

**FIN26001-BOND_FAREQUEST FOR PROPOSALS FOR
FINANCIAL ADVISORY SERVICES
ISSUED BY THE STATE OF DELAWARE DEPARTMENT OF FINANCE AND
DEPARTMENT OF TRANSPORTATION**

CONTRACT NUMBER: FIN26001-BOND_FA

I. Overview

The State of Delaware Department of Finance (“DOF”) and the Department of Transportation (“DelDOT”) (collectively, the “Agencies”), seek professional services to provide independent financial advice. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ [6981](#) and [6982](#).

VENDOR ELIGIBILITY: Any prospective vendor (“Vendor”) that is not able to meet the following criteria will not qualify for this RFP process:

1. Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Provide evidence of insurance as set forth in **Appendix B**, attached hereto.
3. Possess a minimum of 10 years’ experience in providing Financial Advisory Services (“Services”) as outlined herein to states and state-level entities such as the Agencies.

A. Timetable

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP Published	October 14, 2025
Deadline for Vendor Questions	October 21, 2025, 4:30 pm local time
Deadline for State Responses – Q&A Closed & Published	October 28, 2025, 4:00 pm local time
Deadline for Vendor Proposal Submission	November 12, 2025, 3:00 pm local time
Finalist Presentations (Remote)	To be determined
Intent to Negotiate	To be determined
Contract Commencement Date	To be determined

There will be no pre-bid meeting associated with this RFP.

This RFP is not an offer. The Agencies and the State reserve the right to cancel this RFP or modify the above RFP dates at any time, and for any reason.

Vendors are expected to fully inform themselves of, and by submitting a proposal shall be deemed to have read, understood and unconditionally and irrevocably accepted, all conditions, requirements, and specifications of this RFP and all attachments and exhibits, subject only to the exception process provided for herein.

B. Proposal to Remain Open

Vendors that submit a proposal in response to this RFP shall be deemed automatically to have consented and irrevocably agreed to keep any such proposal open for nine (9) months after the deadline for Vendor proposal submissions, or for such additional period as the State and any Vendor may agree upon. Rates and fees quoted in a proposal shall remain fixed and binding on the Vendor.

C. Contract Term

The original term of the contract between successful Vendor and the Agencies shall be five years beginning on the Contract Commencement Date, with the Agencies having three one-year extension options, each exercisable in the Agencies' sole discretion.

D. Designated Contact:

This RFP process will be managed by the Director of Bond Finance (the "Designated Contact"):

Name: Joel P. Heller
Title: Director of Bond Finance
Address: 820 North French St., 8th Floor
City/State: Wilmington, DE
ZIP: 19801
Email: joel.heller@delaware.gov
Phone: (302) 577-8988

E. Submission of Written Questions

All written questions about the RFP shall be submitted to the Designated Contact listed above via e-mail on or before 4:00 p.m., prevailing Eastern time, on October 21, 2025 as set forth below.

Questions should be directly tied to the RFP and asked in consecutive order from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number, heading and section number to which it relates.

The Agencies will provide written response to questions from prospective Vendors by October 28, 2025. Responses will be posted publicly and will be available at <http://bids.delaware.gov>.

Background

II. Scope of Services

The Agencies seek one or more firms (“Vendor” or Vendors”) to provide independent financial advisory services (“Services”). Services include without limitation, review and advisement on debt policy, review and development of new financing ideas, technical analysis of the municipal bond market and the Issuer’s cash flows, assistance with best practices with regard to credit ratings, investor relations, and IRS required compliance. The fully enumerated Scope of Services is described in **Appendix A**.

Vendor(s) shall be expected to assist the Agencies in structuring a debt portfolio with the lowest cost Agencies of capital possible in accordance with federal and state laws and regulations and provide support for ongoing debt management.

Vendor(s) shall be precluded from acting as an underwriter or agent on any financing arranged by the Agencies.

Vendor acknowledges that it shall be a fiduciary with respect to the Services and warrants and promises to discharge all such duties (a) solely in the interest of the Agencies and the State, (b) with the care, skill, prudence and diligence under the circumstances prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, and (c) in conformance with other applicable prudence and fiduciary standards under applicable laws and regulations, including the rules of the Municipal Securities Rulemaking Board.

III. RFP Issuance and Submission of Proposals

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981, as modified by the annual budget bill.

2. Obtaining Copies of the RFP

This RFP is available in electronic form at the following:

- <http://www.bids.delaware.gov/>

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 Designated Contact. Communications must be submitted electronically to the following email address: **joel.heller@delaware.gov**.

5. Contact with Professionals

The Agencies may retain consulting services or legal counsel to assist in the review and evaluation of this RFP and Vendor responses. Vendors shall not contact the Agencies' consultants or legal counsel on any matter related to the RFP unless so instructed in writing by the Designated Contact. Vendors who make contact in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors currently doing business with the State who require contact with such consultants or legal counsel in the ordinary course of business.

6. Contact with Other State Employees

Direct contact with State employees other than the Designated Contact regarding this RFP is expressly prohibited without prior written consent from the Designated Contact. Vendors who directly contact a State employee in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors

currently doing business with the State who require contact with State employees in the ordinary course of business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity currently debarred or suspended from conducting business in the State or any other jurisdiction for any reason may be deemed ineligible to respond to this RFP.

8. Exclusions

The State reserves the right to refuse to consider proposals from Vendors who, or whose officers or staff:

- a) Have 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) Have 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 integrity or honesty;
- c) Have been convicted or has had a civil judgment entered for a violation of any state or federal antitrust statute;
- d) Have violated ethical standards set out in law or regulation; and
- e) Any other cause determined by the Agencies to be serious and compelling, and which undermines confidence in a Vendor's ability to perform under any resulting contract for Services.

9. No Press Releases or Public Disclosure

the Agencies reserve the right to pre-approve any news or broadcast advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State regarding any project or contract performance. Any such news or advertising releases pertaining to this RFP or any resulting contract or services shall require the prior express written permission of the Agencies.

10. RFP Not an Offer

This RFP does not constitute an offer by the Agencies or the State.

B. Submission of Proposals

1. Proposal Content

Each proposal must be submitted in writing and respond to the items outlined in this RFP. the Agencies reserve the right to reject any non-responsive or non-conforming proposals.

The Agencies discourage overly lengthy and costly proposals and prefers that they be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those enough to present a fully responsive proposal are not desired.

Proposals must be realistic and must represent the best estimate of time, materials and other costs, including the impact of inflation and any economic or other factors that are reasonably predictable. The Agencies shall have no responsibility or liability for a Vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

A Vendor should describe in detail on **Attachment 3** (exceptions) any areas where it will be unable to provide services as requested or required herein. See Section V.B.17, below. In addition, if a Vendor is able to provide the services exactly as requested or required but believes that there would be benefits (such as cost savings or improved service) to making adjustments to the services outlined, the Vendor should describe the adjustments and the benefits in its proposal. Acceptance or rejection of any or all exceptions or proposed adjustments is within the Agencies' sole discretion.

Vendors must respond to all mandatory requirements presented in this RFP. The words "shall," "will," and "must" are used herein to designate mandatory requirements. Failure to respond to a mandatory requirement may, in the the Agencies' discretion, result in the disqualification of a Vendor from the RFP process.

2. Proposal Delivery

All proposals must be **received no later than 3:00 p.m., prevailing Eastern time, on November 12, 2025** (the "Proposal Deadline"). Responses received after the Proposal Deadline will not be considered.

