REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
Marijuana Seed-to-Sale Tracking System
ISSUED BY GOVERNMENT SUPPORT SERVICES
CONTRACT NUMBER GSS24929-SEED_SALE

Contents:

I. Overview

II. Scope of Services

III. Required Information

IV. Professional Services RFP Administrative Information

V. Contract Terms and Conditions

VI. RFP Miscellaneous Information

VII. Attachments

Appendix A – Functional and Non-Functional Technical Requirements

Appendix A1 – Technology Policies and Standards

Appendix B – Online Bid Submission Portal Instructions & Forms

Appendix C – Bid Table Pricing

Appendix D – Sample PSA

I. Overview

The State of Delaware Office of Management and Budget, Government Support Services, seeks professional services to provide a marijuana seed-to-sale tracking system. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

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

Public Notice	Date: April 29, 2024
Deadline for Questions	Date: May 9, 2024 4:00 p.m. (Local Time)
Response to Questions Posted by:	Date: May 16, 2024
Deadline for Receipt of Proposals	Date: May 30, 2024 at 3:00 PM (Local Time)
Estimated Notification of Award	Date: TBD

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. Exceptions must be recorded on the Exceptions Form.)

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

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

MANDATORY PREBID MEETING

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

II. Scope of Services

A. Overview

The State of Delaware is seeking proposals to provide a Commercial Off the Shelf System ("COTS") hosted Software as a Service (SaaS) application that supports the identification and tracking of adult-use recreational marijuana and medical marijuana in all its forms, for the purposes of inventory, enforcement, investigations, and diversion prevention (Marijuana Seed-to Sale Tracking System), as defined in this Request for Proposals ("RFP"). This document provides instructions for submitting proposals, the procedure, and criteria by which the Provider(s) will be selected and the contractual terms which will govern the relationship between the State of Delaware (State) and the awarded Bidder(s).

B. Background and Purpose

Delaware's Medical Marijuana Program has served qualifying patients, assuring access to safe and reliable products. The current program *BioTrackTHC* provides compliance oversight, processes, guidelines, and support to registered participants involved in the cultivation, processing and selling of medical marijuana and products containing it. After the passage of adult use recreational marijuana, and the stand-up of the Office of the Marijuana Commissioner (OMC), both medical and the adult use recreational marijuana programs will rely on the seed to sale system. All current data and information from the traceability system must be exported from *BioTrackTHC*, converted, and imported into the chosen application.

For additional information please review the full text of the laws:
https://legis.delaware.gov/BillDetail?legislationId=129970
https://legis.delaware.gov/BillDetail?legislationId=129969

The purpose of this RFP is to implement an electronic portal for tracking marijuana cultivation, harvest, manufacturing, testing, distribution, and sale that addresses the statutory requirements set forth for medical and adult-use marijuana. The functionality of the solution should provide maximum standardization, coordination and integration between the adult-use marijuana and medical marijuana programs.

C. Scope of Services

The selected bidder will provide a Commercial Off the Shelf System (COTS) hosted Software as a Service (SaaS) application that provides the identification and tracking of medical and adult-use marijuana in all its forms. This statewide monitoring system is for

the express purposes of tracking medical and adult-use marijuana production, transfer, sale and inventory, purchaser verification, laboratory testing, collecting, reviewing, and analyzing all data needed to effectively manage marijuana policy. It will provide the necessary accountability and controls required to protect the health and well-being of the population of the State. The Scope of Work for this RFP includes:

1. Ease of use and access to the Marijuana Seed-to-Sale Tracking System
2. Configuration and customization
3. Software documentation and User Manuals
4. Installation of client software
5. Ability to interface with licensing and tax administration systems
6. Ability to interface with multiple departments
7. Provide training for system users and administrators
8. Supply specification of requirements and access for licensee users
9. Ongoing software support
10. System enhancements
11. Ongoing maintenance and support
12. Project management in coordination with the state to ensure all aspects of the work is integrated with ongoing state systems and program needs.
13. Adhering to the Standards and Policies of the Delaware Department of Technology and Information (DTI) identified in Appendix A1.

Consideration will be given to those Bidders who can demonstrate meeting the deliverables and requirements stated in the RFP efficiently while providing the best value to the State of Delaware, which includes government and industry users.

D. Deliverables

The selected bidder shall provide all deliverables/services and support staff to meet all requirements as outlined below.

1. Provisioning a Software as a Service (SaaS) solution that can be accessed across all devices through any popular web browser ensuing availability 24/7.
2. Will supply at least four environments (Development, Testing, Training and Production) to support the Software Development Life Cycle (SDLC) process (Customization/Configuration, User Acceptance and Deployment).
3. Capture all Business Requirements to configure and customize the SaaS solution for the Marijuana Seed-to-Sale Tracking System.
4. Project Management services to support all aspects of the project in support of the Bidder in service to the state.
5. All integration required for the Bidder's service to integrate with Revenue Premier Delaware's Integrated Revenue Accounting System (IRAS).
6. Implement the service.
7. All training provisions, including documentation, in person hands-on training and follow on training for up to 100 Department employees.
8. Virtual and on-site industry specific training for Delaware license marijuana businesses, as required by and paid for by the licensee.
9. Offer continuous 24/7 support for the solution to users within the Department and Industry.
10. Conduct monthly business reviews with the Department throughout the project

implementation phase and persistently through the contract duration to address any performance concerns and/or policy change implications.

11. Meet systems requirements standards and performance measures as listed in this solicitation.
12. Meet requirements, as outlined in this RFP to include any and all appendices, attachments, and addenda.

