

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
DRUG & ALCOHOL TESTING (VARIOUS) AND RELATED MATERIALS  
ISSUED BY GOVERNMENT SUPPORT SERVICES  
CONTRACT NUMBER GSS25715-DRUGTESTING**

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**I. Overview**

The State of Delaware Department of Government Support Services seeks professional services to provide an employee and applicant drug and alcohol testing services, DOT (CDL) Regulated Testing and related materials. 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: September 2, 2025
Deadline for Questions	Date: September 9, 2025, 4:00 p.m. (Local Time)
Response to Questions Posted by:	Date: September 23, 2025, 4:00 p.m. (Local Time)
Deadline for Receipt of Proposals	Date: September 30, 2025, 3:00 PM (Local Time)
Estimated Notification of Award	Date: October 29, 2025

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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**

The purpose of this contract is to establish a centralized procurement vehicle to facilitate access to a wide range of drug testing services and associated materials. These services will support the operational needs of multiple ordering agencies, ensuring consistency, cost-efficiency, and compliance across departments. The selected vendor(s) will be expected to deliver reliable, timely, and secure drug testing solutions tailored to meet agency-specific requirements while adhering to all relevant regulatory standards.

The technical requirements of this RFP are stated in Appendix A

**III. Required Information**

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

**A. Minimum Requirements**

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.
2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the RFP, Section G, Item 8 (insurance).

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**B. General Evaluation Requirements**

1. Experience and Reputation
2. Expertise (for the particular project under consideration)
3. Capacity to meet requirements (size, financial condition, etc.)
4. Location (geographical)
5. Demonstrated ability
6. Familiarity with public work and its requirements
7. Distribution of work to individuals and firms or economic considerations
8. Other criteria necessary for a quality cost-effective project

**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:

**Luci Karnai, SCPO II**

**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

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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 C – Online Bid Submission Portal Instructions 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

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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 November 30, 2027. 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.

The Agency will conduct a public opening of proposals and complete a public log of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

For anyone who wishes to witness the proposal opening through a remote access rather than in-person, they may do so by joining virtually at:

Virtual Meeting Link: [Microsoft Teams Meeting](#)  
Meeting ID: 242 984 527 510 0  
Passcode: 6tW9nr9y

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

**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.

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**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.

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**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.

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**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 September 9, 2025, 4:00 p.m. (Local Time) referencing the section, page number, text of passage being questioned, and the question. All questions will be answered in writing by September 23, 2025, 4:00 p.m. (Local Time) 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.

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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.

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**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

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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.
- Select more than one vendor pursuant to 29 *Del. C. § 6986*. Such selection will be based on the following criteria:
  - Government Support Services reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, by county or whichever may be most advantageous to the State of Delaware.

**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:

	<b>EVALUATION CRITERIA</b>	<b>POINTS</b>
1.	<b>Experience and Background:</b> Does the vendor have experience and background in providing drug and alcohol screening services? Has the vendor had experience providing service to other government entities? Does the vendor meet the General Requirements for both regulated and non-regulated testing?	35
2.	<b>Employee Qualification:</b> Does the vendor have experienced and qualified personnel? Did vendor provide evidence of required certified staff?	20

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3.	<b>Location:</b> Does the vendor have the ability to collect samples on-site (at state facilities)? Does the vendor have the ability to collect samples off-site (at vendor facilities) in all three (3) counties?	20
4.	<b>Methodology/Approach:</b> The ability to provide services within the defined time frames, and the understanding of problems that may occur; and how you plan to meet them.	30
5.	<b>Quality Assurance Program:</b> To ensure accuracy of drug and alcohol testing and reporting of results.	20
6.	<b>Training Program:</b> Does the vendor offer a structured and comprehensive training program for Agency Designated Contacts? Does the training include key subject components? Is the training delivered in-person at least semi-annually, with flexibility for additional sessions as needed? Are instructors qualified and materials aligned with current regulatory standards?	15
7.	<b>Business References</b>	15
8.	<b>Pricing</b>	20
<b>TOTAL</b>		<b>175</b>

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.

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**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 two (2) years with four (4) optional extensions for a period of one (1) 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,

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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.

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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

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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.

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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:

**GSS25715-DRUGTESTING**  
**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

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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.

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- 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: GSS25715-DRUGTESTING  
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.

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**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,

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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.

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**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.

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**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,

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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;

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- 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.

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**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 officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor.
- (2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format 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 or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

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(6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.

(7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

(8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.

(9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.

(10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

(11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.

(12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

**b) Criminal/Civil Sanctions**

(1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI 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 FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a

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criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(4) 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.

(5) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures 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 the initial certification and the annual recertifications, the contractor and each officer or employee 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. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

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**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.