Proposals must be emailed to the following address:
FinancialAdvisor2025RFP@delaware.gov.

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, amendments, or modifications to proposals shall not be accepted or considered after the Proposal Deadline.

4. Proposal Costs and Expenses

The State is not responsible for and will not pay any costs incurred by any Vendor in responding to this RFP, including, but not limited to, costs associated with proposal preparation, printing, and delivery, the interview/presentation process and contract negotiations.

5. Late Proposals

Proposals will be electronically date and time stamped upon receipt. Proposals received after the Proposal Deadline will not be opened or considered.

6. Proposal Opening

Timely proposals will be opened by the Agencies personnel. Unless required by applicable law, the contents of any proposal shall not be disclosed prior to contract award.

7. Non-Conforming Proposals

The Agencies may, in their discretion, reject any non-conforming proposals. Non-conforming proposals are defined as those that do not meet the material requirements of this RFP. The Agencies shall have the authority and discretion to determine whether an RFP requirement is material, or a mere formality or non-substantive requirement.

8. Confidentiality of Documents

Except as noted below, all documents submitted as part of a Vendor's proposal will be treated as confidential during the evaluation process and will not be available for review by anyone other than the Evaluation Team and counsel. There shall be no disclosure of any Vendor's information to a competing Vendor prior to award of the contract unless such disclosure is required by law or a court order.

The State is required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). Under FOIA, the State'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 written request. Once a proposal is received by the Agencies, it becomes subject to FOIA's public disclosure obligations, subject to any applicable exemptions.

The State wishes to create a business-friendly environment and procurement process. As such, the State respects that Vendors desire to protect intellectual property, trade secrets and other confidential business information (collectively referred to herein as "confidential business information"). If a Vendor feels that it cannot submit a proposal without including confidential business information, it must adhere to the following procedure or such 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 confidential business information, Vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendors may submit portions of a proposal considered to be confidential business information in a separate, electronic file labeled "Confidential Business Information" and include the specific RFP number. **The file must contain a letter from the submitting Vendor's legal counsel describing the information contained in the documents, representing in good faith that the information is protected from disclosure under FOIA, and briefly stating the reasons that such information is exempt under FOIA.**

Upon receipt of a proposal accompanied by such a separate, sealed electronic file, the Agencies will 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; rather, the Agencies 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 Agencies' absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. **Accordingly, Vendors assume the risk that confidential business information included within a proposal may enter the public domain.**

9. Sub-Contracting

Subcontracting is not permitted without the Agencies' prior written consent. Any Vendor that submits a proposal contemplating the use of independent contractors or a subcontractor shall identify the purpose for such use, as well as the scope of work and other terms for any such arrangement. All independent contractors and subcontractors must agree in writing to be bound by the terms of the Professional Service Agreement (the "PSA") attached hereto as **Appendix B**, governing the relationship between the Vendor and the State.

10. Discrepancies and Omissions

Vendors are fully responsible for the completeness and accuracy of their proposals, and for examining this RFP and all attachments, exhibits and addenda. Failure to do so will be at the sole risk of Vendors. Should a Vendor find discrepancies, omissions, or unclear or ambiguous language in this RFP, the Vendor should seek clarification pursuant to the question and answer process detailed below. Protests based on any discrepancies, omissions, or unclear or ambiguous language will be disallowed if the same have not been timely raised in and preserved through the question and answer process below.

11. RFP Question and Answer Process

The Agencies will allow written requests for clarification of the RFP. Vendors must submit written questions in the format specified below to be received by the Designated Contact by 4:00 p.m., prevailing Eastern time, on October 21, 2025 at 4:30 pm prevailing Eastern Time. Questions must be submitted electronically to the following email address: joel.heller@delaware.gov.

All questions will be consolidated and answered in a single response that will be posted on the State's websites at <http://www.bids.delaware.gov/> by 4:00 p.m., prevailing Eastern time, on October 28, 2025, or such other date and time as may be prescribed by the Agencies. Vendor names will not be attributed to questions in the Agencies' response.

Questions should be submitted in a standalone Microsoft Word document in the following format:

Section number
Paragraph number
Page number
Text (of passage being questioned)

Questions that deviate from this format may be rejected by the Agencies in their discretion.

12. State's Right to Reject Proposals

The Agencies reserve 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 RFP specifications or contained in a Vendor's response), to assess the merits and qualifications of each proposal and Vendor, to solicit new or modified proposals on the same project, as the Agencies may deem necessary or appropriate or in the best interest of the State.

13. State's Right to Cancel Solicitation

The Agencies reserve the right to cancel this solicitation at any time during the procurement process, for any reason, or for no reason at all. The Agencies make no commitments, expressed or implied, that this process will result in a contract with any Vendor.

A Vendor's participation in this RFP process may result in the Agencies selecting the Vendor to engage in discussions and negotiations of a formal contract. The commencement of such negotiations does not signify, and may not be interpreted as, a commitment by the State to execute a contract or continue negotiations. The Agencies may terminate negotiations at any time and for any reason, or for no reason at all.

14. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* § 6986, the State may award multiple contracts to two or more Vendors if the Agencies make a determination that such action is necessary or appropriate or in the best interest of the State.

15. Notification of Withdrawal of Proposal

A Vendor may modify or withdraw its proposal by written request, provided that both the proposal and subsequent request is received by the Designated Contact prior to the Proposal Deadline. A withdrawn proposal may be revised and re-submitted and will be considered timely if the revised proposal is received by the Proposal Deadline.

All proposals received prior to, and which have not been withdrawn by, the Proposal Deadline shall become firm offers and shall not be revocable after that time.

16. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted at <http://www.bids.delaware.gov>.

17. Exceptions to the RFP

Any exceptions to the RFP or any attachments, exhibits or addenda, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 3** and submitted with a proposal by the Proposal Deadline. Vendors that fail to timely and otherwise adequately preserve and assert exceptions shall be deemed to have waived all such exceptions and related arguments. The Agencies have discretion with respect to the acceptance or rejection of exceptions.

18. Exceptions to the PSA

Attached hereto as **Appendix B** is the Agencies' standard form of PSA and related exhibits. The terms of the PSA will govern the contractual relationship between a Vendor and the Agencies. Any exceptions to the PSA, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 3**. Vendors shall provide a redlined version of the PSA ("Redline") reflecting all requested changes. Vendors that fail to timely and otherwise adequately preserve and assert exceptions to the PSA shall be deemed to have waived all such exceptions and related arguments. The State is not bound by any provision of the form PSA and has discretion with respect to the acceptance or rejection of PSA exceptions.

19. Award of Contract

The Agencies have the sole right to select the successful Vendor and approve the issuance of any Award and the terms of any PSA. The Agencies may (a) approve the issuance of an Award to a Vendor other than the Vendor who submitted the lowest priced proposal, (b) issue multiple Awards, or (c) withdraw the RFP and issue no Award. No Award or contract resulting from this RFP process shall be effective unless and until authorized by the Agencies.

An Award, if any, will be communicated to the successful Vendor and published only after (a) the Agencies authorize the issuance of an Award, and (b) the Agencies and each such Vendor execute a formal PSA on terms acceptable to the Agencies. No Vendor will acquire any legal or equitable rights or privileges until the occurrence of both events.

The Award, the PSA and all attachments and exhibits, including all pricing information, and amounts and other details concerning any payments made to a successful Vendor shall be matters of public record subject to disclosure under FOIA.