E. System Requirements

The selected bidder shall provide evidence of their ability to meet system business and technical requirements by responding to the items below and providing detailed explanation for each requirement listed in the table. The delivered system is required to be available to licensees, law enforcement agencies, and authorized State departments and agencies on a 24-hour/seven days per week basis for the following:

1. The system must be in compliance with all relevant State laws and regulations.
2. The solution should aim to make the State's enforcement efforts as efficient as possible while not overburdening the licensees.
3. The ability for marijuana establishments to enter all transactions, current inventory, and other required information as determined by the Commissioner pertaining to cultivation, processing, transfer, retail, and testing of marijuana and marijuana products in all forms.
4. The ability for dispensaries, retail stores, manufacturers, testing facilities, transporters, and other marijuana establishments to enter all transactions, current inventory, and other required information as determined by the Commissioner.
5. The system must be configurable to allow differences in business rules and user interface fields between medical marijuana and adult-use programs.
6. Tracking and tracing marijuana transfer and transportation by licensees, including information on licensee, date, quantity, price, tax, and other required information as determined by the Commissioner.
7. Real time verification that a transaction will not exceed the limit that a qualifying patient or a marijuana establishment is authorized to receive under the regulations governing medical and adult-use marijuana.
8. Retain records of the date, time, quantity, price, tax, and other information as determined by the Commissioner of each sale or transfer of marijuana and marijuana products in all forms.
9. Provide a unique, non-repeating identification number for every plant and inventory item recorded in the system.
10. Allow for the entry of routes and trip tickets for transportation manifest.
11. Give licensees access only to the information in the system that they are required to have access to.
12. Provide confidentiality of information in the database by preventing access by unauthorized individuals.
13. The system will allow for the creation of both static and ad-hoc reports that provide the Commissioner with analytics, including but not limited to total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.
14. The system should be capable of sending notifications to the Commissioner based on triggering events as determined by the Commissioner.
15. System database must be accessible via an Application Programming Interface (API) or query tool over an encrypted connection.
16. Interface portal to provide access to all potential external users (i.e., dispensaries,

manufacturers, testing facilities, and other licensed marijuana establishments engaged in cultivation, manufacturing, testing and distribution of marijuana).

F. Performance Measures, Service Level Agreements, and Damages

The Vendor shall:

- Be responsible for complying with all performance measurements and shall also ensure compliance by all subcontractors.
- Meet the Problem response time and resolution requirements as defined.
- Provide a monthly report to monitor and detail response times and resolution times.
- Log Problems into the Vendor-supplied help desk software and assign an initial severity (Emergency, High, Medium or Low as defined).
- Respond to and update all Problems, including recording when a Problem is resolved and its resolution. Appropriate OMC personnel shall be notified when a Problem is resolved.
- The OMC shall make the final determination regarding Problem severity.
- Vendor shall review any Problem with OMC to establish the remediation plan and relevant target dates.

1. SLA Effective Date (SLA Activation Date)

SLAs set forth herein shall be in effect beginning with the commencement of monthly services as of the completion of “go live” date.

Beginning on the SLA Activation Date, for any performance measurement not met during the monthly reporting period, the SLA credit for that individual measurement shall be applied to the Monthly Charges.

2. Service Level Reporting

a) Vendor performance will be monitored by OMC.
b) The Vendor shall provide detailed monthly reports evidencing the attained level for each SLA.
c) The Vendor shall provide a monthly summary report for SLA performance.
d) Monthly reports shall be delivered via email to the OMC by the 15th of the following month.
e) If any of the performance measurements are not met during the monthly reporting period, the Vendor will be notified of the standard that is not in compliance.

3. SLA Service Credits

Time is an essential element of the Contract. For work that is not completed within the time(s) specified in the service level metrics in the Contract, the Vendor shall be liable for service credits in the amount(s) provided for in the Contract.

Service credits will be cumulative for each missed service requirement. The State, at its option for amount due the State as service credits, may deduct such from any money payable to the Vendor or may bill the Vendor as a separate item. In the event of a catastrophic failure affecting the entire Solution, all affected SLAs shall be credited to the State.

In no event shall the aggregate of all SLA credits paid to the State in any calendar month exceed 25% of the Monthly Charges.

Example: If the Monthly Charges were $100,000 and one SLA were missed, with an

applicable 4% credit, the credit to the monthly invoice would be $4,000, and the State would pay a net Monthly Charge of $96,000.

The parties agree that any assessment of service credits shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as compensation to the State for the Contractor's failure to satisfy its service level obligations.

4. Root Cause Analysis

If the same SLA measurement yields an SLA credit more than once, the Vendor shall conduct a root cause analysis. Such root cause analysis shall be provided within 30 days of the second breach, and every breach thereafter.

In addition, for each 'Emergency' or 'High' priority Problem, the affected parties will perform a root cause analysis and institute a process of problem management to prevent recurrence of the issue.

5. Service Level Measurements Table (System performance)

Offeror shall complete the table below with its proposed service level metrics and SLA credits.

No.	Service Requirement	Measurement	Service Level Agreement	SLA Credit
1	Problem Response Time – High (example)	(Example) Average Response Time for High Priority Problems.	98% <15 minutes	1%

The State shall have the unilateral right to reallocate percentages among the various SLAs annually on the anniversary of the Contract, provided that such reallocation will not exceed the cap identified.

6. Problem Response Definitions and Times

The Contractor shall meet the Problem response time and resolution requirements.

The Contractor shall provide a monthly report to monitor and detail response times and resolution times.

Service Priority	Response Time	Resolution Time	Response Availability	Work Outage	Users Affected
Emergency	Less than 15 minutes	Within 2 hours of first report	24 hours per day, seven days per week	Major portions of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job.	Users or internal System functionalities are impaired.

