

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
FOR THE MANAGEMENT AND OPERATION OF A
MARINA RESTAURANT AT INDIAN RIVER MARINA
ISSUED BY DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL, DIVISION OF PARKS AND RECREATION
CONTRACT NUMBER NAT22011_MARINA RESTAURANT**

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I. Overview

The State of Delaware Department of Natural Resources and Environmental Control, Division of Parks and Recreation (“DNREC”), seeks to obtain sealed proposals to operate a Marina Restaurant for the general public at the Indian River Marina at Delaware Seashore State Park (“DSSP”) in Rehoboth Beach, DE commencing **April 1, 2023**. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ [6981](#) and [6982](#).

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

Activity	Due Date
Public Notice	Thursday, October 6, 2022
Non-mandatory meeting/site visit	Thursday, October 20, 2022, at 9:00 a.m. (Local Time)
Deadline for Questions Due	Thursday, October 27, 2022
Response to Questions Posted	Monday, November 7, 2022
Deadline for Receipt of Proposals	Wednesday, November 30, 2022, 1:00 p.m. (Local time)
Estimated Date of Award	Wednesday, December 28, 2022

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Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing Vendor's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

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

NON-MANDATORY PREBID MEETING

A non-mandatory pre-bid meeting and site visit has been scheduled for **Thursday, October 20, 2022, at 9:00 a.m. local time at the Indian River Marina Conference room located at 39415 Inlet Road, Rehoboth Beach, DE 19971.** After the meeting, the site visit will take place.

II. Scope of Services

A. Overview

DNREC is seeking a qualified and competent concessionaire to operate a Marina Restaurant with full waterfront menu fare, including but not limited to, fully prepared seafood dishes (excluding off premise raw seafood sales), entrees, appetizers, desserts, alcoholic beverages, non-alcoholic beverages, and any other refreshments necessary to carry on the business in accordance with the terms and conditions set forth in the contract for the general public at the Indian River Marina located in Delaware Seashore State Park. For a full Scope of Work, please see Appendix A, Scope of Work and Technical Requirements.

B. Background

Delaware Seashore State Park, boasting six miles of ocean and 20 miles of bay shoreline, serves as an important part of the southern Delaware coastline. The dynamic Indian River Inlet connects the Indian River and Rehoboth Bays with the Atlantic Ocean and is the epicenter of the park's many activities that hosted more than 1.8 million visitors in FY22. A beach lies on either side of the inlet, welcoming anglers and beachgoers who stay for the day or overnight at the park's waterfront campground and cottages. The Indian River Life-Saving Station, built in 1876 for use by the United States Lifesaving Service to respond to shipwrecks, now pays homage to its maritime heritage while doubling as a coastal event space and educational center. The barrier beach and inland bays provide the perfect salt marsh habitat and nesting grounds for birds and terrapins. More than seven miles of trails welcome hikers, bikers and birders.

Indian River Marina, Delaware's largest, is a destination for boaters seeking direct access to the rich Atlantic Ocean and inland bays fishing grounds. The marina boasts 294 slips with a floating dock system and 154 spots for indoor dry boat storage. A monitored public boat ramp with shuttle service to parking is available in the summer. It also serves as a waterfront event space with beautiful sunset views. A concession bait and tackle shop offers full-service bait and tackle along with fish cleaning and an on-site fresh seafood market. A concession restaurant provides waterfront fare in a lively restaurant setting, with a bar and live entertainment. Twelve rental cottages overlook the Indian River Inlet while the Burton Island Trail offers hikers a quiet stroll along the water and through the woods.

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The concession facility is located at the Indian River Marina located on the north side of the Indian River Inlet at Delaware Seashore State Park, the third largest state park containing over 2638 acres. It is located within minutes of the Atlantic Ocean and Inland Bays and has been renowned as some of the finest fishing grounds on the East Coast.

The Awarded Vendor shall not compete with bait and tackle shop steamed/cooked or fresh to-go seafood salad type offerings without written permission from the DNREC.

The site for the Indian River Marina Restaurant operation includes a building with approximately 1,400 square feet (35'x 40') with an outside usable deck area of approximately 1,100 square feet. The exterior deck/plaza area includes four covered roof pergolas, a stage, a tiki bar, planter boxes that border the business area, and some built in seating. The building has limited traditional cooking equipment and outdoor grill capabilities. Any equipment required by the Vendor for their proposed business offering that is not provided by the DNREC, shall be provided for by the Vendor.

C. Statement of Needs

DNREC is seeking a qualified and competent Vendor (“the Vendor”) to provide a Marina Restaurant for the general public and marina slip holders at the Indian River Marina at Delaware Seashore State Park commencing on April 1, 2023. The purpose of this Request for Proposal is to obtain sealed proposals from vendor(s) capable of satisfying DNREC requirements for providing, managing and operating a Marina Restaurant as stated herein. It is the goal of this Request for Proposal to identify vendor(s) who (i) meet park requirements and the criteria set forth herein; (ii) are capable of executing a contract within the timeline provided; and (iii) can provide, operate and manage a Marina Restaurant as stated in vendor(s) submitted proposal.

Vendors are encouraged to submit creative business proposals that include, but not limited to: (i) refurbishing the existing facility in accordance with the specifications listed herein, (ii) replacement of old equipment with state of the art equipment meeting the required food service standards normally associated with a restaurant, business, (iii) offering the public a full indoor and/or outdoor bar service, (iv) plan, design and promote a new menu, offering breakfast, lunch and dinner, a variety of seafood, gourmet sandwiches (hot and cold), entrees, appetizers, desserts, alcoholic beverages, non-alcoholic and a variety of other menu choices for the general public’s enjoyment, (v) provide methods of increasing Park visitor satisfaction through the use of the Marina Restaurant, and offer delivery food services for the Indian River Marina and the North Inlet Campground. All alcoholic beverages sold and served shall be restricted to the immediate Marina Restaurant area and all State of Delaware alcohol guidelines shall be adhered to.

