



## **State of Delaware**

# **PARK CONCESSIONS FOR FOOD AND BEACH RETAIL ITEMS**

**Request for Proposal**

**Contract No. NAT22001\_PARK CONCESSIONS**

*Tuesday, January 11, 2022*

**- *Deadline to Respond* -  
*Thursday, February 24, 2022*  
*1:00 PM (Local Time)***

STATE OF DELAWARE  
Department of Natural Resources and Environmental Control  
Division of Parks and Recreation

**CONTRACT NO. NAT22001\_Park Concessions**

ALL VENDORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" for PARK CONCESSIONS FOR FOOD AND BEACH RETAIL ITEMS. The proposal consists of the following:

**Contents:**

- I. INTRODUCTION
- II. SCOPE OF WORK
- III. FORMAT FOR PROPOSAL
- IV. PROPOSAL EVALUATION PROCEDURES
- V. MANDATORY PREBID MEETING
- VI. DEFINITIONS AND GENERAL PROVISIONS
- VII. PROPOSAL REPLY SECTION

**ATTACHMENTS**

Appendix A – STATEMENT OF WORK AND TECHNICAL SPECIFICATIONS

Appendix B – PRICING FORMS

Appendix C – SPECIFICATIONS AND ADDITIONAL INFORMATION

In order for your proposal to be considered, the Proposal Reply Section shall be executed completely and correctly and returned in a sealed envelope **clearly displaying the contract number and Vendor name** by **Thursday, February 24, 2022 at 1:00 PM** (Local Time) to be considered.

**Proposals must be mailed to:**

Delaware Department of Natural Resources and Environmental Control  
Division of Parks and Recreation/OBS NAT22001\_PARK CONCESSIONS  
89 Kings Highway  
Dover, DE 19901  
Attn: Elizabeth LaSorte

Please review and follow the information and instructions contained in the General Provisions and this Request for Proposal (RFP). Should you need additional information, please call Elizabeth LaSorte at 302-739-9027 or email [elizabeth.lasorte@delaware.gov](mailto:elizabeth.lasorte@delaware.gov).

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## I. INTRODUCTION

### A. PURPOSE

The State of Delaware provides certain facilities for the use and benefit of the public in areas under the administration of the Department of Natural Resources and Environmental Control, Division of Parks and Recreation (the “**Division**”) and desires to provide Snack Food Services, Beach Retail Items, Management and Operations of these concession services (collectively the “**Concession Services**”).

The purpose of this Request for Proposal is to obtain sealed proposals from Vendor(s) capable of satisfying the Division requirements for Concession Services in our four (4) park locations as stated herein. NOTE: Vendors shall submit a proposal for any and/or all location(s). Additionally, the Cape Henlopen location allows for “Value Added” proposal opportunities.

It is the goal of this Request for Proposal to execute a contract and identify a Vendor(s) who (i) meet park requirements and the business and legal criteria set forth herein; (ii) are capable of executing a contract within the timeline provided; and (iii) can deliver the Concession Services within the Parks as stated in Vendor(s) submitted proposal.

### 1. COMPETITIVE SEALED PROPOSAL

It has been determined by the State of Delaware, Department of Natural Resources and Environmental Control (“DNREC”), Division of Parks and Recreation, pursuant to **Delaware Code Title 29, Chapter 6924 (a)** that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not practical and/or not in the best interest of the State. The use of competitive sealed proposals is necessary to:

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

### 2. CONTRACT REQUIREMENTS

Multiple contract(s) may be issued to procure Snack Food and Beach Retail Item Concession Services at:

- Cape Henlopen State Park (Main Beach Area Concession)
- Delaware Seashore State Park (Tower’s Ocean Concession)
- Fenwick Island State Park (Concession)
- Killens Pond State Park (Water Park Concession)

### 3. AGENCY USE CONTRACT

Pursuant to 29 *Del. C.* [§ 6904](#)(e) respectively, if no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency’s contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also

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procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

**4. MULTIPLE SOURCE AWARD**

The Agency reserves the right to award this contract to more than one Vendor pursuant to 29 *Del. C. § 6926*. The basis for such selection shall be: The Division of Parks and Recreation will award the best suited Vendor for each concession site in the best interest of the State of Delaware.

**5. POTENTIAL CONTRACT OVERLAP**

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

**6. SUPPLEMENTAL SOLICITATION**

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

**7. CONTRACT PERIOD**

Each Vendor's contract shall be valid for **four (4) years from April 15, 2022 to April 14, 2026**. Each contract may be renewed for two (2) three (3) year periods through negotiation between the Vendor and DNREC-Division of Parks and Recreation. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

The State reserves the right to enter into Contract(s) that shall not exceed twenty-five (25) years, if the awarded Vendor provides capital improvements and offerings (i.e., Value Added Options) that require longer timelines for return on investment. The State shall be the sole determining authority for a Contract that shall exceed the Contract period listed above.

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. In the event of an extended re-procurement effort and the contract's available renewal options have been exhausted, Division of Parks and Recreation reserves the right to extend the contract. If exercised, the extension shall be for a reasonable period of time as mutually agreed to by the Division and the contractor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new contract.

**B. KEY RFP DATES/MILESTONES**

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

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 Department of Natural Resources and Environmental Control  
 Division of Parks and Recreation

Activity	Due Date
RFP Availability to Vendors	<b>Tuesday, January 11, 2022</b>
<b>Non-Mandatory</b> Pre-bid Conference and Site Visits	<b>Tuesday, January 25, 2022</b>
Written Questions Due No Later Than (NLT)	<b>Tuesday, February 1, 2022</b>
Written Answers Due/Posted to Website NLT	<b>Tuesday, February 8, 2022</b>
Proposals Due NLT	<b>Thursday, February 24, 2022</b>
Public Proposal Opening	<b>Thursday, February 24, 2022</b>
Proposal Evaluation/Presentations as required	To be determined if applicable
Vendor Best & Final Discussions, as required	To be determined if applicable
Contract Award	Will occur within 90 days of bid opening

**C. INQUIRIES & QUESTIONS**

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

All questions with regard to the interpretation of this solicitation, drawings, or specifications, or any other aspect of this RFP must be received in writing by **Tuesday, February 1, 2022**. All questions will be answered in writing by **Tuesday, February 8, 2022** via being posted on <http://bids.delaware.gov/> website. All questions must make specific reference to the section(s) and page numbers from this RFP where applicable. Oral explanations or instructions will not be binding.

**D. RFP DESIGNATED CONTACT**

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

Delaware Department of Natural Resources and Environmental Control  
 Division of Parks and Recreation  
 89 Kings Highway  
 Dover, DE 19901  
 Attn: Elizabeth LaSorte  
 elizabeth.lasorte@delaware.gov

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

**E. CONTACT WITH STATE EMPLOYEE**

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

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## II. SCOPE OF WORK

### A. OVERVIEW

The Vendor(s) shall provide all equipment, materials and labor to supplement the State of Delaware's need for Contract No. NAT22001\_PARK CONCESSIONS, as described herein. The contract will require the Vendor(s) to cooperate with the DNREC's Division of Parks and Recreation to ensure that the State receives the most current state-of-the-art material and/or services.

### B. BACKGROUND

DNREC's Division of Parks and Recreation is seeking to bid out Concession Services and in doing so will select the most qualified and competent Vendor(s) to manage and operate a food service to include, but not limited to: equipment, staff and operation normally associated with non-alcoholic beverages (e.g. soda, sweet tea, water, juices), coffee, hot and cold sandwiches, hot dogs, hamburgers, tacos, pizza, chicken tenders, ice cream, fresh fruits, salads, and a variety of healthy foods and snacks for the general public's enjoyment. In addition, Vendor(s) may sell beach retail items, including beach umbrellas, beach chairs and floatation devices, as well as sale of beach related goods approved by the Park. **Note: At Cape Henlopen State Park, awarded Vendor must provide rental of beach chairs and beach umbrellas. At Killens Pond State Park, the awarded Vendor may rent beach chairs (per Division approval and based on space constraints). All other parks listed have rental services provided by the Division and rentals are not included in this RFP.**

### C. STATEMENT OF NEEDS

Vendor(s) shall furnish all labor, personnel, equipment and supplies necessary to operate park concessions for food and beach retail items per the terms and conditions as described herein. The Division of Parks and Recreation currently provides snack food services to the four (4) Delaware State Park locations through either contracted services or operated by the Division. The Division of Parks and Recreation is interested in procuring services for these locations with an emphasis on excellent customer service and operations/management, quality food products in accordance with the specifications listed herein and increasing visitor satisfaction through the use of the Concession Services. The four (4) Delaware State Park locations included in this Request for Proposal are as follows:

- Cape Henlopen State Park (Main Beach Area Concession)
- Delaware Seashore State Park (Tower's Ocean Concession)
- Fenwick Island State Park (Concession)
- Killens Pond State Park (Water Park Concession)

**At the Cape Henlopen State Park Concession, the Division is open to "Value Added" proposals which may include capital improvements and/or new opportunities or enhancements for a food concession in a "restaurant" like environment.**

**NOTE: Vendors shall submit a proposal for any and/or all location(s). If bidding only on selected location(s), enter NO PROPOSAL on the location(s) for which a PROPOSAL is Not being submitted.**

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**D. DETAILED REQUIREMENTS**

Any technical requirements (Statement of Work and Technical Specifications) of this RFP are stated in Appendix A. **Vendors must provide detailed pricing for all Concession Services they are bidding on the Excel Spreadsheet, Appendix B.**

**III. FORMAT FOR PROPOSAL**

**A. INTRODUCTION**

This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each Vendor must provide every component listed in the order shown in this RFP, using the format prescribed for each component. A proposal may be rejected if it is incomplete or conditional.

**B. PROPOSAL RESPONSE**

The Request for Proposal may contain pre-printed forms for use by the Vendor in submitting its proposal. The forms required by this solicitation shall be considered mandatory, prevailing documents. When preprinted forms are used, the forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the Vendor for entering information such as unit bid price, total bid price, as applicable.

The Vendor's proposal shall be written in ink or typewritten on the form provided, and any corrections or erasures **MUST** be initialed by Vendor's representative completing the bid submission.

If items are listed with a zero quantity, Vendor shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The proposal shall show a total bid price for each item bid and the total bid price of the proposal excluding zero quantity items.

Vendors' proposal must respond to each and every requirement outlined in the RFP criteria in order to be considered responsive. Proposals must be clear and concise.

**C. 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.

**D. 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.

**E. COVER LETTER**

Each proposal will have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the Vendor's ability to provide the services specified in

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the RFP. The cover letter shall be signed by a representative who has the legal capacity to enter the organization into a formal contract with DNREC, Division of Parks and Recreation.

**F. TABLE OF CONTENTS**

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

**G. DESCRIPTION OF SERVICES AND QUALIFICATIONS**

Each proposal must contain a detailed description of how the Vendor will provide the goods and services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the Vendor will provide that are not mentioned in this RFP.

**H. DISCOUNT**

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 into unit bid price(s).

**I. SAMPLES OR BROCHURES**

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

**J. ACKNOWLEDGEMENT OF UNDERSTANDING OF TERMS**

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

**K. PROPOSAL BOND (BID BOND) REQUIREMENT**

Each Vendor shall furnish a bond to the State of Delaware for the benefit of the Department of Natural Resources and Environmental Control. No offer will be considered unless the Vendor(s) submits a bond drawn upon an insurance or bonding company authorized to do business in the State of Delaware. In lieu of a proposal bond, a certified check may be drawn from a reputable banking institution authorized to do business in the State of Delaware. **The certified check must be payable to the Delaware Division of Parks and Recreation, in the sum of \$2,500.00 (for each site being bid).** This certified check is required as a cash deposit to guarantee the Vendor's performance of the terms of said contract and is to be submitted along with the offer and application forms. The Division reserves the right to retain all or a portion of the deposit if the Vendor fails to execute the awarded contract. Upon award of the contract, the \$2,500.00 deposit of the successful Vendor will be retained by the Division of Parks and Recreation and may at the option of the Division if all of the obligations have been met, be credited towards the annual contract fee payment for the first year of operation. The deposits of all other Vendors not selected will be returned immediately after the contract has been awarded.