Service Priority	Response Time	Resolution Time	Response Availability	Work Outage	Users Affected
High	Less than 30 minutes	Within 4 hours after first report	24 hours per day, seven days per week	Major portions of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job.	Affects the majority of users to include public facing users and high-profile users
Normal	Within 2 hours	Within 1 day (24 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 7AM-7PM	Specific non-critical features are not operating as specified Systems or users are unable to perform a small portion of their job but are able to complete most tasks.	Affects a number of users
Low	Within 2 hours	Within 3 days (72 hours) after first report. If the outage is not resolved a resolution plan must be in place.	Mon-Fri, 7AM-7PM	Lower priority features that can be done manually are not operating as specified Often a request for service with ample lead time.	Affects a number of users

Force Majeure: Neither the Vendor nor the State shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to: (1). 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; (2). Diseases, plagues, quarantine, epidemics or pandemics; (3). Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics or pandemics; or (4). The 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.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

G. Expectations

1. Setup and Implementation Plan

As part of the scope of services, the awarded Vendor will be required to do the following:

a) Provide a detailed fixed price project plan for setup and implementation, based on the approach, methodology and tools as set forth by the Project Management Institute (PMI). The selected Vendor will be responsible for identifying critical milestones and recommending solutions to any critical issues that may arise during setup and implementation. The selected Vendor will be responsible for working with State representatives on the finalization and maintenance of the project plan and schedule within the project budget. The Vendor must be able to implement (not just coach) the proposed system within 6 (six) months of contract signing. The Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished to the State. The Vendor shall follow practices consistent with generally accepted professional and technical standards.

b) Lead the implementation with a Project Management Team with strong communication skills, excellent project planning and execution experience, and proven skills in leading project team to successful solution implementation. The Vendor Project Manager will work directly with the State's Project Team. The Vendor project team shall include personnel with skills in process and requirements facilitation; thorough knowledge of the solutions from both a functionality and technical architecture standpoint; and skills to perform effective training and knowledge transfer. The State of Delaware expect the Vendor to be available as needed through the completion of the project implementation and provide change management services. The State of Delaware expects implementation and configuration work to occur concurrently as appropriate where the opportunity exists. Work with the State team and stakeholders to refine the business processes and requirements and document any changes to processes and requirements. The Vendor may choose to use their staff or a third-party partner to deliver these services.

c) Configure and deploy the solution per the agreed upon requirements and design documentation.

d) Provide seamless data conversion of all current and past data to similar or like fields with minimal or no interruption for applicants or hiring agencies. Conversion must maintain the links of all data. Data integrity must be maintained throughout the conversion.

e) Migrate existing data from the existing solution. Data shall be provided in the mutually agreed upon required format for conversion. Data conversion will take no longer than 90 days from the date of receipt of data from current vendor.

f) Provide training and knowledge transfer to foster user adoption of the solution and so staff are fully able to utilize the new capabilities. User manuals and training must be provided for all system components and train-the-trainer education is provided to prepare for standardized quality training. All personnel who are identified as end users for the new system will be required to attend training. To reach this goal, the Vendor will be responsible for developing a comprehensive training plan. The plan will identify the training needs of system end-users; work with State team to organize the training registration process, identify training course content, and develop the training materials needed to deliver the course specifications.

2. System Customization

It is the intention to use the Vendor's system as delivered with configurations as indicated in the vendor's proposal. The Vendor must indicate how the system is delivered for each requirement in Appendix A. Pricing in the vendor's proposal should include the cost of customizations. However, if during the contract an agreement is made for any specific customizations, the Vendor must:

a) Work with State to define requirements.
b) Perform unit, system, conversion, and integration testing.
c) Provide a test environment for user acceptance testing.
d) Migrate customizations to future system upgrades/versions.
e) Provide detailed Statement of Work (SOW) for any customization work.

3. Project Plan, Meetings, Reports, Communication, and Timeline

The Vendor will establish and provide a detailed project plan to successfully complete the tasks and deliverables for the Project. The project plan shall summarize the Vendor's approach, tasks with dated timelines, milestones, communication, change management, governance, and deliverables clearly specified. And include detail about time demands on State staff necessary and other resources (i.e., office space etc.) throughout the project.

4. Meetings and Reports

a) Monthly Progress Reports – The Vendor shall submit monthly progress reports to the State project manager beginning thirty (30) calendar days after the Planning Meeting. The progress reports must be submitted electronically and are to outline the following:
    1) The specific steps/activities performed/completed with date(s) during the reporting period.
    2) The specific steps/activities completed to date and the completion dates of such activities.
    3) The percentage of the project that has been completed to date.
    4) The specific steps/activities remaining to be completed and projected completion date(s) for the remaining steps/activities.
    5) List of any roadblocks or hurdles to the completion of work as scheduled with solutions for overcoming the obstacle and remaining on target.
b) Periodic meetings, which can be virtual, to review progress and discuss other items that may be in or outside of the scope of the project shall be scheduled at least bi-monthly.
    1) Monthly virtual meetings after go live date will address performance, technical and training issues.
c) Executive Overview to provide a "high-level" general overview of the Project work and results oriented toward a non-technical audience.

5. Communication and Implementation

a) Communication strategy shall be provided to cover the content, messaging, and delivery/notification methods for each stakeholder group.
b) Training plan and material shall be provided to demonstrate the application of solution which is sustainable for the future.
c) Governance strategy shall be provided to enable the State to manage the system effectively.

d) The Vendor will be available to provide ongoing consultation to members of the State team for the duration of the contract.

6. Timeline and Milestones

The Vendor shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Vendor in providing the required goods and services as outlined in this RFP. The description shall include an outline of the overall management concepts employed by the Vendor and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

Implementation Schedule – Vendor shall provide the proposed implementation schedule with its Proposal.

The Vendor shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.

7. Contract Transition

All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services performed hereunder shall become the property of Delaware and delivered to Delaware's Office of Marijuana Commissioner representative upon completion or termination of the contract, whichever comes first. The awarded vendor shall, within thirty (30) days of notification of the State, provide the data mapping requirements allowing for transition of the contracting service to another provider. And provide the data to the State of Delaware within 60 days of termination or completion of the contract.