Additionally, DNREC is open to a “Value Added” proposal which may include capital improvements and/or new opportunities or enhancements for catering events such as weddings, reunions, etc.

III. Required Information

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.

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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

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

A. Minimum Requirements

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.
 - a. Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.
2. Vendor shall provide responses to the Request for Proposal ("RFP") scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below. Vendor shall ensure to describe the methodology/approach used for operating and managing a Marina Restaurant included in proposal to DNREC, including work plan and timeline. Include a well-defined ACTION PLAN that will describe the bidder's organization and method for providing Marina Restaurant operations, where applicable and providing services as specified herein. Include approach to opening operations, any proposed capital improvements. Include 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 recruitment, hiring, training plan and procedures. Include conflict resolution processes. Vendor shall provide an Alcohol Management Plan in their proposal.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation.
5. Brief history of the organization, including accreditation status, if applicable.
6. Vendor's experience providing similar services. Include references on Attachment 6.
 - a. Include how the State of Delaware will be prioritized to provide superb service with other Vendor client responsibilities and contractual obligations.
7. For multi-partner solutions, a Joint Venture or Business Association Agreement clearly describing the responsibilities of the partners, if applicable.
8. Detailed description of any sub-contracted activity and Vendor being utilized for services under this Contract.
9. Vendor Emergency Contact Data as required in this Proposal.

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10. Provide one (1) copy of financial information for the past three (3) years for your business to include, but not limited to: balance sheets and income statements.

B. 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 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 the State.

C. Table of Contents

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

D. 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.

If the Vendor does not have the ability to provide a service/capability specified in the RFP, their proposal may include outsourced service/capability through a subcontractor(s). The Vendor is responsible for all aspects of subcontractor's performance and cost. The State reserves the right to require additional information about the subcontractor such as but not limited to experience, personnel, and financial strength during the bid evaluation process or during performance of the contract. At a minimum, Attachment 5, Company Profile and Capabilities Form shall be completed and submitted.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* [§ 6981](#).

2. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov . Paper copies of this RFP will not be available.

3. Assistance to Vendors with a Disability

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

4. RFP Designated Contact

All requests, questions, or other communications about this 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.

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State of Delaware
Department of Natural Resources and Environmental Control
Division of Parks and Recreation/OBS
89 Kings Highway
Dover, DE 19901
Attn: Elizabeth LaSorte
Email: 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.

5. Consultants and Legal Counsel

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

6. Contact with State Employees

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

7. Organizations Ineligible to Bid

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

8. Exclusions

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

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

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- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a 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.

2. Proposals

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 copy on CD or DVD media disk, or USB memory drive. Please provide a separate electronic pricing file (in MS Excel format) from the rest of the RFP proposal responses.

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) on Wednesday, November 30, 2022.** The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**State of Delaware
Department of Natural Resources and Environmental Control
Division of Parks and Recreation/OBS NAT22011_MARINA RESTAURANT
89 Kings Highway
Dover, DE 19901**

Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. NAT22011_MARINA RESTAURANT” on the outside of the bid submission package.

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing Vendor bears the risk of delays in delivery and any costs for returned proposals. 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.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment, or modification to a previously submitted proposal. Changes,

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

4. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at Vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through April 15, 2023. The State of Delaware reserves the right to ask for an extension of time if needed.

6. 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.

7. Proposal Opening

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

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

8. Non-Conforming Proposals

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

9. Concise Proposals

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

10. Realistic Proposals

It is the expectation of the State of Delaware that Vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials

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and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

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

11. Confidentiality of Documents

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. All proposals are subject to FOIA's public disclosure obligations.

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 in a proposal may enter the public domain.

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12. Multi-Vendor Solutions (Joint Ventures)

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

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

a. Primary Vendor

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

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

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

b. Sub-contracting

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

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

c. Multiple Proposals

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

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13. Sub-Contracting

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

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

14. Discrepancies and Omissions

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

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

15. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **Thursday, October 27, 2022**. All questions will be consolidated into a single set of responses and posted on the State's website at www.bids.delaware.gov by the date of **Monday, November 7, 2022**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

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

Questions not submitted electronically shall be accompanied by a CD/USB and questions shall be formatted in Microsoft Word.

16. State's Right to Reject Proposals

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

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the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

17. 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.

18. State's Right to Award Multiple Source Contracting

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

19. 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.

20. 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.

21. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

22. Revisions to the RFP

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

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23. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

24. Company Information and Capabilities

Provide full responses regarding your company and capabilities using the Company and Capabilities form (Attachment 5).

25. 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.