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- l) Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number GSS25715-DRUGTESTING 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 (2<sup>nd</sup> Tier Spend) Report
- Attachment 1 – Office of Supplier Diversity Application

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- Attachment 2 – Performance Bond
- Attachment 3 – Bid Bond
- Attachment 4 – HIPAA Business Associate Agreement
- Attachment 5 – DTI Confidentiality (Non-Disclosure) And Integrity of Data Agreement
- Attachment 6 – DTI T&C Governing Cloud Services & Data Usage Agreement
- Attachment 7 – Department of Corrections Security Clearance Application
- Appendix A – Scope of Work/Technical Requirements
- Appendix B – Pricing BidTable
- Appendix C – Online Bid Submission Portal Instructions
- Appendix D – Online Bid Required Forms
- Appendix E – Vendor Collection Sites
- Appendix F – Questionnaire

**IMPORTANT – PLEASE NOTE**

Attachments 4, 5, 6 and 7 must be included in your proposal submission.

**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](mailto: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 15<sup>th</sup> 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,

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VetBiz.gov). The format used for Subcontracting 2<sup>nd</sup> 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](mailto:vendorusage@delaware.gov) on the 15<sup>th</sup> (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.



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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](mailto:vendorusage@delaware.gov)



**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](mailto:OSD@Delaware.gov)

For more information, please send an email to OSD:  
[OSD@Delaware.gov](mailto: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, 10<sup>th</sup> Floor  
Wilmington, DE 19801

Telephone: 302-577-8477 / Fax: 302-736-7915

Email: [OSD@Delaware.gov](mailto: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.

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BOND HAS BEEN WAIVED

Attachment 2

PERFORMANCE BOND

Bond Number: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that we, \_\_\_\_\_, as principal ("**Principal**"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, legally authorized to do business in the State of Delaware, as surety ("**Surety**"), are held and firmly bound unto the \_\_\_\_\_ ("**Owner**") (*insert State agency name*), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, that if **Principal**, who has been awarded by **Owner** that certain contract known as Contract No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Contract"), which Contract is incorporated herein by reference, shall well and truly provide and furnish all materials, appliances and tools and perform all the work required under and pursuant to the terms and conditions of the Contract and the Contract Documents (as defined in the Contract) or any changes or modifications thereto made as therein provided, shall make good and reimburse **Owner** sufficient funds to pay the costs of completing the Contract that **Owner** may sustain by reason of any failure or default on the part of **Principal**, and shall also indemnify and save harmless **Owner** from all costs, damages and expenses arising out of or by reason of the performance of the Contract and for as long as provided by the Contract; then this obligation shall be void, otherwise to be and remain in full force and effect.

**Surety**, for value received, hereby stipulates and agrees, if requested to do so by **Owner**, to fully perform and complete the work to be performed under the Contract pursuant to the terms, conditions and covenants thereof, if for any cause **Principal** fails or neglects to so fully perform and complete such work.

**Surety**, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of **Surety** and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition or change in or to the Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any work to be performed or any monies due or to become due thereunder; and **Surety** hereby waives notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to **Surety** as though done or omitted to be done by or in relation to **Principal**.

**Surety** hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the Contract shall in any way whatsoever affect the obligation of **Surety** and its bond.

Any proceeding, legal or equitable, under this Bond may be brought in any court of competent jurisdiction in the State of Delaware. Notices to **Surety** or Contractor may be mailed or delivered to them at their respective addresses shown below.

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IN WITNESS WHEREOF, **Principal** and **Surety** have hereunto set their hand and seals, and such of them as are corporations have caused their corporate seal to be hereto affixed and these presents to be signed by their duly authorized officers, the day and year first above written.

**PRINCIPAL**

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Address

**SURETY**

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Attachment 3

Bid Bond

**BOND HAS BEEN WAIVED**

(Amend percentage as appropriate) → 10% BOND TO ACCOMPANY PROPOSAL  
(NOT NECESSARY IF CERTIFIED CHECK IS USED)

KNOW ALL MEN BY THESE PRESENTS That \_\_\_\_\_ of \_\_\_\_\_ of the County of \_\_\_\_\_ and State of \_\_\_\_\_ principal, and \_\_\_\_\_ of \_\_\_\_\_ of the County of \_\_\_\_\_ and the State of \_\_\_\_\_ as surety, legally authorized to do business in the State of Delaware, are held and firmly bound unto the State of Delaware in the sum of \_\_\_\_\_ Dollars or \_\_\_\_\_ per cent (not to exceed \_\_\_\_\_ Dollars) of amount proposal on Contract No. \_\_\_\_\_ to be paid to said State of Delaware for the use and benefit of the \_\_\_\_\_ of said State, for which payment well

(hereinafter referred to as Agency)

and truly to be made, we do bind ourselves, our and each of our heirs, executors, administrators, and successors, jointly and severally for and in the whole, firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH That if the above bounden principal \_\_\_\_\_ who has submitted to said Agency of the State of Delaware, a certain proposal to enter into a certain contract to be known as Contract No. \_\_\_\_\_, for the furnishing of certain products and/or services within the said State of Delaware shall be awarded said Contract No. \_\_\_\_\_, and if said \_\_\_\_\_ shall well and truly enter into and execute said Contract No. \_\_\_\_\_ and furnish therewith such surety bond as may be required by the terms of said contract and approved by said Agency, said contract and said bond to be entered into within twenty days after the date of official notice of the award thereof in accordance with the terms of said proposal, then this obligation to be void or else to be and remain in full force and virtue.