IV. Proposal Requirements and Evaluation

A. Required Information

1. Vendors shall provide the following information with their proposals in the order listed below. Failure to respond to any request for information within this RFP may result in rejection of the proposal.

Tab A: Transmittal Letter:

- Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services.
- The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on **Attachment 3**).
- A statement indicating whether the proposal contains confidential business information that is being submitted in a separate, sealed envelope in accordance with the procedure above; and

Tab B: Questionnaire(s). Provide a detailed set of responses to the questions posed in **Attachment 1**. All Vendors must respond to **Attachment 1**. Responses should be both complete and concise.

Tab C: Fee Schedule. Vendors must provide a fee schedule covering the initial contract term and each optional extension period.

Tab D: Confidential Information Form. Vendors should identify any documents or information that it considers confidential using the form set forth on **Attachment 2**.

Tab E: SEC Registration. Provide proof of Vendor's registration as an investment advisor with the Securities and Exchange Commission and also provide **electronic** copies (no paper copies) of your most recent ADV, Parts 1 and 2, or otherwise indicate that you are exempt from registration. If exempt, you must explain the nature of the exemption.

Tab F: Exception Form. Provide a detailed listing of any exceptions to the RFP, including all attachments and appendices, including the PSA and its exhibits, using the form included as **Attachment 3**. Successful Vendors who do not take exceptions as required are deemed to have consented and irrevocably agreed to the terms of the RFP.

Tab G: PSA Redline. Include the Redline or similar comparative version of the PSA, a copy of which is affixed hereto as **Appendix B**, reflecting all proposed changes to

the PSA, which changes may be accepted or rejected in the Agencies' discretion. Successful Vendors who do not propose changes are deemed to have consented and irrevocably agreed to the PSA.

Tab H: Business References. Provide at least three business references using the form provided in **Attachment 4**.

Tab I: Business Continuity and Disaster Recovery Plans. Vendors responding to this RFP must attach summaries of their business continuity and disaster recovery plans.

Tab J: Retention Policies. Vendors responding to this RFP must attach summaries of their document retention policies.

2. Prior to Award, the successful Vendor shall furnish the Agencies with proof of (i) all necessary business licenses, including a valid State business license, (ii) certification(s) necessary to perform services identified herein, and (iii) proof of insurance required under the PSA.

B. Proposal Evaluation

1. Initial Screening

The Designated Contact and/or designated the Agencies' staff shall perform an initial screening of all proposals submitted by qualified Vendors and evaluate them for timeliness and compliance with the minimum qualifications and other requirements set forth herein. the Agencies shall have discretion with respect to any such determination. Proposals that pass the initial screening shall be forwarded to the Evaluation Team for scoring and evaluation as provided herein.

2. The Evaluation Team

An evaluation team ("Evaluation Team") that may be composed of representatives from the Agencies and other State entities will evaluate qualified Vendor proposals meeting all RFP requirements based on the quantitative and qualitative criteria set forth below. Neither the lowest priced, nor the highest scoring proposal, will necessarily be selected. the Agencies may in their discretion remove or add members of the Evaluation Team.

3. Evaluation Criteria

Vendors must review the evaluation criteria below and provide responses that address the criteria. The Evaluation Team will not make assumptions about Vendor capabilities.

The State has outlined the services it will require in Section II and **Appendix A**. In formulating responses, Vendors are encouraged to suggest additional or modified

services in their proposals if such additional or modified services will provide a benefit to the Agencies and/or the State.

Proposals that meet submission requirements of the RFP will be evaluated and scored based on the criteria and points system set forth in the table below.

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:

Experience and reputation of management and staff in the public finance industry	20
Demonstrated ability, methodology and expertise in each Issuer's specific industry with respect to analysis, policy issues and complexities, variety and size of public financial issues	30
Capacity to meet Issuer requirements including size, operational capability, location and staffing	15
Familiarity with the State and availability of other services	20
Appropriateness of proposed fees	15

4. Proposal Clarification

The Evaluation Team may communicate with a Vendor in order to clarify uncertainties or gain better understanding of a proposal. The Evaluation Team may require Vendors to modify or supplement their proposals as a result of such communication. Vendors must provide all requested information in a timely manner, which shall mean on or before any deadline established by the Evaluation Team.

5. Communication with References and Past or Present Clients

The Evaluation Team may communicate with all references provided by a Vendor on **Attachment 4** and may use information gained thereby in the evaluation process. In addition, the Evaluation Team may communicate with any known past or present client of a Vendor outside of the reference list, and any information gained may be used in the evaluation process. Vendors that submit a proposal in response to this RFP shall be deemed to have (a) waived any confidentially or other restrictions that may limit in any way a reference or former or current client's ability to convey information relevant to the evaluation process, and (b) consented to all such communications with references or former or current clients.

6. Oral Presentations

The Evaluation Team, with or without prior consultation with the Agencies or the Board, may in its discretion invite one or more Vendors to make in-person or virtual presentations to the Evaluation Team will be scheduled on an as needed basis. **Any costs associated with presentations will be borne by the Vendor.** The State requests that all individuals who are expected to be assigned to this engagement be in attendance.

V. Contract Process

A. Formal Contract

Vendors that are selected as finalists and invited via written notification from the Agencies (the “Invitations”) to enter into negotiations concerning the Services will be expected to enter into formal contracts with the Agencies in the form of the PSA attached here to as **Appendix B** (the “Contract”). A Vendor’s attempt to negotiate pricing or other material Contract terms that were not disclosed through the exception process and detailed in the Vendor’s response may result in the termination of negotiations with, and/or the disqualification of, such Vendor.

B. Modification of PSA

In its discretion, the Agencies may consider and accept proposed modifications or additions to the PSA, whether or not raised in an exception.

C. Time Frame

A Vendor who receives an Invitation must execute a Contract within twenty (20) business days from the date of the Invitation, unless such period is extended by the Agencies in their discretion. If no Contract has been executed by the applicable deadline, the Agencies may in their discretion cancel the Invitation and enter negotiations with another Vendor.

D. Inception of Services

Absent the Agencies’ prior written request or approval, no Vendor is to begin providing services prior to the issuance of an Award.

E. Cancellation of Award

If a Vendor that receives an Award fails to commence providing Services when due under the Contract, the Agencies without liability, may cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

F. Collusion or Fraud

Vendors may not restrain competition by agreement to offer a fixed price, or otherwise. By responding to this RFP, each Vendor shall be deemed to have represented and warranted that: (i) its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP; (ii) its approval is in all respects fair and without collusion or fraud; (iii) 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 (iv) no employee or official of the State, the Board or the Agencies participated directly or indirectly in the Vendor's proposal preparation.

If at any time, whether prior to or after the issuance of an Award, the Agencies determine that any of the foregoing representations was untrue when made or subsequently became untrue, they may, without liability, cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

G. Lobbying and Gratuities and Contingency Fees

As required by 29 *Del. C.* § 6903(b), the successful Vendor is deemed to have sworn under oath that the Vendor has not employed or retained any company or person to solicit or secure a Contract by improperly influencing the Agencies in this procurement process. In addition, the Vendor represents and warrants that it has not directly or indirectly paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for Vendor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from an Award or Contract.

For breach or violation of the foregoing oath, representation or warranty, the Agencies, in their discretion and without liability, shall have the right to cancel and annul any Award and terminate any Contract, or deduct from the Contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

H. Solicitation of State Employees

During the RFP process and for the term of the Contract, Vendor shall not, directly or indirectly, solicit any employee of the State to accept employment with the Vendor, its affiliates, or any person acting in concert with Vendor, without prior written approval of the Agencies.

