click [here](#) for sample through assessments.

The development of through-year assessments in grades 4-8 can provide more information for teaching and learning, targeted closer to the time in which students receive instruction. The aggregated data can help evaluate the instructional materials used to teach standards.

Delaware also delivers a comprehensive summative at the end of 11th grade that serves as a capstone measurement of student achievement of Delaware Social Studies Standards. The assessments in this system (grades 4-8 and 11) contribute to school, district, and charter school accountability ratings.

1.A.1 Scoring

All items, including those requiring scoring by trained raters, will be scored by the content and/or platform vendor or some combination of the two.

Some items included on the NGSS Science Summative will require human scoring or complex artificial intelligence (AI) scoring. The successful bidder will provide a complete description of collaborative work streams expected with an operational and delivery vendor for human scoring training/feedback, monitoring, and quality control processes AND/OR quality AI programming to ensure smooth transitions from rubric development to scoring procedures and backward editing.

Benchmarking refers to the process of using experienced scorers to select papers that will serve as anchors for the score points of a rubric, as well as the selection of papers to be used in training readers, monitoring the scoring process, and in recalibrating readers. All open-ended items which require students to write a response will be benchmarked. The successful bidder shall be responsible for collaborating with all benchmarking processes, and Delaware educators must be involved. The bidder shall propose a plan including all costs, collaborative efforts with operational and delivery vendors who may be hosting benchmarking proceedings. While benchmarking may be a scoring related endeavor, rubric validation and item feedback are valuable aspects of the process.

RESPONSE REQUIRED

All responses should clearly identify activities associated with Science, Social Studies or Both as appropriate.

Test Development: The bidder shall propose a clear breakdown of anticipated collaborations, considering the allocation of tasks and responsibilities among participating entities (development and platform). Additionally, a transparent budget breakdown covering various project activities is expected.

Scoring: The bidder will provide a complete description of collaborative work streams expected with a platform/psychometric analysis vendor for human scoring training/feedback, monitoring, and quality control processes AND/OR quality AI programming to ensure smooth transitions from rubric development to scoring procedures and backward editing

The bidder shall propose a strategy for selecting, training, and qualifying readers.

The bidder shall propose a reader quality control reporting system for hand-scoring and indicate how they will use that system to ensure quality scoring.

If the bidder suggests the use of AI scoring, an alternative proposal outlining cost, quality and accuracy comparisons to human scoring is required.

Benchmarking: The bidder shall propose a plan including all costs, collaborative efforts with operational and delivery vendors who may be hosting benchmarking proceedings. While benchmarking may be a scoring related endeavor, rubric validation and item feedback are valuable aspects of the process.

1.A.2 Psychometric Analysis & Scaling

The successful bidder will be responsible for collaborating with the primary operational and delivery vendor for required psychometric analysis needed to support the development, administration, reporting and maintenance of the NGSS Science Summative and Social Studies Assessments. These responsibilities include, but are not limited to, the analyses required to support the review of item quality, creation of operational test forms, item scoring, item and test form reviews, scaling and equating of test forms, and establishing the reporting scale. DDOE expects the completion of these activities to produce evidence that supports the validity of intended interpretations and uses of the NGSS Science Summative and Social Studies Assessments scores, as well as evidence of their reliability.

DDOE does not anticipate any change to current scaling and equating approaches used in any of the existing DeSSA assessments that are the subject of this RFP. The successful bidder will be responsible for ongoing and effective collaboration with any supporting vendors, the DDOE, and the TAC to maintain current scaling and equating approaches.

RESPONSE REQUIRED

All responses should clearly identify activities associated with Science, Social Studies or Both as appropriate.

The bidder is required to present a breakdown of the anticipated collaboration in Psychometric Analysis and Scaling, considering the allocation of tasks and responsibilities among all involved entities. If any adjustments to current practices are recommended, please offer a concise explanation along with a list of advantages and disadvantages. Moreover, a clear and detailed budget breakdown for project activities should be provided, where applicable.

1.A.3 Standard Setting

The successful bidder must host or prepare to be present for a multiday workshop to set the achievement standards for the NGSS Science Summative and Social Studies Assessments as needed/appropriate. The workshop participants will be selected by DDOE to represent relevant constituencies. The successful bidder is responsible for collaborating with the primary operational/delivery vendor in conducting all advance preparations (logistical and methodological), conducting the meeting, and generating a final report documenting the validity evidence to support the results. In addition, the vendor is expected to co-present the results to the TAC and policy makers to gain final support.

Given the unique structure of both assessment systems, a person-centered standards-setting method that draws upon reviewing samples of student work is preferred.

RESPONSE REQUIRED

The bidder must provide a detailed description of their proposed process for collaboration with a primary operations/delivery vendor for supporting standards-setting procedures for science and/or Social Studies.

1.A.4 Reporting

Reporting will be allocated as a primary responsibility of a platform/operations vendor, the successful bidder must be prepared to collaborate across development and delivery to support reporting efforts.

The reporting system for science will include a single proficiency score supporting classroom, school, district, and state-level data that can be disaggregated for all subgroups identified by DDOE. Social Studies must include reporting capabilities with a through-year capacity also allowing for results at the classroom, school, district, and state level to be disaggregated for all subgroups identified by DDOE.

1.A.5 Alignment

The Science Summative Assessments and Social Studies Through Year and Summative assessments are state assessments that are used as part of the State ESSA Accountability

STATE OF DELAWARE
Delaware Department of Education

Framework. Delaware expects the design of these assessments to meet the United States Department of Education Standards and Assessment Peer Review Criteria, as well as meet the standards of best practice laid out in the *Standards for Educational and Psychological Testing* (American Educational Research Association (AERA), American Psychological Association (APA), and the National Council on Measurement in Education (NCME), 2014). To do so, Delaware assumes that the successful bidder will work with the state to produce one or more documents articulating the state's unique approach to covering the NGSS and Delaware Social Studies Standards.

The selected bidder will be required to furnish independent substantiation of alignment for the Science Summative Assessments and/or Social Studies Through Year and Summative assessments. This verification will be accomplished through an independent alignment study or studies, to be conducted by an experienced and qualified third-party contractor with no affiliations to the selected bidder.