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

SEALED AND DELIVERED IN THE

Presence Of \_\_\_\_\_

\_\_\_\_\_  
Name of Vendor (Principal) (Seal)

Witness

\_\_\_\_\_ BY

\_\_\_\_\_ (Seal)

Corporate  
Seal

\_\_\_\_\_  
Title

\_\_\_\_\_ BY

\_\_\_\_\_  
Name of Surety (Seal)

\_\_\_\_\_ (Seal)

\_\_\_\_\_  
Title

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into as a result of the referring executed Contract between the identified CONTRACTOR, hereafter referred to as “**Business Associate**”, and the State of Delaware, Department of Services for Children, Youth & Their Families, hereafter referred to as “**Covered Entity**” (collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the “Agreement”) which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate (“CE Affiliate”) that involve the use or disclosure of either (a) Protected Health Information (“PHI”) that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the “HIPAA Rules”) issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), or (b) health information relating to substance abuse and treatment (“Part 2 PHI”) protected under the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, “Part 2”), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI and Part 2 PHI.

**WHEREAS**, Business Associate provides professional services for Covered Entity pursuant to a referring contract and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain PHI or Part 2 PHI to Business Associate (collectively, the “Master Agreement”);

**WHEREAS**, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

**WHEREAS**, Business Associate is also a Qualified Service Organization (“QSO”) under Part 2 and must agree to certain mandatory provisions regarding the use and disclosure Part 2 PHI;

**WHEREAS**, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity’s knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

**WHEREAS**, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

**NOW, THEREFORE**, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

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- 1) **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.
- 2) **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:
  - a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.
  - b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:
    - i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
    - ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
    - iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.
  - c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.
  - d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
    - i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or

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transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.

- ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.
  - iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.
- e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.
- f) **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.
- i) In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.
  - ii) Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.
  - iii) Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.
- g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.
- h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI

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available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

- i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.
- j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:
  - (i) for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and
  - (ii) for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.
- k) **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.
  - i) **Part 2 QSO Compliance.**
    - (1) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits Part 2 PHI, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
    - (2) Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that may prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
    - (3) Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

STATE OF DELAWARE  
Government Support Services

**3) Obligations of Covered Entity.**

- a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

**4) Term and Termination.**

- a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.
- b) **Termination Upon Breach.**
  - i) Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if non-severable, the Master Agreement.
- c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.
- d) **Effect of Termination.**
  - i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from or created or received

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by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

- ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.
- iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5) **Miscellaneous.**

- a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.
- c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.
- d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.
- e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

STATE OF DELAWARE  
Government Support Services

- f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.
- g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.
- h) **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended, nor should they be construed to grant any rights, remedies, obligations, or liabilities whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.
- i) **Applicable Law.** This BAA shall be governed under the laws of the State of Delaware, without regard to choice of law principles, and the Delaware courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.
- j) **Judicial and Administrative Proceedings.** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.
- k) **Transmitting Electronic PHI.** Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 C.F.R. § 164.402.

Covered Entity	Business Associate
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



**DEPARTMENT OF TECHNOLOGY AND INFORMATION**

William Penn Building  
801 Silver Lake Boulevard  
Dover, Delaware 19904-2407

**CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT**

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; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency 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.

I/we, as an employee(s) of \_\_\_\_\_ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

STATE OF DELAWARE  
Government Support Services

Attachment 6



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

**State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement**

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_  
between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

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

Form Revision Date: 8/21/23

STATE OF DELAWARE  
Government Support Services



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

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

**State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement**

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_

between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

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

Form Revision Date: 8/21/23

STATE OF DELAWARE  
Government Support Services



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

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

**State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement**

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_

between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

	Public Data	Non Public Data																						
			have no convictions, pending criminal charges, or civil suits related to any crimes of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the PROVIDER's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.																					
8		✓	<b>Security Logs and Reports:</b> The PROVIDER shall allow the State of Delaware access to system security logs that affect this engagement, its data, and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.																					
9		✓	<b>Sub-contractor Flowdown:</b> The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.																					
10		✓	<b>Contract Audit:</b> The PROVIDER shall allow the State of Delaware to audit conformance including contract terms, system security, and data centers, as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days advance written notice and shall not unreasonably interfere with the PROVIDER's business. In lieu of performing its own audit, the State may request the results of a third party audit from the PROVIDER or an attestation of compliance.																					
11		✓	<p><b>Cyber Liability Insurance:</b> An awarded vendor unable to meet the <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a> requirement of encrypting PII at rest shall, prior to execution of a contract, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s). Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount.</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Level</th> <th style="width: 40%;">Number of PII records</th> <th style="width: 50%;">Level of cyber liability insurance required (occurrence = data breach)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">1-10,000</td> <td style="text-align: center;">\$2,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">10,001 – 50,000</td> <td style="text-align: center;">\$3,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">50,001 – 100,000</td> <td style="text-align: center;">\$4,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">100,001 – 500,000</td> <td style="text-align: center;">\$15,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;">5</td> <td style="text-align: center;">500,001 – 1,000,000</td> <td style="text-align: center;">\$30,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;">6</td> <td style="text-align: center;">1,000,001 – 10,000,000</td> <td style="text-align: center;">\$100,000,000 per occurrence</td> </tr> </tbody> </table>	Level	Number of PII records	Level of cyber liability insurance required (occurrence = data breach)	1	1-10,000	\$2,000,000 per occurrence	2	10,001 – 50,000	\$3,000,000 per occurrence	3	50,001 – 100,000	\$4,000,000 per occurrence	4	100,001 – 500,000	\$15,000,000 per occurrence	5	500,001 – 1,000,000	\$30,000,000 per occurrence	6	1,000,001 – 10,000,000	\$100,000,000 per occurrence
Level	Number of PII records	Level of cyber liability insurance required (occurrence = data breach)																						
1	1-10,000	\$2,000,000 per occurrence																						
2	10,001 – 50,000	\$3,000,000 per occurrence																						
3	50,001 – 100,000	\$4,000,000 per occurrence																						
4	100,001 – 500,000	\$15,000,000 per occurrence																						
5	500,001 – 1,000,000	\$30,000,000 per occurrence																						
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Form Revision Date: 8/21/23

