



CONTRACT NO: DSU220203-HVACPARTS

HVAC parts, components, and filters

Bid packets must be received by:
3:00 pm (local time), February 16, 2022

Time listed above is the local time in the State of Delaware

Email: contracts@desu.edu

Note: Bidder bears the risk of bid's late delivery, non-delivery, or spam box delivery. Bidder must have a system delivered email return receipts request.

Point of Contact: Procurement Team

Email: contracts@desu.edu

TO: ALL BIDDERS

The enclosed packet contains an "INVITATION TO BID" for HVAC parts, components, and filters. The bid consists of the following documents:

- I. PURPOSE, BACKGROUND, DEFINITIONS AND GENERAL PROVISIONS**
 - A – GENERAL PROVISIONS**
 - B – AWARD AND EXECUTION OF CONTRACT**
 - C – GENERAL AUTHORITY**
 - D – EQUAL OPPORTUNITY**
- II. SPECIAL PROVISIONS**
- III. TECHNICAL SPECIFICATIONS**
- IV. BID QUOTATION REPLY SECTION INCLUDING BID SUBMISSION FORM**

Attachments:

- 1) Non-Collusion Statement
- 2) Exceptions
- 3) Confidentiality and Proprietary Information
- 4) Business References
- 5) Subcontractor Information Form
- 6) Bid/ Pricing Sheet/ Bid Quotation

Appendix(s):

- A. Scope of work/ Specifications**
- B. Cyber Responsibilities, Liability and Insurance**

IMPORTANT NOTES:

Responses will be received electronically through email at contracts@desu.edu The email subject must have ITB name and contract number. If you need to abbreviate the ITB name, you can do so. Electronic response should have only one file in total. File name must start with vendor's name. Aggregate size of your response without compressing the file must not be more than 5 megabytes. Response must be in pdf format, should not be protected with any password and should be **only one file** instead of multiple files. Deviation from these specifications will be an automatic cause for rejection of your response. Do not send any unnecessary messages to this email address. Otherwise, your emails will be marked as spam. Thus, you will fully assume the risk/ liability of no response from the University to your email messages.

Delaware State University

Bidder bears the risk of incomplete response, late delivery or delivery at wrong email address of the University other than specified in this ITB. Bidder must make sure they receive confirmation stating their bid has been received. University is not responsible if bid goes into spam or is not delivered by the system whatsoever until University confirms its receipt.

In order for your proposal to be considered, the Proposal Reply Section shall be executed completely and correctly including but not limited to all attachments and bid submission form.

Please review and follow the information and instructions contained in the General Provisions and this Invitation to Bid (ITB).

There will be NO mandatory pre-bid meeting.

Bid bond requirement for this ITB has been waived.

The term of the contract between the successful bidder and the University shall be for three years. There is an option to renew the contract for two (2) one-year extensions by negotiations.

This ITB will use non-public Funds.

I. PURPOSE, BACKGROUND, DEFINITIONS AND GENERAL PROVISIONS

PURPOSE

Delaware State University is requesting bids for HVAC parts, components, and filters.

BACKGROUND

Delaware State University is a public, comprehensive, 1890 land-grant institution that offers access and opportunity to diverse populations from Delaware, the nation, and the world. Building on its heritage as a historically black college, the University purposefully integrates the highest standards of excellence in teaching, research, and service in its baccalaureate, master's and doctoral programs. Its commitment to advance science, technology, liberal arts, and the professions produces capable and productive leaders who contribute to the sustainability and economic development of the global community. It is located in Dover, Delaware the capital of the State. For more information, please visit us at www.desu.edu

DEFINITIONS AND GENERAL PROVISIONS

The attached Definitions and General Provisions apply to all contracts and are part of each invitation to bid. The requirement to furnish a bid bond and performance bond is applicable unless waived in the Special Provisions. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Bidders or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

DEFINITIONS

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

STATE: The State of Delaware

UNIVERSITY: Delaware State University

AGENCY: Delaware State University or any other State Agency as noted on cover sheet.

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

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

BIDDER'S DEPOSIT: The security designated in the bid to be furnished by the bidder 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 the bidder.

BID INVITATION: The "bid invitation" or "invitation to bid" is a packet of material published for vendors and consists of General Provisions, Special Provisions, specifications, 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.

CONTRACTOR: Any individual, firm, or corporation with whom a contract is made by the University/ Agency.

DESIGNATED OFFICIAL: The agent authorized to act for the 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.

ITB: Invitation to Bid.

LOCAL TIME: Eastern Standard Time/Eastern Daylight Time

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 contractor's payments of all debts pertaining to and for its acceptable performance of the work for which it has contracted.

SECTION A - GENERAL PROVISIONS

1. BID INVITATION

See "Definitions".

2. Bid FORMS

The invitation to bid shall contain pre-printed forms for use by the vendor in submitting its bid. The forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, etc.

3. INTERPRETATION OF ESTIMATES

The attention of bidders is called to the fact that, unless stated otherwise, any quantities given in the bid form 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.

An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

4. 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.

5. EXAMINATION OF SPECIFICATIONS AND PROVISIONS

The bidder shall examine carefully the bid and the contract forms for the material contemplated. The bidder 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 the Special Provisions and the contract. The submission of a bid shall be conclusive evidence that the bidder has made examination of the aforementioned conditions.

