



DELAWARE DEPARTMENT OF TRANSPORTATION

State of Delaware

Request for Proposal

Title: **NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE
(NEVI)**

Contract ID: DOT2317-NEVI

- *Deadline to Respond* -

**Thursday, September 14, 2023
PRIOR TO 2:00 P.M. Local Time**



Responses to be received at:

State of Delaware
DEPARTMENT OF TRANSPORTATION
Administration Building
Contract Administration
800 Bay Road, Dover, DE 19901



QUESTIONS are to be submitted via [Bonfire Procurement Portal](#)

Responses to Questions will be posted in the Bonfire Procurement Portal.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE

ALL VENDORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" consisting of the following documents:

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INFORMATIONAL DOCUMENTS: *(not required to be returned with bid)*

- 1 – Sample Monthly Usage Report (Sample Report 1)
- 2 – Sample Subcontracting (2nd Tier) Quarterly Reporting (Sample Report 2)
- 3 – Proposal Reply Requirements

REQUIRED BID DOCUMENTS: *(MUST be completed and returned with your bid)*

- [ATTACHMENT A – NON-COLLUSION STATEMENT](#)
- [ATTACHMENT B – EXCEPTIONS](#)
- [ATTACHMENT C – SUBCONTRACTOR INFORMATION FORM](#)
- [ATTACHMENT D – BUSINESS REFERENCES](#)
- [ATTACHMENT E – CONFIDENTIAL AND PROPRIETARY INFORMATION](#)
- [ATTACHMENT F – BID BOND FORM](#)
- [ATTACHMENT G – QUARTERLY PROGRESS REPORT & DATA CAPTURE REQUIREMENTS](#)
- [ATTACHMENT H – SERVICE LEVEL AGREEMENT GUIDANCE](#)

- APPENDIX A – SCOPE OF WORK
- APPENDIX B – PROJECT BUDGET
- APPENDIX C – TECHNICAL PROPOSAL FORM
- APPENDIX D – TERMS AND CONDITIONS GOVERNING CLOUD SERVICES AND DATA USGAE POLICY
- APPENDIX E – TERMS AND CONDITIONS GOVERNING CLOUD SERVICES AND DATA USGAE AGREEMENT

All above documents are made part of this solicitation and are contained within this file, or available for download at the following site: [Bonfire Procurement Portal](#)

In order for your response to be considered, the REQUIRED BID DOCUMENTS must be executed completely and correctly within the [Bonfire Procurement Portal](#)

COMPETITIVE SEALED PROPOSAL

The Department has determined, pursuant to **Delaware Code Title 29, Chapter 6924(a)** that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not practical and/or not in the best interest of the State. The use of competitive sealed proposals is necessary to:

- Use a contract other than a fixed-price type; or
- Conduct oral or written discussions with vendors concerning technical and price aspects of their proposals; or
- Afford vendors an opportunity to revise their proposals through best and final offers; or
- Compare the different price, quality and contractual factors of the proposals submitted; or
- Award a contract in which price is not the determining factor.

NATIONAL ELECTRIC VECHICLE INFRASTRUCTURE

1. PROJECT INFORMATION

This Request for Proposal (RFP) issued by the Delaware Department of Transportation (DeIDOT) is for the purpose of acquiring Proposals from qualified firms to deploy, operate and maintain electric vehicle (EV) charging stations in affiliation with the U.S. Department of Transportation’s (DOT) Federal Highway Administration (FHWA) National Electric Vehicle Infrastructure (NEVI) Program. This request for proposals (RFP) is issued pursuant to 29 Del. C. §§ 6981 and 6982. All selected firms shall be expected to procure all necessary professional services, construction and/or project management to fulfill the grant requirements for the installation of public direct-current (DC) fast charging stations in Delaware that satisfy the established NEVI requirements.

1.1. KEY RFP DATES/MILESTONES

The following dates and milestones apply to this RFP and contract award. Vendors are advised that these dates and milestones are not absolute and may change by Addendum or due to unplanned events during the bid proposal and award process.

Activity	Due Date / Time
Pre-bid Conference:	Thursday, August 24, 2023 1:00 P.M.
Questions Due - No Later Than:	Thursday, August 31, 2023 3:00 P.M.
Final Questions/Answers Posted:	One week prior to Proposal Due Date
Proposals Due - Prior To Public Opening:	Thursday, September 14, 2023 2:00 P.M.
Contract Award	Within 90 days of bid opening

1.2. INQUIRIES & QUESTIONS

We welcome your interest in working with us, and we will be pleased to answer any questions you may have in formulating your response to this Request for Proposal.

Questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this RFP must make specific reference to the section(s) and page numbers of the RFP where applicable. All communications with DeIDOT regarding this RFP are to be made through email to the Bonfire Procurement Portal.

Questions must be submitted before the due date identified in the Key RFP Dates/Milestones for this RFP. All inquiries must be submitted in the Q/A section of the project listing in the [Bonfire Procurement Portal](#).

The Department’s response to questions will be posted, according to the Key RFP Dates/Milestones, under the project listing in Bonfire and to the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/>.

Responses issued by DeIDOT will be posted on the Bonfire Procurement Portal. Vendors should rely only on written statements issued by DeIDOT regarding this RFP. Information otherwise obtained is not valid.

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Department of Transportation
Contract No.DOT2317-NEVI

Direct contact with State of Delaware employees other than DelDOT's Contract Administration staff 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.

1.3. PREBID MEETING

A pre-bid meeting has been scheduled for the date and time shown in Section 1.1.

Pre-bid meeting will be held through TEAMS app. To obtain pre-bid meeting link, a request must be sent to dot.profservices@delaware.gov.

1.4. BID BOND REQUIREMENT

Each bidder must furnish a Bid Bond to the State of Delaware for the benefit of the Delaware Department of Transportation in the amount equal to 10% of the respective bid value. The bond shall be drawn upon an insurance or bonding company authorized to do business in the State of Delaware. If the enclosed standard State of Delaware bond form is not used, the substitute bond must reflect the minimum conditions specified in the standard form. ATTACHMENT F

A certified or bank check made out to the Delaware Department of Transportation in an amount equal to 10% of the respective proposed value may be submitted in lieu of a proposal bond. The deposits shall be returned to the successful bidder upon the execution of the formal contract. The deposits of unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or rejection of their bids. Bidders are made aware that Certified or Bank Checks submitted in lieu of Bond will be deposited, and unsuccessful bidders will receive payment of the value of the check from the state.