**L. PERFORMANCE BOND REQUIREMENT**

Contractors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of Division of Parks and



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Recreation with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted using Attachment 11 in the form of a good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware.

**M. NUMBER OF COPIES WITH MAILING OF PROPOSAL**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with **four (4) paper copies and two (2) electronic copies** on CD or DVD media disk or a USB drive. **One of the copies shall be marked “Master Copy” and will contain original signatures in all locations requiring a Vendor signature.** The remaining copies do not require original signatures. CD or DVD media disk or USB drive must also contain the completed **Appendix B Excel sheets, in Excel format**.

All properly sealed and marked proposals are to be sent to the State of Delaware and received **no later than 1:00 PM (Local Time) Thursday, February 24, 2022**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Delaware Department of Natural Resources and Environmental Control  
Division of Parks and Recreation/OBS NAT22001\_PARK CONCESSIONS  
89 Kings Highway  
Dover, DE 19901  
Attn: Elizabeth LaSorte**

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Any proposal received after the date and time deadline referenced above shall not be considered and shall be returned unopened. The proposing Vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

The State reserves the right to award the proposed contract to multiple Vendors if the Head of the Agency determines that such an award is in the best interest of the State.

**N. PROPOSAL EXPIRATION DATE**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through April 30, 2022. Delaware reserves the right to ask for an extension of time if needed.

**O. WITHDRAWAL OF PROPOSALS**

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

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**P. PROPOSAL MODIFICATIONS**

Any changes, amendments or modifications to a submitted proposal requires that the original proposal be withdrawn, **prior** to the time set for the submission of the proposal, and a new proposal submitted **prior** to the deadline for submission of proposals.

Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

**Q. LATE PROPOSALS**

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

**R. ADDENDA TO THE REQUEST FOR PROPOSAL (RFP)**

If it becomes necessary to revise any part of this RFP, revisions will be posted at <http://bids.delaware.gov/>. By submitting an offer to the State, Vendors have acknowledged receipt, understanding and commitment to comply with all materials, revisions, and addenda related to the Request for Proposal.

**S. INCURRED EXPENSES**

The State will not be responsible for any expenses incurred by the Vendor in preparing and submitting a proposal.

**T. ECONOMY OF PREPARATION**

Proposals should be prepared simply and economically, providing a straight-forward, concise description of the Vendor's offer to meet the requirements of the RFP.

**U. 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, no later than ten (10) calendar days prior to the time set for opening of the proposals.

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**V. EXCEPTIONS**

Bidders may elect to take **minor exception** to the terms and conditions of this RFP by completing Attachment 3. DNREC, Division of Parks and Recreation shall evaluate each exception according to the intent of the terms and conditions contained herein, but DNREC, Division of Parks and Recreation must reject exceptions that do not conform to State bid law and/or create inequality in the treatment of bidders. Exceptions shall be considered only if they are submitted with the bid or before the date and time of the bid opening.

**Exceptions must be submitted utilizing Attachment 3 to be considered.** Exceptions listed elsewhere in the Vendor's proposal will not be considered. DNREC, Division of Parks and Recreation maintains sole discretion to reject any Vendor exceptions that are submitted.

**W. BUSINESS REFERENCES**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 6. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

**X. DOCUMENT(S) EXECUTION**

All Vendors must complete and submit with its proposal the non-collusion statement that is enclosed with this Request for Proposal labeled as Attachment 2. The awarded Vendor(s) will be presented with the contract form for signature and seal, if appropriate. Both of these documents shall be executed by a representative who has the legal capacity to enter the organization into a formal contract with DNREC, Division of Parks and Recreation.

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.

**Y. SUBCONTRACTS**

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal using Attachment 7.

**Z. CONFIDENTIALITY**

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 proposal will be treated as confidential during the evaluation process.

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As such, Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal 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 a fully executed contracts is received, the content of all Vendor proposals 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"). Proposals must contain sufficient information to be evaluated. If a Vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the Vendor's confidential business information may be lost.

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

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002, and briefly stating the reasons that each document meets the said definitions.

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

**AA. ATTACHMENTS**

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Company Profile and Capabilities
- Attachment 5 – Confidentiality and Proprietary Information
- Attachment 6 – Business References
- Attachment 7 – Subcontractor Information Form
- Attachment 8 – Monthly Usage Report

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Attachment 9 – Subcontracting (2<sup>nd</sup> Tier Spend) Report  
Attachment 10 – Office of Supplier Diversity Certification Application  
Attachment 11 – Performance Bond Form  
Attachment 12 – Bid Bond Form  
Attachment 13 – Proposal Reply Requirements  
Appendix A – Statement of Work and Technical Specifications  
Appendix B - Pricing Form(s) and Instructions  
Appendix C – Specifications and Additional Information

Vendors shall complete each attachment included in the bid packet and include in their response to this RFP. Vendors who do not complete the attachments may be considered non-responsive.

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Department of Natural Resources and Environmental Control  
Division of Parks and Recreation

**IV. PROPOSAL EVALUATION PROCEDURES**

**A. GENERAL ADMINISTRATION**

**1. STATE'S RIGHT TO REJECT PROPOSALS**

DNREC, Division of Parks and Recreation reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever is determined to be the most advantageous to the State of Delaware. Vendors submitting proposals may be afforded an opportunity for discussion. Vendors may be requested to provide a best and final offer during the negotiation process. Negotiations may be conducted with responsible Vendors who submit proposals found to be reasonably likely to be selected for award. The contents of any proposal shall not be disclosed so as to be available to competing Vendors during the negotiation process.

**2. STATE'S RIGHT TO CANCEL SOLICITATION**

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

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

**3. FORMAL CONTRACT AND/OR PURCHASE ORDER**

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, telephone call, email, fax, or State credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

**4. DELIVERY OF PROPOSALS**

Proposals shall be delivered in sealed envelopes and shall bear on the outside the name and address of the Vendor as well as the designation of the contract. Proposals forwarded by U.S. Mail shall be sent first class to the address stated in this RFP. Proposals forwarded by delivery service other than the U.S. Mail or hand delivered must be delivered to the applicable addresses also stated in this RFP. All bids must clearly display the bid number on the envelope.

**Delaware Department of Natural Resources and Environmental Control  
Division of Parks and Recreation/OBS NAT22001\_PARK CONCESSIONS  
89 Kings Highway  
Dover, DE 19901  
Attn: Elizabeth LaSorte**

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All proposals will be accepted at the time and place set in the RFP. Vendor bears the risk of delays in delivery and any delivery costs for returned proposals. Proposals received after the time set for public opening will be returned unopened.

**5. PUBLIC OPENING OF PROPOSALS**

The proposals shall be publicly opened at the time and place specified by the Agency. Vendors or their authorized representatives are invited to be present.

Only the Vendor's name and address will be read aloud during the bid opening process.

**6. DISQUALIFICATION OF VENDORS**

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

- a. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among Vendors.
- c. Unsatisfactory performance record as evidenced by past experience with the State of Delaware or on a State of Delaware central contract.
- d. Any suspension or debarment of the parent company, subsidiary or individual involved with the Vendor by federal, any state or any local governments within the last five (5) years.
- e. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.
- f. If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- g. Non-attendance of mandatory pre-bid meetings shall be cause of disqualification.

**7. AUTHORITY OF AGENCY**

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

**8. OR EQUAL (PRODUCTS BY NAME)**

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

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**B. RESPONSIVENESS AND RESPONSIBILITY OF VENDOR**

DNREC, Division of Parks and Recreation shall award this contract to the most responsible and responsive Vendor who best meets the terms and conditions of the proposal.

1. Rejection of individual proposals. -- A proposal may be rejected for 1 or more of the following reasons:
  - a. The person responding to the solicitation is determined to be nonresponsive or non-responsible;
  - b. It is unacceptable;
  - c. The proposed price is unreasonable; or
  - d. It is otherwise not advantageous to the State.
2. Vendors whose proposals are rejected as non-responsive shall be notified in writing about the rejection.
3. Responsibility of Vendors. -- It shall be determined whether a Vendor is responsible before awarding a contract. Factors to be considered in determining if a Vendor is responsible include:
  - a. The Vendor's financial, physical, personnel or other resources, including subcontracts;
  - b. The Vendor's record of performance and integrity;
  - c. Any record regarding any suspension or debarment;
  - d. Whether the Vendor is qualified legally to contract with the State; and
  - e. Whether the Vendor supplied all necessary information concerning its responsibility.
4. Any other specific criteria for a particular procurement which an agency may establish (If a Vendor is determined to be non-responsive, the Vendor shall be informed in writing.
5. The State reserves the right to waive minor irregularities, or request additional information before determining the responsiveness of the Vendor. All Vendors will be afforded the same or similar opportunities, as necessary, and will be treated with equal regard before such determinations are finalized.

**C. PROPOSAL EVALUATION COMMITTEE**

The Proposal Evaluation Committee ("Committee") is comprised of representatives of the State of Delaware.

The Committee 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.



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- Select more than one Vendor pursuant to 29 Del. C. § 6926. Such selection will be based on the needs of each individual park.

DNREC, Division of Parks and Recreation reserves the right to reject any or all bids in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**D. REQUIREMENTS OF THE VENDOR**

The purpose of this section is to assist the Proposal Evaluation Committee to determine the ability of the organization to provide the materials and services described in the application. The proposal response should contain at a minimum the following information:

- Brief history of the organization, including accreditation status, if applicable.
- Applicant’s experience, if any, providing similar services. Include references on Attachment 6.
- Financial information (balance sheets and income statements) for the past three years.
- Describe the methodology/approach used for providing park concessions for food and beach amenities to the Division of Parks and Recreation, including work plan and timeline. Include well defined ACTION PLAN that will describe the bidder’s organization and method for providing park concessions for food and beach retail items, where applicable and providing services as specified herein from annual season opening to season close. Include customer billing and payment processes/options, customer service, advertising and marketing plans, delivery services, health standards/processes, cleaning processes, and employee training procedures. If providing any “Value Added” options for Cape Henlopen, please detail all aspects of those options.
- Menu(s), Brochures/Specification information for park concessions for food and beach retail items proposed.
- All required forms included in this RFP.
- Vendor Emergency Contact Data as required in this Proposal.

**E. CRITERIA AND SCORING**

	EVALUATION CRITERIA	
		<b>POINTS</b>
1.	Background and experience (e.g. past performance on similar ventures) company history, qualifications and experience of the employees and the organization in managing and operating a concession service	80
2.	Financial stability/resources, past performance and references	60
3.	Vendor’s action plan (methodology and/or approach) for providing concession services, including scheduling, customer service, marketing, and employee training	100

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4.	The value of Vendor's proposal to Delaware Parks (e.g., annual fees, annual percent of gross receipts from the sale of products and services), pricing and discounts	140
5.	Extent to which Vendor agrees to the State of Delaware's contract terms and conditions and specification without taking exceptions	20
TOTAL SCORE		400

Procurement Evaluation Committee members will assign up to the maximum number of points listed for each of the criteria listed above. For items having quantitative answers, points will be proportionate to each proposal's response. Items with qualitative answers will receive the average of points assigned by Proposal Evaluation Committee members.