STATE OF DELAWARE  
Government Support Services



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

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

**State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement**

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_  
between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

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

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

Provider Name/Address (print): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Provider Authorizing Official Name (print): \_\_\_\_\_

Provider Authorizing Official Signature: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF DELAWARE  
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Attachment 7

SECURITY CLEARANCE APPLICATION DELAWARE DEPARTMENT OF CORRECTION

PLEASE PRINT CLEARLY

**WHO SHOULD COMPLETE THIS FORM:**

- i. Applicants requesting one-time access or occasional access (whether for one facility or multiple facilities)
- ii. Applicants requesting a badge for access to one or more facilities (frequent access for period of 1 year or more)  
*Note: These applicants will be directed to Human Resources after this form is approved*
- iii. Individuals requesting to schedule an offender visit may be asked to complete this form.

**Volunteers, interns and professional service visitors must attach a letter from their sponsoring organization. Letter must be on agency letterhead, signed by the agency's director and include the name and title/role of the applicant and the name of the program.**

**WHO SHOULD NOT COMPLETE THIS FORM:**

- (1) Attorneys
- (2) Employees of DOC's contracted medical/behavioral health provider (please contact DOC's Human Resources directly)

**SECTION 1: PERSONAL INFORMATION & CRIMINAL HISTORY**

**NAME:** \_\_\_\_\_  
(LAST) (FIRST) (MIDDLE)

**PLEASE LIST ALL OTHER NAMES YOU HAVE USED INCLUDING MAIDEN, NICKNAMES AND RELIGIOUS NAMES:**  
\_\_\_\_\_

**DOB:** \_\_\_\_\_ **PLACE OF BIRTH:** \_\_\_\_\_ **SSN#:** \_\_\_\_\_

**SEX:** MALE / FEMALE **RACE:** \_\_\_\_\_ **DRIVER'S LICENSE#:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ **APT#:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**PHONE: HOME:** (<-->) \_\_\_\_\_ **WORK:** (<-->) \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**PLEASE LIST WHICH FACILITY(IES) YOU ARE REQUESTING ACCESS TO:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE SELECT TYPE OF ACCESS REQUESTED**

- Offender Visit**
- One Time Access (i.e. single event) \*No badge issued**
- Occasional Volunteer or Service Provision (Less than 3 days per week or less than 165 days per year for a period of one year or less) \* No badge issued**
- Frequent/Long Term Volunteer or Service Provision (At least 3 days per week or 165 days per year for a period of one year or more) \* You will be directed to HR to fill out a badge application packet after this form has been approved by the respective DOC Bureau Chief**

**DO YOU HAVE ANY ARRESTS FOR CHARGES OTHER THAN TRAFFIC TICKETS (WHETHER CONVICTED, DISMISSED, NOLLE PROSSED, OR PARDONED)? NO/YES (IF YES, COMPLETE BELOW). IF YOU NEED MORE ROOM, PLEASE ATTACH A SEPARATE SHEET.**

**COUNTRY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**OFFENSE:** \_\_\_\_\_

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Page 2 of 3

HAVE YOU EVER BEEN CONVICTED OF AN OFFENSE OTHER THAN A TRAFFIC TICKET? NO / YES  
(IF YES, COMPLETE BELOW). IF YOU NEED MORE ROOM, PLEASE ATTACH A SEPARATE SHEET.