The State of Delaware retains full ownership and control of all data, including but not limited to, any information, documents, or materials uploaded, created, or generated within the SaaS solution. This includes the right to access, use, modify, and transfer such data as necessary for governmental purposes, subject to any applicable laws and regulations governing data privacy and security.

Vendor will provide access to and support for extraction of data and conversion to a new solution as required to facility the transition to another vendor's solution.

a) The Vendor shall provide a draft Transition-Out Plan 120 Business Days in advance of Contract end date.

b) The Transition-Out Plan shall address at a minimum the following areas:

   1) Any staffing concerns/issues related to the closeout of the Contract;

   2) Communications and reporting process between the Contractor, the OMC and the Contract Monitor;

   3) Security and system access review and closeout;

   4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the OMC or a designee;

5) Any final training/orientation of OMC staff;

6) Connectivity services provided, activities and approximate timelines required for Transition-Out;

7) Knowledge transfer, to include:

   a) A working knowledge of the current system environments as well as the general business practices of the OMC;

   b) Review with the OMC the procedures and practices that support the business process and current system environments;

   c) Working knowledge of all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;

   d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;

   e) A working knowledge of various utilities and corollary software products used in support and operation of the Solution;

8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and

9) Any risk factors with the timing and the Transition-Out schedule and transition process. The Vendor shall document any risk factors and suggested solutions.

The Vendor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.

The Vendor shall provide copies of any current daily and weekly back-ups to the OMC, or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.

H. Technical Standards and Security Requirements

Acknowledgement of all requirements outlined in this section are required.

a) **Terms and Conditions** – The State of Delaware is taking a very deliberate approach to cloud-based engagements and protection of our data. It is for this reason explicit details of the cloud solutions are required, including an item-by-item acknowledgement from the candidate vendor. Proposals must contain Acknowledgement of the Delaware Cloud Service Terms and Conditions Agreement and Delaware Data Usage Terms and Conditions Agreement attachments. Additional policies and standards apply, refer to Appendix A1 for full list.

b) Confidentiality and Data Integrity – The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored. Computer software developed to process State data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of

the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information. The Contractor is required to agree to the requirements in the CONFIDENTIALITY AND INTEGRITY OF DATA STATEMENT, attached, and made a part of this RFP. Contractor employees, individually, may be required to sign the statement prior to beginning any work.

c) **Security** – Computer, network, and information security is of paramount concern for the State of Delaware and the Department of Technology and Information. Vendor agrees to provide, maintain, and support its Software and subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities as described in:

1) The Open Web Application Security Project's (OWASP) "Top Ten Project" – http://www.owasp.org;
2) The CWE/SANS Top 25 Programming Errors – http://www.sans.org/top25- programming-errors/;
3) The Center for the Internet Security Critical Security Controls https://www.cisecurity.org/controls/;
4) Other generally recognized and comparable industry practices or standards. The Contractor is guaranteeing that any systems or software provided by the Contractor are free of the vulnerabilities listed above.

I. Cyber Security Liability

It shall be the duty of the Vendor to ensure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by the State of Delaware. Vendor's agreement shall not limit or modify liability for information security breaches, and Vendor shall indemnify and hold harmless the State, its agents, and employees, from any and all liability, suits, actions, or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State shall subtract from any payment made to Vendor all damages, costs and expenses caused by such information security breaches that have not been previously paid to Vendor. See Attachment for details on the vendor's requirement under the State of Delaware Cyber Responsibilities, Liability, and Insurance.

J. Architectural Documentation Requirements

a) Network Diagram - A conceptual network diagram of the proposed solution is required that clearly documents the user's interaction with the solution and the State. The network diagram should follow the example include in attachments; Network Diagram Template. A final network diagram will be required prior to contract execution.

III. Required Information

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

A. Minimum Requirements

1. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.

2. Complete all appropriate attachments and forms as identified within the RFP.

B. General Evaluation Requirements

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State. For all functional and non-functional requirements in Appendix A, the Vendor must indicate how the system is delivered.

1. **Experience and Reputation** – Vendor's capability to deliver proven enterprise solution for organizations of comparable scope and complexity as the State of Delaware that meet the requirements detailed in this RFP. The evaluation includes past performance, and key personnel with demonstrated expertise in the defined areas. Vendors must provide brief biographical summaries and professional qualifications of key professionals proposed for this project.

2. **Functional/Technical Requirements** – How well the vendor solution can meet the functional requirements in terms of system features, communication and collaboration, resource and content management, workflow administration, and user experience. The Vendor must indicate how the system is delivered for each requirement in Appendix A. Specify options if available.

3. **Support and Maintenance** – Vendor's technical support and maintenance plan. The evaluation includes vendor's technical support, end user support, approach to ongoing maintenance and upgrades, business continuity, and ongoing training.

4. **Implementation and Training Plan** – Vendor's approach to planning, executing, and controlling the implementation of the project. The vendor will be evaluated on its risk management plan, milestones, resourcing, and general approach to project management and will consist of subcategories of solution implementation, user adoption, and initial training.

5. **Reporting** – Vendor's approach to reporting and dashboards.

6. **Data Handling and Security** – Vendor's plan for maintaining integrity and accuracy of data. Vendor's openness, security, and scalability. Evaluation includes ability of the vendor to manage roles and security permissions and protect the application and data integrity.

7. **Additional Requirements** – Vendor's system architecture, approach to required interfaces, and ability to address accessibility standards. Vendor's approach to

providing ongoing training and help resources.

8. **Price Proposed** – Evaluation of vendor's proposals will be conducted. Pricing breakdown by module is expected. Any functionality needed specifically to meet the Office of the Marijuana Commissioner's (OMC) requirements should be indicated as a separate item on the pricing spreadsheet. Optional and otherwise additional cost shall be included in vendor's cost proposal including a breakdown of implementation and annual costs.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

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

2. Obtaining Copies of the RFP
This RFP is available in electronic form through the State of Delaware Procurement website at https://www.bids.delaware.gov/ and https://gss.bonfirehub.com/. Paper copies of this RFP will not be available.