26. Award of Contract

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

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

a. RFP Award Notifications

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

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

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the Vendor who submits the lowest bid or the Vendor who receives the highest total point score, rather the contract will be awarded to the Vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

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

27. Cooperatives

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

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C. RFP Evaluation Process

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

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

1. Proposal Evaluation Team

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

2. Proposal Selection Criteria

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

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

The Team reserves the right to:

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

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- Select more than one Vendor pursuant to 29 *Del. C.* § [6986](#). Such selection will be based on the following criteria:

a. Criteria Scoring and 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 this RFP. The proposal response should contain at a minimum the following information:

- Brief history of the organization, including accreditation status, if applicable.
- Vendor's experience providing similar services. Include references on Attachment 6.
- Financial information (balance sheets and income statements) for the past three years and/or Dun & Bradstreet report.
- Describe the methodology/approach used for operating and managing a restaurant included in proposal to the DNREC, including work plan and timeline. Include a well-defined ACTION PLAN that will describe the bidder's organization and method for providing Marina Restaurant operations, where applicable and providing services as specified herein. Include approach to opening operations, any proposed capital improvements. Include 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. Include conflict resolution processes. Vendor shall provide an Alcohol Management Plan in their proposal.
- Include industry analysis (detail the market in which you are competing, how large it is and what trends are affecting it) and customer analysis (what customers you are targeting). Include **BUSINESS FINANCIAL PLAN with five (5) years projected revenue, and expenditures (including debt service)**.
- If applicable (proposed Capital Improvements), provide a Full Phase approach description as describe in Appendix A herein.
- Menu(s), Brochures/Specification information for a Restaurant (include all proposed food options, food delivery service and amenity sales proposed).
- All forms included in this RFP.
- Proposal Bid Bond.
- Vendor Emergency Contact Data as required in this Proposal

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

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EVALUATION CRITERIA		POINTS
1.	Background and experience (e.g. past performance on similar ventures) company history, qualifications and experience of the employees and the organization in developing/constructing, managing and operating a restaurant or similar business scope.	60
2.	Financial stability/resources, past performance, financials/Dun & Bradstreet report (if applicable) and references.	40
3.	Vendor's action plan (methodology and/or approach) for operating and managing a Restaurant, including daily business operations, scheduling, customer service, operations, marketing, employee training, and alcohol management plan. Include industry analysis and 5-year BUSINESS FINANCIAL PLAN.	60
4.	Vendor's proposed creativity in planning, designing, and delivering a successful establishment through return on investment, capital improvements, advertising, marketing, promotions and event planning. Include compliance with local, state and federal requirements.	80
5.	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.	80
6.	Quality and diversity of menu offered (for both in restaurant and delivery).	60
7.	Extent to which Vendor agrees to the State of Delaware's contract terms and conditions and specification without taking exceptions.	20
TOTAL SCORE		400

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

3. Proposal Clarification

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

4. References

The Evaluation Team may contact any customer of the Vendor, whether or not included in the Vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing facilities, 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.

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V. Contract Terms and Conditions

A. Contract Use by Other Agencies

REF: Title 29, Chapter [6904](#)(e) Delaware Code. If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

B. Cooperative Use of Award

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

C. General Information

- 1. The term of the contract between the successful Vendor and the State shall be for ten (10) years. The contract may be renewed for one five (5) year period through negotiation between the Vendor and the State.** Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.
 - a. The State reserves the right to enter into a contract for longer periods, not to exceed twenty-five (25) years if the awarded Vendor provides capital improvements and offerings 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.
 - b. The State reserves the right to extend this Contract on a month-to-month basis for a period of up to three (3) months after the term of the full Contract has been completed. In the event of an extended procurement effort and the Contract's available renewal options have been exhausted, DNREC reserves the right to extend the Contract. If exercised, the extension shall be for a reasonable period of time as mutually agreed to by DNREC and Vendor at the same terms, conditions, provisions, and pricing in order to complete the procurement process and to transition to the new Contract.
- 2. The selected Vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.**
- 3. The selected Vendor or Vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected Vendor's response to this RFP will be incorporated as part of any formal contract.**

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4. The successful Vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No Vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful Vendor.
5. If the Vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another Vendor. Such Vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
6. 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.
7. Vendors are not restricted from offering lower pricing at any time during the contract term.

D. Collusion or Fraud

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

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

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

E. Lobbying and Gratuities

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

The selected Vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul

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any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

F. Solicitation of State Employees

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

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

G. General Contract Terms

1. Independent Contractors

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

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the Contractor's services.

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

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this

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Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third-party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

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

3. Work Performed in a State Building

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

4. Licenses and Permits

In performance of the contract, the Vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful Vendor. The Vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § [2502](#).

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

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

5. Notice

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

**DNREC/Division of Parks and Recreation
Attn: OBS - NAT22011_MARINA RESTAURANT
89 Kings Highway
Dover, DE 19901**

6. Indemnification

a. General Indemnification

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

b. Proprietary Rights Indemnification

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

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

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

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7. Insurance

- a. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Vendor in their negligent performance under this contract.
- b. The Vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The Vendor is an independent contractor and is not an employee of the State of Delaware.
- c. As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage:
 1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
 2. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
 3. Liquor Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
 4. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
 - a. \$1,000,000 combined single limit each accident, for bodily injury;
 - b. \$250,000 for property damage to others;
 - c. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 - d. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and

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- e. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.
5. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
 - e. 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 DNREC.

The certificate holder is as follows:

DNREC/Division of Parks and Recreation
Attn: OBS - NAT22011_MARINA RESTAURANT
89 Kings Highway
Dover, DE 19901

- f. 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.
 - g. 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.
 - h. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.**
 - i. The Vendor shall provide a Certificate of Insurance (COI) as proof that the Vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded Vendor(s).
- 8. Performance Requirements**
- The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.
- 9. Bid Bond**
- Each bidder shall furnish a Bid Bond to the State of Delaware for the benefit of DNREC in the amount of two-thousand five hundred (\$2,500.00) dollars. The bond shall be

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drawn upon an insurance or bonding company authorized to do business in the State of Delaware. If the enclosed standard State of Delaware bond form using Attachment 12 is not used, the substitute bond must reflect the minimum conditions specified in the standard form. A certified check made out to DNREC in the amount of two-thousand five hundred (\$2,500.00) dollars may be submitted in lieu of a proposal bond.

10. Performance Bond

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 DNREC 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.

11. 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.

12. Warranty

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

13. 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 purchase equivalent product and services 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.