**F. BEST AND FINAL OFFERS**

Once the proposals have been evaluated and negotiations have been held with the Vendor(s) determined to be likely to receive an award, the Procurement Evaluation Committee issue a request for Best and Final Offers from the Vendor(s).

**G. REFERENCES**

The Committee may contact any customer of the Vendor, whether or not included in the Vendor's reference list, and use such information in the evaluation process. Additionally, 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.

**H. ORAL PRESENTATIONS**

Selected Vendors may be invited to make oral presentations to the Committee. The Vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the Vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the Vendor's responsibility.

**V. NON-MANDATORY PREBID MEETING AND SITE VISITS**

A non-mandatory pre-bid meeting has been scheduled for **Tuesday, January 25, 2022 at 9:30 a.m. local time at the Indian River Marina Conference room located at 39415 Inlet Road, Rehoboth Beach, DE 19971. This is a non-mandatory meeting where a simple review of the RFP will take place.** Vendors are not required to attend this meeting.

**Site Visits for each site will also be held on this date. Sites will be open for review from 10:30 a.m. to 2:00 p.m.** This site visit shall be for visual inspection of the premises being bid only. Bid questions will not be taken or answered during site visits. **Site visits are not mandatory but are highly recommended.**

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**VI. DEFINITIONS AND GENERAL PROVISIONS**

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

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

**STATE:** The State of Delaware

**AGENCY:** State Agency as noted on cover sheet.

**BID INVITATION:** The "invitation to bid" or "Request for Proposal" is a packet of material sent to Vendors and consists of General Provisions, Special Provisions, specifications, and enclosures.

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

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

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

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

**LOCAL TIME:** Eastern Standard Time/Eastern Daylight Time

**OPPORTUNITY BUY:** A special offer from a supplier that is usually associated with a limited time to respond.

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

**RFP:** Request for Proposal.

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

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

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

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

**VALUE ADDED OPTION:** An option in the Vendor's proposal that may include capital improvements and/or new opportunities or enhancements that are outside the minimum requirements and/or statement of work that the Division is requesting. Examples of a Value Added Options may include, but are not limited to: including a restaurant option, adding to or modifying the existing structure at the concession area for the purpose of the business to provide new types of services and amenities that will enhance the current operation, expanded delivery service to beach and campground patrons, etc. Any Value Added Option should complement the Park and Vendor is fully responsible for the capital improvements and any and all requirements (i.e., federal, state, local, licensing, funding, and approvals). The Division reserves the right to enter into Contract(s) that shall not exceed twenty-five (25) years, if the awarded Vendor provides capital improvements and offerings that require longer timelines for return on investment. The Division shall be the sole determining authority for a Contract that shall exceed the Contract period listed in this RFP. The Division also reserves the right to provide potential cost share opportunities for projects including capital improvements. Cost share is defined as the Division creating a purchase order and paying for partial elements of an approved capital improvement. Note: any "impact" fees levied by the applicable county in Delaware related to structural, design, increased/decreased population resulting from this Contract, parking, roadway traffic, utilities, etc. shall be the responsibility of the Awarded Vendor and the Division shall "pass" these costs through an invoice with appropriate support documentation.

**DIVISION "EQUIPMENT":** Consumable equipment provided by the Division that in the event that the life cycle is exhausted, or it breaks, it shall be the responsibility of the Awarded Vendor for repair or replacement. All Division Equipment is property of the Division. If equipment is exhausted or broken (deemed unserviceable), it shall be turned into the Division for proper disposal per State of Delaware Surplus guidelines.

**DIVISION AMENITIES:** Areas or services provided by the Division that are not considered equipment.

## **B. GENERAL PROVISIONS**

### **1. INTERPRETATION OF ESTIMATES/QUANTITIES**

- a. Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation.
- b. An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.
- c. Prior contract utilization may be viewed on the Delaware Open Data Portal <https://data.delaware.gov/>. The Government and Finance data sets provide Central Contract Line Item Spend by Fiscal Year among several additional data products. Past usage shall not be considered a guaranteed future volume.

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**2. SILENCE OF SPECIFICATIONS**

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

**3. EXAMINATION OF SPECIFICATIONS AND PROVISIONS**

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

**4. PRICES QUOTED**

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

All Vendors that maintain a core list of products under this contract shall maintain the appropriate negotiated prices on their core list. Vendors shall routinely offer to add to the core list material that has been identified as necessary. The Vendors are expected to routinely update any changes to the core list with the appropriate discounts listed.

Any adjustments to a core list must receive prior written approval from the State before a core list can be changed by the Vendor. Changes include but are not limited to the migration of items on and off the core list as well as any price adjustments from the original agreed upon pricing.

**5. PUBLIC INSPECTION OF PROPOSALS**

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

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

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a Vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information"

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with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

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

**6. LAWS TO BE OBSERVED**

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

**7. APPLICABLE LAW AND JURISDICTION**

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

**8. 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.

**9. PERMITS AND LICENSES**

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

**10. PATENTED DEVICES, MATERIAL AND PROCESSES**

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

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**11. EMERGENCY TERMINATION OF CONTRACT**

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

**12. TAX EXEMPTION**

- a. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers, and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510>. Per IRS regulations, all exemption certificates must be specific to the Vendor and the type of excise tax. If an exemption certificate is requested by a Vendor, the Division of Accounting will work with the agency and Vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted. Such taxes shall not be included in prices quoted.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the Vendor. Each Vendor shall take its exemption into account in calculating its bid for its work.

**13. INVOICING**

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

**14. EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS**

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

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

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

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

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

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

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

## 15. PRICES

Prices and/or rates shall remain firm for the initial four (4) year term of the contract, unless further negotiations are deemed necessary by the State.

The pricing policy that you choose to submit must address the following concerns:

a. The structure must be clear, accountable and auditable.

b. It must cover the full spectrum of services required.

c. Costs and compensation must be consistent with the rates established or negotiated as a result of this RFP or P.O. issued based on this contract.

## 16. COOPERATIVES

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.



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**17. PRICE ADJUSTMENT**

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

If agreement is reached to extend this contract beyond the initial four (4) years from April 15, 2022 to April 14, 2026 through negotiation between the Vendor and DNREC-Division of Parks and Recreation, DNREC, Division of Parks and Recreation shall have the option of offering/requesting a price adjustment.

**18. SHIPPING TERMS**

FOB Destination, freight prepaid.

**19. ELECTRONIC CATALOG**

At the discretion of DNREC, Division of Parks and Recreation, the successful Vendor(s) may be required to submit their items list in an electronic format designated by the State.

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

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

**20. INDEPENDENT CONTRACTORS**

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

**21. TEMPORARY PERSONNEL ARE NOT STATE EMPLOYEES UNLESS AND UNTIL THEY ARE DIRECTLY HIRED**

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware 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)

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provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

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

## **22. 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. At the present time these include, but not limited to, wearing a mask in all State buildings and the policy for State employees regarding vaccination. The vaccination policy is located at <https://dhr.delaware.gov/policies/documents/covid19-vaccination-and-test-policy.pdf> . For clarity, State buildings are those owned or leased by the State

## **23. 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.

## **24. FUNDING OUT or NON-APPROPRIATION**

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

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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.

**25. MANDATORY INSURANCE REQUIREMENTS**

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:

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

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

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  
Department of Natural Resources and Environmental Control,  
Division of Parks and Recreation/OBS NAT22001\_Park Concessions  
89 Kings Highway  
Dover, DE 19901

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

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

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

## **26. STATE OF DELAWARE BUSINESS LICENSE**

Prior to receiving an award, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: 302-577-8778. <http://revenue.delaware.gov/services/BusServices.shtml>

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

## **27. 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);

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

## **28. NON-PERFORMANCE**

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

## **29. FORCE MAJEURE**

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

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

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

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

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**30. VENDOR NON-ENTITLEMENT**

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

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

**31. OPPORTUNITY BUYS**

The Director for the DNREC, Division of Parks and Recreation can waive use of a contract pursuant to 29 *Del. C.* § 6911(d). A process has been developed to permit any Vendor the opportunity to submit an Opportunity Buy offer to the State for goods and/or services for consideration despite the existence of a contract. See [Opportunity Buy Flowchart](#). The Director will afford any Vendor on an existing contract an opportunity to match or to beat the Opportunity Buy offer made by a non-contracted Vendor prior to a waiver being granted.

**32. REQUIRED REPORTING**

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

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

Reporting is required by Executive Order.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state

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contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as Attachment 9.

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

### **33. ORDERING PROCEDURE**

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

### **34. PURCHASE ORDERS**

Agencies that are part of the First State Financial (FSF) system are required to identify the contract number Contract No.: NAT22001\_Park Concessions on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

### **35. BILLING**

The 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. The Vendor shall not charge a late fee that exceeds more than one percent (1%) per month, not to exceed twelve percent (12%) per annum.

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

### **36. METHOD OF PAYMENT**

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

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

- b. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.

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- c. The agencies or school districts using this award will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract. While it is the State's intention to utilize the P-card payment method the State reserves, at its discretion, the right to pay by ACH/ ACl or check. Should a Vendor wish to provide a financial incentive to not process payment by P-Card in their proposal, they are to prepare their proposals to clearly outline any incentives for alternative payment methods the Vendor is willing to accept.

**37. PRODUCT SUBSTITUTION**

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

If a substitution is granted by the state, the Vendor must update its core list and maintain said list in a timely manner.

**38. SCHEDULE FOR PERFORMANCE OF WORK**

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

**39. VENDOR RESPONSIBILITY**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 7, and are subject the approval and acceptance of DNREC, Division of Parks and Recreation.

**40. VENDOR- OWNED RENTAL EQUIPMENT AND SUPPLIES REMOVAL**

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

**41. ENVIRONMENTAL PROCUREMENT REQUIREMENTS**

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



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Green Products – third party certification of green products accepted from DNREC, Division of Parks and Recreation w/approved green certification shall be offered wherever available in addition to or as a substitute for non-green products.

Vendors shall report all green items procured during the monthly reporting period using the Usage Report that will be provided to the awarded Vendor(s).

Environmental Procurement Policies of the State shall determine acceptable consideration and credit for environmentally preferred products and services in the performance of this award. The State Environmental Procurement Policies may be found:

[Environmentally Preferred Purchasing Policy](#)

#### **42. 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 Attachment 7 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 7 must be approved in writing by the State.

#### **43. 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.

#### **44. VENDOR BACKGROUND CHECK REQUIREMENTS**

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

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

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

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

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

#### **45. 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](#)

#### **46. MINIMUM WAGE RATES**

Work performed under this solicitation may fall under the [State of Delaware Minimum Wage Rates](#) or the Delaware Prevailing Wage rates. Prior to issuing a purchase order, the ordering agencies must obtain from the Department of Labor a determination if prevailing wage applies to the project and, if appropriate, what the applicable prevailing wage rates would be for the work to be performed. No work shall proceed without a determination by the Department of Labor. Request for prevailing wage certification can be found at: <http://dia.delawareworks.com/labor-law/prevailing-wage.php> .

#### **47. PREVAILING WAGE**

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

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**48. DISPUTE RESOLUTION**

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

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

**49. REMEDIES**

Except as otherwise provided in this solicitation, including but not limited to Section 48 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.

**50. TERMINATION OF INDIVIDUAL ORDERS OR PURCHASE ORDERS**

The individual orders may be terminated as follows:

- a. Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner his obligations, or if the Vendor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.
- b. Termination for Convenience:** The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

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- 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.

## 51. TERMINATION OF CONTRACT

The contract awarded as a result of this RFP may be terminated as follows by DNREC, Division of Parks and Recreation.

- 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 thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A Vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the Vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

- b. **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
- 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.