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

4. RFP Designated Contact
All requests, questions, or other communications about this solicitation shall be made in writing through the online bid submission portal. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the solicitation designated contact, through an addendum posted on https://mmp.delaware.gov/Bids/ and https://gss.bonfirehub.com/. The designated contact for this solicitation is:

Courtney McCarty
State Contract Procurement Administrator

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

6. Contact with State Employees
Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently

doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Respond

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

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- **a.** Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract:
- **b.** Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor:
- **c.** Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes:
- **d.** Has violated contract provisions such as;
  - **1)** Known failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - **2)** Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- **e.** Has violated ethical standards set out in law or regulation; and
- **f.** Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

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

2. Proposals

Solicitation responses must be submitted through the online bid submission portal. Refer to Appendix B – Online Bid Submission Portal Instructions & Required Forms for specific instructions.

3. Proposal Modifications

Vendors will have the ability to modify their submissions up to the Submission Deadline in the online bid submission portal.

4. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or

delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the vendor at least through December 31, 2025. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals submitted after the specified date and time will not be accepted by the online bid submission portal. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt within the online bid submission portal.

7. Proposal Opening

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

8. Non-Conforming Proposals

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

9. Concise Proposals

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

10. Realistic Proposals

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

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

11. Confidentiality of Documents

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's solicitation response (response) will be treated as confidential during the evaluation process. As such, vendor responses will not be available for review by anyone other than the State of Delaware Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information until a fully executed contract is received unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once fully executed contracts are received, the contents of all vendor responses are subject to FOIA's public disclosure obligations and exemptions.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Responses must contain sufficient information to be evaluated. Through the online bid submission portal, vendors will submit two copies of their solicitation response. One shall be marked original containing the full solicitation response. The second shall be marked redacted copy, redacting those items the vendor is looking to mark confidential.

The redacted copy must include the completed confidentiality form describing the items redacted, representing in good faith that the information is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each redaction meets the said definitions.

A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a response to the solicitation herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a response to a solicitation may enter the public domain.

12. Multi-Vendor Solutions (Joint Ventures)

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

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

a. Primary Vendor

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

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

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

b. Sub-contracting

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

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

c. Multiple Proposals

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

13. Sub-Contracting

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

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

14. Discrepancies and Omissions

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

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

- **RFP Question and Answer Process**
  The State of Delaware will allow written requests for clarification of this solicitation. All questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this solicitation must be received through the online bid submission portal by 4:00 p.m. Local Time, Thursday, May 9, 2024, referencing the section, page number, text of passage being questioned, and the question. All questions will be answered in writing by May 16, 2024, with responses posted on https://bids.delaware.gov and https://gss.bonfirehub.com/.

15. State's Right to Reject Proposals

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

16. State's Right to Cancel Solicitation

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

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

17. State's Right to Award Multiple Source Contracting

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

18. Potential Contract Overlap

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

19. Supplemental Solicitation

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

20. Notification of Withdrawal of Proposal

Vendors will have the ability to withdraw their submissions up to the Submission Deadline in the online bid submission portal.

21. Revisions to the RFP

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

22. Exceptions to the RFP

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

23. Business References

Provide at least three (3) business references consisting of current or previous customers of similar scope and value, completing the Business Reference Form. Include business name, mailing address, contact name and email, number of years doing business with, and type of work performed. Personal references cannot be considered.

24. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

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

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

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest proposal or the vendor who receives the highest total point score, rather the contract will be awarded to the

vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

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

25. Cooperatives

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

C. RFP Evaluation Process

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

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

1. Proposal Evaluation Team

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

2. Proposal Selection Criteria

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

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

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

Criteria Weight

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

Criteria	Weight
Vendor's Technical Response to Requirements and Work Plan	**20**
Experience and Qualifications of Proposed Staff with similar project implementations	**20**
Approach to Functional & Non-Functional Requirements	**10**
Approach to data handling and data security	**10**
Compliance with technology policies & standards	**10**
Pricing	**20**
References	**10**
Total	**100**

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

3. Proposal Clarification

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

4. References

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

5. Oral Presentations

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

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

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

V. Contract Terms and Conditions

A. Mandatory Contract Use

REF: Title 29, Chapter 6911(d) Delaware Code. All Covered Agencies as defined in 29 *Del. C.* § 6902(6) shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, school districts, and the Legislative Branch are specifically exempted from the mandatory use requirements of this subchapter. In addition, the Delaware Transit Corporation is exempt from the entire procurement chapter. Pursuant to 29 *Del. C.* § 6904(l) and (n) respectively, the Department of Elections and the Board of Pension Trustees have certain exemptions from the procurement chapter which may or may not apply to this Request for Proposals.

This contract shall be accessible to any School District, Political Subdivision, Municipality, Volunteer Fire Company, or higher education entity receiving state funds. Furthermore, this contract shall be accessible to all other entities as identified by Del. Code, Chapter 69, Title 29 § 6910.

B. Cooperative Use of Award

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

C. General Information

1. The term of the contract between the successful vendor(s) and the State shall be for three (3) years with three (3) optional extensions for a period of three (3) year for each extension.
2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development

prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

3. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.
4. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
5. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
6. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. A purchase order, telephone call, email, fax, or State credit card shall serve as the authorization to proceed with work in accordance with the proposal specifications and the special instructions, once it is received by the awarded vendor.
7. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
8. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.
9. Vendors are not restricted from offering lower pricing at any time during the contract term.

D. Collusion or Fraud

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

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

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

E. Lobbying and Gratuities

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

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

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

F. Solicitation of State Employees

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

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

G. General Contract Terms

1. Independent Contractors

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

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

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

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

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

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

3. Work Performed in a State Building

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

4. ACA Safe Harbor

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

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

5. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state, and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C*. § 2101.