6. KEY ITB DATES/MILESTONES

The following dates and milestones apply to this ITB and subsequent contract award. Vendors are advised that these dates and milestones are not absolute and may change due to unplanned events during the bid bid and award process.

- **Deadline for Questions** **January 04, 2022 at 10:00am local time**
- **Response to Questions Posted by** **February 02, 2022**
- **Deadline for Receipt of Proposals** **February 16, 2022 at 03:00pm local time**
- **Contractor Selection Date** **TBD**
- **Anticipated Contract Start** **April 01, 2022**

*** Each of the above date is subject to change. Local time means the State of Delaware local time.**

Note: All questions shall be in writing (in MS Word format, written in a paragraph form and numbered.) No table or Ms. Excel spreadsheet, etc. should be inserted. These questions should be submitted via email to contracts@desu.edu Questions must be submitted in the following format. Deviations from this format will not be accepted and entertained.

Section number____, Paragraph number____, Page number____, Text of passage being questioned____,
Question: _____.

We encourage all prospective bidders to please take a moment to register your organization (provided you have not already done so) by clicking at <https://denotificationservices.bbcportal.com/> . In this way, you can get notifications of RFPs/ ITBs of your interest once those get published. We will publish all public related information, including but not limited to answers to ITB questions, amendments or changes to the ITB, changes to the ITB's scheduled events/ dates, contract award/ no award, and other relevant information at <http://bids.delaware.gov/> website next to the ITB under ITB's specific link. Most of this information will be published in the form of addendums. Kindly make sure you continue to check ITB's assigned web link where ITB and related material is published. So that you do not miss any updates as those are not notified to your account automatically. Please do not expect to receive any personalized or individual responses from the University.

Each bid must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the ITB which the applicant may have taken in presenting the bid. (Applicant exceptions must also be recorded on Attachment 2). The bid must be submitted to:

Email: contracts@desu.edu

The Delaware State University reserves the right to deny any and all exceptions taken to the ITB requirements.

7. 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 Invitation to Bid.

All questions shall be in writing and submitted via email to contracts@desu.edu. Questions should be submitted in the following format. Deviations from this format will not be accepted and entertained.

- Section number
- Paragraph number
- Page number
- Text of passage being questioned

Questions will be answered in writing and posted at <http://bids.delaware.gov/> website. Oral explanations or instructions will not be binding.

8. PREPARATION OF BID

- a. The bidder's bid shall be written in ink or typewritten on the form provided.
- b. If items are listed with a zero quantity, bidder shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The bid shall show a total bid price for each item bid and the total bid price of the bid excluding zero quantity items.

9. PRICES QUOTED

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract.

All prices must be quoted in U.S. Dollars.

10. DISCOUNT

No qualifying letter or statements in or attached to the bid, or separate discounts will be considered in determining the low bid except as may be otherwise herein noted. Cash or separate discounts should be computed and incorporated into unit bid price(s).

11. SAMPLES OR BROCHURES

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

12. BID GUARANTY; BID BOND

Unless Bid Bond has been waived, each bidder shall submit with its bid a guaranty in sum equal to at least 10% of the total value of its bid, according to Delaware Code Title 29, Section 6927(a).

Each vendor shall furnish a bond to the State of Delaware for the benefit of **Delaware State University** 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. A certified check made out to the Delaware State University in an amount equal to 10% of the respective proposed value may be submitted in lieu of a bid bond.

13. ITB DESIGNATED CONTACT

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

Procurement Team: Email Address contracts@desu.edu

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable.

14. DELIVERY OF BIDS

Unless exception granted in this ITB on page 2, bids must be delivered via **Email to contracts@desu.edu**

All bids will be accepted at the time and place set in the advertisement. **Bidder bears the risk of incomplete response, late delivery or delivery at wrong email address other than specified in this ITB.**

15. WITHDRAWAL OF BIDS

A bidder may withdraw its Bid unopened after it has been deposited, if such a request is made prior to the time set for the opening of the Bid.

16. PUBLIC OPENING OF BIDS

The bids shall be publicly opened at the time and place specified by the Agency. Bidders or their authorized representatives are invited to be present. But their presence is not required.

17. PUBLIC INSPECTION OF BIDS

If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

18. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of its bid or bids:

- a. More than one bid for the same contract from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among bidders.
- c. Unsatisfactory performance record as evidenced by past experience.
- d. 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.
- e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.
- f. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the bid incomplete, indefinite, or ambiguous as to its meaning.
- g. If attendance of pre-bid meetings is required, then non-attendance of mandatory pre-bid meetings may be cause of disqualification.

19. ADDENDA TO THE INVITATION TO BID (ITB)

If it becomes necessary to revise any part of this ITB, revisions will be posted at <http://bids.delaware.gov/> .
 . By submitting an offer to the University, vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Invitation to Bid.