COUNTRY: \_\_\_\_\_ DATE: \_\_\_\_\_

OFFENSE: \_\_\_\_\_ SENTENCE: \_\_\_\_\_

ARE YOU PRESENTLY UNDER DEPT. of CORRECTION SUPERVISION: NO/YES (IF YES, WHAT): \_\_\_\_\_

ARE YOU RELATED TO OR KNOW ANYONE INCARCERATED AT A DOC FACILITY: NO/ YES

IF YES, NAME OF INMATE AND YOUR RELATIONSHIP TO THEM: \_\_\_\_\_

SECTION 2: JUSTIFICATION FOR SECURITY CLEARANCE REQUEST *DO NOT COMPLETE THIS SECTION IF APPLYING FOR AN OFFENDER VISIT. IF REQUESTING ONE-TIME PRISON ACCESS FOR A SINGLE EVENT, ONLY ANSWER THE QUESTIONS MARKED WITH AN ASTERISK(\*).*

\*REASON FOR CLEARANCE: \_\_\_\_\_

\*DATE(S) OF ACTIVITY: \_\_\_\_\_ \*ORGANIZATION: \_\_\_\_\_

\*PROGRAM NAME: \_\_\_\_\_

\*JOB TITLE: \_\_\_\_\_ \*HOW LONG EMPLOYED/NOLUNTEERING: \_\_\_\_\_

ORGANIZATION ADDRESS, PHONE NUMBER, AND EMAIL:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WHAT TYPE OF VOLUNTEER OR PROFESSIONAL SERVICES WILL YOU BE PROVIDING?

\_\_\_\_\_  
\_\_\_\_\_

DESCRIBE YOUR QUALIFICATIONS FOR PROVIDING PROFESSIONAL OR VOLUNTEER SERVICES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LIST ANY PAST OR PRESENT PROFESSIONAL OR VOLUNTEER ORGANIZATIONS YOU PARTICIPATED IN (INCLUDE NAME, LENGTH OF SERVICE, CONTACT PERSON, AND PHONE NUMBER OR EMAIL):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 3: PLEASE READ AND SIGN *ALL APPLICANTS MUST COMPLETE THIS SECTION*

I understand that DOC authorities will verify my criminal record information. I also understand that my application may be rejected for any reason.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_

STATE OF DELAWARE  
Government Support Services

Page 3 of 3

**DOC USE ONLY:**

The following is the result of the DELJIS and NCIC records checks:

DELAWARE WANTS/WARRANTS \_\_\_\_\_ 'DELAWARE CRIMINAL HISTORY \_\_\_\_\_

NCIC WANTS/WARRANTS \_\_\_\_\_, NCIC CRIMINAL HISTORY \_\_\_\_\_

DELJIS/NCIC  
INVESTIGATOR \_\_\_\_\_ SIGNATURE \_\_\_\_\_ ◆ DATE \_\_\_\_\_

APPROVAL \_\_\_\_\_ APPROVAL EXPIRES ON: \_\_\_\_\_  
DENIED \_\_\_\_\_

**IF DENIED, PLEASE INDICATE REASON BELOW:**

- (1) Dishonest/incomplete application;
- (2) Active pending charges/warrants/capiases;
- (3) Any criminal conviction within the past two years;
- (4) Any incarceration in a Delaware correctional facility within the past three years;
- (5) Pending litigation against DOC involving applicant, arrest for escape, conviction for smuggling prison contraband, affiliation with confirmed security threat group, or previous institutional misconduct relating to the security, life, safety, and health of the facility while incarcerated;
- (6) Other (See Investigation for info).

REVIEWER'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

## APPENDIX A - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

### A. Executive Overview

1. **Purpose and Scope** This contract is intended to establish a procurement vehicle for comprehensive drug testing services and associated materials, available for use by multiple ordering agencies. The drug testing services covered under this contract include:

- Pre-employment applicant testing
- Random testing
- Incident-triggered testing
- Post-accident testing
- Reasonable suspicion testing
- Follow-up testing
- Return-to-duty testing

Depending on the requirements of the using agency, federal regulations may apply to the testing procedures.

2. **Invoicing and Payment** The awarded vendor(s) must submit all invoices directly to the State of Delaware, using the address provided by the ordering agency.  
If an agency-specific policy or procedure requires an applicant or employee to cover the cost of drug testing, reimbursement will be processed through the State.

### B. General Requirements

The requirements listed below are applicable to both regulated and non-regulated testing under this contract.

#### 1. Compliance with HIPAA Regulations

- a.) The awarded vendor(s) must comply with the privacy and security standards outlined in **45 CFR §160 et seq.** and **45 CFR §164.308 et seq.** when providing services under this contract.
- b.) Vendor must provide a detailed overview of its company policy, procedures and protocols to ensure full HIPAA compliance and protection of client information.
- c.) Certain ordering agencies may require vendors to execute a HIPAA Business Associate Agreement (see Attachment 4)

#### 2. Vendor Primary Contact

- a.) Awarded vendor(s) must have designated primary contact(s) to work with ordering agencies for:
  - (1) Establishing testing population
  - (2) Scheduling sample collection
  - (3) Providing reporting results
  - (4) Invoicing
- b.) Awarded Vendor(s) must provide the names and contact details for their designated primary contacts.

#### 3. Ordering Agency Designated Contact

The ordering agency shall provide the vendor with a designated point of contact for the random drug testing program. The primary point of contact shall be within, or delegated by, the ordering agency's Human Resources Department.

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**4. Security Clearance/Employee Screening**

- a.) On-site collections at Department of Correction facilities require Security Clearance, which can be obtained by submitting the Department of Corrections Security Clearance Application (see Attachment 7).
- b.) Vendors must disclose whether they employ individuals who are also employed by, or under the direct supervision of, a State Agency. This disclosure is required before contract execution and must be updated throughout the contract term, as applicable.