VIII. Attachments and Appendices

The following items are provided for use in your response. Attachments are required forms to be submitted with your proposal as described in this RFP. Appendices are provided as additional detail or information to assist in your proposal response.

1. Attachments

<u>Attachment 1</u>	Vendor Questionnaire
<u>Attachment 2</u>	Confidential Information Form
<u>Attachment 3</u>	Exception Form
<u>Attachment 4</u>	Business References

2. Appendices

<u>Appendix A</u>	Scope of Services
<u>Appendix B</u>	Form of PSA

Attachment 1: Vendor Questionnaire

CONTRACT NUMBER: **FIN26001-BOND_FA**

Firm Overview

1. Provide an executive summary of your organization's financial advisory services business unit.
2. Describe and/or provide your firm's core values, governing principles, and mission statement. How do these traits and/or goals relate to your firm's provision of the requested services? Why do they make your firm a "good fit" for this engagement?
3. Describe specific strengths and services/products your organization has for meeting the needs of government clients.
4. Include an organization chart of the business unit, as well as an organization chart showing the position of the unit within the firm's overall management structure. Describe the firm's overall management structure, and how the financial advisory business unit fits within it.
5. List the office location(s) (primary and secondary) from which the work is to be delivered.
6. Are there any current organizational issues (*i.e.*, mergers, acquisitions, personnel changes, business concerns, etc.) about your institution that we should know about? How about the last three years?

Client Servicing

1. What is your approach to client servicing? What would be the most distinct element of your client servicing approach that the State would benefit from and consider exceptional relative to the financial advisory industry?
2. How do you propose to staff for the State both from client servicing and actual daily service deliverables? Will your organization assign a day-to-day administrator to act as the point of contact for the Agencies?
3. What is the turnover over the last three years of the client servicing staff to be assigned to the State?
4. Identify the individuals who will provide Services to the State's account, including title, resume, area of specialization, expertise on federal and state law specific to Delaware, its

Issuers and its bonds, other clients currently served, client references, MSRB Series 50 qualification, and location of primary office.

I. Experience and Expertise

1. Provide a list of the firm's state-level government and transportation public finance clients actively served and those on a retainer basis, with a description of the services provided (noting whether on-going or transaction-specific), dates and contact names and numbers for reference purposes. Provide a list of underwriters or agents with which your firm has teamed on behalf of your clients and provide contact information for reference purposes.
2. Describe the frequency, variety and size of recent municipal issues for which your firm acted as advisor and the complexity of structures recommended.
3. With regard to your firm's provision of financial advisory services to state-level government and transportation public finance, for each of the Issuers for whom you wish to provide financial advisory services:
 - Describe your firm's knowledge of and expertise in the tax-exempt municipal markets;
 - Describe resources you can provide to ensure the Issuers receive the highest and best consideration for their respective bonds;
 - Describe how you would consider structuring state-level government and transportation public finance offerings, including any credit-rating strategy and any investor-marketing strategy considerations; and
 - Describe any policy considerations you might recommend.

II. Capacity to meet requirements (size, financial condition, etc.)

4. Describe briefly your firm's organizational structure, primary business(es) engaged in, ownership, business affiliations, number and location of offices, and number of professional staff at each location.
5. [Reserved]

6. Describe your firm's capacity to perform periodic arbitrage rebate analyses and compliance as required by the IRS Code and trust indentures, relating to Issuer's transactions.
7. Describe any other financial consulting services your firm can make available to the State and its Issuers during an engagement. Provide the approximate contribution of these services to the firm's total revenue.

III. Distribution of work to individuals and firms or economic considerations

8. Describe any contractual relationships you may have with other firms that may be working on State accounts and/or describe any contractual relationships you may have with other State agencies.
9. [Reserved]
10. Identify and describe any litigation, mediation, arbitration, administrative proceedings, or any investigation in which your firm is or was involved.

IV. Other criteria necessary for a quality cost-effective project

11. Discuss any other considerations or factors that impact upon your ability to perform the tasks relevant to or associated with this proposal.
12. Identify any portion of your proposal that contains confidential or proprietary information.

Pricing

Please provide an annual fee for services required by the Agencies. The flat fee may be quoted as an annual dollar amount or a graduate annual fee based on specific transactions.

Consider a multi-year contract. Provide a comprehensive fee schedule assuming an annual retainer, a transaction fee, a fee for arbitrage rebate compliance services and an hourly rate for a minimum of five years with annual extensions. Identify all other charges and expenses for which you will seek reimbursement, the method of determining such reimbursements and the frequency of billing. Note that invoices will be subject to review. The firm or firms selected should discuss in their response accepting payment by procurement card or electronic funds transfer, at the State's option, without imposing any additional fees, costs or conditions.

Attachment 2: Confidential or Proprietary Information Form

CONTRACT NUMBER: **FIN26001-BOND_FA**

- o By checking this box, Vendor acknowledges that its proposal does not contain any information it declares to be confidential or proprietary for the purpose of production under FOIA.

Confidentiality or Proprietary Information

Note: Use additional pages as necessary.

Attachment 3: Exception Form

CONTRACT NUMBER: FIN26001-BOND_FA

Proposals must include all exceptions to the specifications, terms or conditions contained in this solicitation, including all attachments and appendices. If Vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, Vendor acknowledges that it takes no exception to the specifications, terms or conditions found in this solicitation, including the terms of the PSA.

Paragraph # and page #	Exceptions to specifications, terms or conditions	Proposed Alternative

Note: Use additional pages as necessary.

Attachment 4: Business References

CONTRACT NUMBER: FIN26001-BOND_FA

List a minimum of four business references. At least three (3) of the references should be from government entities that resemble the relationship you envision with the State. Business references should include the following information:

- Business name and mailing address
- Contact name, phone number and email address
- Number of years doing business with
- Type of work performed

Please do not list any entity, officer or employee of this State as a business reference.

If you have held a contract with the State within the last 5 years, provide a separate list of the contract(s), describe the scope of work performed and include the name, title, phone number and email address for your primary contact for each engagement.

Appendix A - SCOPE OF WORK AND TECHNICAL REQUIREMENTS

1. Examine, evaluate and formulate fiscally sound and flexible financing programs that take into consideration the Issuer's objectives, existing debt structures, timing of capital projects, tax regulations, and the climate in the capital markets. In addition, consider the effective utilization of operating reserves, state appropriations, federal funds and subsidies and other resources available to the Issuers.
2. Assist in the preparation of special studies, including review of debt capacity and the formulation of related debt policies.
3. Review new program ideas and financing techniques, and generate or assist in the development of new program/financing initiatives. Conduct independent and objective reviews and evaluations of economic feasibility and cost-effectiveness of programs, project finance transactions or other initiatives developed by the State or proposed to the State by third parties including governmental entities, non-profit sponsors, for-profit developers, investment banking firms and others.
4. Advise on the merits of competitive, negotiated, or private placement of debt, subject to State requirements. Analyze the cost/benefit of different structuring and pricing options, and provide guidance on pricing based on market comparables and market indices.
5. For competitive sale transactions, assist in the preparation of bidding provisions, independently evaluate and verify bids, verify calculations and conformance with bidding parameters, independently rank submitted bids, and recommend an award.
6. In the event bonds are to be sold pursuant to a negotiated sale, assist in the development of a Request for Proposals, review the qualifications of financial institutions interested in acting as managing underwriters, and participate in the selection process.
7. Provide technical assistance as needed in the management of the State's existing portfolios to maximize cash flow and monitor bond-related investments, including review of pricing and timing.
8. Advise the Agencies and the State and its individual Issuers on the best practices for ensuring a favorable credit rating and provide preparatory information for rating agency visits. Prepare reports for, and participate in, presentations to the rating agencies, credit enhancement providers and bond insurers. Participate in the rating agency visits.