20. LOBBYING AND GRATUITIES

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

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

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

21. SOLICITATION OF STATE/ UNIVERSITY EMPLOYEES

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

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

22. INDEPENDENT CONTRACTORS

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

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

23. TEMPORARY PERSONNEL ARE NOT STATE/ UNIVERSITY EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware/ University 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/ University 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/ University pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State and its agencies 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 or its agency subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the obligations to hold harmless, indemnify, and defend the State of Delaware and its agency 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 and its agency for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware and its agency. 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 of Delaware and its agency's intention to hire.

24. WORK PERFORMED IN A UNIVERSITY BUILDING

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a University facility shall have those employees comply with any health mandate or policy issued by the State/University related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to University employees. These may include but not limited to, wearing a mask in all University buildings and the policy for University employees regarding vaccination. The vaccination policy is located at <https://www.desu.edu/sites/flagship/files/document/31/covid-19-policy.pdf> . For clarity, University buildings are those owned or leased by the University.

SECTION B - AWARD AND EXECUTION OF CONTRACT

1. CONSIDERATION OF BIDS

The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new bids, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. MATERIAL GUARANTY

Before any contract is awarded, the successful bidder 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.

3. CONTRACT AWARD

Within thirty days from the date of opening bids, the contract may be awarded or the bids rejected.

4. EXECUTION OF CONTRACT

The bidder to whom the award is made shall execute a formal contract and bond within twenty days after date of notice.

If the successful bidder fails to execute the required contract and performance bond, as aforesaid, within twenty days of notice, its bid guaranty shall immediately become forfeited as liquidated damages. Award will then be made to the next lowest qualified bidder of the work or re-advertised, as the Agency may decide.

5. REQUIREMENT OF CONTRACT PERFORMANCE BOND

Unless Performance Bond has been waived, successful bidders shall furnish a Performance Bond simultaneously with the execution of the formal contract, to the State of Delaware for the benefit of the Delaware State University with surety in the amount of 100% of the total contract award or as otherwise provided. Said bonds shall be conditioned upon the faithful performance of the contract. Performance Bonds are not required at the time of bid submission.

The bond forms shall be provided by the Agency and the surety shall be acceptable to the Agency.

6. WARRANTY

The successful bidder(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.

7. THE CONTRACT(S)

The contract(s) with the successful bidder(s) will be executed with Delaware State University.

8. INFORMATION REQUIREMENT

The successful bidder's shall be required to advise the University of the gross amount of purchases made as a result of the contract.

9. CONTRACT EXTENSION

The University reserves the right to extend this contract on a month-to-month basis.

10. SUPPLEMENTAL SOLICITATION

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

SECTION C – GENERAL AUTHORITY

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 the Agency shall be final and binding.

2. LAWS TO BE OBSERVED

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall

indemnify and save harmless the State of Delaware, the Agency, 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 or by its employees.

3. 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.

4. PERMITS AND LICENSES

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

5. PATENTED DEVICES, MATERIAL AND PROCESSES

- a. The contractor 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.
- b. The contractor 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.

6. EMERGENCY TERMINATION OF CONTRACT

- a. 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.
- b. In the event the contractor 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. TAX EXEMPTION

- a. In accordance with the Internal Revenue Service regulations, the University is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510> . Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the University will work with the vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted. To get in touch with the for this purpose, please call at 302-857-7852 and ask for Accounts Payable department.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the bid 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 contractor. Each bidder shall take its exemption into account in calculating its bid for its work.

8. 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.

9. BID EVALUATION AND AWARD

The University will award this contract to the lowest responsible bidder(s) which in their judgment best serves the interest of the State of Delaware in accordance with Delaware Code Title 29, Section 6923(k). Personnel with experience and technical background may be utilized by the University in making judgment. In case of error in price extension, the unit price(s) shall prevail.

10. INVOICING

The successful bidder (s) is required to bill upon completion, delivery, and installation as specified. All invoices must be identified by the approved purchase order received and be forwarded to: Invoices@desu.edu or to Accounts Payable Department, Administration Building, 3rd Floor, Delaware State University, 1200 N. DuPont Highway, Dover, DE 19901-2277. The contractor or vendor must accept full payment by credit card and/or conventional check and/or other electronic means at the University's option, without imposing any additional fees, costs or conditions.

11. 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.

12. 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 and University 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/ University pursuant to this contract. Upon either the State/ University'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/ University and Vendor shall meet and confer about coordination of representation in such action.

SECTION D - EQUAL OPPORTUNITY

1. 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 or the University, the contractor agrees as follows:

Delaware State University

- a. 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.
- b. During the performance of this contract, the contractor agrees as follows:
 - 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.
 - 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."
- c. 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.

II. SPECIAL PROVISIONS

1. CONTRACT REQUIREMENTS

This contract will be issued to fulfil all the requirements of University.

2. 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.

3. CONTRACT PERIOD

The term of the contract shall be valid as specified in this ITB.

4. PRICES

Prices shall remain firm for the term of the contract. All prices shall be quoted in U.S. Dollars.

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

5. NUMBER OF COPIES WITH MAILING OF BID

To be considered, all bids must be submitted as specified in this ITB.

6. COOPERATIVES

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

7. 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 University 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.

8. SUPPLEMENTAL SOLICITATION

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

9. PRICE ADJUSTMENT

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

If agreement is reached to extend this contract beyond the initial period, the University shall have the option of offering a determined price adjustment and shall not exceed 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.