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14. Schedule for Performance of Work

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

15. Vendor-Owned and Rental Equipment and Supplies

The awarded Vendor shall remove all owned and rental equipment and supplies from the location no later than thirty (30) days after contract expiration or termination.

16. Costs and Payment Schedules

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

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

17. Liquidated Damages

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

18. 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.

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19. Remedies

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

20. Termination of Contract

The contract resulting from this RFP may be terminated as follows by DNREC.

a. Termination for Cause

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

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A Vendor response shall not 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 twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

c. Termination for Non-Appropriations

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

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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.

21. Non-discrimination

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

22. Covenant against Contingent Fees

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

23. Vendor Activity

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

24. 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.

25. 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.

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- 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.

26. 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.

27. Vendor Background Check Requirements

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

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

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

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

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

28. 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](#)

29. 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>.

30. 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.

31. Work Product

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

32. Contract Documents

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

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33. Applicable Law

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

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

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

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

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

34. 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.

35. 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.

36. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall

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be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

37. Affirmation

The Vendor must affirm that within the past five (5) years the Vendor 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.

38. 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.

39. IRS 1075 Publication (If Applicable)

a. Performance

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

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

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

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

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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 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

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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.

40. Other General Conditions

- a. Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- b. Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- c. Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.

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- d. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- e. **Billing** – The successful Vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
- f. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
- g. **W-9** – The State of Delaware requires completion of the [Delaware Substitute Form W-9](#) through the Supplier Public Portal at <https://esupplier.erp.delaware.gov> to make payments to Vendors. Successful completion of this form enables the creation of a State of Delaware Vendor record.
- h. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number NAT2010_FISHING PIER on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- i. **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- j. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

VI. RFP Miscellaneous Information

A. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news, digital media 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.

At no time shall Vendor disparage DNREC's management of any state owned property.

B. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definitions are offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented

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in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

The words *Vendor(s)* and *Contractor(s)* are used to designate the entity submitting the proposal and responsible for all contractual terms and conditions upon award.

VII. Attachments

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

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Company Profile and Capability Form
- Attachment 6 – Business References
- Attachment 7 – Subcontractor Information Form
- Attachment 8 – Monthly Usage Report
- Attachment 9 – Subcontracting (2nd Tier Spend) Report
- Attachment 10 – Office of Supplier Diversity Application
- Attachment 11 – Performance Bond
- Attachment 12 – Bid Bond
- Attachment 13 – Check List
- Appendix A – Scope of Work / Technical Requirements
- Appendix B – Pricing Spreadsheet
- Appendix C – Specifications and Additional Information

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IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5 and 6 must be included in your proposal**
- Attachment 7 must be included in your proposal if subcontractors will be involved
- Attachments 8 and 9 represent required reporting on the part of awarded Vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

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

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.

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.

NO PROPOSAL REPLY FORM

Contract No. **NAT22011_MARINA RESTAURANT**
Contract Title: **MARINA RESTAURANT AT INDIAN RIVER MARINA**

To assist us in obtaining good competition on our Request for Proposals, we ask that each Vendor 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.**

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Attachment 2

Contract No. **NAT22011_ MARINA RESTAURANT**
 Contract Title: **MARINA RESTAURANT AT INDIAN RIVER MARINA**
DEADLINE TO RESPOND: November 30, 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, Department of Natural Resources and Environmental Control, Division of Parks and Recreation.

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, State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation.

COMPANY NAME _____ Check

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

 one)
 NAME OF AUTHORIZED REPRESENTATIVE _____
 (Please type or print)

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

COMPANY CLASSIFICATIONS: CERT. NO.:	Certification type(s)	Circle all that apply	
		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 HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

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

Attachment 5

Contract No. **NAT22011_MARINA RESTAURANT**
 Contract Title: **MARINA RESTAURANT AT INDIAN RIVER MARINA**

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"> - # of years in business - # of years doing business in the State of Delaware - # of employees (Full and Part time) - Type of business entity and principles (LLC, Sole proprietor, Corporation, EIN#, D&B#) - List parent Company if applicable
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 methodology/approach used for operating and managing a Marina Restaurant including work plan, timeline, well defined ACTION PLAN describing bidder's organization and method for providing a Marina Restaurant operation, providing services as specified herein (include customer billing, payment processes/options, customer service, cleaning/housekeeping processes, menu planning, kitchen operations, employee training, and alcohol management plan).
6.	Operating Schedule being proposed (must at least meet DNREC minimum requirements).
7.	Has Vendor ever filed bankruptcy? If so, provide details.
8.	Describe any change in ownership or any planned changes in ownership in the next (3) years.
9.	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.
10.	Describe any violations by regulatory agencies (including Public Health).
11.	Provide copy of your marketing/advertising plan for the term of the contract.
12.	What strategies will be used to promote and increase business and managing the concession services? Please include delivery services plan. Describe the product research, social media or other

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	strategies used to determine Amenities provided and types of food products within the geographical areas selected for this project (e.g., healthy choices and locally grown). Will company offer any daily / weekly specials or promotions on products/Amenities or services? How will these specials be offered (signage, social media, customer emails, and/or sign postings)?
13.	Provide list of retail items/inventory (if any) and other items to be sold within concession area.
14.	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.
15.	Outline a problem/conflict resolution plan to resolve any customer complaints, including the timeline from initial report of issue to resolution.
16.	Describe vender's employee training in food safety and Quality Control (QA) processes. Provide a copy of vendor's training manual.
17.	Do you propose any Capital investments or improvements? If so, please detail them.

Answers shall be listed on a document in the order shown and annotated as Attachment 5.