9. Assist the State in making submissions and presentations relating to the State's past, current and proposed financing activities to governmental entities, including the State Legislature, as well as to private entities, such as financial institutions.
10. Formulate, coordinate and participate in information meetings with institutional investors, credit analysts, underwriters and other public presentations as requested by the State, including hearings with the State Legislature and other government bodies as required.
11. Perform periodic arbitrage rebate analyses and compliance as required by the IRS Code and trust indentures relating to Issuer's transactions. Such services may be priced separately.
12. Provide advice as required on the investment guidelines pertaining to the State's portfolios, reserve accounts and escrow accounts, and assist staff as needed in structuring refunding escrows and evaluating the purchase of State & Local Government Securities (SLGS) and/ or open-market securities.
13. Provide continuing information and advice on a timely basis to the State concerning the municipal debt markets, changes in applicable tax laws, on improving its financial performance in the marketplace and on avoiding any actions that may have a negative impact on the Issuer's credit standing and pricing performance in the marketplace.
14. Monitor market conditions and the State's portfolio for refunding opportunities, and upon the request of the State, perform periodic refunding analysis looking for opportunities to reduce debt service and/or achieve present value savings.
15. Provide financial analyses and expert advice to the State in all the areas of a financing relative to timing, the merits of the method of sale, i.e. competitive vs. negotiated vs. private placement, strategies, economic considerations, market conditions, maturity structures, interest rates, redemption provisions, debt service requirements, evaluation of bond pricing and fees for services (underwriter, trustee, bond counsel, agents, etc.), evaluation of syndicate members, monitoring bond allocations, settlement and post-settlement analyses, and compliance with all IRS rules for issuance and post-issuance and including the verification of post-sale pricing via the use of EMMA.
16. Advise and assist the State in preparing requests for proposals from, and in selecting service providers (underwriters, bond counsels, tax counsel, financial printers, verification agents, etc.) required to assist in effecting the issuance of State notes or

- bonds. Undertake bidding process, assist bond counsel with printing and distribution of any Official Statement, any Notice of Sale or other financing document. Prepare or assist in the preparation of all documents relative to a financing, including review of all legal documents.
17. Advise and represent the State in negotiating bond interest rates, transactions fees and expenses, and other provisions of bond purchase agreements or remarketing agreements governing the negotiated sale of notes or bonds to underwriters or the private placement of notes or bonds to institutional investors.
 18. Assist in the preparation and review of closing documents including but not limited to authorizing resolutions, trust indentures, notices of sale, bond purchase agreements and disclosure documents. Assist the State and its Issuers in making information available for bidding to bidding syndicates, individual securities dealers, municipal analysts, institutional investors, credit enhancers and rating agencies in connection with new issues and prior issues and generally be available to respond to inquiries from such entities regarding the structure, security features and financial integrity of such securities.
 19. Review cash flow analyses or other financial projections prepared by others such as budgeted expenditures, debt service requirements, application of bond proceeds, investment of funds and other program parameters.
 20. Advise and assist the State on matters relating to reinvestment of bond proceeds, including services as investment agreement broker to prepare and distribute bid specifications/documents and to conduct required competitive bidding among prospective investment agreement providers. These services will be provided on an as-needed basis, exclusive of the contract price.
 21. Attending working group meetings as required.
 22. Perform such other duties that are reasonably required.

APPENDIX B: FORM OF PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the “Agreement”) is entered into by and between the Office of State Treasurer (“the Agencies”) for the State of Delaware (the “State”), and [_____] (“Vendor”).

WHEREAS, in April 1, 2021, the Agencies, on behalf of itself issued a formal Request for Proposals (the “RFP”) pursuant to the State Procurement Code seeking proposals from qualified firms to provide financial advisory services to the Agencies;

WHEREAS, the Agencies desire to obtain from Vendor services as set out in the Statement of Work on **Exhibit 1** to this Agreement;

WHEREAS, Vendor desires to provide such services to the Agencies on the terms set forth in the Agreement;

WHEREAS, the Agencies, and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, the Agencies and Vendor agree as follows:

1. Services and Term.

- 1.1. Vendor shall provide to the Agencies, the Board and its subcommittees those services as set forth herein and as specified on the Statement of Work attached hereto as **Exhibit 1** (collectively, the “Services”). Vendor shall provide all Services in a fiduciary capacity.
- 1.2. The initial term of this Agreement shall begin on the date this Agreement is fully executed, or as may be otherwise agreed upon by the parties, and shall extend for five years from that date. the Agencies has three one-year extension options. the Agencies, in their discretion, may exercise each option at any time prior to the expiration of the initial or extended term, as the case may be.
- 1.3. Vendor shall meet and confer with the Agencies at such times and places as the Agencies, may reasonably request. Vendor, if requested by the Agencies, shall participate in meetings with other State agencies concerning financing elated issues. Vendor shall keep the Agencies staff informed of progress and provide updates on the status of the Services. This interface shall include regular telephone communication, exchange of written data and analysis and other interaction as requested by the Agencies.

2. Payment for Services and Expenses.

- 2.1. the Agencies will pay Vendor for the performance of Services in accordance with **Exhibit 2**.

- 2.2. The Agencies' obligation to pay Vendor for the performance of Services will not exceed the annual fixed price and/or rates and limits set forth on **Exhibit 2**. Vendor is solely responsible for ensuring that all Services are completed for the agreed upon price and/or rates and within any applicable cap. Annual fees and/or rates shall be fixed for the initial term of the Agreement and, at the Agencies' option, shall remain fixed for any extension period.
- 2.3. Unless otherwise agreed, all payments will be sent to Vendor's identified address on record with the Agencies.
- 2.4. Vendor shall submit invoices to the Agencies in arrears on a [monthly] basis. Services provided for a fixed annual price shall be prorated and billed monthly. the Agencies agrees to pay undisputed amounts within 30 days of receipt. In the event that the Agencies disputes all or any portion of an invoice, the Agencies agrees to provide Vendor with a detailed statement of the Agencies' position on the invoice, or disputed portion of the invoice, within 30 days of receipt.
- 2.5. All expenses incurred in the performance of the Services are Vendor's responsibility. Vendor shall not be reimbursed for any expenses incurred by Vendor in the performance of the Services, including, but not limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.6. the Agencies shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable by Vendor as a consequence of this Agreement.
- 2.7. the Agencies shall have the right to setoff or subtract from any payment to be made to Vendor all damages, costs and expenses caused by Vendor's breach of the Agreement, or Vendor's negligence, gross negligence or other tortious or illegal conduct in connection with the provision of Services hereunder, to the extent such damages, costs and expenses have not otherwise been reimbursed by Vendor.
- 2.8. Invoices shall be submitted electronically to the [Assistant Debt and Cash Manager, OST] with a copy to joel.heller@delaware.gov or such other designees as may be requested from time to time.

3. [Reserved.]