1.5. PERFORMANCE BOND REQUIREMENT

Contractors awarded contracts are required to furnish a Performance Bond to the State of Delaware for the benefit of the Delaware Department of Transportation with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted using a form supplied by DelDOT in the form of a good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware.

1.6. CONTRACT PERIOD

Each successful Vendor's contract shall be valid for a six (6) year period. The contract may be extended for up to two (2), one (1) year periods through negotiation between the Vendor and DelDOT. Negotiation should be initiated no later than ninety (90) days prior to the termination of the agreement period.

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 contract has been completed.

1.7. PRICES

Prices and/or rates shall remain firm for the initial six (6) year term of the contract, unless further negotiations are deemed necessary by the State. The pricing policy that you choose to submit must be clear, accountable and auditable and must cover the full spectrum of services required. Submittal must be structured as described.

1.8. PRICE ADJUSTMENT

The Vendor is not prohibited from offering a price reduction on its services or materiel offered under the contract. The State is not prohibited from requesting a price reduction on those services or materiel during the initial term or any subsequent options that the State may agree to exercise.

If agreement is reached to extend this contract beyond the initial period, DelDOT shall have the option of offering a determined price adjustment based on the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

1.9. SHIPPING TERMS

FOB destination, freight prepaid and allowed

2. SCOPE OF WORK

The Vendor(s) shall provide all equipment, materials and labor to supplement DelDOT's need for National Electric Vehicle as described herein. The contract will require the Vendor(s) to cooperate with DelDOT to insure the State receives the most current state-of-the-art material and/or services.

2.1. BACKGROUND

Delaware has successfully administered two DC fast charging grant programs through a competitive request for proposal (RFP) process. These grants were distributed from the Volkswagen's emission scam settlement that established Electrify America to fund deployment of EV charging infrastructure throughout the country. This experience gives the state a model to follow for the deployment of NEVI Formula Funding and will enable the state to quickly build out its AFCs.

Delaware's overall plan for fast charging along highway corridors is to build out corridor charging to NEVI requirements as quickly as possible and to be the first state to accomplish this goal. Delaware is a small state with only 96 miles from the most southern to the most northern point and between nine and 35 miles from east to west. This puts the First State at a great advantage to build out its AFCs with NEVI funded stations within the first two rounds of funding.

Delaware has three overarching goals to deploy stations around the state:

- **Goal 1** sites will facilitate the installation of new DCFC stations and upgrade existing DCFC stations every 50 miles.
- **Goal 2** sites will facilitate the installation of new DCFC stations and upgrade existing DCDC stations every 25 miles or less.
- **Goal 3** sites will facilitate the installation of level 2 and DCFC stations within communities that lack access to convenient neighborhood level charging.

Delaware has 259 miles of AFCs. Figure 1 displays Delaware's AFC designations, existing NEVI-compliant Electrify America Stations, and the general locations for proposed DCFC locations that would satisfy achieving Goals 1 and 2. These locations are generalized as specific site selection and site host coordination is the responsibility of the vendors responding to this RFP.

2.2. MANDATORY INSURANCE REQUIREMENTS

As a part of the contract requirements, the vendor 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 below with a carrier satisfactory to the State. All vendors/contractors must carry at least the following coverages:

- Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate, and
- Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to other, and
- 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.

Note: The State of Delaware shall not be named as an additional insured.

Before any work is done with the State, a Certificate of Insurance referencing the name and contract number stated herein, must be filed with DelDOT. The certificate holder is as follows:

**State of Delaware
Department of Transportation
P.O. Box 778 Dover, DE 19903
Contract: DOT2317-NEVI**

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

2.3. TECHNICAL SPECIFICATIONS

The Technical Specifications of this RFP are stated in **Appendix A**.

2.4. OR EQUAL (PRODUCTS BY NAME)

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified. DelDOT must approve any substitutions in writing.

3. PROPOSAL REQUIREMENTS

Interested firms must submit the material required herein or they may not be considered for the project:

1. Proposals must be received before the Proposal Due Date and Time, as identified in the Procurement Schedule for this RFP. Responses submitted by hard copy, mail, facsimile, or e-mail will not be accepted. Responses received after the Proposal Due Date and Time will not be considered.
2. **Upload your submission at:** <https://deldot.bonfirehub.com/portal/>

Important Notes:

- Logging in and/or uploading the file(s) does not mean the response is submitted. Users must successfully upload all the file(s) and MUST click the submit button before the proposal due date and time.
- Users will receive an email confirmation receipt with a unique confirmation number once the submission has been finalized. This will confirm that the proposal has been submitted successfully.
- Each submitted item of Requested Information will only become visible to DelDOT after the proposal due date and time.
- If the file is mandatory, you will not be able to complete your submission until the requirement is met.
- Uploading large documents may take significant time depending on the size of the file(s) and your Internet connection speed. The maximum upload file size is 1000 MB.
- Minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. Java Script must be enabled.

Need Help? Please contact Bonfire directly at Support@GoBonfire.com for technical questions related to your submission. You can also visit their help forum at <https://bonfirehub.zendesk.com/hc>.

3. **The Prime Consultant must be Registered**, or submit application for registration, with DelDOT at or before the time of submission in order to be considered. For registration information, click [here](#) .
4. **Submit one (1) Original and one (1) Redacted copy** of the Proposal. The original must be a .pdf file of the original signed proposal and should be clearly marked “Original” on the first page of the document. The redacted copy must be a .pdf file of the original signed proposal with any proprietary or confidential information redacted, and this copy should be clearly marked as “Redacted” on the first page of the document. The redacted copy is required even if the submission contains no proprietary or confidential information.

To determine what information may be considered proprietary or confidential and may be redacted from their Proposal, firms should review Delaware’s Freedom of Information Regulations here; <http://regulations.delaware.gov/AdminCode/title8/1400.shtml#TopOfPage>. Under Delaware FOIA law, 29 Del. C, §10002(1)(2), “Trade secrets and commercial or financial information...which is of a privileged or confidential nature” are “records that shall not be deemed public” and are therefore exempt from disclosure under FOIA.

3.1. COVER LETTER

Each proposal must have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the Vendor's ability to provide the services specified in the RFP. The cover letter shall be signed by an officer of the company who has the legal capacity to enter the organization into a formal contract with DelDOT.

3.2. TABLE OF CONTENTS

Each proposal must include a Table of Contents with page numbers for each of the required components of the proposal.