The evaluation(s) should encompass an assessment of the alignment documentation outlining Delaware's alignment strategy, in conjunction with more conventional indicators of alignment such as assessment blueprints. The selection of the independent contractor proposed by the bidder will be subject to approval or rejection by Delaware. The alignment methodology proposed by the bidder must also secure approval from the state.

It is imperative that potential alignment methodologies recognize the inadequacy of one-to-one correlations between individual items and standards in accurately representing the intricate nature of these assessments. A viable methodology, such as the one based on the Chief Council of State School Officers' (CCSSO) Criteria for Procuring and Evaluating High-Quality Assessments (2014), as implemented by Doorey & Polikoff (2016) in the Guide to Evaluating Assessments Using the CCSSO Criteria for High-Quality Assessments: Focus on Test Content (NCIEA, 2016), should be considered. However, this methodology will necessitate modification to suit the NGSS framework, given its origins in the domains of English language arts/literacy and mathematics. Such adaptation must be attuned to the intricacies of NGSS, particularly its three-dimensional structure.

Likewise, comparable adaptation should be observed for the Social Studies standards and assessments due to their multi-dimensional nature.

RESPONSE REQUIRED

The bidder should provide a preliminary plan for alignment. This plan should acknowledge the complexity of the NGSS and/or Social Studies Assessment system. Specific details to be included, but not limited to, in the provided plan include:

- The alignment methodology that will be used or developed. If the methodology has been used previously, the plan should provide details on implementation and revision. If the methodology has not been used previously, the plan should outline the proposed development process and ways in which the methodology will be evaluated.

- The name and qualifications of a contractor, not affiliated with the successful bidder, who will design and implement the necessary alignment study or studies.
- Planned responses should the alignment study indicate problematic areas.

1.A.6 Accommodations and ADA

Assessments must comply with the provisions of the Americans with Disabilities Act of 1990. Assessment must include accommodations and enhancements to individual students including capacity to securely print reading passages, use tests presented in a language other than English, adjust the size of the items and graphics, use pre-recorded wave files and convert item text to speech, and meet as many as possible of the other accommodations outlined in the [Accessibility Guidelines](#) and [Update](#). Accommodations must be able to be set by test administrators while approving students to take tests. Accommodations must also be set through an upload process in advance of student testing. Bidder should identify all accommodations available with the system and allow for online monitoring/tracking of accommodations by approved state, district and school personnel. Proposals shall include a discussion of the impact of the proposed accommodations on the validity of the tests and a method for “flagging” students’ scores resulting from nonstandard test administrations or those that result in invalid score.

1.A.7 Universal Design

The principles and practices of “universally designed” (UD) assessments are to be followed in the development and implementation of all components of the DeSSA. Any UD principles used must not affect the assessment validity for students with or without disabilities. As part of the development process, items should be reviewed by a fairness and bias committee to determine if they meet the following UD principles:

- Multiple means of Representation – variations in the manner in which the test is presented
 - Multiple means of Expression – allowing a variety of ways in which a student can show what they know
 - Multiple means of Engagement – allowing opportunities for establishing interest in tasks
- See:
- NCEO: Considerations for the Development and Review of Universally Designed Assessments <http://www.cehd.umn.edu/nceo/onlinePubs/Technical42.htm>
 - NCEO: A State Guide to the Development of Universally Designed Assessments <http://www.cehd.umn.edu/nceo/OnlinePubs/StateGuideUD/default.htm>
 - NCEO: Universal Design Applied to Large Scale Assessments <http://www.cehd.umn.edu/NCEO/onlinepubs/synthesis44.html>

1.A.8 Validity

Validation shall be a joint responsibility between the successful bidder and the DDOE. The successful bidder will be responsible for furnishing relevant evidence and a rationale in support of any test score interpretations for specified uses intended by the developer. Relevant evidence shall include, but not be limited to:

- Evidence of careful test construction

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- Adequate score reliability
- Appropriate test administration and scoring
- Accurate score scaling, equating and standard setting.
- And careful attention to fairness for all test takers as appropriate to the test interpretation in question.

1.A.9 Supporting Materials & Interpretative Guides

1.A.9.a Informational Brochures

The successful bidder shall collaborate with operational and delivery vendors to produce informational brochures that describe the new assessments for science and/or social studies. The brochures will be designed for parents, teachers, and students, as well as policymakers and administrators. Although all elements of production and distribution to schools will be the responsibility of the bidder, the work will be closely managed by the DDOE to ensure that the brochures adequately and accurately reflect the nature and goals of the Science and/or Social Studies Assessment System(s). The brochures must be produced in English and Spanish with the ability to print from Adobe PDF and Microsoft Word formats sent to the DDOE. The brochures will also be available on the DDOE website. These brochures shall be produced annually, with updates, as deemed necessary by the DDOE.

1.A.9.b Public and Educator Practice Sites

The successful bidder will collaborate with operational and delivery vendors to develop a practice test site available to the public that can be accessed with a non-secure browser and uses released items to display the functionality of the test and to help prepare students to use the test interface and tools successfully. Assessment items used on the practice sites must reflect the full range of the types of assessment items that a student might encounter while taking the assessments. As new types of assessment items are introduced, the Vendor will provide practice items of that type sufficiently ahead of time so students may experience these new item types before they appear on actual, secure assessments. The practice site should contain the same essential functionality as the operational site but must be altered as necessary to maintain security, enforce copyrights or otherwise make the site accessible to the public. The practice site must have the capacity on a grade and/or content area basis to allow instant score results. In addition, the successful bidder must provide a training site that mimics the entire test administration system such that DDOE, school districts, and school staff will be able to learn to use the system.

RESPONSE REQUIRED

The bidder should provide an assurance that collaborative efforts for informational brochures and public and educator practice sites are included as part of their proposed SOW.

1.A.10 Technical Advisory Committee

A Technical Advisory Committee (TAC) comprised of national measurement experts will provide feedback and suggestions on the technical aspects of the assessment program. The Vendor

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shall work collaboratively with the DDOE to ensure that appropriate materials are developed and made available for TAC members' review at least three (3) weeks prior to scheduled meetings of the Technical Advisory Committee in support of the meeting agenda. The Committee typically holds two, two-day meetings each year. Vendor staff may be required to be in attendance, at the request of the DDOE, and the Vendor must cover the costs of such attendance.