## 52. CHANGES

Both parties may, from time to time, require changes in the services to be provided by the Vendor under

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the Scope of Work/Statement of Work. Such changes, including any increase or decrease in the amount of the Vendor's compensation, which are mutually agreed upon by and between the Agency and the Vendor shall be incorporated in written amendments to the Purchase Order or contract.

**53. INTEREST OF VENDOR**

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

**54. PUBLICATION, REPRODUCTION AND USE OF MATERIAL**

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

**55. RIGHTS AND OBLIGATIONS**

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

**56. 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.

**57. TESTING AND INSPECTION**

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

**58. COVENANT AGAINST CONTINGENT FEES**

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

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or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

**59. GRATUITIES**

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

**60. 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.

**61. 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.

**61. IRS 1075 Publication (If Applicable)**

**a. Performance**

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

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

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

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

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

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

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

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

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

**b. Criminal/Civil Sanctions**

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

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each

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such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

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

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 ) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **c. Inspection**

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

## **62. REMEDIES**

Except as otherwise provided in this contract, all claims, counterclaims, disputes, and other matters in question between the State and the Vendor arising out of, or relating to, this contract, 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.



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**63. SUBCONTRACTS**

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal (Attachment 7) and agreed to in writing by the State or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

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

**64. AGENCY'S RESPONSIBILITIES**

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.
- c. When an ordering agency first experiences a relatively minor problem or difficulty with a Vendor, the agency will contact the Vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering agencies should stress to Vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.
- d. The state has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the state cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the Agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.
- e. If there is a performance deficiency, a Corrective Action Report (CAR) may be used. Complete this form to report concerns with Vendors or commodities. Be sure to furnish as much detail as possible. [Corrective Action Report](#)

**65. CONTRACT DOCUMENTS**

The Definitions and General Provisions and any Special Instructions, Specifications, Request for Proposal, Proposal, Purchase Order, and Contract shall be a part of and constitute the entire Agreement entered into by the State of Delaware and any Vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails

STATE OF DELAWARE  
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over the latter:

- Contract
- Final Negotiation Document (if applicable)
- Request for Proposal
- Specifications or Statement of Work
- Definitions & General Provisions
- Proposal
- Purchase Order
- Special Instruction

**66. ASSIGNMENT**

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

**67. NOTICE**

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

State of Delaware, Department of Natural Resources and Environmental Control  
Division of Parks and Recreation/NAT22001\_Park Concessions  
89 Kings Highway  
Dover, Delaware 19901

**68. 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.

**69. 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.

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**C. AWARD AND EXECUTION OF CONTRACT**

**1. CONSIDERATION OF PROPOSALS**

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

**2. MATERIAL GUARANTY**

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

**3. AWARD OF CONTRACT**

Within ninety (90) days from the date of opening proposals, the contract will be awarded or the proposals rejected.

**4. EXECUTION OF CONTRACT**

The Vendor (s) to whom the award is made shall execute a formal contract within twenty (20) days after date of official notice of the award of the contract.

**5. WARRANTY**

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

**6. THE CONTRACT(S)**

The contract(s) with the successful Vendor(s) will be executed with DNREC, Division of Parks and Recreation acting for all participating governmental entities.

**7. INFORMATION REQUIREMENT**

The successful Vendor(s) shall be required to advise and provide DNREC, Division of Parks and Recreation, of the gross costs associated with this contract, as well as detailed data required as part of the Division's monthly reporting (template provided by the Division).

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STATE OF DELAWARE  
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Division of Parks and Recreation

**VII. PROPOSAL REPLY SECTION**

**Contract No. NAT22001\_Park Concessions for Park Concessions for Food and Beach Retail Items.**

Please fill out the attached forms fully and completely and return with your proposal in a sealed envelope clearly displaying the contract number to the State of Delaware, DNREC, Division of Parks and Recreation **Thursday, February 24, 2022 at 1:00 pm (Local Time)** at which time bids will be opened.

A non-mandatory pre-bid meeting and site visits have been scheduled for **Tuesday, January 25, 2022 at 9:30 a.m. (Local Time)**. This is a non-mandatory meeting.

**Proposals must be mailed to:**

**Delaware Department of Natural Resources and Environmental Control  
Division of Parks and Recreation/OBS NAT22001\_PARK CONCESSIONS  
89 Kings Highway  
Dover, DE 19901  
Attn: Elizabeth LaSorte**

**PUBLIC PROPOSAL OPENINGS**

The public proposal opening ensures the citizens of Delaware that contracts are being proposed fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the proposals at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the proposal opening is to reveal the name(s) of the Vendor(s), not to serve as a forum for determining the apparent low Vendors. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each proposal has been determined.

After receipt of a fully executed contract(s), the Delaware public and all Vendors are invited to make an appointment with the agency in order to review pricing and other non-confidential information.

**NOTE: ONLY THE VENDOR'S NAME AND ADDRESS WILL BE READ AT THE OPENING**

**ATTACHMENTS**

The following attachments are required to be included in the final submission package.

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Department of Natural Resources and Environmental Control  
Division of Parks and Recreation

**Attachment 1**

**NO PROPOSAL REPLY FORM**

Contract No.: **NAT22001\_Park Concessions**

Contract Title: **Park Concessions for Food and Beach Retail Items**

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

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

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
  
- \_\_\_\_\_ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document.  
Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
  
- \_\_\_\_\_ 3. We do not feel we can be competitive.
  
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
  
- \_\_\_\_\_ 5. We do not wish to sell to the State. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
  
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
  
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ FIRM NAME

\_\_\_\_\_ SIGNATURE

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

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

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

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**Attachment 2**

**CONTRACT NO.: NAT22001\_Park Concessions**  
**TITLE: Park Concessions for Food and Beach Retail Items**

**DEADLINE TO RESPOND: Thursday, February 24, 2022 at 1:00 PM (local time)**

**NON-COLLUSION STATEMENT**

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

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

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, DNREC, Division of Natural Resources and Environmental Control.

	Corporation
	Partnership
	Individual

COMPANY NAME \_\_\_\_\_ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE \_\_\_\_\_

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE LICENSE NUMBER \_\_\_\_\_

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

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

PURCHASE ORDERS SHOULD BE SENT TO:  
 (COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?  
 YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

**THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED**

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_



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**Attachment 4**

Contract No.: NAT22001\_Park Concessions  
 Contract Title: Park Concessions for Food and Beach Retail Items

**COMPANY PROFILE & CAPABILITIES FORM**

Suppliers are required to provide a reply to each question listed below. Your replies will aid the evaluation committee as part of the overall qualitative evaluation criteria of this Request for Proposal. Your responses should contain sufficient information about your company so evaluators have a clear understanding of your company's background and capabilities. Failure to respond to any of these questions may result in your proposal to be rejected as non-responsive.

1.	Provide company profiles and a brief history of your organization in a manner that will support your company's ability to successfully meet the requirements of this RFP: <ul style="list-style-type: none"> <li>- # of years in business</li> <li>- # of years doing business in the State of Delaware</li> <li>- # of employees (Full and Part time)</li> <li>- Type of business entity and principles (LLC, Sole proprietor, Corporation, EIN#, D&amp;B#)</li> <li>- List parent Company if applicable</li> </ul>
2.	Provide Company Emergency Point(s) of Contact, include: Phone#, Cell # and/or Emergency Contact #
3.	Describe any awards, recognition in last three years.
4.	Describe your business management process and team structure.
5.	Describe the skills and knowledge used for operating and managing Park Concessions and Beach Retail Items, including working plan, timeline, well defined ACTION PLAN describing Vendor's organization and operations for providing services as specified herein (include customer billing, payment processes/options, customer service, and any other relevant processes).
6.	Operating Schedule being proposed (must at least meet Division requirements).
7.	Describe Vendor's employee training and certification processes and requirements (include employee training in food safety and Quality Control (QA) processes; provide a copy of Vendor's training manual)
8.	Has Vendor ever filed bankruptcy? If so, provide details.
9.	Describe any change in ownership or any planned changes in ownership in the next (3) years.
10.	List any past and/or pending litigation or disputes relating to the services described herein with which your company has been involved within the past five (5) years and identify any awarded contracts or sales agreements your company has terminated as a result of litigation or dispute. For any applicable occurrence list the company's name and the term of the contract. For occurrences resulting in contract termination, provide an explanation as to why the contract was terminated.
11.	Describe any violations by Public Health or other regulatory agencies.
12.	Provide copy of your marketing/advertising plan for the term of the contract.



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13.	What strategies will be used to promote and increase business and managing the concession services?
14.	Describe the product research, social media or other strategies used to determine types of food products within the geographical areas selected for this project (e.g., healthy choices). Will company offer any daily/weekly specials or promotions on products or services? How will these specials be offered (signage, social media, customer emails, and/or sign postings)? How will you increase the number of customers buying food or merchandise from the concession?
15.	Provide list of retail items to be sold or rented within concession area (for each location being bid) Note: Appendix A under each park description states if rental is applicable.
16.	Outline a detailed customer service plan, from the point of sales inquiry from a customer, to the point of delivery of the product. Include any credit card requirements, billing structure and actions to complete the sale to the customer.
17.	Outline a problem/conflict resolution plan to resolve any customer complaints, including the timeline from initial report of issue to resolution.
18.	Describe any reliance on 3 <sup>rd</sup> party distributors or catering service(s) to deliver food products and expertise and/or food services.
19.	Will company place any vending machines in the concession areas? If so, describe the location, quantity and process for replenishment of these machines. Describe how customers will be reimbursed should the vending machine fail to dispense a food product.
20.	Describe (if any) Capital investments and improvements offered by the Vendor. Please be detailed and provide timelines, investment and how these complements and benefits the operation.
21.	Describe (if any) your Value Added Option (Cape Henlopen State Park Only).

**Answers shall be listed on a document in the order shown and annotated as Attachment 4.**



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**Attachment 6**

Contract No.: NAT22001\_Park Concessions  
Contract Title: Park Concessions for Food and Beach Retail Items

**BUSINESS REFERENCES FORM**

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

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

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

1.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
2.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	
3.	<b>Contact Name &amp; Title:</b>	
	<b>Business Name:</b>	
	<b>Address:</b>	
	<b>Email:</b>	
	<b>Phone # / Fax #:</b>	
	<b>Current Vendor (YES or NO):</b>	
	<b>Years Associated &amp; Type of Work Performed:</b>	

**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**

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**Attachment 7**

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. NAT22001_Park Concessions	2. Proposing Vendor Name:	3. Mailing Address
<b>4. SUBCONTRACTOR</b>		
a. NAME	4c. Company OSD Classification:  Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
9a. NAME OF PERSON SIGNING	10. BY ( <i>Signature</i> )	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

**Use a separate form for each subcontractor**

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 Department of Natural Resources and Environmental Control  
 Division of Parks and Recreation

**Attachment 8**

**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**  
**Department of Natural Resources and Environmental Control**  
**Division of Parks and Recreation**

Contract Number / Title: [REDACTED]  
 Vendor Name: [REDACTED]  
 Park Name: [REDACTED]  
 Report Period: [REDACTED]

E-mail report to **Parks\_OBS@state.de.us** as required by your contract reporting terms (15th of the following month for monthly reports)

Contact Name: [REDACTED] Report Start Date: [REDACTED]  
 Contact Phone: [REDACTED] Report End Date: [REDACTED]  
 Today's Date: [REDACTED]

Date mm/dd/yy	Day of the Week	Customized columns (add as required for each contract) to capture attendance and/or patronage count for the day or item being sold	Customized columns (add as required) for each product or product group required to be tracked by the individual contract)	customized columns to capture the extended money value of gross receipts for each product reported per contract	Column to show total of all gross receipts for the day	Notes on Weather conditions if business was affected	Other comments relevant to business volume
1/1/2016	Friday						
1/2/2016	Saturday						
1/3/2016	Sunday						
1/4/2016	Monday						
1/5/2016	Tuesday						
1/6/2016	Wednesday						
1/7/2016	Thursday						
1/8/2016	Friday						
<b>Total by Column</b>							