3.3. DESCRIPTION OF SERVICES AND QUALIFICATIONS

Each proposal must contain a detailed description of how the Vendor will provide the goods and services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the Vendor will provide that are not mentioned in this RFP. Vendors are encouraged to review the Evaluation criteria to see how the proposals will be scored and verify that the response has sufficient documentation to support each scoring criteria identified.

3.4. PRICES QUOTED

The prices quoted are those for which the material will be furnished F.O.B. DelDOT unless otherwise specified, and include all charges that may be imposed during the period of the contract. All prices quoted must be in U.S. Dollars.

Vendors may offer to add related materiel or services that have been identified as necessary. The Vendors and DelDOT must agree on the pricing of any addition in writing.

3.5. INTERPRETATION OF ESTIMATES/QUANTITIES

Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation. An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

3.6. NON-COLLUSION STATEMENT

Include a signed and notarized copy of the Non-Collusion Statement.
Must have original signatures and notary mark. **Use Attachment A.**

3.7. SUBCONTRACTORS

Subcontracting is permitted under this RFP and contract. Every subcontractor must be identified. Make as many copies of the form as needed. **Use Attachment C.**

3.8. BUSINESS REFERENCES

Provide at least three (3) business references consisting of current or previous customers of similar scope and value. 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. Please provide references other than DelDOT contacts. **Use Attachment D.**

3.9. CONFIDENTIALITY FORM

Complete and include the Confidentiality Form. If your submittal includes confidential information, list on the form the confidential areas of your submittal. Please check box if no confidential or proprietary information is submitted. **Use Attachment E.**

3.10. EXCEPTIONS FORM

Bidders may elect to take **minor exception** to the terms and conditions of this RFP. DelDOT will evaluate each exception according to the intent of the terms and conditions contained herein. DelDOT must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening, and listed on the Exceptions form. DelDOT maintains sole discretion to reject any vendor exceptions that are submitted. **Use Attachment B.**

3.11. BID BOND

One (1) completed paper copy of the Bid Bond paperwork, or Bank Check or a security of the bidder assigned to the Department of Transportation. **Use Attachment F.**

3.12. DBE GOAL

A five percent (5 %) DBE goal has been established OR: A DBE goal will be established on a task-by-task basis for the sum total of all federally funded tasks associated with this Agreement. The Department will require ongoing reviews and approval of good faith efforts before a Notice to Proceed is issued. Department DBE Program staff will monitor this Agreement to ensure that good faith efforts are being made to meet the DBE goal. DBE firms must be certified through DelDOT's DBE Program in order to qualify toward meeting the goal.

3.13. PROPOSAL SUBMISSION

Interested firms must submit the material required herein or they may not be considered for the project. Proposals must be received prior to the Submission due date and time indicated in Section 1.1 above. Proposals must be submitted through the [Bonfire Procurement Portal](#).

Facsimile and E-mail responses to this RFP are not acceptable. No response will be accepted after the due date and time. It is the responsibility of the submitter to ensure the Proposal is received on time. DelDOT's time is considered the official time for determining the cut-off for accepting submissions. To be considered, firms must submit the Proposal as set forth herein. Any variation, including additions, may negatively impact the scoring

3.13.1. EXAMINATION OF SPECIFICATIONS AND PROVISIONS

The Vendor shall examine carefully the proposal and the contract forms for the material contemplated. The Vendor shall investigate and satisfy itself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of any Special Provisions in the RFP and the contract. The submission of a proposal shall be conclusive evidence that the Vendor has made examination of the aforementioned conditions.

4. PROPOSAL EVALUATION

4.1. DISQUALIFICATION OF VENDORS

Any one or more of the following causes may be considered as sufficient for the disqualification of a vendor and the rejection of its proposal or proposals:

- 1.2.1. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
- 1.2.2. Evidence of collusion among vendors.
- 1.2.3. Unsatisfactory performance record as evidenced by past experience with DelDOT or on a State of Delaware contract.
- 1.2.4. Any suspension or debarment of the parent company, subsidiary or individual involved with the vendor by federal, any state or any local governments within the last five (5) years.
- 1.2.5. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- 1.2.6. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.

4.2. RESPONSIVENESS AND RESPONSIBILITY OF VENDOR

- 1.3.1. An individual proposal may be rejected for one or more of the following reasons:
 - 1.3.1.1. The respondent to the solicitation is determined to be nonresponsive or non-responsible.
 - 1.3.1.2. It is unacceptable.
 - 1.3.1.3. It is otherwise not advantageous to the State.
 - 1.3.1.4. The proposed price is unreasonable.
- 1.3.2. It shall be determined whether a vendor is responsible before awarding a contract. Factors to be considered in determining if a vendor is responsible include:
 - 1.3.2.1. The vendor's financial, physical, personnel or other resources, including subcontracts.
 - 1.3.2.2. The vendor's record of performance and integrity.
 - 1.3.2.3. Any record regarding any suspension or debarment.
 - 1.3.2.4. Whether the vendor is qualified legally to contract with the State.
 - 1.3.2.5. Whether the vendor supplied all necessary information concerning its responsibility.
- 1.3.3. If a vendor is determined to be non-responsible or non-responsive, the vendor shall be informed in writing.
- 1.3.4. DelDOT reserves the right to waive minor irregularities, or request additional information before determining if the Vendor is responsible and/or responsive. All Vendors will be afforded the same or similar opportunities, as necessary, and will be treated with equal regard before such determinations are finalized.

4.3. RIGHT TO CANCEL SOLICITATION

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

4.4. PROPOSAL EVALUATION COMMITTEE

The Selection Committee is generally comprised of representatives of DelDOT, other agency employees, and/or persons familiar with the subject matter.

1.5.1. The Committee reserves the right to:

- 1.5.1.1. 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.
- 1.5.1.2. Waive or modify any information, irregularity, or inconsistency in proposals received.
- 1.5.1.3. Request modification to proposals from any or all vendors during the contract review and negotiation.
- 1.5.1.4. Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- 1.5.1.5. Select for contract, or for negotiations, a proposal other than that with lowest costs.
- 1.5.1.6. Select more than one vendor pursuant to 29 Del. C. §6926. Such selections will be based on the highest rated Criteria and Scoring evaluations.