OR IF PREVAILING WAGE APPLIES

If agreement is reached to extend this contract beyond the initial contract term, University shall have the option of offering a determined price adjustment that shall not exceed available wage rates as determined by the Department of Labor regarding prevailing wage as determined.

10. SHIPPING TERMS

F.O.B. destination; freight pre-paid.

11. QUANTITIES

The attention of bidders is called to the fact that, unless stated otherwise, the quantities given in the bid are best estimates and are given as a basis for the comparison of bids. Quantities ordered may be increased or decreased by any eligible agency as deemed necessary during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.

12. ELECTRONIC CATALOG

At the discretion of University, the successful vendor(s) may be required to submit their items list in an electronic format designated by the University.

By example, but not limited to, the following items may be required:

- Electronic catalogs,
- Electronic catalogs converted to a CSV format with contract specific pricing,
- Items designated by commodity/classification code: United Nations Standard Products and Services Code (UNSPSC), and/or
- A unique item ID for all items in your system and/or our award.

13. FUNDING OUT

The continuation of this contract is contingent upon availability of funding by the University.

14. BID BOND REQUIREMENT

If the bid bond requirement has not been waived, each bidder shall furnish a Bid Bond to the State of Delaware for the benefit of Delaware State University 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 standard State of Delaware bond form is not used, the substitute bond must reflect the minimum conditions specified in the standard form. A certified check made out to University in an amount equal to 10% of the respective proposed value may be submitted in lieu of a bid bond.

15. PERFORMANCE BOND REQUIREMENT

If submission of Performance Bond requirement has been waived, contractors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of Delaware State University with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract.

16. MANDATORY INSURANCE REQUIREMENTS

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the Delaware State University.
3. As a part of the contract requirements, the contractor must obtain at its own cost and expense

Delaware State University

and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the University. All contractors must carry the following coverage depending on the type of service or product being delivered. These insurances requirements are in addition to additional insurance requirements, if any, somewhere listed in this ITB.

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

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

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

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

Delaware State University

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the University's Risk Management Office that is:

Delaware State University
Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor,
1200 North DuPont Highway, Dover, DE 19901-2277

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

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

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

4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to University contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
7. In case of a software/ information technology related work, additional insurance must be provided as listed under <http://mymarketplace.delaware.gov/documents/cyber-liability.doc>

17. BASIS OF AWARD

University will award this contract to the lowest responsible and responsive bidder(s) who best meets the terms and conditions of the bid. The award will be made on the basis of price, product evaluation, and prior history of service and capability.

University reserves the right to reject any or all bids in whole or in part, 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 and or University, pursuant to 29 Del. C. § 6926.

18. STATE OF DELAWARE BUSINESS LICENSE

Prior to receiving an award, the successful vendor shall either furnish University 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 19899-8750 or by telephone to one of the following numbers: (302) 577-8201 - Public Service, (302) 577-8205 - Licensing Department. <https://dorweb.revenue.delaware.gov/scripts/licrenew/licrenew.dll>

19. INDEMNIFICATION

a. General Indemnification

By submitting a bid, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, University, 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.

b. Proprietary Rights Indemnification

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

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

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

20. OWNERSHIP OF INTELLECTUAL PROPERTY

All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the University. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the University to evidence the University's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

21. 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/ University may terminate any individual orders in accordance with Special Provisions, Item labeled "TERMINATION OF INDIVIDUAL ORDERS OR 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 University no later than 30 days following the delivery of the University'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.

22. FORCE MAJEURE

Neither the Recipient nor the University shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

- a) Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
- b) Diseases, plagues, quarantine, epidemics or pandemics;
- c) Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or
- d) The University/ State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Vendor/ Contractor shall notify the University in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the vendor's knowledge of significant non-performance risk.

Notwithstanding the content of subparagraphs (a) through (d) of this paragraph, vendor agrees that any event giving rise to *Force Majeure* as defined herein shall not relieve the vendor of the obligation to perform and carry out any of the Mandatory Terms and Conditions set forth in this document.

23. CONTRACTOR NON-ENTITLEMENT

State of Delaware Contractors for Materiel and for Services shall not have legal entitlement to, nor seek business from another Contractors' Central Contract. Additionally, they shall not utilize other Central Contracts to fulfill the requirements of their respective contract as they are not a "Covered Agency" as defined by Title 29 Chapter 69 of the State Procurement Code.

24. EXCEPTIONS

Bidders may elect to take **minor exception** to the terms and conditions of this ITB. University shall evaluate each exception according to the intent of the terms and conditions contained herein, but University 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.

Exceptions must be submitted utilizing Attachment 2 to be considered. University maintains sole discretion to reject any vendor exceptions that are submitted.

25. BUSINESS REFERENCES

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 4. 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 DO NOT UTILIZE STATE OF DELAWARE OR UNIVERSITY PERSONNEL AS REFERENCES.

26. ORDERING PROCEDURE

Successful contractors 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. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, email, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the University's option, without imposing any additional fees, costs or conditions.

27. BILLING

The successful vendor is required to **"Bill as Shipped"** to the University.