4. Responsibilities of Vendor.

- 4.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services. In performing the Services, Vendor shall follow practices consistent with generally accepted professional and technical standards and comply with all applicable federal, state and local laws, ordinances, codes and regulations.

- 4.2. Vendor shall be responsible for ensuring that all Services and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the State's Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/> and as modified from time to time by DTI during the term of this Agreement. If any Service or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (a) replace it with a conforming equivalent or (b) modify it to conform to DTI standards. Vendor shall be liable and indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by the State or its agents or employees resulting from or attributable to Vendor's failure to comply with DTI standards and requirements.
- 4.3. [Reserved.]
- 4.4. It shall be Vendor's duty to assure that Vendor does not compromise the security, confidentiality, or integrity of information owned or maintained by the State. In providing Services, Vendor will meet or exceed the standards set forth in the Top 20 Critical Security controls located at: <http://www.sans.org/critical-security-controls/>.
- 4.5. Vendor shall be responsible for all security breaches caused by its employees and contract employees, its subcontractors, and the employees and contract employees of its subcontractors. Vendor shall indemnify and hold harmless the State and its officers, employees and attorneys from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State may offset against and subtract from any payment to be made to Vendor any damages, costs and expenses caused by any such breach.
- 4.6. Multifunction peripherals must be hardened when used or connected to the State's network.
- 4.7. Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, *etc.*) shall be disposed of in a manner corresponding to the classification of the stored information, up to and including physical destruction.
- 4.8. [Reserved.]
- 4.9. [Reserved.]
- 4.10. It shall be the duty of Vendor to assure that all Services and deliverables are technically sound and in conformance with all applicable federal, state and local statutes, codes, ordinances, resolutions and other regulations applicable to the Services. Vendor will not provide access to software, or produce work product, that violates or infringes on any copyright, trademark, patent or other intellectual property rights. Vendor shall, without

additional compensation, correct or revise any errors or omissions in the software or work product and shall indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by the State or its officers, employees or attorneys resulting from or attributable to Vendor's failure to comply with this Section.

- 4.11. The Agencies' review, approval, acceptance, or payment for any Services shall not be construed to operate as an admission or acknowledgement of any fact or circumstance, or a waiver of any rights under this Agreement or otherwise, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by Vendor's breach or negligent performance or failure to perform under this Agreement.
- 4.12. Vendor shall appoint a senior employee who will manage the performance of Services and act as the single point of contact to the Agencies.
- 4.13. Upon receipt of written notice from the Agencies that an employee of Vendor is unsuitable for good cause, Vendor shall remove such employee from the performance of Services and substitute in his/her place an employee suitable to the Agencies.
- 4.14. Unless legally prohibited, Vendor shall promptly notify the Agencies in writing of any investigation, examination or other proceeding involving Vendor, or any key personnel or designated staff of Vendor, including a contract employee or a subcontractor, or any key personnel or designated staff of a subcontractor, commenced by any regulatory or law enforcement agency and involving allegations of fraud or illegal conduct, or a data breach.
- 4.15. Vendor agrees that its senior employee and other key personnel or designated staff will cooperate with the Agencies in the performance of Services and will be available for consultation with the Agencies upon reasonable request.
- 4.16. [Reserved.]
- 4.17. [Reserved.]
- 4.18. Vendor has or will retain such employees as it may need to perform the Services.
- 4.19. Vendor will not use the Agencies' or the State's name, either express or implied, in any of its advertising or sales materials without the Agencies' prior written consent.
- 4.20. Vendor represents that it is properly licensed, registered and authorized to transact business and perform Services in the State.
- 4.21. Vendor will provide to the Agencies audited or unaudited financial statements, as requested by the Agencies.

- 4.22. Vendor shall be independent and shall provide advice and recommendations to the Agencies free of any conflicts of interest and solely in the best interest of the State.

5. the Agencies Responsibilities/Representations.

- 5.1. The Agencies agree that its officers and employees will cooperate with Vendor in the performance of Services and will be available for consultation with Vendor upon reasonable request.
- 5.2. The Agencies shall pay for the Services as provided on **Exhibit 2**, subject to review for compliance with and the terms of this Agreement.

6. Ownership of Work Product and Data and Documents.

- 6.1. All materials, information, documents, reports and other work product, whether finished, unfinished, or draft, developed, prepared or completed by Vendor relating to the Agreement shall become the property of the State and shall be delivered upon request by the Agencies. The State shall have the right to reproduce and disclose all work product related to this Agreement. The State's rights under this Section shall survive termination of the Agreement.
- 6.2. The State shall have and retain title and interest to all data and documents related to this Agreement, including Vendor work product and data and documents electronically stored by Vendor. Upon termination of the Agreement, and for a period of six (6) months thereafter, the Agencies shall have the right to request and shall, at the Agencies' option and at Vendor's expense, be provided with copies of all data and documents electronically stored by Vendor related to the Agreement. Promptly after such six (6) month period, all State data and documents shall be destroyed or retained in accordance with Section 7.8.

7. Confidential Information of the State.

- 7.1. "Confidential Material," as used herein, means all documents and data that contain confidential commercial, financial, consumer, or other confidential information of the State, whether or not such agreements or other documents are marked "confidential" or otherwise designated as confidential by the Agencies.
- 7.2. Confidential Material shall be used by Vendor solely for purposes of executing its duties and obligations under the Agreement. Vendor may disclose Confidential Material only to those Vendor employees who have a need to access Confidential Material in the scope of their employment for Vendor, and who have been informed, understand and acknowledge in writing that Confidential Material is highly sensitive and confidential and must be held in strictest confidence.
- 7.3. Confidential Material shall not be copied or reproduced without the express written permission of the Agencies, except for such copies as may reasonably be required for

Vendor to execute its duties and obligations under the Agreement. Except as contemplated by the Agreement, Vendor shall not store or aggregate in a data base or other electronic storage means any Confidential Material; provided, however, that Vendor is permitted to store Confidential Material in physical or electronic files in accordance with this Section 7 while executing its duties under the Agreement and for a reasonable period of time thereafter, after which the Confidential Materials, including all physical and electronic copies, shall be destroyed or retained in accordance with Section 7.8.

- 7.4. Except as expressly permitted in this Section 7, Confidential Material shall not be disclosed to any individuals or third parties without the prior written consent of the Agencies unless such disclosure is required by law. Vendor shall immediately notify the Agencies in writing of Vendor's receipt of a court order, subpoena or discovery requests seeking or ordering the production, disclosure or inspection of any Confidential Material. Vendor shall, at the request of the Agencies, object to any such order, subpoena or discovery and shall take all other measures that may reasonably be necessary to protect against the unwarranted production, disclosure or inspection of Confidential Material. In the event disclosure of Confidential Material is compelled or otherwise required by law, Vendor shall mark all documents submitted in connection with any such disclosure so as to indicate the confidential nature of the material and the The Agencies' interest therein.
- 7.5. This Section 7 shall not restrict the disclosure or use of Confidential Material that:
- a. is in the public domain at the time of disclosure or thereafter enters the public domain through no breach of the Agreement;
 - b. is in the possession of Vendor without restrictions when received;
 - c. has been lawfully obtained or is lawfully obtainable without restrictions from a source other than the Agencies or the State through no breach of the Agreement;
 - d. has been developed independently by Vendor and without reliance upon Confidential Material.
- 7.6. Vendor shall take reasonable steps to restrict access to and otherwise safeguard the confidentiality and integrity of Confidential Material at all times, including, without limitation, the implementation of electronic security procedures and other measures designed to ensure that all Confidential Material is properly stored, and password protected at all times.
- 7.7. Vendor shall immediately disclose to the Agencies the discovery of any security breach or suspicious intrusion involving Confidential Material and shall identify the type and amount of Confidential Material that was compromised or disclosed.
- 7.8. Within six (6) months from the termination of the Agreement, all Confidential Material, regardless of form, shall be permanently deleted or destroyed in accordance with all

applicable law, orders, rules and regulations and industry best practices. Any electronic data or documents deleted under this Section 7.8 shall be permanently deleted and shall not be recoverable, according to the National Institute of Standards and Technology's approved methods. If requested, Vendor shall provide a destruction certificate to the Agencies listing the type and contents of electronic records or physical documents destroyed or permanently deleted under this Section 7.8. Notwithstanding the foregoing, Vendor may, subject to Vendor's confidentiality obligations under this Agreement, retain copies of State data and documents to the extent required by applicable state or federal law, regulations, rules, or orders or Vendor's document retention policy.