4.5. CRITERIA AND SCORING

Submittal	Element	Description	Max Points
Administrative Proposal	Team Structure	<ul style="list-style-type: none"> • Organizational chart showing all organizations involved by roles • Identification of a single Point of Contact person and POC’s qualification of effective management and communication • Existing and planned partnership and/or conditional site agreements 	5
	Qualifications and Experience	<ul style="list-style-type: none"> • Similar installations experience in the past 5 years • Additional relevant experience 	15
	Financial Capabilities	<ul style="list-style-type: none"> • Funding commitments, sources, and cash flow management • Who is responsible for costs and profits • Rate structure, payment options, and billing practices 	5
Technical Proposal	Work Approach	<ul style="list-style-type: none"> • Project planning • Design and permitting 	20

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Submittal	Element	Description	Max Points
		<ul style="list-style-type: none"> • Utility Commitment • Site preparation and construction • O&M duration and plan • Uptime plan • Data sharing • Schedule and timeline 	
	Siting	<ul style="list-style-type: none"> • Interchange score and access • Site characteristics • Safety and ADA compliance • Site readiness • Enhancements and amenities • Site layout and details 	15
	Future Proofing	<ul style="list-style-type: none"> • Potential for additional charging ports • Current and future ability to allow for parking and charging of MDVs/HDVs • Additional equipment that can improve site resiliency 	10
	Sustainability, Equity, Resilience, and Economic Development	<ul style="list-style-type: none"> • Renewable energy usage • Innovative technologies and battery storage • Use of DBE and/or MBE • Charging accessibility and equity principles, • Justice40 initiatives 	10
	Safety and Training	<ul style="list-style-type: none"> • Safety Considerations • EVSE Incident Plan (including vandalism protection and/or mitigation) • Workforce Training • Public and stakeholder engagement 	5
Financial Proposal	Funding Requests	<ul style="list-style-type: none"> • Overall eligible costs proposed • Overall amount requested 	10
	Cost Breakdown and Narrative	<ul style="list-style-type: none"> • Breakdown of expected costs • Narrative describing costs 	5

Selection Committee members will assign up to the maximum number of points listed for each of the above criteria which determines individual ranking. The Department’s ranking is the averaged ranking of all Committee members. Upon review of the Department’s ranking the Committee will;

- Select the firm(s) with the highest Department ranking and award a contract(s); or
- Conduct negotiations with offerors who submit proposals found to be reasonably likely to be selected for award. If negotiations are held, Best and Final Offers will be requested from those offerors.

1.6.1. References

The Committee 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, DelDOT may choose

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

1.6.2. Oral Presentations

Vendors who submit proposals found to be reasonably likely to be selected for award may be invited to make oral presentations to the Committee. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

5. **AWARD**

DelDOT reserves the right to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

DelDOT reserves the right to waive technicalities, to reject any or all bids, or any portion thereof, to seek new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of DelDOT, the best interest of the State will be promoted thereby.

DelDOT will award this contract within ninety (90) days from the date of opening proposals to the most responsible and responsive vendor(s) who best meets the RFP terms and conditions, or all proposals will be rejected. A formal contract must be executed with the successful firm(s) within 20 days after award.

5.1. **STATE OF DELAWARE BUSINESS LICENSE**

Prior to receiving an award, the successful Vendor(s) shall either furnish DelDOT 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: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

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

5.2. **MATERIAL VERIFICATION**

Before any contract is awarded, the successful Vendor(s) may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

5.3. **CONTRACT IMPLEMENTATION**

No order is to be shipped, or employee of the Vendor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A Notice to Proceed may also be required prior to beginning work if directed in this RFP.

5.4. 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.

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

5.5. WARRANTY

In addition to any warranty requirements listed or proposed, the successful Vendor(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

5.6. PERSONNEL, EQUIPMENT AND SERVICES

The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.

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.

5.7. ASSIGNMENT

This contract shall not be assigned except by express prior written consent from the Agency.

5.8. SUBCONTRACTS

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal and agreed to in writing by DelDOT or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the RFP and with all local, State and Federal Laws. The vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State.

5.9. LAWS TO BE OBSERVED

The vendor is presumed to know and shall strictly comply with all Federal, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The Vendor shall indemnify and save harmless the State of Delaware, DelDOT, and all Officers, Agency and Servants thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by itself, by its employees, or by its subcontractor (s).

5.10. PERMITS AND LICENSES

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the Vendor at its own expense.

5.11. 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 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.

5.12. 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 or DelDOT 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 DelDOT.

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.

5.13. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the State agrees not to use any design or engineering plans prepared by the vendor for anything other than their intended purpose under this Contract. The Vendor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

5.14. CONTRACT DOCUMENTS

The executed Contract, DelDOT's Request for Proposal with Attachments and Appendices, the Purchase Order(s), and the Vendor's submitted Proposal shall be a part of and constitute the entire Agreement entered into by the State of Delaware and any Vendor. In the event there is any discrepancy between any of these contract documents, the former prevails over the latter.

6. TERMS AND CONDITIONS

6.1. 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, and are subject to the approval and acceptance of DelDOT.

The Department requires the use of various electronic applications for various documentation processes. These processes will be identified, and the Contractor's required use will be detailed during the Preconstruction Meeting. No additional payments will be made to the contractor to use or interface with the applications.

6.2. RIGHTS AND OBLIGATIONS

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been approved by the Secretary of Finance, and all procedures of the Department of Finance have been complied with. A separate purchase order shall be issued for every project or order.

6.3. ORDERING PROCEDURE

Successful Vendor(s) are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Depending on the nature and scope of the event, DelDOT and each State agency or other governmental entity shall be responsible for contacting the awarded vendor directly for all required resources. All consumables delivered by the Vendor and received by DelDOT or a State agency or other governmental entity, become the property of that State agency or entity. Orders may be accomplished by written purchase order, telephone, email, fax or computer on-line systems.

6.4. BILLING

The Vendor is required to "Bill as Shipped" to DelDOT or the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number. The Vendor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

Agencies will make every effort to achieve available discount opportunities under this contract. Vendors shall be required to report semi-annually opportunities to enhance the discounts achieved.

6.5. INVOICING

After the award(s) are made, DelDOT will forward their purchase orders ("P.O.") to the successful Vendor(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an acceptable invoice from the vendor.

6.6. METHOD OF PAYMENT

3.6.1. For each P.O. issued as part of this contract, the State will pay Vendor monthly, within thirty (30) days of receipt of the Vendor's billing, the amount which is legitimately earned by the Vendor, and supported by data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.

Final settlement for total payment to the Vendor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.

3.6.2. No premium time for overtime will be paid without prior written State authorization. Any indirect overhead cost shall not be applied to the premium portion of the overtime.

3.6.3. DelDOT, agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. 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. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACI or check. Should a Vendor wish to provide a financial incentive to not process payment by P-Card in their proposal, they are to prepare their proposals to clearly outline any incentives for alternative payment methods the Vendor is willing to accept.