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

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

6. Notice

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

GSS24929-SEED_SALE
Government Support Services
600A S. Bay Road
Dover, DE 19901-4604

7. Indemnification

a) General Indemnification

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

b) Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services, and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third

party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

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

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

8. Insurance

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

    1) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
    2) Commercial General Liability - $1,000,000 per occurrence/$3,000,000 per aggregate.
    3) Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or

staff), providing coverage on a primary non-contributory basis with limits of not less than:

a) $1,000,000 combined single limit each accident, for bodily injury;
b) $250,000 for property damage to others;
c) $25,000 per person per accident Uninsured/Underinsured Motorists coverage;
d) $25,000 per person, $300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and
e) Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage, or other loss.

d) The successful vendor must carry at least one of the following depending on the scope of work being performed.
   1) Medical/Professional Liability - $1,000,000 per occurrence/$3,000,000 per aggregate
   2) Miscellaneous Errors and Omissions - $1,000,000 per occurrence/ $3,000,000 per aggregate
   3) Product Liability - $1,000,000 per occurrence/$3,000,000 aggregate

e) Should any of the policies described above be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
f) Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

State of Delaware
Government Support Services
Contract No: GSS24929-SEED_SALE
600A S. Bay Road
Dover, DE 19901-4604

g) Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.
h) To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.
i) In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.
j) The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s).
k) The State of Delaware shall not be named as an additional insured.

9. Performance Requirements

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

10. Bid Bond

The Bid Bond requirement has been waived.

11. Performance Bond

The Performance Bond requirement has been waived.

12. Vendor Emergency Response Point of Contact

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

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

13. Warranty

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

14. Costs and Payment Schedules

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

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

15. Liquidated Damages

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

16. Dispute Resolution

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

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

17. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section 16 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

18. Termination of Contract

The contract resulting from this RFP may be terminated as follows by Government Support Services.

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

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not affect or prevent the contract cancellation unless the State provides a written acceptance of the

vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

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

c) **Termination for Non-Appropriations**: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring 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.

19. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

20. Covenant against Contingent Fees

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

21. Vendor Activity

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

22. Vendor Responsibility

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

23. 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 State. Only those subcontractors identified in the Subcontractor Form are considered approved upon award. Changes to those subcontractor(s) listed in the solicitation response must be approved in writing by the State.

24. Fair Background Check Practices

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

25. Vendor Background Check Requirements

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

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

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

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

Individual agency requesting services may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided, the location(s) being accessed, or as a matter of law. This includes, but may not be limited to, background checks that are compliant with 31 Del. C. §309 and/or 16 Del. C. § 1141 or other applicable laws. The agency requesting service is responsible for notifying the vendor of any special requirements at the time-of-service request, including the applicability of 31 Del. C. §309 and/or 16 Del. C. § 1141 or other statutory requirements. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract. The Vendor(s) shall be responsible for all costs associated with background check requirements. The access to and the provision of services by the Vendor or its agents may be withheld until background checks are completed and deemed accepted by the Agency requesting services.

26. 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

27. Work Product

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

28. Contract Documents

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

29. Applicable Law

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

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

a) the laws of the State of Delaware;

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

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

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

30. 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.

31. Assignment of Antitrust Claims

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

32. Scope of Agreement

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

33. 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.

34. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

35. IRS 1075 Publication (If Applicable)

a) Performance

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

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

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

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

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

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

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

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

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

- Certification that contractor personnel accessing FTI and contractor information systems containing FTI are all located within the United States or territories, given that FTI is not allowed offshore. See Exhibit 6 (pub. 1075).

- Requires external providers to notify designated agency personnel within three business days of any personnel transfers or terminations of external personnel who possess organizational credentials and/or badges or who have system privileges. See PS-7 External Personnel Security (SSR).

b) 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.

c) 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.

36. Other General Conditions

a) Current Version – "Packaged" application and system software shall be the most current version generally available as of the date of the physical installation of the software.

b) Current Manufacture – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer's latest design. All material and equipment offered shall be new and unused.

c) Volumes and Quantities – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.

d) Prior Use – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.

e) Status Reporting – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of

work being performed, milestones attained, resources expended, problems encountered, and corrective action taken, until final system acceptance.

f) Regulations – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.

g) Assignment – Any resulting contract shall not be assigned except by express prior written consent from the Agency.

h) Changes – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.

i) Billing - The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.

j) Payment - The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e., speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.

k) Federal Tax ID - The State of Delaware requires a new vendor to complete the registration process through the Delaware Supplier Portal at http://esupplier.erp.delaware.gov. Successful completion of this registration enables the creation of a State of Delaware supplier record. The Taxpayer ID (SSN or EIN) and Applicant (supplier) name are submitted to the Internal Revenue Service for "matching"/ If the Taxpayer ID and name do not match, the vendor record cannot be approved.

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.

Any questions about completing this registration or specific comments about the registration, please contact supplier maintenance by phone at 302-672-5000.

l) Purchase Orders – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS24923-SEED_SALE on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

m) Purchase Card - The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.

n) Additional Terms and Conditions – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

VI. RFP Miscellaneous Information

A. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract

performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

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

B. Definitions of Requirements

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

C. Production Environment Requirements

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

VII. Attachments

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

- Sample Report 1 - Monthly Usage Report
- Sample Report 2 – Subcontracting (2nd Tier Spend) Report
- Sample 3 – Network Diagram
- Attachment 1 – Office of Supplier Diversity Application
- Attachment 2 – Confidentiality and Data Integrity Agreement
- Appendix A – Functional and Non-Functional Requirements
- Appendix A1 – Technology Policies & Standards
- Appendix B – Online Bid Submission Portal Instructions & Forms
- Appendix C – Pricing BidTable
- Appendix D – Sample Professional Services Agreement

REQUIRED REPORTING

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

A complete and accurate Usage Report (Sample Report -1) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an

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

In accordance with Executive Order 49, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Sample Report - 2.