**Note:** A copy of the current Usage 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: Parks\_OBS@state.de.us





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

Supplier Diversity Applications can be found here:

<https://business.delaware.gov/osd/>

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

Self-Register to receive business development information here:

<https://business.delaware.gov/directory-of-certified-businesses/>

**New Address for OSD:**

Office of Supplier Diversity (OSD)  
State of Delaware  
Division of Small Business  
820 N. French Street, 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 for the Division of Small Business**

**Local applicants may drop off applications here:**

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

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

STATE OF DELAWARE  
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Division of Parks and Recreation

Required for Awarded Vendor(s)

Attachment 11

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**") (*State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation*), 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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Department of Natural Resources and Environmental Control  
Division of Parks and Recreation

**Attachment 12**

**Bid Bond**

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 bid 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 Bidder (Principal) (Seal)

Witness

\_\_\_\_\_ BY \_\_\_\_\_

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

Corporate  
Seal

\_\_\_\_\_  
Title

\_\_\_\_\_ BY \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

STATE OF DELAWARE  
 Department of Natural Resources and Environmental Control  
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Attachment 13

**PROPOSAL REPLY REQUIREMENTS AND CHECKLIST**

The response should contain the following minimum information:

**MINIMUM MANDATORY SUBMISSION REQUIREMENTS CHECKLIST  
 {MUST BE COMPLETED AND RETURNED WITH BID PACKAGE}**

Item No.	Description	Included?? (check yes or no)
1.	Brief Vendor Cover Letter including Vendor's experience, if any, providing similar services. The letter shall be <b>signed</b> by a representative who has the legal capacity to enter.	Yes <input type="checkbox"/> No <input type="checkbox"/>
2.	Table of Contents clearly identifying the structure of the proposal and showing page numbers for each of the required components.	Yes <input type="checkbox"/> No <input type="checkbox"/>
3.	Four (4) paper copies of the bidder's proposal, One (1) copy shall be marked "Master Copy" and will contain original signatures in ALL locations. This includes all Appendix B Tabs <u>printed</u> and all Forms required in the RFP. <b>Brochures are also required.</b>  <b>PLEASE DO NOT PUT SUBMISSION DOCUMENTS INTO SHEET PROTECTORS.</b>  The Appendix B – Pricing Spreadsheet is available at the following website: <a href="http://www.bids.delaware.gov">www.bids.delaware.gov</a> Vendors MUST provide copies of all pricing spreadsheet tabs.	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.	<b>Two (2) electronic</b> copies of the <b>complete bidder's bid package</b> (submitted on CD/DVD media disk or USB drive). This means two (2) separate CD/DVD's or USB's must be submitted. If the paper copy of the proposal includes a printed catalog or brochure, an electronic version of the catalog or brochure must be included. (If catalogs are not available in electronic version, then two (2) additional copies of the paper catalog must be provided).  <b>All copies must have completed Appendix B in <u>active EXCEL format</u>, Vendor's Proposal and Forms required in this proposal.</b>  Include Vendor menus and brochures in pdf. Format on each CD, DVD or USB. <b>VERIFY ALL MEDIA WORK CORRECTLY FROM SEVERAL SOURCES PRIOR TO SUBMISSION.</b>  All documents in Vendor's proposal, <b>excluding Appendix B, Menus and Brochures</b> , should be scanned and saved as <b>one</b> PDF file. Please avoid saving individual pdf. pages of your proposal.	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.	<b>(Attachment 2)</b> <b>One (1) complete</b> signed and <b>notarized</b> copy of the Non-Collusion agreement <b>MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>
6.	<b>(Attachment 3)</b> <b>One (1) completed</b> RFP Exception form – please check box if no information. Form must be included.	Yes <input type="checkbox"/> No <input type="checkbox"/>

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7.	<b>(Attachment 4)</b> <b>One (1) completed</b> Company Profile and Capabilities form	Yes <input type="checkbox"/> No <input type="checkbox"/>
8.	<b>(Attachment 5)</b> <b>One (1) completed</b> Confidential and Proprietary form – please check box if no information provided will be considered confidential or proprietary. Form must be included.	Yes <input type="checkbox"/> No <input type="checkbox"/>
9.	<b>(Attachment 6)</b> <b>One (1) completed</b> Business Reference form – please provide references other than State of Delaware contacts. Form must be included.	Yes <input type="checkbox"/> No <input type="checkbox"/>
10.	<b>(Attachment 7)</b> <b>One (1) complete</b> and signed copy of the Subcontractor Information Form for each subcontractor – only provide if applicable. Click on N/A if not using subcontractor.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
11.	<b>(Attachment 10)</b> <b>One (1) complete</b> OSD application (see <i>link on Attachment 10</i> ) – only provide if applicable.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
12.	<b>(Attachment 12)</b> <b>One (1) complete and notarized Bond</b> ( <b>only applicable if bidder is not including a certified check with bid packet</b> )	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
13.	<b>(Attachment 13)</b> One (1) completed copy of this Proposal Reply Requirements and Checklist filled out by the Bidder.	Yes <input type="checkbox"/> No <input type="checkbox"/>
14.	<b>Two (2) Copies</b> of each brochure/equipment specification/product being bid on.	Yes <input type="checkbox"/> <input type="checkbox"/>
15.	<b>One (1) copy</b> of Financial information (balance sheets and income statements) for the past three years.	Yes <input type="checkbox"/> No <input type="checkbox"/>
16.	<b>One (1) certificate of insurance.</b> Please ensure you have the <u>correct insurance levels as specified in this RFP.</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>

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**APPENDIX A  
STATEMENT OF WORK AND TECHNICAL SPECIFICATIONS**

**I. MINIMUM REQUIREMENTS**

**A. Products and Services:**

The Department of Natural Resources and Environmental Control, Division of Parks and Recreation, is seeking a qualified and competent Vendor to manage and operate the concession services. The successful Vendor(s) will be granted a contract(s) herein for the provision to operate a food service in four (4) Delaware State Park locations included in this RFP.

**NOTE: Vendors shall submit a proposal for any and/or all location(s). If bidding only on selected location(s), enter NO PROPOSAL on the location(s) for which a PROPOSAL is NOT being submitted. Bid Bond (or certified check) is applicable for each site being bid.**

The food service concession may include, but is not limited to: equipment, staff and operation normally associated with non-alcoholic beverages (e.g. soda, sweet tea, water, juices), coffee, hot and cold sandwiches, hot dogs, hamburgers, tacos, pizza, chicken tenders, ice cream, fresh fruits, salads, and a variety of healthy foods and snacks for the general public's enjoyment. In addition, Vendor(s) may sell beach retail items, including beach umbrellas, beach chairs and floatation devices, as well as sale of beach related goods approved by the Park. Note: At Cape Henlopen State Park, awarded Vendor must provide rental of beach chairs and beach umbrellas. At Killens Pond State Park, the awarded Vendor may rent beach chairs (per Division approval and based on space constraints). All other parks listed have rental services provided by the Division and rentals are not included in this RFP.

Vendor bids should recognize the importance of a sound business model that will promote a balanced diet; will reflect regional cultural traditions, will support the local farming community, will use recyclable products and service ware; and will reduce waste and energy,

Products must be served in recyclable containers (no Styrofoam). Plastic straws are prohibited. Additional items such as souvenirs and other non-food items may not be sold without advance written approval by the Division. The Vendor agrees to withdraw from sale or rent any items not approved by the Division when notice is provided.

The beach retail items service may include, but is not limited to, sale and rental of body boards, umbrellas, and chairs. Additionally, sale of sun-screen, hats, shirts, beach toys, bathing suits and other similar retail items may be necessary to carry on the business in accordance with the terms and conditions included herein. Rental of beach umbrellas and chairs are managed by the Division at Fenwick State Park and Delaware Seashore State Park (Towers). The awarded Vendor may sell these items, but not rent at those sites. The Division shall have final approval of retail items being sold or rented at any site included in this RFP as well as final approval of pricing of such items.

In accordance with the Division's "smoking in the workplace" Policy No. D-0309(A), **no tobacco products shall be sold on the premises**. Vapor products are also not acceptable.

Delaware State Parks prohibits the use of tobacco products in concession and outdoor gathering areas.

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**B. Contract Fee:**

The Vendor, as a fee for the contract and concession rights herein granted, agrees to pay to the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901, **an annual contract fee and a negotiated percentage of gross receipts**.

The annual contract fee *minimum* is listed on each location scope of work included herein, as well as on the Appendix B pricing spreadsheet. Vendors are invited to bid higher than the minimum and shall bid on a percentage of gross receipts for consideration of award. ***The Division will not consider bids lower than the minimum contract fee.***

The annual contract fee shall be due in two (2) installments on July 15 and September 15 during the term of this contract. The Vendor agrees to pay the percentage of total gross receipts to the Division on or before December 31 of each year.

The Vendor agrees to submit to: [OBS Parks@state.de.us](mailto:OBS_Parks@state.de.us), a concession contract report once a month, covering each day's operation under the agreement, **plus a tabulated annual gross receipts report and annual financial reports** for the period of operation on or before December 31 of each year. All annual gross receipt reports must be "Reviewed" by a certified public accountant prior to submission and proof of "Review" must be included in Vendor submission.

**C. Interest Payments:**

Any payments which become due from the Vendor to the Division, and which are not paid on or before the due date shall be subject to an interest penalty of twelve (12) percent per annum until paid, computed from the due date. When a late payment is received, the Vendor shall be billed the amount of interest owed. This provision is in no way a waiver of the Vendor's obligation to make payments when they are due.

**D. Utilities:**

Electricity, internet service, telephone and/or other utilities used in the concession area shall be solely at the Vendor's expense. The Vendor will be required to make independent arrangements for service with the local utility companies unless the location has sub metered functionality managed by the Park. Each site shall be designated as such in the individual Park details included in this Scope of Work.

**E. Taxes and Permits:**

The Vendor shall pay all State and Federal taxes and/or license fees which may be imposed or legally chargeable, and obtain all necessary permits and licenses, including but not limited to, a Delaware Business License, Public Health License and other necessary permits at its own cost and expense as a result of operating the concession business conducted as part of the services.

**F. Security:**

The Vendor shall be responsible for security of its equipment, software and any credit card services while contracting with the Division.

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**G. Inspection:**

The Vendor will allow free access to the concession space as needed to authorize representatives of the Division and other county, state or federal officials having jurisdiction for inspection purposes. The Vendor shall further agree that if notified in writing by the Division or its authorized representatives that any part of the contracted premises or the facilities thereof for which the Vendor is responsible for services rendered are not in conformance with the contract granted, then the VENDOR shall remedy the same within five (5) working days, or a reasonable time period agreed upon between the DIVISION and the VENDOR.

**H. Accounting and Reports:**

The Vendor shall maintain proper and complete books and records of accounts of its operation under the contract granted. Internal control procedures implemented by the Vendor shall be adequate to ensure that all revenue is accounted for and recorded. All receipts of any nature from the operation of this contract provided by the Vendor shall be immediately and properly recorded. The Vendor shall permit the Division or its authorized representatives to examine and audit financial records relative to this contract at any reasonable time during normal business hours, after giving the Vendor two weeks' notice of the date and time of such examination and audit. The Vendor shall retain these financial records for a period of five (5) years beyond the termination of this contract, unless earlier disposal is approved by the Division in writing.