1.A.11 Organization of Evidence for Peer Review

As part of state and federal requirements, Delaware will submit their assessment for Federal Peer Review. As such, the documentation should be tailored to the peer review guidance, and, where applicable, explicitly reference the *U. S. Department of Education Peer Review of State Assessment Systems: Non-Regulatory Guidance for States (2015)*, as well as the *Standards for Educational and Psychological Testing (AERA, APA, & NCME, 2014)*. Delaware will work with the successful bidder to develop an understanding as to what evidence will be produced by the successful bidder, the State, or both. The table below shows the critical elements and indicates which elements the Delaware expects evidence produced by the successful bidder to meet, or partially meet with additional evidence produced by the state. In the table below “S” indicates that the state will produce the required evidence, “M” means that a mix of evidence from the state and successful bidder will be used, and “B” means that the evidence will come solely from the successful bidder, *or collaboration between the successful bidder for this RFP and the operational administration vendor* and be produced as a result of the bidder meeting the requirements specified in this RFP.

Table 1. *Responsibilities for Evidence by Federal Peer Review Critical Elements.*

1.1	S	2.1	M	3.1	M	4.1	B	5.1	S	6.1	S
1.2	S	2.2	M	3.2	B	4.2	M	5.2	S	6.2	B
1.3	S	2.3	M	3.3	B	4.3	B	5.3	M	6.3	S
1.4	S	2.4	M	3.4	M	4.4	B	5.4	S	6.4	B
1.5	S	2.5	M			4.5	B				
		2.6	M			4.6	B				
						4.7	B				

RESPONSE REQUIRED

The bidder must provide assurances:

- That it will ensure that appropriate materials are developed and made available for TAC members review at least three (3) weeks prior to scheduled meetings of the Technical Advisory Committee in support of the meeting agenda. And that vendor staff will be made available to be in attendance, at the request of the DDOE, and the Vendor must cover the costs of such attendance.
- That it can and will provide all expected documentation referenced as specific critical elements for which it is deemed responsible to facilitate the organization of evidence for Peer Review.
- That this evidence will be made available in a print-ready format that is clearly aligned and identified (i.e., labeled) for each appropriate critical element.

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- That the evidence will be stored in a repository (e.g., online directory, shared secure website, etc.) that will be accessible to the state and any identified designees.

Social Studies is not a Peer Reviewed assessment and does not require the same level of scrutiny, however, evidence of Validity, reliability, fairness, and all aspects measured by Peer Review are expected Standards of the DDOE. DeSSA Social Studies must be able to be submitted for Peer Review if required.

Section II.2—Content Development

NGSS Science Summative Assessment

This section exclusively concerns the development of NGSS Science Summative Assessments. Bidders who do not intend to submit proposals related to Science Assessment may disregard this section.

Science Context

Delaware has developed a comprehensive science assessment system for grades 3 to 10, consisting of three distinct types of assessment. Throughout the academic year, teachers have access to peer-developed, standards-aligned, and curriculum-agnostic *Embedded Classroom Assessments*. These Embedded Classroom Assessments are numerous, short, and administered at the discretion of each teacher to provide instructional feedback in real-time.

End-of-Unit Assessments are provided for use after completing a unit of classroom instruction. Each academic school year is divided into three to four units, each of which is aligned to a specific topical arrangement of the NGSS standards (See *Performance Expectations by Grade Level* [HERE](#)). Data from End-of-Unit assessments are meant to provide information for the purposes of instruction (e.g., determining if additional instruction on previously taught topics is needed, informing curriculum decision-making including adoption, adaptation, and modification) and evaluation (e.g., to be used in place of a classroom assessment for instructional feedback and/or evaluative purposes) at classroom, school building, district and (as appropriate) cross-district levels.

In parallel, students in grades 5, 8, and high school biology participate in a State Summative Assessment, distinct from the Embedded Classroom and End-of-Unit Assessments taken by all students in grades 3 to 10. These State Summative Assessments aim to gauge students' application and transfer of science knowledge and skills gained throughout the year.

The principal objective of the Science Summative Assessment is to fulfill the stipulations of the Every Student Succeeds Act (ESSA) of 2015. Specifically, the overall scores derived from the Science Summative Assessment will contribute to Delaware's ESSA-compliant accountability framework, facilitating meaningful differentiation among schools. Hence, the Science Summative Assessment must also adhere to the criteria set forth in the Federal Peer Review, outlined in the U.S. Department of Education's Peer Review of State Assessment Systems: Non-Regulatory Guidance for States (2015), and align with the Standards for Educational and Psychological Testing (AERA, APA, & NCME, 2014).

2.A Science Summative Assessment

2.A.1 Purpose

The primary purpose of the Science Summative Assessment is to meet the requirements of the Every Student Succeeds Act (ESSA) of 2015. That is, the overall scores from the Science Summative Assessment will be used in Delaware's ESSA compliant accountability system to meaningfully differentiate among schools. Therefore, the Science Summative Assessment must also meet the requirements of Federal Peer Review, provided in the *U. S. Department of Education Peer Review of State Assessment Systems: Non-Regulatory Guidance for States*

(2015), as well as those provided in the *Standards for Educational and Psychological Testing* (AERA, APA, & NCME, 2014).

Science Summative Assessment results may be used, specifically to:

- **Provide evaluative information at the school and district levels.**
- **Signal shifts in the standards.** The three-dimensional learning captured by the NGSS is profoundly different from prior science standards. The interpretive guide, score report, and other outward-facing material must clearly convey the three-dimensional nature of the NGSS while also highlighting that the standards call for the integration of the dimensions.

2.A.2 Design

The Science Summative Assessments are meant to provide students the opportunity to demonstrate their ability to transfer and apply their three-dimensional learning to solve problems in novel contexts. Doing so will require that students have an integrated, problem-based context that spans the assessed PEs. To do so, the development of each item cluster or stand-alone item must start with the selection of a phenomenon that will support these types of student demonstrations. The presentation of the phenomenon will vary in depth, depending on whether that phenomenon is tied to an integrative item cluster, regular item cluster or stand-alone item, with the former providing the greatest and the latter providing the least depth.

DDOE expects that the Science Summative Assessment will employ as many integrative item clusters as is feasible, given the time constraints (90 minutes for grade 5, and 120 minutes for grade 8 and high school biology). Currently, the assessment (grade 5) contains 2 IICs, 4 RICs and 10 stand-alone items with an item cluster and 3 stand-alone items field tested on each form. Grades 8 and HS contain 2 IICs, 6 RICs and 14 stand-alone items with an item cluster and 3 stand-alone items field tested. The current blueprint can be modified slightly, but not substantially in future iterations. (See *current blueprint* [HERE](#)).