28. PRODUCT SUBSTITUTION

All items delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the bid unless specific approval is given by the University to do otherwise. However, 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 University exists. In such cases, the University may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

29. BID/CONTRACT EXECUTION

Both the non-collusion statement with this Invitation to Bid and the contract form delivered to the successful bidder for signature **shall** be executed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Delaware State University.

The University requires completion of the W-9. Successful completion of this form enables the creation of a University vendor record.

It is the applicant's responsibility to select the appropriate 1099 Withholding Type and Class. If incorporated, a business is not subject to 1099 reporting unless the business is providing legal or medical services.

30. VENDOR RESPONSIBILITY

The University 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 ITB 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 bid by completing Attachment 5, and are subject the approval and acceptance of University.

31. PERSONNEL, EQUIPMENT AND SERVICES

- a. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
- b. 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.
- c. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the University. Only those subcontractors identified in Attachment 5 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 5 must be approved in writing by the University.

32. 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/ University are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

33. VENDOR BACKGROUND CHECK REQUIREMENTS

Vendor(s) selected for an award that access state and or University property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State/ University'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.

34. 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](#)

35. LIFE CYCLE COSTING

If applicable, the specifications contained within this ITB have been developed through Life Cycle Cost Analysis that will allow the University to realize the lowest total cost of ownership and operation over the useful life of the equipment

36. MINIMUM WAGE RATES

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Vendor must comply to the [State of Delaware Minimum Wage Rates](#) if it fall under this requirement.

37. PREVAILING WAGE

The prevailing wage law, 29 Del.C. [§6960](#), is enforced by the Department of Labor and states that the specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. The Department of Labor has determined that awarded contract is subject to prevailing wage. Awarded vendors shall confirm with the Department of Labor which of the prevailing wage rates applies to their project. Awarded vendors must identify the central contract when confirming the proper rates.

38. ENVIRONMENTAL PROCUREMENT PRODUCTS

- a. Energy Star - If applicable, the Contractor 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 Contractor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.
- b. 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.
- c. 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](#)

39. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS

The individual orders may be terminated as follows:

- a. 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.

b. 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/ University, 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 as per solely determined by the Agency.

c. Termination for Non-Appropriations or Non-Availability of Funds

In the event the University 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 University 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.

40. DISPUTE RESOLUTION

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

If the matter is not resolved by negotiation, as outlined above, or, alternatively, Agency elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by Agency, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the University's General Counsel, for final and binding arbitration. University reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Vendor shall bear of the costs of mediation, arbitration or litigation, including attorneys' fees for both parties.

41. TERMINATION OF CONTRACT

The contract resulting from this ITB may be terminated as follows by the University.

a. Termination for Cause

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the University 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. 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 University, 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 University.

b. Termination for Convenience

The University 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 University, 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 University as per University's sole discretion.

d. Termination for Non-Appropriations or Non-Availability of Funds

In the event the University 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 University 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.

42. 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.

43. AFFIRMATION

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

44. 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 and University, 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 and or University representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State, University 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 or University for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

45. IRS 1075 Publication (If Applicable)

Performance

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

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

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

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

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

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

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

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

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.

46. ASSIGNMENT

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

47. NOTICE

Any notice to the University required under the contract shall be sent by registered mail to:

**Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor
1200 North DuPont Highway
Dover, DE 19901**

48. VENDOR EMERGENCY RESPONSE POINT OF CONTACT

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

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State/ University may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the University, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms such as funds availability.

49. SUBCONTRACTS

Subcontracting is permitted under this ITB and contract. However, every subcontractor shall be identified in the Bid and agreed to in writing by the University. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the University.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the ITB and with all local, State and Federal Laws and University policies and procedures. 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 University.

If a company elects to be a subcontractor for another vendor, the subcontractor shall not independently bid on this solicitation.

50. PRICE NOT CONFIDENTIAL

Vendors shall be advised that as a publicly bid contract, no Vendor shall retain the right to declare their pricing confidential.

51. NO PRESS RELEASES OR PUBLIC DISCLOSURE

The University 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 University with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the University.

Delaware State University

The University 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 University's seal or imply preference for the solution or goods provided.

III. TECHNICAL SPECIFICATIONS

The Vendor(s) shall provide all equipment, materials, software, and labor to supplement the University's need for this contract as described herein in Appendix A. The contract will require the Vendor(s) to cooperate with the University to insure the University receives the most current state-of-the-art material and/or services.

IV. BID QUOTATION REPLY SECTION

Please fill out the attached forms fully and completely and return with your bid in a sealed envelope clearly displaying the contract number to the University's designated contact by entering bid opening date and at time (Local Time) at which time bids will be opened.

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. The agency conducting the opening is required by law to publicly open the bids at the time and place specified. 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 the University.

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

Response/ Bid Submission Form:

**Delaware State University
ITB for HVAC parts, components, and filters
Contract Number DSU220203-HVACPARTS**

By signing this statement, you certify the information provided is accurate and that you are authorized to sign on behalf of the responder. If the contract is awarded, vendor agrees to the terms and conditions of the State of Delaware's standard contract posted at <http://mymarketplace.delaware.gov/agency-forms.shtml> under [Agency/Vendor Contract](#) and under [Professional Services Agreement](#). The Delaware State University reserves the right to deny any and all exceptions taken to the ITB requirements. It's further understood that in case of any conflict or inconsistency between the provisions of the contract documents shall be resolved by giving precedence to such documents in the following order: (a) the signed Contract/ Agreement (including any amendments or modifications thereto); (b) the ITB itself; and (c) Vendor's response to the ITB.