**I. Operating Schedule:**

The Vendor agrees to operate the concession service in accordance with the specific Park location schedules as stated herein. The concession hours of operation may be changed with prior approval by the Park Management. In addition, Vendor is required to contact the Park Management prior to canceling service for the day and receive permission to cancel service. The Division reserves the right to revoke the contract of the Vendor if they do not adhere to the agreed-upon schedule of operations. The Division may, in its sole discretion, close the concession operation services temporarily or permanently with prior notice to the Vendor.

**J. Trash Removal and Use of Recyclable Products:**

1. The Vendor shall provide trash cans inside the concession area for the public's use and will be responsible for **depositing the trash in a Vendor-provided dumpster at the end of each day**, conforming with all rules and regulations pertaining to sanitation and safety as written the Delaware Food Code and administered by the Delaware Division of Public Health.
2. All rubbish, refuse garbage and debris collected by Vendor shall be deposited in containers provided by a local waste management service approved by the Division of Parks and Recreation. Vendor is responsible for arranging placement and removal of waste dumpster and any expenses incurred for waste management services. **Vendor shall ensure that trash cans are kept clean and emptied often throughout the day to avoid hazardous insects as well as unsanitary receptacles.**
3. Vendor shall ensure that their waste disposal company service dumpsters during park business hours. The park is not always accessible outside of business hours (i.e., gates locked, etc.). Trash shall be picked up by Vendor's waste disposal company regularly. Vendor shall ensure there is no overflow or waste debris around dumpsters at any time.

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***NOTE: For Killens Pond Water Park Concession, the Division shall provide all exterior trash receptacles within the water park (does not apply to inside the concession/work area). Vendor is responsible for cleaning and emptying as included herein. Additionally, at this Concession, the awarded Vendor shall be responsible for providing at least an 8-yard dumpster with doors and a lid that will have pick-up at least 2x weekly.***

The Vendor is required to serve all food and beverages in recyclable containers in compliance with the spirit and intent of **Executive Order 18** [https://archivesfiles.delaware.gov/Executive-Orders/Markell/Markell\\_EO18.pdf](https://archivesfiles.delaware.gov/Executive-Orders/Markell/Markell_EO18.pdf).

**K. Emergencies:**

The Vendor and the Division or their designated agent(s) shall be available by phone twenty-four (24) hours a day, seven (7) days a week for emergencies during the entire term of the contract. Information on how to contact the Vendor or their designee is to be provided as part of Vendor's proposal.

**L. Parking.**

Parking spaces for the concession operator and their employees will be assigned by the Park Superintendent. Note: Once a park reaches capacity and gates are temporarily closed, Vendor staff will be required to wait until gates re-open. Logistically, line-skipping is not practical. Vendor shall ensure staff are aware of peak periods within each park and schedule accordingly for available parking.

**M. Concession Franchise Limitations:**

Vendor shall faithfully conform to all the provisions of this RFP and any contract signed between the State and Vendor, and for as long as any Concession Services are provided as heretofore described at each of the Delaware State Parks, however, Vendor may **not have exclusive rights** at the sole discretion of the Division of Parks and Recreation.

**N. Marketing and Promotion Plans; Signs and Advertising:**

1. The Vendor is encouraged to work with the Division of Parks and Recreation on a marketing and promotion plan for each calendar year. The agreed upon marketing plan may contain promotional activities at or in connection with Delaware State Parks annual promotional activities or with individual state parks or facilities. (The Division is considered a "Qualified Organization" for purposes of receiving deductible charitable contributions).
2. The Vendor agrees not to use signs or any other means of soliciting business without the approval of the Division and agrees not to advertise any contract between the State and Vendor in any manner or form on or about premises contracted to it, or elsewhere, or in any newspaper or otherwise, without such prior approval. Any printed advertising shall include the correct name and location of the operation, e.g., Delaware State Parks at Killens Pond.
3. The Division, through their authorized agents, reserves the right to prohibit the erection, display or use of signs which are not in keeping with the park area. Permission must be granted by the Division or their authorized agents prior to the erection, display or use of signs. The Division also reserves the right to designate the type, size, wording, color and number of signs requested by the Vendor.



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**O. Required Passes and Fee's for Delaware State Parks:**

1. A park entrance fee is charged daily from March 1 to November 30. Annual passes are also available. These fees and passes allow vehicles and passengers to enter any Delaware State Park on the date of purchase. The fees play an important role in protecting open space and wildlife, support recreational activities and nature education, and provide visitor assistance and safety.
2. Awarded Vendors are encouraged to participate in the Delaware State Parks Corporate Pass program (*provides for discounted annual passes for businesses and groups*). Entrance fees apply to Vendors and their staff.

**P. Payment Credit Card Industry (PCI) Requirements:**

The Vendor agrees that it is their responsibility to become PCI compliant and maintain compliance. For more information related to PCI Security Standards, the following link is provided: [https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php)

**Q. Quality and Pricing:**

1. Vendor warrants that all products and services offered by it to the public shall be of the highest quality and consistent with quality specifications provided by the Vendor pursuant to this section.
2. Vendor shall the right and privilege to charge prices and rates as are reasonable and fair. All price changes shall be subject to the prior written approval of the Division.
3. Vendor shall submit a price list to the Division each season, before the beginning of the operation, with a schedule of products and services to be offered and the prices to be charged for each product or service. Vendor agrees to offer only such products, services and beach retail items at such prices as have been approved by the Division. In approving rates, primary consideration will be given to the prices charged for similar classes of products and services and beach retail items furnished outside the areas administered by the Division under similar conditions.
4. If, in the sole opinion of the Division, any products or services offered by the Vendor are inconsistent with the image or reputation of the Division or the State of Delaware, or are otherwise deemed unsuitable for sale on the contracted premises, the Division shall request the Vendor cease selling such products or services and the Vendor shall cease doing so immediately upon receipt of such written request from the Division.

**R. Vendor Responsibilities:**

Vendor(s) will be granted the right to provide Park Concession Services at the locations specified in Exhibit A, Scope of Work. Vendor's responsibilities under a contract with the Division shall include the following:

1. Provide foods as described herein for the Park Concession Services during operating hours at each Park included in this RFP.
2. Provide quality and reasonably priced beach retail items (pool retail items at Killens Pond State Park) during operating hours at each Park included in this RFP.

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3. Vendor will be required to furnish and install the necessary equipment, if not provided by the Division at the concession location, for the preparation, display and storage of retail merchandise sales items in order to provide the specified Concession and Beach Retail Items. The existing concession facility includes the equipment listed in Exhibit A, Statement of Work and Technical Specifications, below for Vendor to use. **Note: repair or replacement of Division equipment shall be at Vendor's expense.** Equipment replaced by Vendor shall be property of the Vendor unless part of improvements included as "modifications to park facilities".
4. Vendor must furnish a cash register with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports (Attachment 8 and Attachment 9).
5. All of the Vendor-owned equipment or any permanently installed fixtures used in the concession operation shall be subject to approval by the Division, the Division of Public Health and the State Fire Marshal, if applicable, as to their workability, appearance, appropriateness, and compliance with codes
6. All outdoor furniture must be aesthetically designed to fit into the beach restaurant environment (e.g., picnic tables).
7. Vendor shall be responsible for providing the following services:
  - a. Vendor (or Vendor's subcontractor service) shall provide daily cleaning and janitorial service of the sales area, and other building space assigned to Vendor.
  - b. Vendor shall repair and maintain all food service equipment owned by Vendor. **Vendor shall repair or replace Division equipment at the Vendor's expense. Exhausted equipment must be turned into the Division for proper disposal.**
  - c. Vendor (or Vendor's subcontractor) shall, on a daily basis, collect and deposit litter, garbage and other refuse from the grounds and buildings assigned or used by Vendor into Vendor's dumpsters rented or leased by Vendor as part of the concession's services and in the everyday course of business. The Park will not provide any trash removal services and it is the sole responsibility of the Vendor to ensure trash services are provided for daily and Holiday pickup requirements. Failure to adhere to this responsibility will result in additional expense to Vendor, in the event the Division is contacted to provide these emergency services on behalf of Vendor. Vendor shall ensure that all trash receptacles are cleaned often to avoid harmful insects and unsanitary conditions.
  - d. Vendor is responsible, at their expense, for the repairs and maintenance of interior building fixtures and utilities (e.g., door locks, light bulbs, water faucets, clogged sinks or toilets, etc.).
  - e. Vendor is responsible, at their expense, for cleaning any Hood Exhaust and Fire Suppression System installed by the Park in the concession facility on an annual basis.
  - f. Vendor shall provide maintenance of the concession area, including cleaning of tables and chairs, removal of all debris to ensure chairs are accessible for handicap visitors, in compliance with Americans with Disabilities Act (ADA) laws and legislation.
  - g. Vendor and its employees shall at all times generate and maintain an inviting atmosphere inside and outside the concession area for customers of the Park. Any significant visitor complaints may be considered performance deficiencies under this contract.
  - h. Vendor must publicly display in a conspicuous place at the concession area a neat and legible sign listing hour of operation, rates, prices and charges for all products and services. Vendor

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shall affix a menu board and/or a standing dry erase outside the concession area depicting specials for the day.

- i. Vendor shall be responsible for providing quality food products and services at a reasonable price, in addition to providing excellent customer service to Park visitors.
- j. Vendor shall be responsible in employing only competent, mature and orderly employees and ensure their employees shall keep themselves neat and clean and be courteous to all visitors and patrons of the Park.
- k. Vendor, if approved by the Division in writing, may provide optional Food Truck services to the Parks from Memorial Day to Labor Day.
- l. At the end of the contract term or at the request of the Division, Vendor shall ensure that all facilities and equipment provided by the Division are returned to the Division in good order, reasonable wear and tear expected. Failure to return such facilities to its natural state or return equipment to the Division at the end of the contract term may result in the Division billing Vendor, as applicable.

**8. Modifications to Park Facilities:**

Vendor may make alterations, modifications, additions or improvements to the contracted premises and concession facilities **with prior Division approval** of the design, development, timeline and approved plans. No work shall commence until Vendor receives the Division's approval and consent in writing. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor, unless the Division consents to share a portion of said costs or provide necessary materials and/or labor. Vendor shall submit a proposed layout of the operation and a description of any alterations or modifications which are contemplated to set up the operation. Vendor is responsible for obtaining any work permits, at Vendor's expense, and will coordinate any subcontractor access to the Park with the Park Superintendent. Additional requirements based on state and local ordinances, code and regulations may be required and shall be the responsibility of the Vendor. All alterations, modifications, additions or improvements shall become property of the Division, however must be maintained by the Vendor during the full term of the contract, including extensions. At any time during the term of the Contract, an inspection may be conducted by the Division. Any issues other than standard wear and tear (standard is determined at the discretion of the Division) must be rectified by the Vendor or shall be considered a performance issue.

**9. Damage to Park Facilities:**

In the event State property or facilities are damaged in any way whatsoever by reason of any act or omission of Vendor or its employees, Vendor shall repair at its own cost and expense the facility or property so damaged. Upon the failure of Vendor to make such repairs within five (5) working days or a reasonable time period agreed upon by the Division and Vendor, the Division will repair such damage at the cost and expense of Vendor and deliver a detailed invoice to Vendor which will be due and payable within thirty (30) days of the date of the invoice.

**10. Waiver of Damages:**

Vendor waives any and all claims for compensation of any loss or damage sustained by the Vendor resulting from fire, water, natural disaster (e.g hurricane, tornado, etc.) civil commotion or riots.