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Attachment 6

Contract No. **NAT22011_MARINA RESTAURANT**
Contract Title: **MARINA RESTAURANT AT INDIAN RIVER MARINA**

BUSINESS REFERENCES

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

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

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

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

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

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

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

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Attachment 7

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. NAT22011_MARINA RESTAURANT	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

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

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Attachment 9

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

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

Note: Completed reports shall be saved in an Excel format, and submitted to the following email address: osd@delaware.gov . The form can be located at [Office of Supplier Diversity - Division of Small Business - State of Delaware](#), bottom of the page, 'Services and Information' section, 'Subcontractor Reporting Form'.



**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

For more information, please send an email to OSD:

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, 10th Floor
Wilmington, DE 19801

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

Email: OSD@Delaware.gov

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

Dover address 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.

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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**") (*insert State agency name*), in the amount of _____ (\$_____), to be paid to **Owner**, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrations, successors and assigns, jointly and severally, for and in the whole, firmly by these presents.

Sealed with our seals and dated this _____ day of _____, 20__.

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

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

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

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

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

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

PRINCIPAL

Witness

Name

Title

Date

Company Name

Company Address

SURETY

Witness

Name

Title

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Attachment 12

Bid Bond

\$2,500.00 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

Name of Surety (Seal)

_____ (Seal)

Title

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Attachment 13

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 signed 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 A Tabs <u>printed</u> and all Forms required in the RFP. Brochures are also required if applicable. PLEASE DO NOT PUT SUBMISSION DOCUMENTS INTO SHEET PROTECTORS. The Appendix B – Pricing Spreadsheet is available at the following website: www.bids.delaware.gov Vendors MUST provide copies of all pricing spreadsheet tabs.	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.	Two (2) electronic copies of the complete bidder's bid package (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). All copies must have completed Appendix B in <u>active EXCEL format</u>, Vendor's Proposal and Forms required in this proposal. Include Vendor brochures in pdf. Format on each CD, DVD or USB. VERIFY ALL MEDIA WORK CORRECTLY FROM SEVERAL SOURCES PRIOR TO SUBMISSION. All documents in Vendor's proposal, excluding Appendix B, and Brochures , should be scanned and saved as one PDF file. Please avoid saving individual pdf. pages of your proposal.	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.	(Attachment 2) One (1) complete signed and notarized copy of the Non-Collusion agreement MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.	Yes <input type="checkbox"/> No <input type="checkbox"/>
6.	(Attachment 3) One (1) completed RFP Exception form – please check box if no information. Form must be included.	Yes <input type="checkbox"/> No <input type="checkbox"/>
7.	(Attachment 4) One (1) completed 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"/>

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8.	(Attachment 5) One (1) completed Company Profile and Capabilities form	Yes <input type="checkbox"/> No <input type="checkbox"/>
9.	(Attachment 6) One (1) completed 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.	(Attachment 7) One (1) complete 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.	(Attachment 10) One (1) complete 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.	(Attachment 12) One (1) complete and notarized Bid Bond (only applicable if bidder is not including a certified check with bid packet)	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
13.	(Attachment 13) One (1) completed copy of this Proposal Reply Requirements and Checklist filled out by the Bidder.	Yes <input type="checkbox"/> No <input type="checkbox"/>
15.	One (1) copy of Financial information (balance sheets and income statements) for the past three years.	Yes <input type="checkbox"/> No <input type="checkbox"/>
16.	One (1) certificate of insurance. Please ensure you have the <u>correct insurance levels as specified in this RFP.</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>
17.	Two (2) copies of vendor brochures/business media.	Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
18.	One (1) copy of Industry analysis (detail the market in which you are competing, how large it is and what trends are affecting it) and customer analysis (what customers you are targeting). Include BUSINESS FINANCIAL PLAN with five (5) years projected revenue, and expenditures (including debt service)	Yes <input type="checkbox"/> No <input type="checkbox"/>

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Appendix A - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

I. MINIMUM REQUIREMENTS

A. Introduction:

Delaware Seashore State Park is Delaware's third largest State Park containing over 2835 acres located immediately south of Dewey Beach, bounded on the east by the Atlantic Ocean for easy beach access and on the west by Rehoboth Bay and the Indian River Bay. Two campgrounds, one on each side of the Indian River Inlet, accommodate a variety of camping units, from tents to large recreational vehicles. Indian River Marina, Delaware's largest, is a destination for boaters seeking direct access to the rich Atlantic Ocean and inland bays fishing grounds. The marina boasts 294 slips with a floating dock system and 154 spots for indoor dry boat storage. A monitored public boat ramp with shuttle service to parking is available in the summer. It also serves as a waterfront event space with beautiful sunset views. A concession bait and tackle shop offers full-service bait and tackle along with fish cleaning and an on-site fresh seafood market. A concession restaurant provides waterfront fare in a lively restaurant setting, with a bar and live entertainment. Twelve rental cottages overlook the Indian River Inlet while the Burton Island Trail offers hikers a quiet stroll along the water and through the woods.

The Awarded Vendor shall not compete with bait and tackle shop steamed/cooked or fresh to-go seafood salad type offerings without written permission from DNREC.

DNREC is seeking a qualified and competent concessionaire to operate a Marina Restaurant with full waterfront menu fare, including but not limited to, fully prepared seafood dishes (excluding off premise raw seafood sales), entrees, appetizers, desserts, alcoholic beverages, non-alcoholic beverages, and any other refreshments necessary to carry on the business in accordance with the terms and conditions set forth in the contract for the general public at the Indian River Marina located in Delaware Seashore State Park.