Vendor/ Business Name

Authorized Signature/ Date

Address

Printed Name of Authorized Signatory

City, State Zip Code

Cell Phone Numbers

Other Telephone Numbers

E-Mail Address (print clearly)

Fax Number

Additional E-Mail Address (print clearly)

Federal EI Number Web Address

CONTRACT NO. DSU220203-HVACPARTS
CONTRACT TITLE: HVAC parts, components, and filters

NON-COLLUSION STATEMENT

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

Note: Signature of the authorized representative MUST be of an individual who legally may enter his/her organization into a formal contract with the Delaware State University. Please print everything listed below.

COMPANY NAME Please circle one: Corporation, Partnership, Individual
NAME OF AUTHORIZED REPRESENTATIVE TITLE
SIGNATURE DATE
COMPANY ADDRESS
PHONE # FAX # EMAIL
FEDERAL EI # STATE OF DELAWARE BUSINESS LICENSE #
COMPANY CLASSIFICATION: CERTIFICATE NO.

Table with 3 columns: CERTIFICATION TYPE (S). Please circle all (Yes or No) that applies., Yes, No. Rows include Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Disadvantaged Business Enterprise (DBA), Veteran Owned Business Enterprise (VOBE), and Service Disabled Veteran Owned Business Enterprise (SDVOBE).

(Information provided through above table is for informational and statistical use only)

PURCHASE ORDER SHOULD BE SENT TO:

Company Name and Address
Contact Name Phone Fax Email

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 or No

If yes, please explain

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

SWORN TO AND SUBSCRIBED BEFORE ME this day of, 20
Notary Public My commission expires
City of County of State of

CONTRACT NO. DSU220203-HVACPARTS

CONTRACT TITLE: HVAC parts, components, and filters

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 Personal References or University Employees as a business reference. If you have held a University contract within the last 5 years, please provide a separate list of the contract(s).

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

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

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

CONTRACT NO. DSU220203-HVACPARTS
CONTRACT TITLE: HVAC parts, components, and filters

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR																	
1. CONTRACT NO. DSU220203-HVACPARTS	2. Proposing Vendor Name:	3. Mailing Address															
4. SUBCONTRACTOR																	
a. NAME	4c. Company OSD Classification: Certification Number:																
b. Mailing Address:	<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">4d. Women Business Enterprise</td> <td style="width: 10%;">Yes</td> <td style="width: 20%;">No</td> </tr> <tr> <td>4e. Minority Business Enterprise</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>4f. Disadvantaged Business Enterprise</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>4g. Veteran Owned Business Enterprise</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>4h. Service Disabled Veteran Owned Business Enterprise</td> <td>Yes</td> <td>No</td> </tr> </table>		4d. Women Business Enterprise	Yes	No	4e. Minority Business Enterprise	Yes	No	4f. Disadvantaged Business Enterprise	Yes	No	4g. Veteran Owned Business Enterprise	Yes	No	4h. Service Disabled Veteran Owned Business Enterprise	Yes	No
4d. Women Business Enterprise	Yes	No															
4e. Minority Business Enterprise	Yes	No															
4f. Disadvantaged Business Enterprise	Yes	No															
4g. Veteran Owned Business Enterprise	Yes	No															
4h. Service Disabled Veteran Owned Business Enterprise	Yes	No															
5. DESCRIPTION OF WORK BY SUBCONTRACTOR																	
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED															
6b. TITLE OF PERSON SIGNING																	
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR																	
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED															
9b. TITLE OF PERSON SIGNING																	

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

CONTRACT NO. DSU220203-HVACPARTS
CONTRACT TITLE: HVAC parts, components, and filters

BID/ PRICING SHEET/ Bid Quotation

1. List price for each of the following items requested as per ITB Specifications and/or it's equivalent:

Item	Description	Unit Cost	Any additional costs	Total Cost
	HVAC Filters			
	HVAC Components: <ul style="list-style-type: none"> ○ Thermostats ○ Furnace ○ Heat exchanger ○ Evaporator coil ○ Condensing unit ○ Refrigerant lines ○ Ductwork ○ Vents ○ Other 			

1. Lead time for delivery after receipt of the order: _____

2. Please list all exceptions (if any) to the items listed above:

CONTRACT NO. DSU220203-HVACPARTS
CONTRACT TITLE: HVAC parts, components, and filters

Scope of Work/ Specifications

Background: Currently there is no central University wide contract to purchase HVAC parts, components, and filters. This ITB would ensure that the University is being compliant regarding University's procurement policies and procedures.

A. GENERAL SPECIFICATIONS

Delaware State University is looking to award the contract to vendor(s) who can offer a range of HVAC parts, components, and filters that will allow in-house staff to maintain and/or make minor repairs to HVAC units.