In their proposal, the vendor is to identify internal controls that will ensure any employee categorized above will not be involved in any way with the collection, processing, or analysis of the ordering agency's testing.

**5. Testing Locations**

- a.) Vendor must operate collection sites in New Castle, Kent, and Sussex counties.
- b.) Vendor must identify the location of its facilities in each county and describe the process for transporting samples to the testing laboratory.
- c.) Vendor must provide procedures and response timeframe for issues, concerns, or questions related to the sample collection process.

**6. On Site Sample Collection and Transport**

- a.) Vendor must have the capability and established protocols for conducting sample collection at the ordering agency's site.
- b.) Vendor must have procedures for transporting collected samples on-site to the testing laboratory.
- c.) Vendor must describe these capabilities and procedures in its proposal.

**7. Split Specimen Testing**

- a.) Vendors must provide split-specimen collection services at both designated service locations and agency sites.
- b.) Vendor must describe its split-specimen handling and storage procedures.

**8. Twenty-Four (24) Hour Availability**

- a.) Vendor must offer 24-hour off-site and on-site sample collection for Incident-Triggered, Reasonable Suspicion, and Random Testing to accommodate all shifts.
- b.) The State prefers the ability to schedule 24-hour sample collection for pre-employment testing.
- c.) Vendor must describe its 24-hour sample collection capabilities in its proposal.

**9. Medical Review Officer (MRO)**

- a.) Vendor must have a certified Medical Review Officer (MRO) on staff. The MRO shall interpret results and consider alternative explanations for positive results.
- b.) Vendor shall identify the MRO(s) on staff and provide evidence of certification.

**10. Expert Witness Services**

- a.) Vendor must offer expert witness services as required, either via phone consultation or via personal appearance.
- b.) Vendor must describe its capacity to provide expert witness services.

**11. Web-based Reporting**

- a.) The vendor must have the capability of web-based reporting of all verified results.
  - (1) Verified results are to be updated daily.
  - (2) Reporting tool must have the ability to provide both test specific results and statistical analysis of the test population.

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(3) Ideally the reporting tool will allow for the ordering agency to download reports in an active environment such as Microsoft Excel.

b.) Vendor must describe the information available within reports, including whether report content is customizable per ordering agency requirements.

**12. Information Technology Requirements (Acknowledgement Required)**

a.) Standard Practices

The vendor must ensure professional quality, technical accuracy, timely completion, and proper coordination of all services furnished to the State. The vendor(s) shall follow practices consistent with generally accepted professional and technical policies and standards. The vendor(s) shall be responsible for ensuring that all services, products, and deliverables are coordinated and aligned with the Department of Technology and Information (DTI) standards, as outlined at DTI Standards & Policies. If any service, product or deliverable furnished by a vendor(s) does not conform to State policies, standards or general practices, the vendor(s) shall, at its expense, either (1) replace it with a conforming equivalent or (2) modify it to conform to State policies, standards or practices.

b.) Security Controls

As computer, network, and information security are of paramount concern, the State wants to ensure that computer/network hardware and software do not compromise the security of its IT infrastructure. Therefore, the Vendor is guaranteeing that any systems or software meets or exceeds the Top 20 Critical Security controls available at SANS Security Controls.

c.) Cyber Security Liability

It shall be the duty of the Vendor to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by 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.

d.) Information Security

Multifunction peripherals must be hardened when used or connected to the network. They should be configured to harden the network protocols used, management services, processing services (print, copy, fax, and scan), logging, and physical security. Care shall be taken to ensure that any State non-public data is removed from memory before service calls and/or equipment disposal. Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, etc.) shall be disposed of in a manner corresponding to the classification of the stored information, up to and including physical destruction.

**13. Records Retention**

Vendors must retain auditable records for a minimum period of six (6) years.

**14. Pricing**

a.) Vendors must provide cost-per-test pricing as outlined in Appendix D.

b.) Pricing must be provided in Appendix D BidTable Pricing and submitted separate from the proposal

**15. Chain of Custody**

Vendor must provide each ordering agency with original chain of custody forms to ensure the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

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- a.) Chain-of-custody forms must include the following details:
- Full name of the employee being tested
  - Employee social security number (last 4 digits) or ID number
  - Laboratory name and address
  - Employer name, address, phone & fax numbers
  - Designated Employer Representative name and telephone number
  - Medical Review Officer name, address, phone & fax number
  - DOT agency which regulates employee safety-sensitive duties
  - Reason for testing
  - Direct Observation
- b.) Web-based chain-of-custody systems are preferred; vendors must describe their procedures.

**16. Designated Contact Training**

The selected vendor shall provide semi-annual, in-person training to each participating agency's Designated Contacts, with additional sessions as requested, based on the agency's specific operational needs, staffing, and program responsibilities. Training must include, but not limited to, the following key components:

- a) Program Manager Training – Oversight, compliance, and documentation.
- b) Reasonable Suspicion Training – Identifying and responding to signs of misuse.
- c) Collection Site Audit Training – Auditing procedures and regulatory standards.
- d) Refresher Training – Targeted updates and reinforcement of key practices.