Vendors are encouraged to submit creative business proposals that include, but not limited to: (i) refurbishing the existing facility in accordance with the specifications listed herein, (ii) replacement of old equipment with state of the art equipment meeting the required food service standards normally associated with a restaurant, business, (iii) offering the public a full indoor and/or outdoor bar service, (iv) plan, design and promote a new menu, offering breakfast, lunch and dinner, a variety of seafood, gourmet sandwiches (hot and cold), entrees, appetizers, desserts, alcoholic beverages, non-alcoholic and a variety of other menu choices for the general public's enjoyment, (v) provide methods of increasing Park visitor satisfaction through the use of the Marina Restaurant, propose new concession services or ways to improve the existing concession services and offer delivery services. DNREC is requesting delivery service to the North Campground. All alcoholic beverages sold and served shall be restricted to the Marina Restaurant area and shall adhere to all State of Delaware regulations.

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; and will reduce waste and energy

In accordance with DNREC'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.

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

Additionally, DNREC is open to “Value Added” proposal which may include capital improvements and/or new opportunities or enhancements for catering events such as weddings, reunions, etc.

B. Revenue and Attendance:

Current Vendor’s Approximate Revenue:

- o 2016: \$1,665,146.84
- o 2017: \$1,579,453.53
- o 2018: \$1,473,524.39
- o 2019: \$1,639,552.88
- o 2020: \$ 738,869.22
- o 2021: \$1,935,720.23

Approximate number of customers at Indian River Marina:

- o 2016: 44,178
- o 2017: 40,901
- o 2018: 36,153
- o 2019: 39,259
- o 2020: 13,073
- o 2021: 31,677

C. Products and Services:

DNREC shall consider detailed and creative proposals for a Marina Restaurant at the Indian River Marina. DNREC invites Vendor(s) to bid for a contract period not to extend the available terms and extension periods under this RFP. Vendors may submit proposals that contain capital investment/improvements for the operation or other proposed improvement offerings. The proposal should detail the concept, drawings, work and potential construction plans, financial investments, and projected return on investment for both the Vendor and DNREC. **Any award associated with capital investment/improvements shall result in DNREC’s ownership of all capital improvements executed during the life of the contract at the point of expiration and/or termination.** For the start of the 2023 season, **Vendor must be able to have the Marina Restaurant operational by May 1, 2023.** Capital improvements must be completed no later than the start of the 2024 season (the minimum operation schedule begins in April). The Vendor shall be solely responsible for capital investment/improvements funding. DNREC must approve all plans and capital improvements related to a contract in writing. **No capital improvements shall occur without Division approval.** For any capital Improvement projects, Vendor shall be responsible for all guidelines and requirements as stated in Appendix C of this Request for Proposal.

The Vendor shall furnish all labor, personnel, equipment and supplies necessary to operate a Marina Restaurant per the terms and conditions as described herein.

1. Phases:

Vendors shall submit proposals that cover a three (3) phase approach (*NOTE: ONLY IF APPLICABLE, IF NO CAPITAL IMPROVEMENTS ARE PROPOSED, THEN VENDOR SHALL*

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OPERATE WITHIN THE MINIMUM OPERATIONS SCHEDULE AS INCLUDED HEREIN):

- a. **Phase I – Immediate operation of Marina Restaurant for the 2023 season.**
- b. **Phase II – Complete capital improvements/investments, designs, plans and/or changes necessary to operate the full scope Marina Restaurant including delivery services no later than the start (April) of the 2024 season.**
- c. **Phase III – Management and operation of the services included herein for the remainder of the contract term(s).**

D. Contract Fee:

- 1. The Vendor, as a fee for the contract and concession rights herein granted, agrees to pay to DNREC, **an annual contract fee (minimum of \$30,000.00) and a negotiated percentage of gross receipts (minimum of 6.5%).**
 - a. Vendors are encouraged to bid higher than the listed minimums for competitive consideration of award. DNREC will not consider bids lower than the minimums listed unless Vendor provides Capital Improvements within their proposal. Any alternate pricing proposals shall use the Attachment 3, Exceptions Form for alternate pricing proposals.
 - b. Capital Improvement Proposals may include a **Tiered Percentage of Gross Pricing Scale** that allows for Vendor's return on investment. Vendor shall provide a clear return on investment plan showing a path to offering an increased percentage of gross annually over the contract term.
 - c. All Contract Fees shall be sent to:

State of Delaware/DNREC
Division of Parks and Recreation/OBS Contract NAT22011_MARINA RESTAURANT
Office of Business Services
89 Kings Highway
Dover, DE 19901
- 2. The State reserves the right to enter into a contract for longer periods, not to exceed twenty-five (25) years if the awarded Vendor provides capital improvements and offerings 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.
- 3. 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 DNREC on or before December 31 of each year.
- 4. Any "impact" fees levied by Sussex County 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 DNREC shall "pass" these costs through an invoice with appropriate support documentation.
- 5. The Vendor agrees to submit to: OBS_Parks@delaware.gov, a concession contract report once

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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.

E. Entrance and Parking Fees:

1. Entrance fees or other fees for accessing the Indian River Marina and/or Delaware Seashore State Park may be proposed as part of the Fee package submitted by the Vendor, however, it is the expectation of DNREC that all visitors to Delaware State Parks pay daily entrance fees or procure an annual park pass.
 - a. Parking lots may fill to capacity during the peak season. Vendor shall ensure that all deliveries and needs for parking occur outside of peak daily hours. DNREC shall not be responsible for any delayed deliveries, employee or agent access to restaurant. Vendor will be notified of location for deliveries by the Park Superintendent/Marina Manager.
 - b. DNREC reserves the right to add a fee booth, automatic fee collection system or vehicle self-registration pay at the Indian River Marina and/or Delaware Seashore State Park.

F. Interest Payments:

Any payments which become due from the Vendor to DNREC, 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.