2.A.2.a Claims & Blueprints. DDOE has defined the claim and does not currently measure subclaims for the **STATE SUMMATIVE ASSESSMENTS**. However, proposals may include models that would support such an opportunity. *Any proposed subclaim effort must provide for enough items in each proposed subclaim to produce a valid statistical argument for peer review. In addition, items should be aligned to the full range of SEPs captured in any proposed subclaims, even if they are not present in the specific combination of dimensions defining the PES for the unit in question. [subclaims and their support are not required, but may be included, as part of this proposal process]*

OVERARCHING CLAIM:

The student is able to draw on the scaffolding construct of crosscutting concepts and accurately use scientific and engineering practices to engage with science phenomena specific to a set of disciplinary core ideas.

The Science Summative Assessments are meant to cover at least 80% of the standards defined for each grade level (5, 8 and HS Biology), including the grade-specific PEs and the Engineering and Design PEs. Given that a minimum of 80% of the PE's must be represented on the test blueprint, the bundling of PEs should be based on phenomenon that allow for students to demonstrate their ability to integrate, transfer, and apply their three-dimensional learning.

RESPONSE REQUIRED

The bidder must provide a process proposed for the refinement of the blueprints for the three Science Summative Assessment assessments. The provided process for the refinement of the Science Summative Assessment blueprints can be presented as a modification of the existing blueprints (*shared [HERE](#)*).

2.A.2.b Achievement Level Descriptors. Given that the Science Summative Assessment results will be used for accountability purposes, DDOE expects the successful bidder to **review and revise as appropriate**; policy, range, threshold, and reporting achievement level descriptors (ALDs). DDOE expects that the policy and range ALDs be reviewed considering an updated blueprint and revised assessment. These ALDs reflect the current assessment claims and blueprint. Delaware currently uses four achievement levels for ELA, mathematics and, science (below, meets, above and well above) and will maintain these levels with our new system. Threshold and policy ALDs will be reviewed and revised as part of the updated standards setting process.

The successful bidder will then use our preliminary set of existing policy ALDs in a workshop to first refine the policy ALDs and then address range ALDs. This workshop may also be coupled with refinement of the claims and subclaims, as detailed in 2.3.B.I. DDOE will recruit a set of participants for the workshop and arrange the initial logistics, including the time, date, and location. The successful bidder will be responsible for all other aspects of the ALD workshop, with communications to participants and the workshop structure subject to approval by DDOE. The result of the workshop will be a report documenting the recommended ALDs.

RESPONSE REQUIRED

The bidder must provide a preliminary plan for a workshop that creates revised policy and range ALDs. This preliminary plan must include training to be provided to the participants as well as the actual processes used to create the revised policy and range ALDs. The bidder must also provide the name of the staff who will develop and conduct the ALD workshop. Finally, the bidder must provide an example table of contents from a prior ALD workshop or complete report from a prior workshop.

2.A.3 Development Process

DDOE expects the successful bidder to employ a principled approach to assessment design (e.g., Evidence-Centered Design) to structure the activities outlined in this RFP. The structure and documentation afforded by such an approach will be particularly important in managing the nonlinear and iterative nature of the continued development process. In addition, drawing on a principled assessment design approach will provide coherent documentation that supports a validity argument, is sensitive to the state's particular context, and supports ongoing development of science items, item clusters and assessments.

By drawing on a principled framework, DDOE expects that the successful bidder will:

- Have a well-structured, coherent, and comprehensive process that encompasses all the activities required to successfully implement Delaware's summative NGSS assessment within the context of our full assessment system.
- Use existing items, clusters, and form outlines as part of ongoing test development while also informing future test development activities.
- Follow a principled approach to review existing claims, and related Achievement Level Descriptors (ALDs) to determine next steps in the evolution of Delaware's Balanced Science Assessment system, including but not limited to, the development of updated test blueprints, templates for upgraded stand-

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alone items and item-clusters, actual items and item-clusters, viable psychometric models which may or may not be the same used in past iterations of the assessment system, and scoring and reporting models to support classroom as well as state assessment systems. Multiple opportunities to revise the claims, and ALDs for the state summative assessment will need to be accounted for by the successful bidder with their proposal - particularly in the proposed scope, schedule, and budget.

- Develop clear documentation that supports the validity of the intended interpretations and uses of the assessments.

The activities outlined in this RFP cover the full range of services necessary to successfully develop, administer, report, and maintain the Science Summative Assessments (SSAs).

RESPONSE REQUIRED

- An outline, with corresponding timeline for Science Summative Assessment development, highlighting key stages in the process, including the use of the existing item and cluster bank for early development as well as ongoing work and proposed upgrades for new development, test administration, scaling, and maintenance of the assessments.
- A summary of experience with, or other qualifications relevant to, principled approaches to assessment design. Example templates for items or tasks like those requested for use with this NGSS-aligned assessment should be included in this summary.
- A summary of previous experiences or a listing of previous clients/states for whom you have developed a large-scale assessment program used for accountability.

2.A.3.a Item Clustering Approach and the Role of Phenomena

Science Summative Assessments will contain “integrated” item clusters, “regular” item clusters³ and stand-alone items. The approach taken by Delaware to item clusters reflects the recommendations laid out within the *Science Assessment Item Collaborative Assessment Framework for the Next Generation Science Standards* (SAIC Assessment Framework; WestEd & CCSSO, 2015). However, Delaware has differentiated between integrated item clusters – which are akin to performance tasks and involve a set of interrelated items that are integrated with the stimulus – and regular item clusters – which incorporate the use of a stimulus with several aligned but “standalone” items. Each item within an integrated item cluster asks students to demonstrate their three-dimensional learning in ways that complement the demonstrations elicited by the other items within the cluster. Regular item clusters closely resemble item testlets commonly found in traditional large-scale assessments. They utilize a common stimulus for context, but items are independent of one another and can be interchanged and/or replaced randomly without sacrificing the integrity of the cluster. Delaware has developed a bank of integrated item clusters under its current contract. Refer to the [ITEM SPECIFICATIONS FOR THE DELAWARE NEXT GENERATION SCIENCE ASSESSMENT](#) document for details on the current specifications associated with the NGSS Summative assessment.