6.7. PRODUCT SUBSTITUTION

All items or services delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the proposal unless specific approval is given by the Agency to do otherwise. Awarded vendors are highly encouraged to offer any like substitute product (s), either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In all cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

6.8. CHANGES

Both parties may, from time to time, require changes in the services to be provided by the Vendor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

6.9. SCHEDULE FOR PERFORMANCE OF WORK

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, the State of Delaware shall be the sole judge of the term "reasonable". If the Vendor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated and the State will forthwith proceed to collect for nonperformance of work.

6.10. VENDOR- OWNED EQUIPMENT REMOVAL

The awarded Vendor shall remove all rental equipment and supplies from the event location (s) no later than an agreed to date once all contract obligations by the Vendor have been met.

6.11. CONTRACT EXTENSION

DelDOT reserves the right to extend this contract on a month-to-month basis for a period of up to three months.

6.12. LAWS OF DELAWARE

This Agreement and the terms thereof shall be construed in accordance with the laws of the State of Delaware. In addition, Vendor(s) agrees to the jurisdiction and venue of a competent court within the State of Delaware.

7. GENERAL PROVISIONS

7.1. AUTHORITY OF AGENCY

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of DelDOT or the Agency shall be final and binding.

7.2. FUNDING OUT or NON-APPROPRIATION

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

7.3. INDEPENDENT CONTRACTORS

The parties to any contract from this solicitation shall be independent contractors to one another, and nothing herein shall be deemed to cause the 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.

7.4. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES

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.

7.5. EMERGENCY TERMINATION OF CONTRACT

- 4.5.1. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- 4.5.2. In the event the Vendor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

7.6. INDEMNIFICATION

4.6.1. General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract.

4.6.2. 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:

- 4.6.2.1. Procure the right for the State of Delaware to continue using the Product(s);
- 4.6.2.2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- 4.6.2.3. 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.

7.7. NON-PERFORMANCE

In the event the Vendor does not fulfill its obligations under the terms and conditions of this contract, in addition to proceeding with termination of the contract, the ordering agency may terminate any individual orders in accordance with General Provisions, Item titled as “TERMINATION OF INDIVIDUAL PURCHASE ORDERS” below and purchase equivalent product on the open market. Regarding any such open market purchase, payment for any difference in cost or expense in excess of the contract prices for reasonably equivalent products or services herein shall be the responsibility of the Vendor and shall be submitted to the State no later than 30 days following the delivery of the State’s invoice detailing the open market purchase. Under no circumstances shall monies be due the Vendor in the event open market products can be obtained below contract cost. Any monies charged to the Vendor may be deducted from an open invoice.

7.8. FORCE MAJEURE

Neither the vendor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

7.9. VENDOR NON-ENTITLEMENT

State of Delaware Vendors for Materiel and for Services shall not have legal entitlement to utilize any Central Contract held by the State of Delaware. The Vendors may not seek business from another Vendors’ Central Contract for the purpose of preparing a bid or proposal to the State of Delaware. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract unless they are considered a “Covered Agency” as defined by Title 29 Chapter 69 of the State Procurement Code or otherwise permitted by law.

This is not a prohibition from any Vendor choosing to work with another Vendor who holds a State Central Contract for private business.

7.10. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

- 4.10.1. **Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least five (5) 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 in the performance of the P.O. shall, at the option of the Agency, 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 Agency.
- 4.10.2. **Termination for Convenience:** The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) 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 department, become its property and the Vendor shall be entitled to receive

compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

- 4.10.3. **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 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.

7.11. TERMINATION OF CONTRACT

The contract awarded as a result of this RFP may be terminated as follows by DelDOT.

- 4.11.1. **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 thirty (30) 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 not 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 affect 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.

- 4.11.2. **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 sixty (60) 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.
- 4.11.3. **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 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.

7.12. PUBLIC INSPECTION OF PROPOSALS

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

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record, and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure, or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions.

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

7.13. TAX EXEMPTION

- 4.13.1. Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.
- 4.13.2. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Vendor. Each Vendor shall take its exemption into account in calculating its bid for its work.

7.14. AGENCY USE CONTRACT

Pursuant to 29 Del. C. §6904(e) respectively, 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.

7.15. SILENCE OF SPECIFICATIONS

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

7.16. APPLICABLE LAW AND JURISDICTION

This bid, any resulting contract, and any and all litigation or other disputes arising therefrom, in connection with, or related hereto shall be governed by the applicable laws, regulations and rules of evidence of the State of Delaware. Bidder submits to personal jurisdiction in the State of Delaware. Any and all litigation or other disputes arising out of, in connection with, or relating to this bid, and any resulting contract, shall be brought exclusively in a court in the State of Delaware or the United States District Court of the District of Delaware as applicable.

7.17. 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.

7.18. PATENTED DEVICES, MATERIAL AND PROCESSES

- 4.18.1. The Vendor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner, and shall file a copy of this agreement with the Agency.
- 4.18.2. The Vendor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

7.19. INTEREST OF VENDOR

The vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The vendor further covenants, that in the performance of this contract, no person having any such interest shall be employed.

7.20. 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.

7.21. TESTING AND INSPECTION

The State of Delaware reserves the right to conduct any test or inspection it may deem necessary to ensure equipment, materials and services conform to contract requirements.

7.22. COVENANT AGAINST CONTINGENT FEES

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

7.23. GRATUITIES

- 4.23.1. If it is found, after notice and hearing, by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Vendor or any agent of the State with a view toward securing a contract, or securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performance of this contract, the State may, by written notice to the Vendor, terminate the right of the Vendor to proceed under this contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which the State makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this contract; and
- 4.23.2. In the event this contract is terminated pursuant to subparagraph “a”, the State shall be entitled (i) to pursue the same remedies against the Vendor, and (ii) to exemplary damages, as a penalty in addition to any other damages to which it may be entitled by law, in an amount which shall be not less than three, nor more than ten, times the costs incurred by the Vendor in providing any such gratuities to any such officer or employee. The amount of such exemplary damages shall be in the sole discretion of the State.

7.24. 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.

7.25. 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.

7.26. 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.

A complete and accurate Usage Report (**Attachment 8**) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to vendorusage@state.de.us,

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with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15th will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment 9.

Accurate 2nd Tier reports shall be submitted to the contracting Agency’s Office of Supplier Diversity at vendorusage@delaware.gov on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

7.27. 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.