G. 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.

H. 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.

I. Security:

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

J. Inspection:

The Vendor will allow free access to the concession space as needed to authorize representatives of DNREC and other county, state or federal officials having jurisdiction for inspection purposes. The

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Vendor shall further agree that if notified in writing by DNREC 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 DNREC and the VENDOR.

K. 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 DNREC 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 DNREC in writing.

L. Operating Schedule:

1. The Vendor agrees to operate the concession service (at a minimum) in accordance with the Operating Schedule 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. DNREC reserves the right to revoke the contract of the Vendor if they do not adhere to the agreed-upon Operating Schedule. DNREC may, in its sole discretion, close the concession operation services temporarily or permanently with prior notice to the Vendor.
2. The Marina Restaurant shall be open for operation, at a minimum, weekends starting April 1st through May 15th (with exception of the first contract year, which shall start no later than May 1st). After May 15th, the Marina Restaurant shall be open seven (7) days per week through the end of October, including holidays. The minimum hours of operation are as follows:
 - **Non-Peak Schedule Spring: April 15th to May 14th**
 - **Thursday – Sunday** **Opening 7:30 a.m.**
 - **Thursday – Sunday** **Closing 8:00 p.m.**
 - **Peak Schedule Summer: May 15th to October 1st**
 - **7 Days Per Week** **Opening 7:30 a.m.**
 - **7 Days Per Week** **Closing 10:00 p.m.**
 - **Non-Peak Schedule Fall: October 2nd to October 31st**
 - **Thursday – Sunday** **Opening 7:30 a.m.**
 - **Thursday – Sunday** **Closing 8:00 p.m.**
3. Vendor is required to promptly contact the Park Management and receive approval prior to canceling service for the day. DNREC may, in its sole discretion, close or limit the operation or parking availability temporarily for repairs or special events as needed, or permanently with prior notice to the Vendor.

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4. DNREC reserves the right to revoke the Contract of the Vendor if they do not adhere to the agreed-upon schedule of operations.

M. Trash Removal and Use of Recyclable Products:

1. The Vendor shall provide trash cans inside the operation area for the public's use and will be responsible for depositing the trash in a Division 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. All rubbish, refuse garbage and debris collected by Vendor shall be deposited in containers provided by a local waste management service approved by DNREC of Parks and Recreation. **Vendor will be responsible for 25% of the cost incurred for waste management services (shared dumpster), to be billed by the Delaware Seashore State Park monthly.** DNREC reserves the right to increase vendor responsible % of cost if it is determined, at DNREC's discretion, that Vendor trash volume is excessive, or creates the need for larger receptacles or additional receptacles. DNREC recommends that Vendor engage in minimal waste output and utilize recyclable and energy efficient options.
2. **Vendor shall ensure that trash cans are kept clean and emptied often throughout the day to avoid hazardous insects as well as unsanitary receptacles.** Failure of Vendor to keep Marina Restaurant in a high state of cleanliness shall be considered a performance deficiency under this Contract.

L. Emergencies:

The Vendor and DNREC 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.

M. Parking.

Parking spaces for the concession operator and their employees will be assigned by the Park Superintendent. Vendor shall be responsible for ensuring employees park as assigned. Entrance/Parking fees will be charged, and limited parking is available. It is the expectation of the Division that all visitors to Delaware Seashore State Park pay daily entrance/parking fees or procure an annual park pass. Vendor shall ensure that all deliveries and business needs for parking occur outside of peak daily hours. DNREC shall not be responsible for any delayed deliveries, or employee/agent access. Vendor will be notified of location for deliveries by the Park Superintendent. Entrance fees or other fees for accessing Delaware Seashore State Park may be proposed as part of the Fee package submitted by the Vendor, however, it is the expectation of DNREC that all visitors to Delaware Seashore State Park and Indian River Marina pay daily entrance fees or procure an annual park pass.

N. 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 DNREC of Parks and Recreation.

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O. Marketing and Promotion Plans; Signs and Advertising:

1. The Vendor is encouraged to work with DNREC and the Indian River Marina on a marketing and promotion plan for each calendar year. The agreed upon marketing plan may contain promotional activities and cross promotions at or in connection with Delaware State Parks annual promotional activities or with individual state parks or facilities. Copies of the publications promoting the Marina Restaurant shall be made available to the Park Management for distribution.
2. The Vendor agrees not to use signs or any other means of soliciting business without the approval of DNREC 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 Indian River Marina.
3. DNREC, 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 DNREC or their authorized agents prior to the erection, display or use of signs. DNREC also reserves the right to designate the type, size, wording, color and number of signs requested by the Vendor.
4. Any signs authorized by DNREC for specific Marina Restaurant events shall become the property of DNREC, if not removed by the Vendor after reasonable notice from and at the direction of DNREC.
5. It is mutually agreed by the Vendor and DNREC that no permanent or temporary advertising, signage, or trademark visibility for the Vendor's Marina Restaurant operation and any packaged products will be displayed or permitted anywhere at Indian River Marina or Delaware Seashore State Park without prior written approval from DNREC, except that it is agreed that the Vendor shall be permitted to include its trademark and brand names on its equipment (e.g., amenities/items being sold, etc.).
6. Vendor may offer Marina Restaurant services (e.g., discounts, free meals, etc.) without charge to state park visitors for promotional purposes, with DNREC's prior approval and the cost of these free services to park visitors shall be included in Vendor's annual financial statement.

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

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 DNREC.
3. **Vendor shall submit a price list to DNREC each season, before the beginning of the operation, with a schedule of products and services to be offered and the prices to be**

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charged for each product or service. Vendor agrees to offer only such products, services and retail items at such prices as have been approved by DNREC. 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 DNREC under similar conditions.