Under Delaware’s approach, each integrated item cluster, regular item cluster or stand-alone item must be specified in terms of a particular natural *phenomenon* (i.e., an “observable events that occur in the universe that humans can use knowledge of science to explain or predict. The goal of building knowledge in science is to develop general ideas, based on evidence, that can explain and predict phenomena.”). That is, each item cluster or stand-alone item is defined in relation to one phenomenon that provides context for the stimuli and question(s) students are asked. The level of detail provided about the phenomenon and reflected in the stimulus and item(s), will be primarily defined by whether it is an integrated item cluster, a regular item cluster or a stand-alone item, with the first generally providing the most detail, the latter generally providing the least detail.

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2.A.3.b Design Requirements for all Items and Item Clusters

There are several requirements for the design of the items and item-clusters for Delaware Science Summative Assessment. At a minimum all items, item-clusters and design processes for Delaware should adhere to our current Item Specifications document available [HERE](#).

In terms of assessment blueprint, Delaware expects that:

- Each PE be assessed by an item-cluster or standalone items.
- Each item cluster or stand-alone item be defined in relation to one or more PEs (the groupings of PEs that align to clusters are referred to as bundles).
- Each item cluster or stand-alone item be defined in terms of a specific scientific or engineering phenomenon, which is clearly related to PEs in question. The phenomenon must provide students context for understanding and solving problems.
- Each item cluster be defined in terms of a cluster (or task) type, which specifies the stimuli for the cluster, the administration materials, and the overall structure for the cluster. Delaware has developed a substantial item/cluster bank and expects to develop several more through this RFP.
- That the items within each item cluster align to the DCIs, SEPs and CCCs of the PEs that define that cluster. In addition, additional “supporting” SEPs or CCCs may be defined for one or more PEs within the cluster, to allow for a more complete demonstration of student learning,
- Cognitive complexity or rigor be appropriately accounted for. Delaware currently uses a cognitive complexity model that is novel to NGSS but accepted by Peer Reviewers. See [HERE](#) for more detail.
- Delaware does not currently report subclaims, however, proposals may include models that would support such opportunity. Any proposed subclaim effort must provide for enough items in each proposed subclaim to produce a valid statistical argument for peer review. In addition, items should be aligned to the full range of SEPs captured in any proposed subclaims, even if they are not present in the specific combination of dimensions defining the PES for the unit in question. **[subclaims and their support are not required, but may be included, as part of this proposal process]**

RESPONSE REQUIRED

The bidder must describe, in detail, their processes and procedures for creating and maintaining a sufficient pool of item and item-clusters, as well as their processes and procedures for creating appropriate test forms. Special attention should be given to the ways in which the bidder will ensure that the item-clusters and items elicit the application of students’ three-dimensional learning.

2.A.3.c Item, Item-Cluster and Form Development

Delaware expects the successful bidder to develop new and modify existing items for the Science Summative Assessments. Item-clusters and standalone items must be created to meet blueprints following a principled approach to assessment design.

Social Studies Through Year and Summative Assessments

This section exclusively concerns the development of Social Studies Through Year and Summative Assessments. Bidders who do not intend to submit proposals related to Social Studies Assessments may disregard this section.

2.B Social Studies Assessment

Delaware moved to an innovative through system in Grades 4-8 Social Studies in order to help evaluate the instructional materials used to teach standards; provide students an opportunity to go deeper into content; provide just in time data to support classroom instruction; and deliver shorter online tests to students multiple times each school year. These tests are constructed with the highest technical quality of peer-reviewed large-scale assessment systems. A through assessment program is administered multiple times through the course of the school year to emphasize the mastery of standards and measure student academic achievement. Click [here](#) for sample through assessments.

The development of through-year assessments in grades 4-8 can provide more information for teaching and learning, targeted closer to the time in which students receive instruction. The aggregated data can help evaluate the instructional materials used to teach standards.

Delaware also delivers a comprehensive summative at the end of 11th grade that serves as a capstone measurement of student achievement of Delaware Social Studies Standards. The assessments in this system (grades 4-8 and 11) contribute to school, district, and charter school accountability ratings.

2.B.1 Social Studies Assessment Design

The State of Delaware has measured student proficiency in social studies using an online testing format since 2010. This assessment will require students to demonstrate college- and career-preparation using a range of higher-order analytical thinking and performance skills. The DeSSA assessments will:

- use complex informational texts as stimuli for items. The term 'complex informational text' in social studies can refer to such documents as photographs, charts, tables, graphs, and maps. Multiple formats of authentic, previously published texts may be used as stimuli, including written, audio, visual, and graphic, as technology and assessment constraints permit. Animation and simulation may be used where appropriate.
- consist of test questions, tasks, and/or prompts, as appropriate, which may demand that students read complex informational texts carefully and deeply and use specific evidence from increasingly complex texts or from informational data sets to obtain or infer and defend accurate responses.
- require students to demonstrate a range of higher-order, analytical thinking and performance skills in reading, writing, and research based on the depth and complexity of Delaware Social Studies Standards allowing robust information to be gathered for students with varied levels of achievement. A significant portion of total score points come from items that demonstrate a deeper level of knowledge (e.g., represent the high complexity levels designated by taxonomies of cognitive demand).

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- require students to demonstrate research and inquiry skills, demonstrated by the ability to find, process, synthesize, organize, and use information from multiple sources and/or data sets.
- be assembled with the highest regard for psychometric integrity.

2.B.2 Social Studies Standards Framework

The Delaware Social Studies Standards are designed to be end-of-grade cluster instructional targets. Four content areas – [Civics](#), [Economics](#), [Geography](#), and [History](#) – are expected to be taught in 2 years for the 4-5 cluster, and within 3 years in the 6-8 grade cluster.

These are the grades and courses that serve as the framework for the through-year system.

Grade 4	Grade 5	Grade 6	Grade 7	Grade 8
U.S. History (1491 – 1787) and Civics	Economics and Geography	World Geography	Economics and Civics	U.S. History (1783 – 1877)

These are the specific number of through-year assessments, instructional targets, and administration schedule anticipated for grades 4-8.