7.28. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

- 4.28.1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any employee or applicant for employment 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 contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post

in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

4.28.2. During the performance of this contract, the contractor agrees as follows:

4.28.2.1. The contractor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will not discriminate against any individual 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 contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

4.28.2.2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin.”

The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

7.29. ENVIRONMENTAL PROCUREMENT REQUIREMENTS

Energy Star - If applicable, the Vendor must provide products that earn the ENERGY STAR rating and meet the ENERGY STAR specifications for energy efficiency in order to keep overall event costs to a minimum. The Vendor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.

Green Products – third party certification of green products accepted from GSS w/approved green certification shall be offered wherever available in addition to or as a substitute for non-green products. Vendors shall report all green items procured during the monthly reporting period using the Usage Report that will be provided to the awarded Vendor(s).

Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found: [Environmentally Preferred Purchasing Policy](#)

7.30. 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.

7.31. 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 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](#)

7.32. MINIMUM WAGE RATES

State of Delaware Prevailing Wage Rates are not applicable to this project.

7.33. PREVAILING WAGE

State of Delaware Prevailing Wage Rates are not applicable to this project.

7.34. IRS 1075 Publication

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.

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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.

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 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 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.

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.

7.35. CLOUD AND EXTERNAL HOSTING

Firms will be required to review and confirm they can adhere to the following:

- all [State Standards](#);
- Terms and Conditions Governing Cloud Services and Data Usage Policy. APPENDIX D
- Terms and Conditions Governing Cloud Services and Data Usage Agreement. APPENDIX E

7.36. SECURITY

As computer, network, and information security are of paramount concern, DelDOT wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. Vendor's system shall meet or exceed the requirements of the most recent version of the State of Delaware Information Security Policy (SE-ESP-001), obtained from <https://dti.delaware.gov/technology-services/standards-and-policies/>.

It shall be the duty of the Vendor to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by DelDOT. Vendor's agreement shall not limit or modify liability for information security breaches, and 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) arising out of such breaches. In addition to all rights and remedies available to DelDOT in law or in equity, DelDOT shall have the right to set off from any payment made to Vendor all damages, costs and expenses caused by any information security breaches. To the extent that there is a conflict between this paragraph and the Cyber Liability Addendum (Cyber Responsibilities, Liability and Insurance Attachment), the terms of the Cyber Liability Addendum shall control.

7.37. OWNERSHIP, SOURCE CODE ESCROW, AND LICENSING

Once the system is deployed, DelDOT shall retain ownership of all tests, production, and historical data produced by the proposed system.

In the event that custom software development is required and developed by Vendor specifically and solely for DelDOT (the "Custom Software"), DelDOT shall own the entire rights (including copyrights, copyright applications, copyright renewals, and copyright extensions), title and interests in and to the Custom Software development documentation, software, and any other intellectual properties created for custom software and versions thereof, and all works based upon, derived from, or incorporating works thereof, and in and to all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the custom software and copyrights arising there from, and in and to all rights corresponding to the custom software and versions thereof.

Custom Software developed to enhance existing commercial off the shelf software to conform to minor aspects of the Technical Requirements per the Request for Proposal Scope of Work is not considered as DelDOT-owned per conditions defined herein but must be included in the escrowed source code.

Vendor is to deliver source code in escrow for all Software programs under this Agreement with all support resource files needed to edit, compile and link these programs on the Department's network. The rights of the Department in this respect shall survive for a period of twenty (20) years. The Escrow Agreement must be executed between the Vendor, Department, and Escrow Company prior to issuance of the Notice to Proceed. Escrow account costs are borne by the Department.

Vendor is to deliver all documentation concerning protocol for Custom Software, source code, program listings, and description of software infrastructure, system architecture, database design, procedure manuals, hardware utilization, and instructions necessary to convert the source code into an operational system such that upon the failure or demise of the Vendor or Vendor's partners, the Department has access to such information limited in use only by the scope of this contract.

Vendor shall transfer to, or purchase for the Department, licenses for software acquired in conjunction with this project, including all original media, documentation, warranties, licenses, and applications software.

7.38. WARRANTIES

The Contractor warrants that the services, and all parts thereof, shall be (a) performed by the Contractor, its employees and subcontractors, utilizing the skill, judgment, and attention of experienced and competent professionals having extensive experience in the performance of the services; (b) consistent with the technology and other practices expected from similar firms of national reputation performing services of a similar nature; (c) conducted in a safe, prudent, careful, and workmanlike manner; and (d) conformed to the standard of care expected from similar firms of national reputation performing services of a similar nature. The Vendor further warrants that any documents, computer disks, printouts, plans, layouts, or other items provided under the Contract Documents, whether by the Vendor or its subcontractors, shall be free from any and all claims, demands, encumbrances, security interests and liens, and that the Vendor shall defend Department's title thereto.

7.39. BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Secretary of the Delaware Department of Transportation. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Secretary. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Secretary's representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by DelDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of the other parties' employees, agents, or others for whose acts that party is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. Contractor acknowledges that DelDOT's liability is limited by law in 2 Del. C. §1329.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between DelDOT and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by DelDOT or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

8. **DEFINITIONS**

The attached Definitions apply to this Request for Proposal. The requirement to furnish a bid bond and performance bond is applicable unless waived. Vendors or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting a proposal.

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

STATE: The State of Delaware

AGENCY: Delaware Department of Transportation (DelDOT).

BID INVITATION: The "Request for Proposal" is a packet of material sent to vendors and consists of related documents and enclosures.

BOND: The approved form of security furnished by the Vendors and its surety as a guaranty of good faith on the part of the Vendor to execute the work in accordance with the terms of the contract.

CONTRACT: The written agreement covering the furnishing and delivery of material or work to be performed.

DESIGNATED OFFICIAL: The agent authorized to act for an Agency.

GENERAL PROVISIONS: General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time.

PROPOSAL: The offer of the Vendor submitted on the approved form(s) and setting forth the Vendor's offer and prices for performing the work or supplying the material or equipment described in the specifications.

RFP: Request for Proposal.

SPECIAL PROVISIONS: Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

SURETY: The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the Vendor's payments of all debts pertaining to and for its acceptable performance of the work for which he has contracted

VENDOR: Any individual, firm, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

VENDOR'S DEPOSIT: The security designated in the proposal to be furnished by the Vendor as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to it.