4. If, in the sole opinion of DNREC, any products or services offered by the Vendor are inconsistent with the image or reputation of DNREC or the State of Delaware or are otherwise deemed unsuitable for sale on the contracted premises, DNREC 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 DNREC.

R. Vendor Responsibilities:

Vendor will be granted the right to provide a Marina Restaurant with delivery services at Delaware Seashore State Park North Inlet and Indian River Marina. Vendor's responsibilities under a Contract with DNREC shall include the following:

1. Provide food and beverages as described herein for the approved Operating Schedule.
2. Vendor will be required to furnish and install the necessary equipment, if not provided by DNREC at the restaurant, for the preparation, display and storage of retail merchandise sales items. **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 or capital improvements."
3. Vendor must furnish a cash register with accumulating daily totals to record all customer sales and receipts collected to complete the Usage Reports.
4. All of the Vendor-owned equipment or any permanently installed fixtures used in the concession operation shall be subject to approval by DNREC, Division of Public Health and the State Fire Marshal, if applicable, as to their workability, appearance, appropriateness, and compliance with codes.
5. All outdoor furniture must be aesthetically designed to fit into the Marina Restaurant environment (e.g., picnic tables).
6. 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 provide daily cleaning of Marina restrooms after 4:00 p.m. on days of operation; restrooms should be cleaned periodically and as needed, including refreshing bathroom supplies (i.e., toilet paper), and completely cleaned at the close of the evening, including refreshing bathroom supplies (i.e., toilet paper), sweeping and mopping floors.
 - c. Vendor shall repair and maintain all food service equipment owned by Vendor and Division. **Vendor shall repair or replace Division equipment at the Vendor's expense. Exhausted equipment must be turned into DNREC for proper disposal.**

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- 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 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 shall provide food delivery services through Indian River Marina and to the North Inlet Campground of Delaware Seashore State Park.
- l. At the end of the contract term or at the request of DNREC, Vendor shall ensure that all facilities and equipment provided by DNREC are returned to DNREC in clean, good order, reasonable wear and tear expected. Failure to return such facilities to its natural state or return equipment to DNREC at the end of the contract term may result in DNREC billing Vendor, as applicable.
- m. Vendor shall be fully responsible for its employees, subcontractors and its agents during the term of this Contract.
- n. For any instance of inappropriate customer behavior the Vendor cannot manage effectively, the Vendor shall immediately report behavior to Park Enforcement.
- o. Vendor shall ensure that no alcoholic beverages leave the designated Marina Restaurant area at any time, for any reason.

7. Modifications to Park Facilities:

Vendor may make alterations, modifications, additions or improvements to the contracted premises and Marina Restaurant with prior Division approval of the design, development, timeline and approved plans. **No work shall commence until Vendor receives DNREC's approval and consent in writing. All costs for any approved alterations, modifications, additions, or improvements shall be the responsibility of the Vendor.** 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, adhering to state and local ordinances, code and regulations at Vendor's expense. Additional requirements based on state and local ordinances, code and regulations may be required and

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shall be the responsibility of the Vendor. Vendor shall coordinate any subcontractor access to the Park with the Park Management. **Any award associated with capital investment/improvements shall result in DNREC's ownership of all improvements executed during the life of the contract at the point of expiration and/or termination.**

8. 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 DNREC and Vendor, DNREC 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.

9. 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.

S. Disapproval of Items

The Vendor agrees to withdraw from sale any item or service disapproved by DNREC. DNREC and Indian River Marina's logo shall not appear on products sold by the Vendor unless those products are purchased directly from DNREC's retail procurement program.

T. Division Responsibilities:

1. DNREC 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 which shall be the Vendor's responsibility). DNREC reserves the right to determine what is "major" for purposes of this contract.
2. DNREC 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 DNREC.
3. DNREC shall provide 1,400 square feet (35'x 40') building with an outside usable deck and pergola area of approximately 1,100 square feet and 64' x 69' grass area extended from the deck. Customer seating and food service area is available inside and outside. Miscellaneous sheds, storage and wooden shelving are included. The exterior deck/plaza area includes four covered roof pergolas, a stage, a tiki bar, planter boxes that border the business area, and some built in seating. **Tables and Chairs, fabric décor and palm plants are not included in this RFP, nor is the boat shaped/concrete top bar that is removable from the exterior of the building.** All other structural and functional equipment is included.

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DNREC shall provide the following equipment in the concession building:

- | | |
|---|--------------------------------|
| 1. Misc. Shelving System | 9. Soap and Towel Dispenser |
| 2. Walk-In Cooler | 10. Three-Compartment Sink |
| 3. Sandwich Prep System
(single door 30" unit) | 11. Mop Sink and Rack |
| 4. Cooler Refrigeration System | 12. Stand-up Freezer |
| 5. Microwave Oven | 13. Soap and Towel Dispenser |
| 6. Cup Dispenser | 14. Booster Chairs/High Chairs |
| 7. Work Counter | 15. Dual Heat Lamp |
| 8. Hand Sink Dispenser | 16. Worktable |

4. DNREC may provide limited electric service to the grass area.
5. DNREC reserves the right upon notice to Vendor to enlarge, close and/or reduce the size of any area for the purposes of improvement, repair, construction or any other legitimate purpose. It is understood that any of the above action shall not entitle the Vendor to any reduction or suspension of the License fee unless otherwise approved by DNREC.

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APPENDIX B

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

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.

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D. DNREC Sediment and Stormwater Management Plan

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.

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J. Necessary Documentation for DFM Review

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

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4. The Architectural Accessibility Board will issue an approval/disapproval letter indicating that the plans and specifications comply with State accessibility standards.