Grade Cluster 4-5				
Grade	Content Area(s)	# Through-year Assessments	Instructional Targets (Content Area and Standard)	Administration Schedule
4	History Civics	3	History 1-3 (1491 - 1700)	November
			History 1-3 (1700 - 1787)	February
			Civics 1-3	May
5	Economics Geography	2	Economics 1-4	January
			Geography 1-4	May

Grade Cluster 6-8				
Grade	Content Area(s)	# Through-year Assessments	Instructional Targets (Content Area and Standard)	Administration Schedule
6	Geography	3	Geography 2-4	November

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			Geography 2-4	February
			Geography 2-4	May
7	Civics Economics	2	Civics 1-4	January
			Economics 1-4	May
8	History	3	History 1-3 (1783 – 1820)	November
			History 1-3 (1821 – 1860)	February
			History 1-3 (1861 – 1877)	May

The Grade 11 assessment will be a summative that measures all four content areas equally.

2.B.3 Social Studies Development Process

DDOE expects the successful bidder to employ a principled approach to assessment design to structure the activities outlined in this RFP in order to provide coherent documentation that supports a validity argument, is sensitive to the state’s particular context, and supports ongoing development of social studies items, item clusters and assessments.

DDOE expects that the successful bidder will:

- Have a well-structured, coherent and comprehensive process that encompasses all of the activities required to successfully implement Delaware’s Social Studies assessment within the context of our full assessment system.
- Use existing items, clusters and form outlines as part of ongoing test development while also informing future test development activities.
- Follow a principled approach to review existing claims, and related Achievement Level Descriptors (ALDs) to determine next steps in the evolution of Delaware’s [Balanced Assessment system](#), including but not limited to, the maintenance or development of updated test blueprints, templates for upgraded stand-alone items and item-clusters, actual items and item-clusters, viable psychometric models which may or may not be the same used in past iterations of the assessment system, and scoring and reporting models to support classroom interpretation and use of state assessment systems. Multiple opportunities to develop ALDs for the state social studies assessment will need to be accounted for by the successful bidder with their proposal - particularly in the proposed scope, schedule and budget.
- Develop clear documentation that supports the validity of the intended interpretations and uses of the assessments.

2.B.4 Current Test Design

Successful test construction depends on solid preparation and teamwork within the successful bidder and between the successful bidder, a potential successful bidder for the delivery platform,

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and the Delaware Department of Education (DDOE). The grades 4-8 and 11 assessments are anticipated to follow the existing [blueprints and rationale developed for each course](#).

Grades 4-8

Each online form per administration will be available with the following accommodations or accessibility features: universal Alt text (text + graphics), Keyword translation in up to six selected languages, universal Text-to-Speech (TTS). One online form will be available in Spanish, and another will be available in American Sign Language (ASL). In addition, there will be one Braille form and one paper form.

The Spanish, ASL, Braille, and paper forms will be comprised of the 15 common items on the main online forms. The TE items on the Braille and paper forms will be converted to resemble the online TE items as closely as possible in content, difficulty, and cognitive complexity. Items are expected to be developed to measure student achievement of the targeted social studies standards and align with the cognitive demand of the standards.

Grades 4, 6, and 8

Item types on operational forms will be distributed as follows:

- Selected Response Items (SR) -- 8 to 9 items
- Technology enhanced Items (TE) -- 6 to 7 items

Assessments in each administration have two categories of items. Cluster sets share a set of stimuli and on the operational form are comprised of three selected-response (SR) items and two TE items. Standalone items are either SR or TE. All items are worth one point each. The operational form will consist of 10 standalone items, one five item set, and five embedded field test items. DDOE expects that grades 4, 6, and 8 will have multiple forms, including embedded field test forms, per administration. Each form contains 15 operational items and 5 field test items. Each form has one operational item-cluster (5 items linked together by stimuli). The estimated time needed to complete the test is 60 minutes, with all items in a single section. Students have historically averaged 30 minutes to complete the test, with all items in a single section. Accommodated forms are delivered online and using Braille and paper forms.

Grades 5 and 7

Item types on operational forms will be distributed as follows:

- Selected Response Items (SR) -- 12 to 14 items
- Technology enhanced Items (TE) -- 10 to 12 items

Assessments in each administration have two categories of items. Cluster sets share a set of stimuli and on the operational form are comprised of three selected-response (SR) items and two TE items. Standalone items are either SR or TE. All items are worth one point each. The operational form will consist of 19 standalone items, one five item set, and five embedded field test items. DDOE expects that grades 5 and 7 will have multiple forms, including embedded field test forms, per administration. Each form contains 24 operational items and 5 field test items. Each form has one operational item-cluster (5 items linked together by stimuli). The

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estimated time needed to complete the test is 60 minutes, with all items in a single section. Accommodated forms are delivered online and using Braille and paper forms.

Grade 11

Item types on operational forms will be distributed as follows:

- Selected Response Items (SR) -- 24 to 26 items
- Technology enhanced Items (TE) -- 14 to 16 items

Assessments in each administration have two categories of items. Cluster sets share a set of stimuli and on the operational form are comprised of three selected-response (SR) items and two TE items. Standalone items are either SR or TE. All items are worth one point each. The operational form will consist of 35 standalone items, one five item set, and five embedded field test items. DDOE expects that grade 11 will have multiple forms, including embedded field test forms. Each form contains 40 operational items and 5 field test items. Each form has one operational item-cluster (5 items linked together by stimuli). The estimated time needed to complete the test is 60 minutes, with all items in a single section. Accommodated forms are delivered online and using Braille and paper forms.

RESPONSE REQUIRED

Vendors must provide in their proposals:

- An outline, with corresponding timeline for Social Studies Assessment development, highlighting key stages in the process, including the use of the existing item and cluster bank for early development as well as ongoing work and proposed upgrades for new development, test administration, scaling and maintenance of the assessments.
- A summary of experience with, or other qualifications relevant to, principled approaches to assessment design. Example templates for items or tasks similar to those requested for use with assessment should be included in this summary.
- A summary of previous experiences or a listing of previous clients/states for whom you have developed a large-scale assessment program used for accountability.

2.B.5 Development of Test Specifications

In collaboration and approval from with the DDOE, the Vendor shall be responsible for continued refinement and/or development of the test specifications for each assessment which will include the basic test design/blueprint, minimum number of items for each content standard, specifications for multiple-choice, technology-enhanced, and constructed-response items, content parameters for each test, etc. These specifications will be used to guide the item development and test form construction.