STATE OF DELAWARE
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 Contract No. **Error! Reference source not found.**

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Informational Document- 1.
 Sample Report 1

STATE OF DELAWARE
 MONTHLY USAGE REPORT

FOR ILLUSTRATION PURPOSES ONLY

State of Delaware									
Monthly Usage Report									
Supplier Name:				Insert Contract No.	Report Start Date:				
Contact Name:					Report End Date:				
Contact Phone:					Today's Date:				
Agency Name or School District	Division or Name of School	Budget Code	UNSPSC	Item Description	Contract Item Number	Unit of Measure	Qty	Contract Proposal Price/Rate	Total Spend
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to vendorusage@state.de.us. It shall contain the six-digit department and organization code for each agency and school district.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Informational Document- 2.
 Sample Report 2

FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																	
Subcontracting (2nd tier) Quarterly Report																	
Prime Name:						Report Start Date:											
Contract Name/Number						Report End Date:											
Contact Name:						Today's Date:											
Contact Phone:						*Minimum Required			Requested detail								
Vendor Name*	Vendor TaxID*	Contract Name/Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran/Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id	Date Paid

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorousage@state.de.us

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Informational Document- 3.

PROPOSAL REPLY 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 submitted in ELECTRONIC format 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. Each applicant must have or be able to secure necessary property rights, easements, right of way and access to the property for the stations. Documentation of site control (e.g., a letter of commitment, lease, or property title) must be included in the grant application.
4. Pricing as identified in the solicitation
5. **Attachment A** – One (1) completed, signed and notarized copy of the Non-Collusion Statement. *MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.*
6. **Attachment B** - One (1) completed, signed paper copy of Exceptions
Please check box if no information
7. **Attachment C** – One (1) completed signed paper copy of the Subcontractor Information Form.
One form for each Subcontractor, if no Subcontractors submit form and mark it N/A.
8. **Attachment D**– One (1) completed Business References Form.
Please provide references other than State of Delaware contacts.
9. **Attachment E** One (1) completed Confidentiality Form.
Please check box if no confidential or proprietary information is claimed.
10. **Attachment F** One (1) completed, signed paper copy of the Bid Bond paperwork.
Include Surety Power of Attorney. Bond not required if submitting other acceptable security.
11. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.
12. 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.
13. Complete all appropriate attachments and forms as identified within the RFP.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (**NEVI**)

14. 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 2.2 (Mandatory Insurance Requirements).
15. The Vendor must provide documentation from the electric utility company that will serve each proposed DC fast charging station. The document must indicate whether adequate amperage is available and/or include a cost estimate of associated electrical upgrades if necessary.
16. The location of the proposed DC fast charging stations must be clearly outlined in the submitted application.

Please provide:

- a. A regional map showing the location of the proposed DC fast charging stations in relation to other stations and designated Federal Highway Administration Alternative Fuel EV Corridors.
 - b. A detailed site map depicting the location of the charging stations with respect to parking, site egress and ingress, buildings, etc.
 - c. GPS coordinates of the proposed stations location
17. All Vendors must include an Operations and Maintenance Plan with their application.
 18. The Vendor must demonstrate that the proposed project budget is reasonable, applicable, and eligible for funding.
 19. The Vendor and must set forth a reasonable and achievable timeline for project completion.
 20. All projects must be located in the state of Delaware.

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.

PUBLIC BID OPENINGS

The public bid opening insures the citizens of Delaware that contracts are being bid fairly on a competitive basis and comply with Delaware procurement laws. DelDOT is required by law to publicly open the bids at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the bid opening is to reveal the name(s) of the bidders(s), not to serve as a forum for determining the apparent low bidders. The disclosure of additional information, including prices, shall be at the discretion of DelDOT until such time that the responsiveness of each bid has been determined. After receipt of a fully executed contract(s), the results will be posted online in order to review pricing and other non-confidential information.

STATE OF DELAWARE
Department of Transportation
Contract No. **Error! Reference source not found.**

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

NOTE: ONLY THE BIDDER'S NAME MAY BE READ AT THE BID OPENING

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: A

NON-COLLUSION STATEMENT

This is to certify that the undersigned bidder 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 bid submitted this date to the Department of Transportation.

It is agreed by the undersigned bidder that the signed delivery of this bid represents the bidder'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 Transportation.

	Corporation
	Partnership
	Individual

COMPANY NAME _____ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE _____

SIGNATURE _____ **TITLE** _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER _____

COMPANY CLASSIFICATIONS:	Certification type(s)	Circle all that apply	
CERT. NO.: _____	Minority Business Enterprise (MBE)	Yes	No
	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 BE SIGNED, NOTARIZED AND RETURNED FOR YOUR PROPOSAL TO BE CONSIDERED

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

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: B

EXCEPTION FORM

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

Paragraph # and page #	Exceptions to Specifications, terms or conditions	Proposed Alternative

Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: C

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO.	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		

Note: Add additional pages as needed.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: D

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 list the contract.

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.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: E

CONFIDENTIALITY FORM

By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

Confidentiality and Proprietary Information

Note: Add additional pages as needed.

NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI)

Attachment: F

10% BOND TO ACCOMPANY PROPOSAL
(NOT NECESSARY IF CERTIFIED CHECK IS USED) OR BOND IS WAIVED

KNOW ALL MEN BY THESE PRESENTS That _____ of _____ of the County of _____ and State of _____ as **Principal**, and _____ of _____ of the County of _____ and the State of _____ as surety, legally authorized to do business in the State of Delaware, are held and firmly bound unto the State of Delaware in the sum of _____ Dollars or _____ percent (not to exceed _____ Dollars) of amount bid on above Contract Number to be paid to said State of Delaware for the use and benefit of the Department of Transportation of said State, for which payment well and truly to be made, we do bind ourselves, our and each of our heirs, executors, administrators, and successors, jointly and severally for and in the whole, firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden **Principal** who has submitted to said Agency of the State of Delaware, a certain proposal to enter into this contract for the furnishing of certain products and/or services within the said State of Delaware shall be awarded this Contract, and if said **Principal** shall well and truly enter into and execute this Contract and furnish therewith such surety bond as may be required by the terms of said contract and approved by said Agency, said contract and said bond to be entered into within twenty days after the date of official notice of the award thereof in accordance with the terms of said proposal, then this obligation to be void or else to be and remain in full force and virtue.

Sealed with _____ seal and dated this _____ day of _____ in the year of our Lord two thousand and _____ (20____).