1. COVERED PRODUCTS

Vendors are expected to propose the broadest catalog selection of products that they offer that fall within the covered products category definitions. Cover products include, but not limited to:

- HVAC Filters
- HVAC Components: thermostats, furnace, heat exchanger, evaporator coil, condensing unit, refrigerant lines, ductwork, vents, etc.

2. CUSTOMER SERVICE

The Bidders shall provide Users a single, local point of contact (and a backup) to handle questions or problems that may arise. At least one Customer Service Representative must be available during Delaware State University's operating hours. All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, contract pricing, contracted product offerings/exclusions, contract compliance requirements, and general product information. Representatives should be available by phone, fax, or email (local or 800 number preferred).

3. GENERAL PRICING

No service fees or additional cost will be invoiced to the Contract User by the supplier during the term of this agreement (except as described in this ITB or mutually agreed upon in writing). There will be no "small order", "minimum order", or "special order" charges or surcharges. There will be no return fees for inaccuracies or other errors

on the part of the supplier. Any rush delivery that occurs as a result of Supplier's error (e.g. stock-outs, delivery of wrong product, etc.) will be free of charge. No handling surcharges will be added or discounts lost for any rush or expedited orders.

4. PRODUCT AVAILABILITY

Awarded vendor(s) must agree that there will be no cancellation of products used without an equal and acceptable replacement approved by a designated Delaware State University representative, as listed in the final contract, during the term of the agreement. Manufacturer's discontinuation of any products must be communicated to Contract Users by suppliers in writing within five (5) business days. In such instances, suppliers agree to work with Contract Users to identify and implement alternative options that maintain or reduce costs associated with the replacements.

5. QUALITY ASSURANCE GUARANTEES

The Awarded Vendor(s) is to guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The terms of this contract will supersede any language to the contrary on purchase orders, invoices or other documents produced by the supplier(s). The Awarded Vendor(s) is to agree to replace without charge to Contract Users any product or part thereof which proves to be defective or fails within the warranty period as specified.

6. PACKAGING AND SHIPPING

Packaging for shipment shall be such as to protect the product adequately to insure safe shipment. All products are to be packaged in sizes as specified in the proposal and shall be packaged in such a manner as to insure delivery in first class condition and properly marked for identification. Shipping cases shall be marked to show the name of the supplier, name and address of receiving agency and state purchase order number. All shipments must be comprised of original cartons associated with the commercial industry represented by the actual product contained within each carton. Itemized packing list is to accompany all shipments. Deliveries containing re-used, re-labeled, re-worked or alternate cartons are subject to rejection at the contractor's expense.

7. DELIVERY

All shipments are made direct to the ordering agency/facility. F.O.B. destination with shipping charges pre-paid. There will be no "small order", "minimum order", or "special order" charges or surcharges. Any rush delivery that occurs as a result of Supplier's error (e.g. stock-outs, delivery of wrong product, etc.) will be free of charge. No handling surcharges will be added or discounts lost for any rush or expedited orders.

8. BACK ORDER

It is the responsibility of the vendor to notify the ordering agency, in writing, immediately upon notification from the Manufacturer that an item is on back order. The vendor shall state the reason for the back order and the date the agency can expect delivery. After receiving this information, the agency will make the determination to wait for the item or cancel it.

9. RETURNS

Any materials delivered in poor condition, in excess of the amount authorized by the purchase order, or not included on the purchase order may, at the discretion of the ordering agency/entity, be returned to the vendor at the vendor's expense within 30 days. Return authorizations must be credited immediately once the vendor has received the returned goods.

a) INCORRECT PRODUCT ORDERED

Any return of unused stock, or special materials, to the vendor due to requirement changes may be liable for a restocking fee, not to exceed 15%.

b) DAMAGE AND/OR INCORRECT PRODUCT SHIPPED

The acceptance of delivery with or without objection shall not waive the right to claim damage for breach nor constitute a waiver of requirements for timely delivery or performance of any actions that shall remain the obligation of the contracted vendor.

- 1) Damaged or incorrect product shall be reported to the contracted vendor by the ordering agency within a reasonable time frame after the damage is noticed.
- 2) The contracted vendor is responsible for pick-up and replacement of all damaged goods within a reasonable time frame acceptable to the ordering agency.
- 3) The contracted vendor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the ordering agency.
- 4) The contracted vendor is responsible for filing all claims for damage with carriers or other responsible parties in a timely manner.
- 5) The contracted vendor is required to keep the ordering agency informed of the replacement process and delivery date for any and all replacement orders.
- 6) The ordering agency will not be charged a re-stock fee for any returns due to a contracted vendor error, or damage.
- 7) In the event that an ordering agency does not accept product due to damages or shipment error as described above, no ordering agency shall pay additional shipping and handling charges for the shipment of replacement products.

B. TECHNICAL SPECIFICATIONS

1. HVAC Filters

a) EFFICIENCY RATING:

Each air filter and/or item of filter media is to bear an Efficiency rating which indicates its percentage efficiency in removing state micron sizes of contaminant from the air.

The name of the approved testing agency by whose test method this efficiency rating was determined is to be given.

The ASHRAE (American Society of Heating, Refrigerating and Air Conditioning Engineers) efficiency rating system for filters will be used as the basis of comparison of filter efficiencies.

b) FIRE RATING:

A class II (or better) fire rating from underwriter laboratories, UL 900 classification, or a similar rating from another approved testing agency is required and shall be included with proposal.