The Vendor will be responsible for the development, management, administration and maintenance of the social studies assessment and schedule, based on the approach, methodology, and tools suggested by the Delaware Department of Education. The Vendor will be responsible for regular reporting against the plan and recommending corrective actions to be taken in the event of

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unanticipated changes to the plan or schedule, and regular updates to the plan and schedule to accommodate any changes.

The Social Studies DeSSA is designed to:

- measure all four social studies content areas - [civics, economics, geography, history](#) - and the [Common Core State Standards for Literacy in History/Social Studies \(CCSS\)](#) equally;
- measure all standards of each content area;
- measure the standard at the grade cluster level. This description of the standard contains both the concept of that content (civics, economics, geography, and history) and the level of critical thinking that should be achieved by the student through classroom instruction and assessment.

The Social Studies item clusters and items on the DeSSA should be designed to measure how well a student understands the concept identified in the standard; applies knowledge and understanding using the skill or process identified in the standard; and connects knowledge to the concept and skill/process in order to explain, support, or justify an explanation.

Achievement of the Delaware Social Studies Standards requires students to analyze or apply knowledge and understanding to a new context or situation. Students make that transfer of knowledge and understanding when they apply their understanding of the standard to the context of the item(s). These standards also require an emphasis on critical analysis, problem-solving, and application of knowledge. Items should center on students demonstrating understanding by transferring concepts into new contexts rather than recalling correct answers. Students should demonstrate understanding, analysis, and application by using the tools of social studies “to think with” — maps, charts, graphs, diary and journal entries, photographs and drawings, newspaper headlines, political surveys, etc.

Each assessment will require item clusters with varied item types addressing concepts and skills inherent in these standards with each question. Additional stand-alone items measuring Delaware Social Studies Standards will be included to complete the test form(s).

To ensure proper test security and item longevity, additional forms will be necessary for each assessment. Item development will be the responsibility of the Vendor with content advisory oversight and review being the responsibility of Delaware educators.

Basic Terminology

To provide additional clarity, an outline of the assessment terminology used throughout this document is provided in this section. Many of these terms are relevant to assessment in general but may have a specific meaning when referenced in the context of social studies assessment and item clusters.

- **Item cluster:** A set of interrelated items that are linked to a common stimulus (or set of stimuli).

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- **Item:** An individual assessment element, within the structure of an item cluster, that includes item-specific stimulus material (optional), a question/prompt, answer/options or an answer field, scoring criteria, and metadata.
- **Item part:** The smallest element requiring a response within an item. (An example might be a two-part item consisting of a multiple-choice item part followed by a constructed-response item part that asks the student to explain the answer chosen in the multiple-choice item part.)
- **Item type:** The most general description of the assessment format of a particular item, divided into three main categories: selected response, constructed response, and technology-enhanced items.
- **Selected response:** An item type in which the response consists of one or more options chosen from a list of options.
- **Technology-enhanced item:** A computer-delivered item type in which the response requires specialized computer interaction that is beyond selected response or constructed response interactions.
- **Item subtype:** A specific assessment format available within an item type (e.g., multiple choice and multiple select are subtypes of the selected-response item type).
- **Stimulus:** A component of an item or cluster that does not directly require a student response. A stimulus can include one or more of the following: text, audio, video, animation/simulation, experimentation, activity, and/or demonstration. “Text” in social studies can refer to a written passage, graph, chart, table, map, survey results, or other authentic, previously published work.
- **Stem:** The statement of an item question or prompt to which the student responds.
- **Performance Expectation (PE):** The assessable unit, or grade-cluster benchmark, of the Delaware Social Studies Standards.
- **Performance Expectation grouping:** A selection of 2–3 PEs to be assessed together within an item cluster.
- **Social Studies context:** The main idea upon which an item cluster focuses provides the context necessary to determine which PEs can be bundled together naturally. Interdisciplinary, integrated approaches that require understanding of historical contexts and application of skills to contemporary issues are essential to help students understand both the boundaries and the relationships between the four disciplines of social studies. Examples of social studies context that could be considered for the main idea include: explaining patterns of historical continuity and change, analyzing solutions for reducing poverty, examining immigration effects and policies, predicting the effects of fiscal and monetary policy, understanding civil rights and due process, explaining the role of banks in the community and economy, evaluating the impact of changes to ecosystems, understanding the processes that affect the location of economic activities, monitoring international trade, understanding responsibilities of citizenship, participating in conservation efforts or with volunteer organizations tackling social concerns.

Item Types and Test Format

The Social Studies DeSSA should mirror how content is taught and tested in the classroom and must be structured in a manner that supports an evidence-based approach to gathering the information necessary to support a specific claim about what a student knows and is able to do.

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These claims are found in the Delaware Social Studies Grade-Cluster benchmarks and may be grouped together within an item cluster.

Stand-alone items may include multiple item types, listed in Table 1 (page 10). Item clusters will be made up of item stimuli with varied item types connected to each stimulus addressing the targeted standards with each question.

The first step in item cluster development entails making inferences about what students should know and be able to do from the Delaware Social Studies Standards. These may be bundled (within the blueprint and grade-level content area) to support rich item clusters, as a teacher might do in the process of investigating and explaining an overarching social studies context.

An integral part of an item cluster is the stimulus package, which should be based on real-world social studies contexts that are representative of topics studied and learned in the classroom. Item clusters or assessment tasks consisting of a stimulus and a variety of item types connected together around the main idea in a social studies context are the key components of a DeSSA social studies assessment. Once the foundation of an assessment is formed with several item clusters, scaffolding within and across assessment tasks can help guide students through a series of progressively more challenging interrelated questions to better provide evidence of the knowledge and skills of students across a wide range of ability and understanding. [Click here to see an existing practice test with representative item clusters.](#)

As defined in Basic Terminology, a *stimulus* is a component of the cluster that does not directly require a student response. A stimulus can include one or more of the following:

- text;
- audio;
- video;
- animation/simulation;
- experimentation;
- discussion;
- activity;
- demonstration.