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**S. Division Responsibilities:**

1. The Division shall be responsible for the major utility and structural repairs and exterior maintenance of the Park concession facilities (excluding any approved and completed modifications during the contract term).
2. Any equipment or services to be provided by the Division shall be included in Appendix A, Statement of Work and Technical Specifications according to the specific Park requirements. Repair or replacement of Division equipment shall be at Vendor's expense.
3. The Division shall be responsible for the initial cleaning and inspection of the Concession facility Ansul System (Hood Exhaust and Fire Suppression System). Thereafter, the Vendor shall be responsible for cleaning the Ansul System at the end of the season or earlier if requested by the Division.

**II. SPECIFIC REQUIREMENTS BY PARK LOCATION**

**A. FENWICK ISLAND STATE PARK (CONCESSION)**

Situated between the town of Bethany to the north and Fenwick Island and Ocean City to the south, Fenwick Island State Park is a three-mile stretch of Barrier Island along Delaware's Atlantic coast. The park offers 344 acres of ocean and bay shoreline on either side of Route 1 with guarded swimming, surfing, fishing, sailing, windsurfing, clamming, crabbing, birdwatching and a host of other activities. Three dune crossings offer access for surf fishing vehicles with the proper permit to drive on the beach. The first access road is at York Beach just below South Bethany. Middle Crossing is approximately one mile north of the main park entrance. The South Crossing is 1/4 mile north of the main park entrance. Each of the beach crossing areas offers an air station.

**1. Description /Introduction of Park Concession:**

The current facilities at Fenwick Island State Park feature a bathhouse which offers showers and changing rooms, a seasonal park office, and a snack food concession.

**a. Approximate Park Attendance:**

- o 2018: 247,962
- o 2019: 256,105
- o 2020: 279,402
- o 2021: 291,831

**2. Specific services required:**

**a. Awarded Vendor shall provide Food Concession Services and Beach Retail Items Sales Services. Rental of beach chairs and beach umbrellas is managed by the Division at this location. Awarded Vendor may not rent beach chairs and beach umbrellas at this site.**

**b. Operating Schedule:**

- The Park is open daily 8:00 a.m. to sunset year-round. Normal park office hours are Monday through Friday 8:00 a.m. to 4:00 p.m. from April through October and are

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contingent upon weather conditions and attendance to be determined by the Park Superintendent.

- The minimum Concession Hours of Operation will be from 10:00 a.m. to 6:00 p.m., seven (7) days per week from Memorial Day weekend through Labor Day weekend.

3. Minimum Annual Fee: **\$9,500.00 + negotiated % of gross receipts**

The Division invites Vendors to be competitive in bidding, however no bid below \$9,500.00 shall be considered.

4. The Park Office Address is:

39415 Inlet Road  
Rehoboth, DE 19971

5. The Concession Address is:

27101 Coastal Highway  
Fenwick Island, DE 19944

6. The Division shall provide the following equipment for the Vendor's use (until exhausted – repairs and replacement are the responsibility of the Vendor):

- (3) Wire Shelves
- Hand Soap Dispenser
- Paper Towel Dispenser
- Fryer
- (2) Hand Soap Dispensers in Storage Room
- Paper Towel dispenser in Storage Room

7. The Division has the following concession amenities:

- Grill Hood
- Wash Sink in Cooking Area
- Three-Compartment Sink
- (2) Hand Sinks in Storage Room

8. Approximate revenue:

- 2016: \$93,534.80
- 2017: \$107,257.95
- 2018: \$96,670.37
- 2019: \$97,643.17
- 2020: \$71,093.35
- 2021: \$108,745.58

9. Approximate number of customers to Concession:

- 2016: 10,696

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- 2017: 9,717
- 2018: 8,511
- 2019: 8,434
- 2020: 5,569
- 2021: 7,566

**B. DELAWARE SEASHORE STATE PARK - TOWERS ROAD (CONCESSION)**

Towers Road is located just south of Dewey Beach with nice waves and wide beaches that attract thousands of visitors each year who enjoy ocean swimming and sunbathing. The day use area features a designated, guarded beach for swimming between Memorial Day weekend and Labor Day. Delaware Seashore State Park includes a campground that is open year-round. The twelve Cottages at Indian River Marina are also open year-round.

**1. Description /Introduction of Park Concession:**

The current concession facilities at Delaware Seashore State Park feature a bathhouse which offers showers and changing rooms and a snack food concession. Towers Road access offers a large Beach with plenty of parking for beach patrons, on-beach parking for surf fishing and rest rooms.

**a. Approximate Park Attendance:**

- 2018: 1,512,060
- 2019: 1,605,696
- 2020: 1,570,920
- 2021: 1,811,565

**2. Specific services required:**

**a. Awarded Vendor shall provide Food Concession Services and Beach Retail Items Sales Services. Rental of beach chairs and beach umbrellas is managed by the Division at this location. Awarded Vendor may not rent beach chairs and beach umbrellas at this site.**

**b. Operating Schedule:**

- The Park is open weekends during the months of May, September and October, 10:00 a.m. to 6:00 p.m. Contingent upon weather conditions and attendance to be determined by the Park Superintendent.
- The Concession Hours of Operation are from 10:00 a.m. to 6:00 p.m., seven (7) days per week from Memorial Day weekend through Labor Day weekend.

**3. Minimum Annual Fee: \$5,700.00 + negotiated % of gross receipts**

The Division invites Vendors to be competitive in bidding, however no bid below \$5,700.00 shall be considered.

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4. The Park Address is:

39415 Inlet Road  
Rehoboth Beach, DE 19971

5. The Concession Address is:

39036 Towers Road  
Rehoboth Beach, DE 19971

6. The Division shall provide the following equipment for the Vendor's use (until exhausted – repairs and replacement are the responsibility of the Vendor):

- Fryer
- Hand Soap Dispenser
- Paper Towel Dispenser
- Wire Shelving in Cooking Area

7. The Division has the following concession amenities:

- Grill Hood
- Three-Compartment Sink
- Hand Sink in cooking area
- Wash Sink in Storage Room

8. Approximate revenue:

- 2016: \$46,920.20
- 2017: \$60,475.68
- 2018: \$65,596.08
- 2019: \$62,787.72
- 2020: \$43,638.80
- 2021: \$63,198.26

9. Approximate number of customers to Concession:

- 2016: 6086
- 2017: 6,099
- 2018: 6,268
- 2019: 5,570
- 2020: 3,747
- 2021: 4,536

**C. KILLENS POND STATE PARK (WATER PARK CONCESSION)**

Natural and recreational opportunities abound at Killens Pond State Park, the only State Park located in the heart of Kent County. The Park's centerpiece is the 66-acre millpond which features boating and fishing. Open year-round, the Park's campground and cozy cabins are popular retreats no matter what the season. The Park offers visitors camping, fishing, swimming, boating, and other recreational activities throughout the woodlands and grassy fields. A sample of amenities offered at this Park are

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softball fields, a boat ramp with boat rentals, campgrounds with cabins, a camp store, canoe launch and canoe trails, a Water Park with slides, kiddie pool, beach volleyball, and a Nature Center.

1. Description /Introduction of Park Concession:

Park Visitors can enjoy a variety of menu items at the Killens Pond Water Park food. The Water Park offers resort entertainment in a serene, natural setting. Park visitors enjoy exciting interactive water features such as two (2) 54 foot speed slides, two (2) spiral slides with tunnels, floating lily pad fun walk, tot pool and tot lot, bubblers, ground water jets, slides, and a pool-side water play system. There is a Swim Shop next to the concession area that provides retail items such as a variety of exclusive lines of swimwear, sun care products, and novelty items. The Water Park also features a bathhouse with showers, changing facilities, hairdryers, restrooms, and baby changing stations.

a. Approximate Water Park Attendance:

- 2018: 51,589
- 2019: 59,028
- 2020: 42,675
- 2021: 33,987

2. Specific services required:

- a. Awarded Vendor is expected to provide Food Concession Services and Manage and Operate the Swim Shop including Retail Items Sales Services. Pool chairs and umbrellas are provided by the Division at this location. Awarded Vendor may rent a small quantity of beach chairs per Division approval at this site (dependent upon on space restrictions). **Vendor is required to sell swimsuits and sun protection products.**

3. Operating Schedule:

- The Park office is open daily from 8:00 a.m. to Sunset Monday through Friday. The Park is open weekends during the months of April through October, 08:00 a.m. – 4:00 p.m. Contingent upon weather conditions and attendance to be determined by the Park Superintendent.
- The Concession hours of operation are from 10:00 a.m. to 6:00 p.m. seven (7) days per week from Memorial Day weekend through Labor Day weekend. At the discretion of the Division, the water park operates in full day or two (2) am/pm shifts for admission.

4. Minimum Annual Fee: **\$14,700.00 + negotiated % of gross receipts**

The Division invites Vendors to be competitive in bidding, however no bid below \$14,700.00 shall be considered.

5. The Park Office Address is:

5025 Killens Pond Road  
Felton, DE 19943



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The Concession and Swim Shop address is:

5025 Killens Pond Road  
Felton, DE 19943

**6.** The Division shall provide the following equipment for the Vendor's use (until exhausted – repairs and replacement are the responsibility of the Vendor):

**a.** Main Concession Area:

- Shelving
- Hot Dog Warmer
- Sink
- Mop Sink/Rack
- Flat Top Grill
- (2) Deep Fryers
- Warming Box
- Chicken Tender /Fryer Warmer
- Ice Cream Freezer
- Refrigerated Prep Station
- Worktable
- Double Commercial Refrigerator

**b.** Manager's Office:

- Safe (Rental Fee(s) apply)
- Manager's Desk
- Filing Cabinets

**c.** Retail Swim Shop:

- Wall Racks
- Clothes Stands
- Sales Counter/Table

**d.** Designated Outdoor Eating Area and Grassy Area for Sun Bathers (Note: Vendor must clean, sanitize and maintain cleanliness throughout the day. Eating area must be entirely cleaned and all trash/rubbish removed daily as part of Vendor's closing procedures to minimize insects, rodents and wildlife.)

- Metal Picnic/Concession Tables and Chairs (new in 2021 – when replaced by Vendor, must be of like model/type) – Vendor is required to have adequate seating for Outdoor Eating area equal to or higher capacity than currently provided
- Umbrellas (when replaced by Vendor, must be like mode/type) - Vendor is required to have umbrellas equal to or higher quantity than currently provided

**e.** Concession Stand:

- Menu Board for daily specials

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7. The Division has the following concession amenities:

- Trash receptacles
- Walk-in Cooler/Freezer
- Cooler Refrigeration System
- Work Counter
- Hand Sink
- Three-Compartment Sink
- Outside Service Window
- Storage Room
- Designated Area for Sign Logo
- Ansul System (Hood Exhaust and Fire Suppression System)
- Air Conditioning (in accordance with State Policies)
- Employee Bathroom
- Security System with monitoring system  
*(Available from Division with a monthly fee)*

8. Approximate revenue:

- 2016: \$193,759.01
- 2017: \$147,880.24
- 2018: \$137,128.63
- 2019: \$168,497.42
- 2020: \$43,143.50
- 2021: \$193,726.72

9. Approximate number of customers to Concession:

- 2016: 21,676
- 2017: 15,463
- 2018: 13,314
- 2019: 15,733
- 2020: 3,163
- 2021: 13,271

**D. CAPE HENLOPEN STATE PARK (Opportunity for Value Added) CONCESSION**

Cape Henlopen's beaches attract thousands of visitors each year who enjoy ocean swimming and sunbathing. A designated swimming beach, accessible from the Lewes entrance to the park, provides guarded beaches between Memorial Day weekend and Labor Day. Pine covered dunes are the setting for over 150 campsites and 12 cabins. Camping is permitted from March 1 through November 30<sup>th</sup>. The Park also conducts a variety of entertaining recreational programs, including natural history lectures, seaside seining, and birdwatching. Cape Henlopen has many year-round hiking and biking opportunities in addition to having a peaceful preserve on a former military base with an observation tower providing a view of the Park and beach areas.