In submitting a bid, the bidder attests to the fact that HVAC Filters supplied under this contract will carry this fire rating where applicable.

e) FILTER REPLACEMENT:

Delaware State University reserves the right to test the delivered product during the contract term to ensure that it meets the contract requirements. If the product fails to meet contract requirements, the delivery shall be rejected and must be replaced within seven (7) days from date of either verbal or written notification. If said replacement is not made within this time frame, the state reserves the right to purchase product elsewhere, charging any increase in price and handling charges to the contractor.

2. HVAC Components and Supplies

Delaware State University occupies numerous buildings throughout the State, which Facilities Maintenance employees service these buildings by purchasing to maintenance the health, safety and welfare of the employees, the public, customers and clients. Various types of HVAC Components and supplies are purchased for installation, repair and maintenance. Delaware State University seeks to purchase HVAC Components and supplies from the below listed Manufacturers. Vendor is to identify which manufacturer(s) they wish to offer a percentage off list price to Delaware State University. This is not an all-inclusive list. Vendors can offer additional Manufacturers within their proposal submission.

❖ **Carrier Corporation**

❖ **Mitsubishi**

❖ **York International**

❖ **Belimo Controls**

❖ **Trane**

❖ **Honeywell**

CONTRACT NO. DSU220203-HVACPARTS

CONTRACT TITLE: HVAC parts, components, and filters

Cyber Responsibilities, Liability and Insurance

A. Vendor Protection of Customer Data

1. The awarded vendor shall, at a minimum, comply with all Delaware Department of Technology and Information (DTI) security standards identified in this Request for Proposals/ Invitation to Bids and any resultant contract(s).

B. Definitions

Data Breach

1. In general the term “data breach” means a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for the State of Delaware that results in, or there is a reasonable basis to conclude has resulted in:
 - 1.1 The unauthorized acquisition of personally identifiable information (PII); or
 - 1.2 Access to PII that is for an unauthorized purpose, or in excess of authorization,
2. Exclusion
 - 2.1 The term “data breach” does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Personally Identifiable Information (PII)

1. Information or data, alone or in combination that identifies or authenticates a particular individual.
 - 1.1 Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.

2. Information or data that meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

Customer Data

1. All data including all text, sound, software, or image files provided to Vendor by, or on behalf of, Delaware which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract.

Security Incident

1. Any unauthorized access to any Customer Data maintained, stored, or transmitted by Delaware or a third party on behalf of Delaware.

C. Responsibilities of Vendor in the Event of a Data Breach

1. Vendor shall notify State of Delaware, Department of Technology and Information (DTI) and Government Support Services (UNIVERSITY) without unreasonable delay when the vendor confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.
 - 1.1 Should the State of Delaware or the awarded vendor determine that a data breach has actually occurred; the awarded vendor will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by VENDOR, DTI, and UNIVERSITY.
 - 1.2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.
 - 1.3 In the event of an emergency the awarded vendor may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.
 - 1.4 For any record confirmed to have been breached whether such breach was discovered by the awarded vendor, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 *Del. C.* § 12B-101 the awarded vendor shall:
 - 1.4.1. Notify in a form acceptable to the State, any affected individual as may be required by 6 *Del. C.* § 12B-101 of the Delaware Code.
 - 1.4.2. Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.
 - 1.4.3. Meet and confer with representatives of DTI and UNIVERSITY regarding required remedial action in relation to any such data breach without unreasonable delay.

- 1.4.4. Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches

1. Covered Data Loss

- 1.1 The loss of Customer Data that is not (1) Attributable to the instructions, acts or omissions of Delaware or its users or (2) Within the published recovery point objective for the Services

2. Covered Disclosure

- 2.1 The disclosure of Customer Data as a result of a successful Security Incident.

3. Notwithstanding any other provision of this contract, there shall be no monetary limitation of vendor's liability for the vendor's breach of its obligations under this contract which proximately causes a (1) Covered Data Loss or (2) Covered Disclosure, where such Covered Data Loss or Covered Disclosure results in any unauthorized public dissemination of PII.

E. Cyber Liability Insurance

1. An awarded vendor unable to meet the DTI Cloud and Offsite Hosting Policy requirement of encrypting PII at rest shall, **prior to execution of a contract**, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).
2. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract must comply with the Laws of the State of Delaware, Federal Government. Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained. In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount of State of Delaware and Federal Laws.

F. Compliance

1. The awarded vendor(s) is required to comply with applicable security-related Federal, State, and Local laws.

G. Media Notice

1. No media notice may be issued without the approval of the University/ State.

H. Points of Contact – Data Breach

1. Delaware State University

Delaware State University
Attention Ms. LaKresha Moultrie - lmoultrie@desu.edu
General Counsel & Chief Enterprise Risk Officer
Dr. Claiborne D. Smith Administration Building, 3rd Floor,
1200 North DuPont Highway, Dover, DE 19901-2277

2. State of Delaware

Department of Technology and Information
Solomon Adote, Chief Security Officer
Solomon.adote@state.de.us ; 302.739.9631