- 7.9. The State shall have no obligation to disclose Confidential Material. the Agencies may, in its discretion, provide or refuse to provide Confidential Material requested by Vendor.
- 7.10. Vendor understands and agrees that the State may suffer irreparable harm in the event that Vendor fails to comply with its obligations hereunder and that monetary damages may not be adequate to compensate the State for such breach. Vendor agrees that the State, in addition to other remedies available to it at law or in equity for actual damages, shall be entitled to seek injunctive relief to enforce the terms of this Section 7.
- 7.11. Vendor's confidentiality obligations shall survive termination of the Agreement.

8. Warranty.

- 8.1. Vendor agrees to correct or re-perform any Services not in compliance with this Agreement in a timely manner.
- 8.2. Third-party products within the scope of this Agreement, if any, are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor in connection with the provision of the Services, if any, Vendor shall pass through or assign to the State all rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless the Agencies, the State and their respective officers, members, employees and attorneys ("Indemnified Parties") from any and all liability, suits, actions, claims or damages, together with all reasonable costs and expenses (including attorneys' fees), arising out of Vendor's breach of the Agreement, or the negligent, reckless, intentional or other tortious, fraudulent, illegal, or unlawful conduct of Vendor or any subcontractor, or their respective officers, employees, contract employees or agents, arising out of or related to this Agreement ("Claims").

- 9.2. If the Agencies notify Vendor in writing of a Claim against an Indemnified Party, including, without limitation, any Claim based on Vendor's disclosure of or failure to safeguard any personal financial or other Confidential Material, Vendor will defend such Claim at Vendor's expense if so requested by the Agencies, in the Agencies' sole discretion. Vendor will pay any costs or damages that may be finally awarded against an Indemnified Party.
- 9.3. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, and notwithstanding anything to the contrary in this Agreement, neither the Agencies, or the State, nor any officers, members, employees or attorneys of the foregoing, shall have any liability to Vendor or any other party for fees (including attorneys' fees), expenses, suits, actions, claims or damages, whether direct or indirect, compensatory or punitive, actual or consequential, in or for actions, claims, causes of action or rights, including alleged indemnification rights, arising out of or related in any way to this Agreement.
- 9.4. Notwithstanding anything to the contrary herein, no provision of this Agreement shall constitute or be construed as an indemnification obligation in favor of Vendor, or a waiver or limitation of any right of the Agencies, the Board or the State that may exist under applicable law.
- 9.5. Notwithstanding anything to the contrary herein, to the extent available under applicable law, the Agencies, the State, and their respective officers, members, employees and attorneys, expressly reserve all rights, claims, arguments, defenses and immunities, including, without limitation, claims or defenses based on sovereign immunity, qualified immunity and other statutory or common law rights, claims, defenses or immunities; provided, however, that Vendor shall have the right to seek to enforce this Agreement in the courts of this State.

10. Insurance.

- 10.1. Vendor shall maintain the following insurance during the term of this Agreement:
- a. Worker's compensation and employer's liability insurance in accordance with applicable law;
 - b. Comprehensive general liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate;
 - c. Professional liability - \$5,000,000 per occurrence/\$5,000,000 per aggregate;
 - d. Miscellaneous Errors and Omissions—\$1,000,000.00 per occurrence/\$3,000,000 per aggregate;

- e. Automotive liability insurance covering all automotive units used in the work with limits of not less than
 - 1. \$1,000,000 combined single limit each accident, for bodily injury;
 - 2. \$250,000 for property damage to others;
 - 3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 - 4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. § 2118; and
 - 5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss \$100,000 for each person and \$300,000 for each accident as to bodily injury and \$25,000 as to property damage to others; and
 - f. Cyber Liability – Vendor must maintain cyber security liability insurance coverage with limits of \$[in an amount TBD] aggregate for loss resulting from a data breach. The policy shall be issued by an insurance company with an A.M. Best Rating of A-VII and shall remain in place for the term of the Agreement. At a minimum, the policy must include coverage for any regulatory penalties and fines (to the extent insurable). Vendor shall be responsible for any deductible or self-insured retention contained in the insurance policy.
 - g. Excess/Umbrella policy - Excess/Umbrella \$4,000,000 total (sits above underlying worker's compensation and employer's liability, general liability, and automotive liability).
- 10.2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to the Agencies.
- 10.3. Before any work is performed pursuant to this Agreement, certificate of insurance and/or copies of the insurance policies specified in Section 10.1 shall be provided to the Agencies. The certificate holder is as follows:

**Department of Finance
820 North French Street, 8th Floor
Wilmington, DE 19801**

- 10.4. In no event shall the Agencies, or the State, or their respective officers, members, employees or attorneys, be named as an additional insured on any policy required under this Agreement.

11. Independent Contractor.

- 11.1. It is understood that in the performance of the Services, Vendor is an independent contractor, not an agent or employee of the Agencies, or the State, and shall furnish such Services in its own manner and method, except as required by this Agreement.

- 11.2. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the Services; provided, however, that Vendor will, subject to scheduling and staffing considerations, attempt to honor the Agencies' request for specific individuals.
- 11.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold the Agencies, and the State, and their respective officers, members, employees and attorneys, harmless from all matters relating to the payment of Vendor's employees, contract employees, subcontractor or subcontractor's employees, including compliance with Social Security withholding and all other wages, salaries, benefits and taxes of any nature whatsoever.
- 11.4. Vendor acknowledges that Vendor and any agents or employees employed or contracted by Vendor shall not, under any circumstances, be considered employees of the Agencies or the State, and that they shall not be entitled to any of the compensation, benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, pension benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits.
- 11.5. Vendor shall be responsible for providing liability insurance for its personnel and agents.
- 11.6. As an independent contractor, Vendor has no authority to bind or commit the Agencies, the Board or the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, or fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

- 12.1. The Agencies may for any reason suspend performance by Vendor under this Agreement for such period of time as the Agencies, in their discretion, may prescribe by providing written notice to Vendor. Upon receipt of such notice, Vendor shall not perform further work under this Agreement until Vendor's receipt of written notice from the Agencies to resume performance.
- 12.2. The Agencies shall pay Vendor compensation earned through the effective date of suspension, less all previous payments and subject to any rights of offset or recoupment that the Agencies or the State may have against Vendor.