The vendor is responsible for developing and delivering all training materials, maintaining attendance records, and providing proof of completion. Sessions must reflect current regulations and be accessible to new personnel as needed.

Vendors must clearly identify the scope, format, frequency, and delivery method of their training program as part of their proposal.

**17. Labor, Supplies and Materials**

The vendor must furnish all labor, supplies, and materials necessary to perform contracted services.

**18. Federal Health and Human Services Cut Off Levels**

- a.) As of January 23, 2017, standards are:

Drug ng/ml  
Marijuana metabolites 50  
Cocaine metabolites 150  
Phencyclidine (PCP) 25  
Opiate metabolites 2000  
Amphetamines 500

- b.) The awarded vendor(s) are responsible for ensuring compliance with the current Federal Health and Human Services Drug Cut Off Levels throughout the contract term.

**19. Monthly Invoicing**

- a.) Vendors must have the capability to provide the ordering agency with a detailed monthly invoice meeting the following requirements:
- (1) Invoice number and date
  - (2) Ordering agency's purchase order number
  - (3) Line items will be listed, sorted, and subtotaled by sample collection location.
    - Line items must include employee ID# and test site location code. (No employee names are to appear on the invoice; for pre-employment screenings, use Social Security Number)
  - (4) Net totals of costs and number of tests completed

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(5) Summation of the number of samples taken, number of tests completed, and, where applicable, reasons a certain sample could not be tested

b.) Vendors must confirm invoicing capability and submit a sample invoice in the proposal.

**20. Random Drug Testing Regulated and Non-Regulated**

a.) Testing Methodology

(1) Initial screening must be completed via Enzyme Multiplied Immunoassay Technique (EMIT). The immunoassays will be grouped as follows and the cutoff levels will be in accordance with Federal Health and Human Services Standards.

(2) All drugs detected by the above screening method shall be confirmed by Gas Chromatography/Mass Spectrometry (GCMS)

b.) Sample Analysis, Confirmation, and Communication of Positive Results

(1) If a specimen is analytically determined positive or has certain non-negative characteristics that may imply tampering, confirmation testing will automatically follow.

(2) The vendor's certified MRO shall interpret results, consider alternative explanations for positive results, and relay only confirmed positive results to the Ordering Agency's Designated Representative.

(a) The legitimate use of certain prohibited medications may produce positive screening results. On such occasions, the VENDOR may review prescription and/or OTC medication use with the referred person to compare with test results. Detection of prohibited substances below the thresholds expected from legitimate use and/or prescribed levels may be considered acceptable and reported to the DEPARTMENT as negative. The VENDOR'S MRO shall follow DEPARTMENT policy and procedures in exercising their professional judgment in such situations to determine if in their opinion, the levels detected constitute abuse.

(b) Initial results that are excessively diluted, contain indicators of masking efforts, are at an incorrect temperature or otherwise may suggest tampering shall be reviewed by the VENDOR'S MRO, who will attempt to contact and question the referred person before reporting final results to the DEPARTMENT. MRO attempts to contact the donor shall follow DEPARTMENT policy and procedures and if unsuccessful, the MRO shall notify the DEPARTMENT'S Designated Employer Representative (DER), who shall attempt to assist the MRO in contacting the donor. Without good cause, such results will constitute a "Fail" status and may be reported to the DEPARTMENT provided that attempts to reach the donor as described in DEPARTMENT policy and procedures have failed.

Otherwise, the VENDOR shall notify the DEPARTMENT of negative results as described in item c. below

(3) The vendor must communicate any positive test results via phone call and in writing to the ordering agency's designated representative. Initial phone call shall be immediate, while written communication must be submitted within five (5) working days from the time of sample collection.

c.) Sample Analysis, Confirmation, and Communication of Negative Results

(1) The ordering agency will define how Negative results must be reported:

(a) En masse in a single document on a daily basis.

(b) Via web-based results system

(2) The vendor must communicate any negative test results in writing to the ordering agency's designated representative. Such written communication must be submitted within two (2) working days from the time of sample collection.

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**21. Turn Around**

Results must be relayed to the ordering Agency Contact with 2-5 days from specimen collection

- a.) Negative Results – Written notice within 2 working days
- b.) Positive Results – Immediate call, written notice within 5 working days

**C. Testing Requirements Specific to Non-Regulated Testing**

**1. Reporting of Test Results**

- a) Negative test results may be reported to the ordering agency in a single comprehensive document.
- b) Positive results must be reported individually and immediately following confirmation by the MRO.
  - (1) Initial notification of a positive result must be conducted via phone to the ordering agency's designated contact.
  - (2) Subsequent to phone communication, positive test reports must be accessible via the vendor's standard reporting tool within five (5) business days from the time of sample collection.
- c) Vendor must confirm their ability to provide reporting as specified in this section.