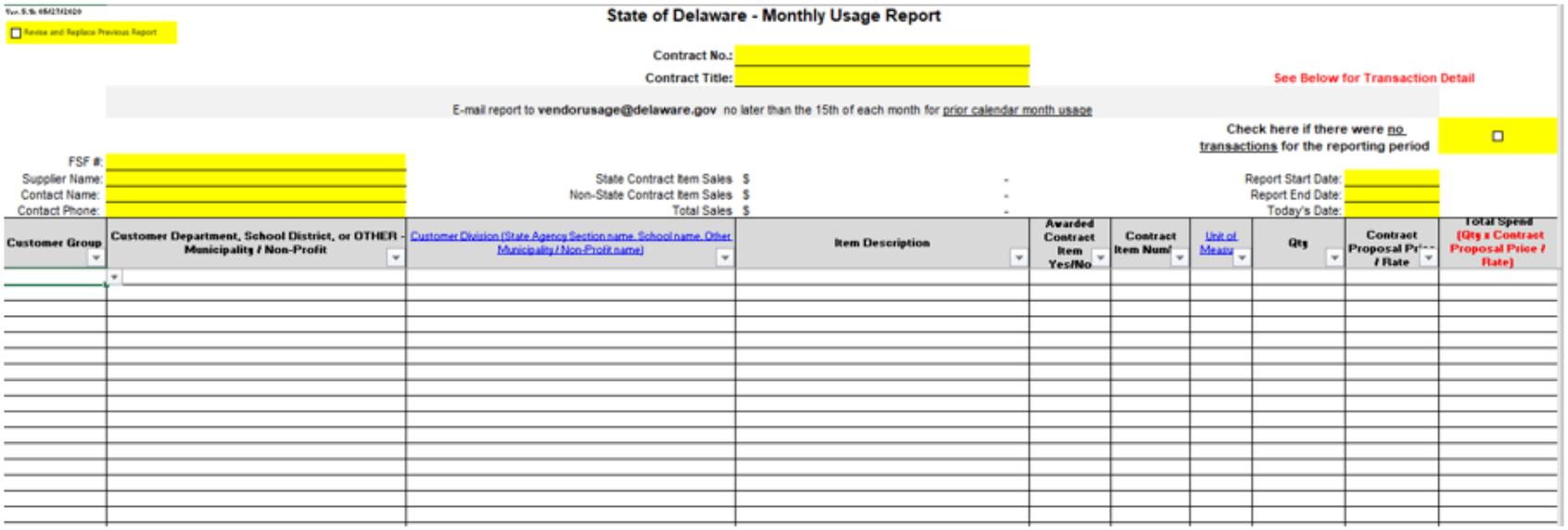
Accurate 2nd tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@delaware.gov on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September,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

STATE OF DELAWARE
Government Support Services

Sample Report - 1

STATE OF DELAWARE
MONTHLY USAGE REPORT

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY



State of Delaware - Monthly Usage Report

Revise and Replace Previous Report

Contract No.:
Contract Title:

See Below for Transaction Detail

E-mail report to **vendorusage@delaware.gov** no later than the 15th of each month for prior calendar month usage

Check here if there were no transactions for the reporting period ☐

FSF #:
Supplier Name:
Contact Name:
Contact Phone:

State Contract Item Sales $ -
Non-State Contract Item Sales $ -
Total Sales $ -

Report Start Date:
Report End Date:
Today's Date:

Customer Group	Customer Department, School District, or OTHER - Municipality / Non-Profit	Customer Division (State Agency Section name, School name, Other Municipality / Non-Profit name)	Item Description	Awarded Contract Item Yes/No	Contract Item Num	Unit of Measu	Qty	Contract Proposal Pr... / Rate	Total Spend (Qty x Contract Proposal Price / Rate)