13. Termination.

- 13.1. This Agreement may be terminated by either party for default, which shall mean the failure of the other party to fulfill a material obligation under this Agreement, through no fault of the terminating party, but only after the other party is given:

- a. Not less than 14 calendar days' written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by the Agencies or the State for its convenience, but only after Vendor is given 30 calendar days' written notice of intent to terminate.
- 13.3. If termination is effected, the Agencies will pay Vendor that portion of compensation earned for Services provided as of the effective date of termination, but:
 - a. No amount shall be allowed for anticipated profit on unperformed Services or other work;
 - b. Any payment due to Vendor at the time of termination may be adjusted or reduced to the extent of the State's offset or recoupment rights; and
 - c. In the event Vendor ceases conducting business, the Agencies shall have the right to make an unsolicited offer of employment to any officers or employees of Vendor.
- 13.4. In connection with any notice issued under this Section 13, the Agencies may immediately retain another vendor to perform the Services. Vendor shall at all times cooperate in the transition and shall perform such Services and additional services as the Agencies shall determine are necessary or appropriate to enable the transition of work to a successor vendor or vendors. Vendor's obligation to provide transition services shall survive termination and shall continue until such date as is communicated in writing to Vendor that such Services or additional services are no longer needed.
- 13.5. If after termination for breach it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for convenience.
- 13.6. The termination of this Agreement shall not terminate indemnification or confidentiality rights or obligations, or any other rights or obligations that are intended to or customarily extend beyond termination.
- 13.7. The rights and remedies of the Agencies provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.8. Gratuities.
 - a. The Agencies may, by written notice to Vendor, terminate this Agreement without liability if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of the Agencies, or the State with a view toward securing a contract or

securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

- b. In the event this Agreement is terminated as provided in Section 13.8.a, the State shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of the Agencies and the State provided in Section 13.8 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

13.9. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. If such funds are not so appropriated, (a) the Agencies may immediately terminate this Agreement without liability, and (b) the Agreement shall be terminated without liability as to any obligation of the Agencies requiring the expenditure of money for which no specific appropriation is available.

14. Assignment; Subcontracts.

- 14.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the Agencies shall be void.
- 14.2. Vendor's employees shall perform all Services, unless the Agencies consents in writing to Vendor's request to use temporary staff, independent contractors or a subcontractor. Neither approval by the Agencies of any such request, nor the Agencies' acceptance of any software, deliverable or payment of any invoice, shall relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the Services. All temporary staff, independent contractors and subcontractors shall adhere to and be bound by the terms of this Agreement, including all exhibits.
- 14.3. Vendor shall be and remain liable for all damages to the Agencies and the State caused by the negligent performance or non-performance of work under this Agreement by any use temporary staff, independent contractors or a subcontractor.
- 14.4. The compensation otherwise due to Vendor pursuant to **Exhibit 2** shall not be affected by the Agencies' approval of Vendor's request to use temporary staff, independent contractors or a subcontractor.

15. Complete Agreement.

- 15.1. This Agreement and its exhibits, which are incorporated herein by reference, shall constitute the entire Agreement between the Agencies and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral

and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement. Notwithstanding the foregoing, or any other provision of this Agreement, all oaths, representations and warranties made by Vendor through participation in the RFP process, including, without limitation, all written representations made by Vendor in Vendor's proposal concerning Vendor's experience and capabilities, shall survive execution and become part of the Agreement.

- 15.2. If the scope of any provision of this Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 15.3. 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.
- 15.4. Each exhibit to this Agreement, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement, modify and supersede the terms and conditions of this Agreement. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter of this Agreement.

16. Miscellaneous Provisions.

- 16.1. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, Vendor shall solely bear the cost incurred in the performance of this Agreement.
- 16.2. Neither this Agreement nor any exhibit may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom enforcement is sought.
- 16.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 16.4. Vendor represents and covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that conflicts or would conflict in any manner or

degree with the performance of Services required under this Agreement. Vendor will immediately notify the Agencies of any material change to such representation that arises during the term of the Agreement, including any extension period.

- 16.5. Vendor acknowledges that the Agencies and the State have obligations to ensure that public funds and resources are not used to subsidize private discrimination. Vendor recognizes that its refusal to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, may result in the Agencies declaring Vendor in breach of the Agreement, terminating the Agreement without liability and/or taking such additional action as may be warranted under the circumstances.
- 16.6. Vendor warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Agencies shall have the right to terminate this Agreement without liability.
- 16.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either party.
- 16.8. At the option of the Agencies, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between officials or executives who have authority to settle the controversy. All offers, promises, conduct and statements, in each case relating to dispute resolution, 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 in any proceeding involving the parties; provided, however, that evidence that is otherwise admissible or discoverable may not be rendered inadmissible merely because it was the subject of discussion in the course of negotiation.
- 16.9. Any disputes, claims or controversies arising out of or relating to this Agreement that are not resolved through resolution pursuant to Section 16.8, may be submitted to mediation if the Agencies so elects. Any such proceedings held pursuant to this provision shall be governed by the State's laws, and venue shall be in this State. The parties shall maintain the confidential nature of the proceedings and shall keep the terms of any resulting settlement or award confidential to the extent permissible under applicable law. Each party shall bear its own cost of mediation, including attorneys' fees and half of the mediator's fees and expenses.
- 16.10. The rights and remedies of the Agencies and the State provided for in this Agreement are in addition to any other rights and remedies provided by law or at equity.
- 16.11. Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance of its obligations under this Agreement when such delays or

defective performance arise out of causes beyond the reasonable control and without the negligence or willful misconduct of the party.

- 16.12. This Agreement, including all exhibits, and its contents, including pricing information, is a public document subject to mandatory disclosure under the State's Freedom of Information Act, 29 *Del. C.* § 10001-10007. In the event that the Agencies is required by law (any statute, governmental rule or regulation, or judicial or governmental order, judgment or decree) to disclose to the public any information or document reasonably designated as "confidential" by Vendor, the Agencies will, to the extent reasonably practicable, give Vendor prior written notice of such disclosure or potential disclosure.
- 16.13. The provisions of this Agreement are for the sole benefit of the parties hereto. This Agreement confers no rights, benefits or claims upon any person or entity not a party hereto, including any permitted independent contractor or subcontractor approved by the Agencies.
- 16.14. The terms of the RFP and any addenda or answers to RFP questions (the "RFP Documents") are incorporated herein by reference and govern the Services and Vendor except to the extent the terms of the RFP Documents conflict with the terms of this Agreement. When construing or interpreting the Agreement (a) the terms of the exhibits shall control and take precedence over the main text of the Agreement; and (b) the terms of the Agreement, including all exhibits, shall control and take precedence over the RFP Documents.

17. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by the Agencies, Vendor hereby grants, conveys, sells, assigns and transfers to the State all of Vendor's 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 or this State relating to the Services and other work product purchased or acquired by the Agencies or the State pursuant to this Agreement.

18. Governing Law.

This Agreement shall be governed by and construed in accordance with Delaware law, without regard to conflict of laws rules or principles. Vendor consents to jurisdiction and venue in this State.

19. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent electronically to the following addresses:

If to the Agencies:

Attn:

If to Vendor:

Attn:

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed as of the date indicated below.

**STATE OF DELAWARE, by and through
the DEPARTMENT OF FINANCE AND
DEPARTMENT OF TRANSPORTATION**

Signature

Name

Title

Date

[VENDOR]

Signature

Name

Title

Date

The following three exhibits are attached and shall be considered part of this Agreement:

**Exhibit 1 – Statement of Work
(to be negotiated)**

**Exhibit 2 – Fee Schedule
(to be negotiated)**