SEALED AND DELIVERED IN THE
Presence of

Corporate Seal

Name of Bidder (Organization)

Attest:

BY

Authorized Signature

Title

Corporate Seal

Name of Surety

Witness:

Authorized Signature

Title

STATE OF DELAWARE
Department of Transportation
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Attachment: G

QUARTERLY PROGRESS REPORT & DATA CAPTURE REQUIREMENTS

Quarterly Progress Report:

- During Engineering and Installation:
 - Please provide a detailed project progress report, including any departures from the proposed timeline and budget.
- During Operations:
 - Please describe below the project's implementation success, any challenges that you encountered during the reporting period, and the utilization of infrastructure including the # of vehicles that used the stations and documentation that the stations are meeting the uptime requirements of 97.00% or more.
 - If milestones and timelines were not met, why not? Did you encounter any challenges during the reporting period which may interfere with meeting the project objectives? How do you propose to remedy any challenges?

Data Capture Requirements:

Every EV charger is required to have network communications that provide at least the following information:

- Date and time of individual charging sessions
- Total energy (kWh) for each session
- Maximum power (kW) demand for each session
- Total dollar amount charged to the user for each session
- Charger station status and health in real-time
- Error status (malfunction or operating error)
- Current price per kWh in real-time

Reporting Requirements:

Vendor must collect and report the following data at the frequency listed. These requirements are based on the [NEVI Standards and Requirements Final Rule](#). FHWA may also require the Vendor to report this information directly to them once FHWA established guidelines for data submittal.

Quarterly Data Submittal (per EVSE charging port, by individual charging sessions):

- Charging station location (site name, EVSE ID number, address, city, zip code, county)
- Charging station identifier (aligned with NEVI Standards related to Third Party Data Sharing)
- Charging port identifier (aligned with NEVI Standards related to Third Party Data Sharing)
- Charging session start time and date
- Charging session end time and date
- Duration of time drawing energy
- Error codes associated with an unsuccessful charging session (if applicable)
- Energy dispensed (kWh) to the EV
- Peak power draw (kW)
- Total dollar amount charged to the user

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- Payment method associated with each charging session
- Vehicle make, and model year (when available)

Quarterly Data Submittal (per EVSE charging port):

- Charging station location (site name, EVSE ID number, address, city, zip code, county)
- Charging station identifier (aligned with NEVI Standards related to Third Party Data Sharing)
- Charging port identifier (aligned with NEVI Standards related to Third Party Data Sharing)
- Number of charge events
- Number of unique vehicles
- Average charge time per event (minutes)
- Average energy drawn per session (kWh)
- Total power consumed (kW)
- Total monthly cost of electricity (including demand charges energy charges [\$/kWh], fixed charges, taxes, and all other fees)
- Monthly maintenance and repair costs per charging station
- Charging port up time (μ), T_outage, and T_excluded as defined in § 680.116(b) of the NEVI Standards
- Number of malfunctions or operating errors
- Start and end time of each outage
- Description of outage

Annual Data Submittal:

- Maintenance and repair costs per charging station
- Revenue breakdown by site (base energy costs, demand charges, taxes, other)
- Detailed costs, such as the EVSE acquisition and installation costs
- Any grid connection and/or upgrade costs paid
- Details about distributed energy resource acquisition and installation

Third-Party Data Sharing:

As defined in the NEVI Standards § 680.116, Vendors must make the following data available to third-party software developers at no cost via application programming interface:

- Unique charging station name or identifier;
- Address (street address, city, State, and zip code) of the property where the charging station is located;
- Geographic coordinates in decimal degrees of exact charging station location;
- Charging station operator name;
- Charging network provider name;
- Charging station status (operational, under construction, planned, or decommissioned);
- Charging station access information:
 - Charging station access type (public or limited to commercial vehicles);
 - Charging station access days/times (hours of operation for the charging station);
- Charging port information:
 - Number of charging ports;
 - Unique port identifier;
 - Connector types available by port;
 - Charging level by port (DCFC, AC Level 2, etc.);

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- Power delivery rating in kilowatts by port;
- Accessibility by vehicle with trailer (pull-through stall) by port (yes/no);
- Real-time status by port in terms defined by Open Charge Point Interface 2.2.1;
- Pricing and payment information:
 - Pricing structure;
 - Real-time price to charge at each charging port, in terms defined by Open Charge Point Interface 2.2.1; and
 - Payment methods accepted at charging station.

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Attachment: H

SERVICE LEVEL AGREEMENT GUIDANCE

Service level agreements provide information regarding the responsibilities vendors will provide to provide timely maintenance operations for DCFC stations. These services include both regular preventative maintenance as well as incident response maintenance. Service level agreement guidance is provided in the table below for typical services, activities and response times that should be outlined as part of the agreement.

Service	Activities	Response Time
Customer service	Provide support and responses to inquiries and comments from EVSE users who are using or attempting to use the EVSE charging equipment	24 hours per day, 7 days a week, 365 days a year
Annual inspection	Including inspection of charger and auxiliary equipment, and connectivity and functionality. Visual check for sticker and signage issues. Report from inspection to include description of the units checked including serial number, full address, date of installation and last test and pass or fail status with itemized fail list if the unit has failed.	Annual, within 15 working days of anniversary.
Maintenance support for Severity Tier 1 incidents	Carry out cosmetic rectification works (excluding cost of replacement parts).	Up to 10 days from notification.
Maintenance support for Severity Tier 2 incidents	Acknowledge and triage issues, perform remote diagnostics, identify and complete corrective actions.	Acknowledge receipt of issue within 4 hours after receiving reported issue from customers. Within 1 business day after issue acknowledgement, complete remote diagnostic and complete the corrective actions within 2 business days after issue acknowledgement. If the issue is not resolved within 2 business days, the issue will be elevated to Severity Tier 3 or 4.
Maintenance support for Severity Tier 3 incidents	Perform additional troubleshooting and identify corrective actions and timeline to resolve issue, implement correction action per established schedule and evaluate the resolution.	Present resolution timeline within 2 business days, implement corrective action and evaluate success within 2 business days. Issue will be closed or elevated to Severity Tier 4 within 1 business day afterwards.
Maintenance support for Severity Tier 4 incidents	Dispatch service contractor or vendor to investigate on-site, present resolution plan, identify corrective actions and timeline to resolve issue, procure replacement equipment as necessary and complete repairment, document root cause analysis and post-mortem.	Dispatch on-site service crew within 2 business days of completing Tier 2 or 3 evaluations, present resolution plan within 1 business days of onsite investigation, show proof of replacement equipment procurement with expedited procurement and shipping within 2 business days of resolution plan presentation, install equipment and complete repair within 2 business days of delivery, complete final resolution action and confirm resolution of issue within 10 business days of repair.
Data capture and progress reporting	Collect and report the installation and operations data for all maintenance activities	Quarterly and annually

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