**2. Confirming Positive Test Results**

- a) If a specimen is determined to be analytically positive, the vendor will automatically confirm the test prior to reporting a positive test result.
- b) Vendors must outline their specific procedures for confirming positive test results.
- c) Specimens determined to contain drugs will be preserved at the laboratory for a minimum of twelve (12) months.
- d) If a retest determines the original positive result was a false positive, the awarded vendor must, at a minimum:
  - Not invoice for the retest
  - Issue a credit of the charges for the original test

**3. Random Drug Testing- Non-Regulated**

a) Testing Population

- (1) The ordering agency shall provide the vendor with a list of employees subject to random drug testing. The ordering agency will identify the testing frequency and the percentage of the total population to be tested in each cycle. The vendor will be responsible for generation of the random population for each test cycle.
- (2) Agencies may require the population of each testing cycle to be divided into on-site and off-site testing.

The vendor shall equally divide the random population into Categories A & B.

- The vendor shall test Category A employees on the worksite without the employees having prior notice of arrival.
- The vendor shall test Category B employees off site by notifying the ordering agency's designated contact of the need for the employees to be sent off site.

b) Sample Collection and Testing Frequency

- 1) The ordering agency will define the testing frequency as:
  - Weekly
  - Bi-weekly
  - Monthly
  - Quarterly

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- 2) The vendor shall collect specimens in accordance with the frequency set by the ordering agency.
- 3) The vendor will be responsible for collecting all urine specimens. Should a specific member of the test population be unable to provide a urine specimen, the vendor shall obtain ordering agency approval to collect a hair specimen.
- 4) The vendor must test samples within the same week they are collected to ensure timely results.

**D. Testing Requirements Specific to DOT (CDL) Regulated Testing**

In addition to those requirements identified in Section C 1 through 3, awarded vendor must:

**1. Certification and Compliance**

- a. Be certified by Department of the Health and Human Services (HHS) under the National Laboratory Certification Program (NLCP) for all required testing.
- b. Maintain "Random Selection Pool" in full compliance with USDOT regulations for individual agencies under FMCSA regulations.
- c. Maintain separate consortium pools for each ordering agency.
- d. Monitor all collection sites to ensure compliance with FMCSA regulations.
- e. Maintain the selection numbers, ensuring compliance with the current FMCSA testing rates.

**2. Personnel & Certification Requirements**

- a. Maintain resumes and certifications for all Medical Review Officers (MROs).
- b. Maintain Breath Alcohol Technician (BAT) certifications for all specimen collectors.

**3. Collection & Testing Availability**

- a. Assure mobile on-site collection availability for statewide coverage (when applicable):
  - Kent County
  - Sussex County
  - New Castle County
- b. Clearly define an after-hours testing process and ensure after-hours collection availability for all testing categories.
- c. Maintain at least one collection site in each county capable of providing Direct Observation (DO) collections 24 hours a day.
- d. Assure availability to assist with FMCSA audits and/or litigation hearings.
- e. Maintain the follow-up testing schedules for all applicable pending tests.

**4. Documentation and Reporting**

- a. Establish a detailed Drug and Alcohol process for all testing categories.
- b. Maintain documentation on all test collection sites as well as testing labs.
- c. Immediately notify Designated Employer Representative (DER) and/or designee(s) of positive results.
- d. Provide no more than 48-hour response time notification for negative drug screens.
- e. Assure that all drug and alcohol tests are performed on the appropriate chain of custody form. In the event that tests are reported incorrectly, provide the Department with an affidavit to acknowledge the error and the corrective actions in place to avoid such errors. (A close, professional working relationship between the provider and all established collection sites is critical to the Department's success in remaining USDOT compliant.)
- f. Maintain and send quarterly and annual statistical reports for each of the Department's testing categories and/or pools.
- g. Provide secured Internet access reporting capability to the Departments Designated Employer Representative (DER) and/or designee(s).
- h. Forward all Chain of Custody (COC) employer copy and the MRO Result Form together via US mail to the Departments DER and/or designee(s).

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- i. Ensure all invoices submitted to the Department for payment must include detailed information regarding pool, test type, test date, employee name, etc.

All Drug and Alcohol Testing services must be tracked via an approved Drug and Alcohol monitoring software package. (e.g., Hidi, DrugPak, JJ Kellers etc.)

**APPENDIX B – BIDTABLE PRICING**

Appendix B is a separate file found on [mymarketplace.delaware.gov](https://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. Appendix B must be submitted through the [online bid submission portal](#) using the provided format.

**APPENDIX C – ONLINE BID SUBMISSION PORTAL INSTRUCTIONS**

Appendix C is a separate file found on [mymarketplace.delaware.gov](https://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. This appendix contains instructions on how to structure your solicitation response and forms that are to be completed and submitted through the [online bid submission portal](#).

**APPENDIX D – ONLINE BID REQUIRED FORMS**

Appendix D is a separate file found on [mymarketplace.delaware.gov](https://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. This appendix contains the forms that are to be completed and submitted through the [online bid submission portal](#) using the provided format.

**APPENDIX E – VENDOR COLLECTION SITES**

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**APPENDIX F – QUESTIONNAIRE (Q-35CS)**

Appendix F is a separate file found on [mymarketplace.delaware.gov](https://mymarketplace.delaware.gov) and <https://gss.bonfirehub.com/>. Appendix F must be submitted through the [online bid submission portal](#) using the provided format.