Five items will be associated with each stimulus to create an item cluster. Each item is inextricably linked to the stimulus and to the other items within the item cluster, and the stimulus may be interspersed among the items to add information as needed. This means that student exposure to a stimulus is considered essential in order to respond correctly to any individual item. Testing time for each item cluster will be content dependent. Acknowledging this, it is presumed that a test form and individual administration in a grade will constrain overall testing time to an average of 30 minutes. An item cluster typically contains 5 items.

For Grades 4, 6, 8 Through Year Administration

It is the DDOE's intention that each administration form (e.g. Fall, Winter, Spring) will have 15 items (1 item cluster of 5 items, and 10 stand-alone items). Five additional item slots (whether in an item cluster or stand-alone items) will be used for field testing. Over the course of the school year, students will see 45 operational items and 15 field test items. It is the DDOE's intention that construction of Technology Enhanced (TE) Items will depend on the alignment

between the intent of the standards and the type of the item. It is the DDOE's intention that 1/3 to 1/2 of a form include TE items.

For Grades 5 and 7 Through Year Administration

It is the DDOE's intention that each administration form (e.g. Winter and Spring) will have 24 items (1 item cluster of 5 items, and 19 stand-alone items). Six additional item slots (whether in an item cluster or stand-alone items) will be used for field testing. Over the course of the school year, students will see 48 operational items and 12 field test items. It is the DDOE's intention that construction of Technology Enhanced (TE) Items will depend on the alignment between the intent of the standards and the type of the item. It is the DDOE's intention that 1/3 to 1/2 of a form include TE items.

2.B.6 Item Development

The requirements below are intended to be general and applicable for all assessments. The Vendor will be responsible for and must provide proposals describing item development processes and procedures. The Vendor shall propose a plan for item development or acquisition, field testing of items and the full implementation of tests.

RESPONSE REQUIRED

Vendors must provide in their proposals:

- An approach to innovative item types and the manner in which they would eventually support Delaware's inclusion of complex items such as simulations.
- Cost-efficient item development/acquisition processes which include, but are not limited to, collaboration and item sharing with other states; purchase of items from multiple sources, including the Vendor; and development of new items.
- Criteria that will be used to judge content validity and the technical quality of the items
- Criteria that will be used to develop test items across a wide range of content and cognitive difficulty levels;
- Criteria that will be used to judge the item quality and procedures for ensuring that the above criteria will be used consistently throughout the item development process.
- A system for field testing new items, item clusters, and stimuli. Field test items will not be included in students' scores. Vendors must demonstrate that their approach to field testing will produce results that can be incorporated into a best practice approach to item calibration and banking.

Ongoing Item Development

The development of the DeSSA will involve several Delaware Committees, the DDOE, and the Vendor. Each of these committees have the mandate to use the Delaware Social Studies Standards as their primary decision-making and policy guide. To that end, it is not enough for them merely to *align* their work on the DeSSA with the standards; the DeSSA must *measure* performance against the standards.

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The work of the Vendor in producing items is ongoing. Their assignment is to produce a sufficient number of items to fill the Delaware item banks, and then constantly replenish Delaware item banks in order to keep a sufficient supply of items available to fulfill the needs of the DeSSA. Items and/or the item clusters will be refreshed annually in order to maintain test security and reduce the recall of memorable items and stimuli. The Vendor shall propose a plan for best serving the needs of Delaware in producing high quality items that measure student performance against Delaware content standards. The vendor will provide items and item clusters as specified in the RFP/contract, subject to the review and consent of the Delaware Content Advisory Committees.

Each item and item cluster will also be reviewed for fairness or bias to ensure that the DeSSA provides equitable measures for students with alternative cultural and ethnic backgrounds and diverse learning styles. The Vendor shall be responsible for the meeting of the fairness/bias review committee. The Vendor shall be responsible for delivering a report, summary, and/or minutes to the DDOE of the decisions and discussions held by members of the Benchmarking, Data Review, Content Advisory, and Fairness/Bias Committees in order to provide documentation of the process related to item development and selection for field testing.

Field testing of Items

Field test items and/or item clusters should be embedded in the operational test. The Vendor should identify a strategy for embedding such items and/or item clusters so as to provide the appropriate data for determining its quality and appropriateness for inclusion in a future live administration.

The goal in administering field tests will be to determine the:

- quality of items and item clusters including supporting graphics, charts, etc.;
- quality of the scoring rubrics and the capacity of the item and item cluster to produce high quality anchors;
- clarity of directions to students and examiners; and,
- feasibility and reliability of tools and manipulatives (such as quality of podcasts, video, or other graphics embedded in items).

RESPONSE REQUIRED

The Vendor shall describe all procedures and costs associated with development and field testing of new items of varying types, editorial expertise, layout, and graphics.

Accommodations and ADA

Assessments must comply with the provisions of the Americans with Disabilities Act of 1990. Assessment must include accommodations and enhancements to individual students including capacity to securely print reading passages, use tests presented in a language other than English, adjust the size of the items and graphics, use pre-recorded wave files and convert item text to speech, and meet as many as possible of the other accommodations outlined in the [Accessibility Guidelines](#) and [Update](#). Accommodations must be able to be set by test administrators while approving students to take tests. Accommodations must also be set through an upload process in advance of student testing. Vendor should identify all accommodations

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available with the system and allow for online monitoring/tracking of accommodations by approved state, district and school personnel. Proposals shall include a discussion of the impact of the proposed accommodations on the validity of the tests and a method for “flagging” students’ scores resulting from nonstandard test administrations or those that result in invalid score.

Universal Design

The principles and practices of “universally designed” (UD) assessments are to be followed in the development and implementation of all components of the DeSSA. Any UD principles used must not affect the assessment validity for students with or without disabilities. As part of the development process, items should be reviewed by a fairness and bias committee to determine if they meet the following UD principles:

- Multiple means of Representation – variations in the manner in which the test is presented
- Multiple means of Expression – allowing a variety of ways in which a student can show what they know
- Multiple means of Engagement – allowing opportunities for establishing interest in tasks

See:

- NCEO: Considerations for the Development and Review of Universally Designed Assessments <http://www.cehd.umn.edu/nceo/onlinePubs/Technical42.htm>
- NCEO: A State Guide to the Development of Universally Designed Assessments <http://www.cehd.umn.edu/nceo/OnlinePubs/StateGuideUD/default.htm>
- NCEO: Universal Design Applied to Large Scale Assessments <http://www.cehd.umn.edu/NCEO/onlinepubs/synthesis44.html>