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

Sample Report - 2

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware

Subcontracting (2nd tier) Quarterly Report

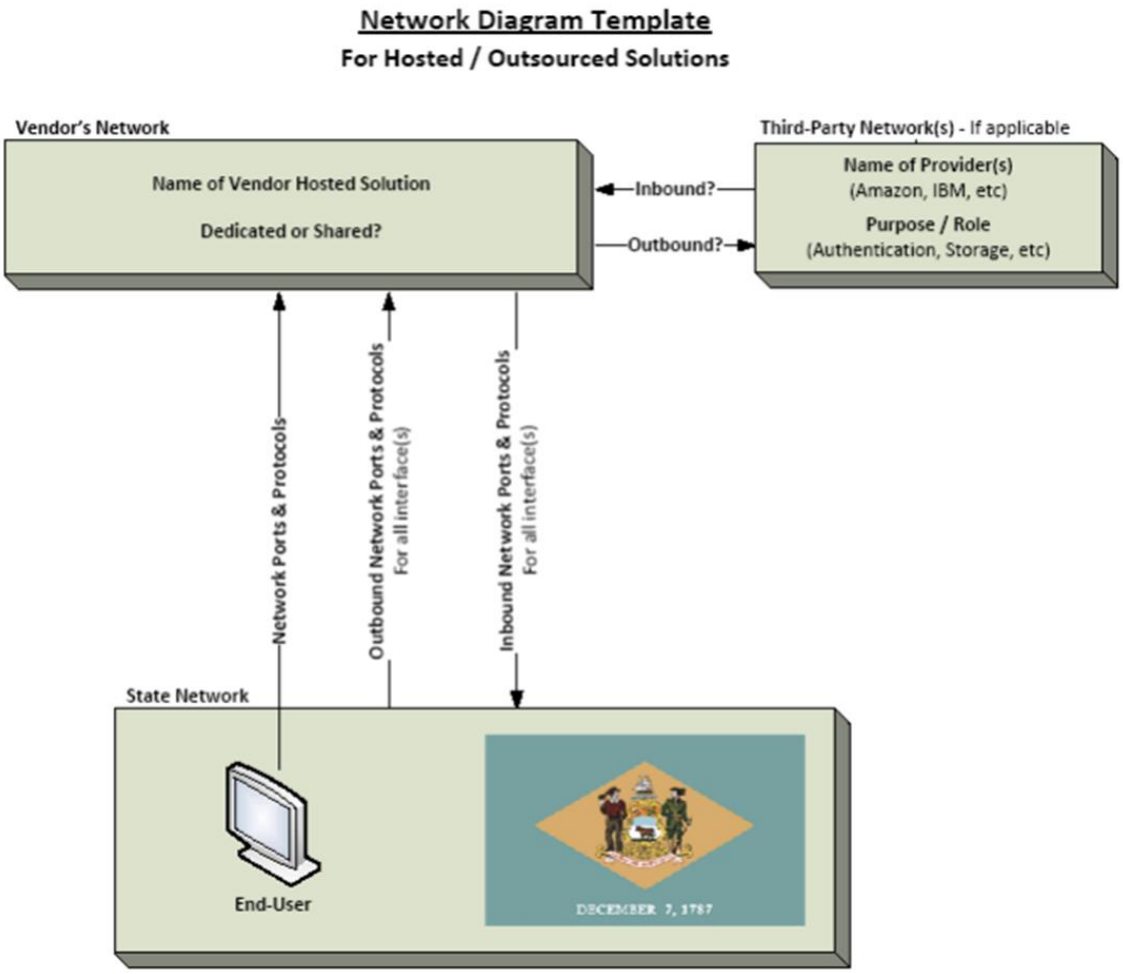
Prime Name:							**Report Start Date:**									
Contract Name/Number							**Report End Date:**									
Contact Name:							**Today's Date:**									
Contact Phone:							*Minimum Required		Requested detail							
Vendor Name*	**Vendor TaxID***	**Contract Name/ Number***	**Vendor Contact Name***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

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

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorusage@delaware.gov

Sample 3 – Network Diagram

https://dti.delaware.gov/about-dti/boards-and-committees/arb-templates



Attachment 1

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

Supplier Diversity Certification Applications can be found here:
Certifications - Division of Small Business - State of Delaware

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

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

Subscribe to the OSD Mailing List

New address for OSD:
Carvel State Building
820 N. French Street, 10th Floor
Wilmington, DE 19801

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

Dover address:
(Local applicants may drop off applications here)

99 Kings Highway
Dover, DE 19901
Phone: 302-739-4271

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

Appendix A – Functional and Non-Functional Technical Requirements

Appendix A outlines the detailed technical specifications and is used to collect vendor responses for each technical requirement identified. The appendix can be found at http://bids.delaware.gov and https://gss.bonfirehub.com/ . Appendix A is a portion of the total submission and is required to be completed and submitted in the format provided. Requirements are broken into three sections:

- Functional and Non-Functional Requirements
- Security and Data Handling
- Technology Policies & Standards

For each requirement, the Criticality Column indicates:

- (M) = "Mandatory". The State considers it to be of such great importance that it must be met in order for the proposal to be accepted. If the proposer believes that there is something about their proposal that either obviates the need for this requirement or makes it of less importance this must be explained within the comments. The State retains the right to accept a proposal if the need of the requirement is reduced or eliminated by another feature of the proposal.
- (P) = "Preferred". This requirement is considered by the State to be of great usefulness, but the lack of this feature is not considered serious enough to disqualify the proposal.
- (O) = "Optional". This requirement is considered by the State to be one which useful or potentially useful but not a central feature of the Project.

For each requirement, vendors are required to:

- Vendor Response Column:
    - YES: If the current release of the software can fully support ALL the functionality described in the row, without special customization. A “Yes” can only be used if the delivery method is Standard (see delivery method instructions below).
    - NO: Delivery method = Future, Custom, or Not Available/Not Proposing (see delivery method instructions below).

- Delivery Method Column:
    - Standard - Feature/Function is included in the proposed system and available in the current software release.
    - Future - Feature/Function will be available in a future release. (Provide anticipated delivery date, version, and service release in the comment area.)
    - Custom - Feature/Function can be provided with custom modifications. (Respondent must provide estimated hours and average billing rate or flat cost for the software modification in the comment area. These cost estimates should be identified clearly and included in the total cost
    - Not Available/Not Proposing - Feature/Function has not been proposed by the Vendor. (Provide brief description of why this functionality was not proposed.
- Comments Column:
    - For each requirement Vendors must provide a brief explanation of how the requirement will be met. Free form text can be entered into this column.

Appendix A1 – Technology Policies and Standards

Appendix A1 is a complete list of all Mandatory and Preferred applicable Technology Policies and Standards.

Appendix B – Online Bid Submission Portal Instructions & Forms

Appendix B is a separate file found on https://mmp.delaware.gov/bids/ and https://gss.bonfirehub.com/. This appendix contains instructions on how to structure your solicitation response and the forms that are to be completed and submitted through the online bid submission portal.

Appendix C – Bid Table Pricing

Appendix C is a separate file found on https://mmp.delaware.gov/bids/ and https://gss.bonfirehub.com/. Appendix C must be submitted through the online bid submission portal using the provided format.

Appendix D – Sample PSA

Appendix D (available at https://mmp.delaware.gov/bids/ and https://gss.bonfirehub.com/) is included with this RFP to provide bidders an opportunity to review the Professional Services Agreement that will be executed between the awarded vendor(s) and the State. The agreement should not be included in a respondent's proposal. Any exceptions a respondent may have to Appendix D must be listed on Exceptions Form of the RFP. Exceptions Form must be included in the respondent's proposal. Exceptions not listed on provided Exceptions Form will not be considered at any point in the evaluation or award process.