1. Description /Introduction of Park Concession:

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The existing concession building is located near the Park's main day use bathhouse for the satisfactory operation of the concession services, offering showers and changing rooms, deck space with tables and provides a variety of snack foods and beverages for the general public's use.

Cape Henlopen's main day use swimming area is lifeguard protected. The day use swimming area also provides Park visitors Mobi-Mat equipment, consisting of three 30-foot mats, allowing those in wheelchairs and power chairs to access the beach from this location.

In the event of adverse weather and heavy surf conditions, Park Management has the authority to prohibit the use of and rental of flotation devices (i.e. boogie boards and rafts), to reduce the risk of injury to Park visitors.

Concessionaire is responsible for providing and properly installing a temporary storage facility for equipment and supplies (such as umbrellas, chairs, towels, rafts, one-size boogie boards and other flotation devices). Temporary storage shall not exceed 8ft. in height and shall be installed at the base of the dune (on the East side adjacent to the pedestrian dune crossovers). Any temporary structures installed by the Concessionaire are to be removed from the concession area no later than October 10<sup>th</sup> of each year. Installation and removal of storage facility shall be coordinated with the Park Superintendent to ensure proper location, installation and removal process.

a. Approximate Park Attendance:

- o 2018: 1,675,572
- o 2019: 1,752,781
- o 2020: 1,729,634
- o 2021: 1,853,574

2. Specific services required:

a. Awarded vendor shall provide Food Concession Services and Beach Retail Items Sales and Rental Services. The Division **does not** rent beach chairs and beach umbrellas at this location and the awarded vendor **must** provide this service.

b. **At the Cape Henlopen State Park Concession, the Division is open to "Value Added" proposals which may include capital improvements and/or new opportunities or enhancements for a food concession in a "restaurant" like environment.**

i. **"Value Added" defined for the purposes of this RFP:** An option in the Vendor's proposal that may include capital improvements and/or new opportunities or enhancements that are outside the minimum requirements and/or statement of work that the Division is requesting. Examples of a Value Added Options may include, but are not limited to: including a restaurant option, adding to or modifying the existing structure at the concession area for the purpose of the business to provide new types of services and amenities that will enhance the current operation, expanded delivery service to beach and campground patrons, etc. Any Value Added Option should complement the Park and Vendor is fully responsible for the capital improvements and any and all requirements (i.e., federal, state, local, licensing, funding, and approvals). The Division reserves the right to enter into Contract(s) that shall not exceed twenty-five (25) years, if the awarded Vendor provides capital improvements and offerings that require longer timelines for return on investment. The Division shall be the sole determining authority for a Contract

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that shall exceed the Contract period listed in this RFP. The Division reserves also reserves the right to provide potential cost share opportunities for projects including capital improvements. Cost share is defined as the Division creating a purchase order and paying for partial elements of an approved capital improvement. Note: any "impact" fees levied by the applicable county in Delaware related to structural, design, increased/decreased population resulting from this Contract, parking, roadway traffic, utilities, etc. shall be the responsibility of the Awarded Vendor and the Division shall "pass" these costs through an invoice with appropriate support documentation.

- ii. **The Division shall own all improvements.** Any proposals with capital improvements shall adhere to Appendix C (Appendix C – SPECIFICATIONS AND ADDITIONAL INFORMATION).
- iii. **It is not required that a Vendor submit a Value Added option, however the Division is very interested in proposed opportunities that include these options.**

c. Operating Schedule:

- Cape Henlopen State Park is open from 8 a.m. to sunset seven days a week. Normal Park office hours are 8:00 a.m. to 4:00 p.m. Monday through Friday contingent upon weather conditions and attendance to be determined by the Park Superintendent.
- The Seashore Nature Center is open as follows:  
9:00 a.m. to 4:00 p.m. from November 1 to March 31<sup>st</sup> Wednesday through Sunday.  
9:00 a.m. to 4:00 p.m. 7 days a week during April and May, and during September through October. 9:00 a.m. to 5:00 p.m. from June 15<sup>th</sup> to Labor Day.
- The Concession hours of operation are from 10:00 a.m. to 06:00 p.m. seven (7) days per week from Memorial Day weekend through Labor Day weekend.

3. Minimum Annual Fee: **\$20,400.00 + negotiated % of gross receipts**

The Division invites vendors to be competitive in bidding, however no bid below \$20,400.00 shall be considered.

4. The Park Office Address is:

15099 Cape Henlopen Drive  
Lewes, DE 19958

5. The Concession address is:

37184 Post Road  
Lewes DE 19958

6. The Division shall provide the following equipment for the Vendor's use (until exhausted – repairs and replacement are the responsibility of the Vendor):

- Shelving
- Hand Soap Dispenser
- Paper Towel Dispenser
- Fryer

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**7.** The Division has the following concession amenities:

- Grill Hood
- Work Counter
- Hand Sink
- Soap and Towel Dispenser
- Three Compartment Sink
- Storage
- Range Hood System

**8.** Approximate revenue:

- 2016: \$239,171.64
- 2017: \$244,436.44
- 2018: \$196,795.62
- 2019: \$212,455.06
- 2020: \$120,167.41
- 2021: \$216,263.54

**9.** Approximate number of customers to Concession:

- 2016: 22,601
- 2017: 21,681
- 2018: 17,786
- 2019: 18,255
- 2020: 9,616
- 2021: 14,889

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**APPENDIX B**  
**Pricing Spreadsheet**

Refer to the Pricing Spreadsheet included in this RFP posting available at <http://bids.delaware.gov/>.

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**APPENDIX C**  
**Specifications and Additional Information**

**I. State of Delaware Project Review and Approval Procedures**

In meeting our goal to provide safe, code compliant and efficient facilities to State agencies and the public, certain public works projects are reviewed by the Office of Management and Budget, Division of Facilities Management (DFM). All State departments and agencies (including school districts) are required to submit to DFM proposed contracts for architectural, engineering or construction management services as well as all architectural, structural, electrical/mechanical plans, specifications and cost estimates (source Delaware Code, Title 29, Chapter 74, Section 7419 and Chapter 63A, Section 6307A).

In addition to DFM, projects must be reviewed and approved by DNREC and other entities depending on the scope and status of the project. These entities may include DNREC Sediment and Stormwater Management Plan, State Historic Preservation Office (SHPO), DelDOT, State Fire Marshal, County and City. This process may require 6 to 8 weeks minimally for single reviews and longer for multiple reviews.

It is recommended that initial reviews be held with the appropriate agencies at the onset of a project to review the proposed scope. The initial meeting may result in decreasing the number of reviews and reducing the amount of time needed for approvals.

**A. Projects Requiring Submission**

Plans, specifications and professional services agreements are required by DFM for those projects that are:

1. Constructed by or on behalf of the State of Delaware.
2. Financed in whole or in part by the State or by bonds in whole or in part by the State.
3. Financed by the federal government through a state agency. Highway construction projects do not need to be submitted for review and approval except those identified by the AAB as requiring submission.
4. Facilities leased by the State (regardless of whether alterations will be made).

**B. Agencies Affected**

All State departments and agencies (including all school districts).

**C. Accessibility Requirements**

The Architectural Accessibility Board (AAB) is housed within the Office of Management and Budget for administrative reasons, but as a separate agency of the State, maintains an independent review and approval process. The Architectural Accessibility Act (Delaware Code, Title 29, Chapter 73) requires submission of certain plans and specifications to the Architectural Accessibility Board. Submission to the AAB and their approval must be made prior to the final DFM application.

**D. DNREC Sediment and Stormwater Management Plan**

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Projects involving 5,000 SF or more of site disturbance must be reviewed and approved by DNREC Sediment and Stormwater Management Plan. This process can require 6 to 8 weeks minimally.

**E. State Historic Preservation Office**

Projects that are on the National Register, have covenants or easements, are within historic districts and/or having landmark status must be reviewed and approved by this office. It is recommended that an initial meeting be held with this office to determine their stance on the scope of work. Final documents are to be submitted and approval can require four weeks. This should be done prior to the final DFM review.

**F. State Fire Marshal**

All construction projects must be reviewed and approved by the State Fire Marshal. It is recommended that an initial meeting be held with this office for mid-level to complex projects. Final signed and sealed documents are to be submitted and approval can require two to four weeks. This should be done prior to the final DFM review.

**G. Delaware Division of Health and Social Services (DHSS)**

All construction projects must be reviewed and approved by the DHSS Office of Engineering. It is recommended that an initial meeting be held with this office for mid-level to complex projects. Final signed and sealed documents are to be submitted and approval can require two to four weeks. This should be done prior to the final DFM review.

**H. County and City**

The State-funded projects are required to submit construction documents for building permits with fees waived except for water and sewer fees. Privately funded projects built on State property will be required to pay all fees associated with the building permit. Issuance of the building permit can take four to twelve weeks. This is typically done by the contractor after award of the project. The Owner, architect or engineer cannot submit for the building permit.

1. The construction documents must be signed and sealed by a registered architect, structural engineer, site engineer and mechanical engineer.
2. The general contractor, plumbing contractor, mechanical contractor and electrical contractor must be licensed by the State and local jurisdiction.
3. The local jurisdiction will complete inspections during construction. These inspections will minimally include foundation, framing, ADA, mechanical, plumbing and electrical.

**I. Asbestos Requirements (if present)**

Delaware Code, Title 16, Chapter 78, Section 7805 (1) requires that all agencies utilizing State funds from any source to perform asbestos abatement and must have plans and specifications approved by DFM if asbestos is found.

**J. Necessary Documentation for DFM Review**

1. **Public Works Project Review Form**: All contracts, plans and specifications submitted to the Division



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of Facilities Management for review must be accompanied by a completed Public Works Project Review Form.

2. **Professional Design Service or Construction Management Contract/Agreement**: If the purpose of the submission is for the review and approval of architectural, engineering or construction management services, the proposed contract or agreement and the Professional Services Contract Review Form must be completed and submitted with the requested information.
3. **Construction Plans and Specifications**: Three (3) complete sets of final plans and specifications must be submitted (cover page of project manual and every drawing shall be signed and sealed). Two (2) copies are sent to the Chief of Engineering and Operations and one (1) copy is sent to the Architectural Accessibility Board. Note: for DFM-managed projects, address documents to the DFM project manager assigned.
4. **Life Cycle Cost Analysis**: As outlined in Delaware Code, Title 29, Chapter 69, section 6909A, the use of life cycle cost analysis is required in the purchasing of equipment and in public works projects. See here for LCCA Requirements.
5. **Design Review Checklist**: Submissions of plans and specifications must be accompanied by a completed and signed Design Review Checklist. (see below for further details)
6. **Asbestos Plans and Specifications**: One copy of final plans and specifications must be submitted to the Chief of Engineering and Operations.

**K. DFM-Managed Design Review Process**

DFM will review projects at the preliminary schematic, schematic, design development and final design stages. The number of reviews can be decreased upon discussion with DFM at the preliminary schematic design stage.

**L. State Agency Project Design Review Process**

Includes all State-funded Public Works projects including DNREC Parks & Recreation, DelDOT non-highway projects, and other projects in State-owned or leased facilities.

**M. Project Design Review Process Response**

1. The Chief of Engineering and Operations will issue a letter, indicating the overall findings of the review.
2. For reviews that have been “Not Approved”, the agency must provide a new review package (plans and specifications) or submit a letter that addresses the issues/comments that were a basis for disapproval.
3. All environmental compliance issues (asbestos abatement, underground storage tank, etc.) will require approval from the Chief of Engineering and Operations.
4. The Architectural Accessibility Board will issue an approval/disapproval letter indicating that the plans and specifications comply with State accessibility standards.