

STATE OF DELAWARE

DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

MID-COUNTY DMV FACILITY

State Contract T201259401
Federal Contract CMAQ-2012001

REQUEST FOR PROPOSALS

INSTRUCTIONS TO PROPOSERS

Draft Issue Date: August 6, 2012

A MEETING WITH THE SELECTED SHORT-LISTED FIRMS WILL BE HELD AT THE
DelDOT ADMINISTRATION BUILDING, 800 BAY ROAD, DOVER, DELAWARE 19901 AT:
XX:00 A.M. - SOMEDAY SEPTEMBER XX, 2012.

Responses must be delivered to the Delaware Department of Transportation, Administration Building, Attention:
Contract Administration, 800 Bay Road, Dover, Delaware, 19901 by the Dates specified in Section XXX

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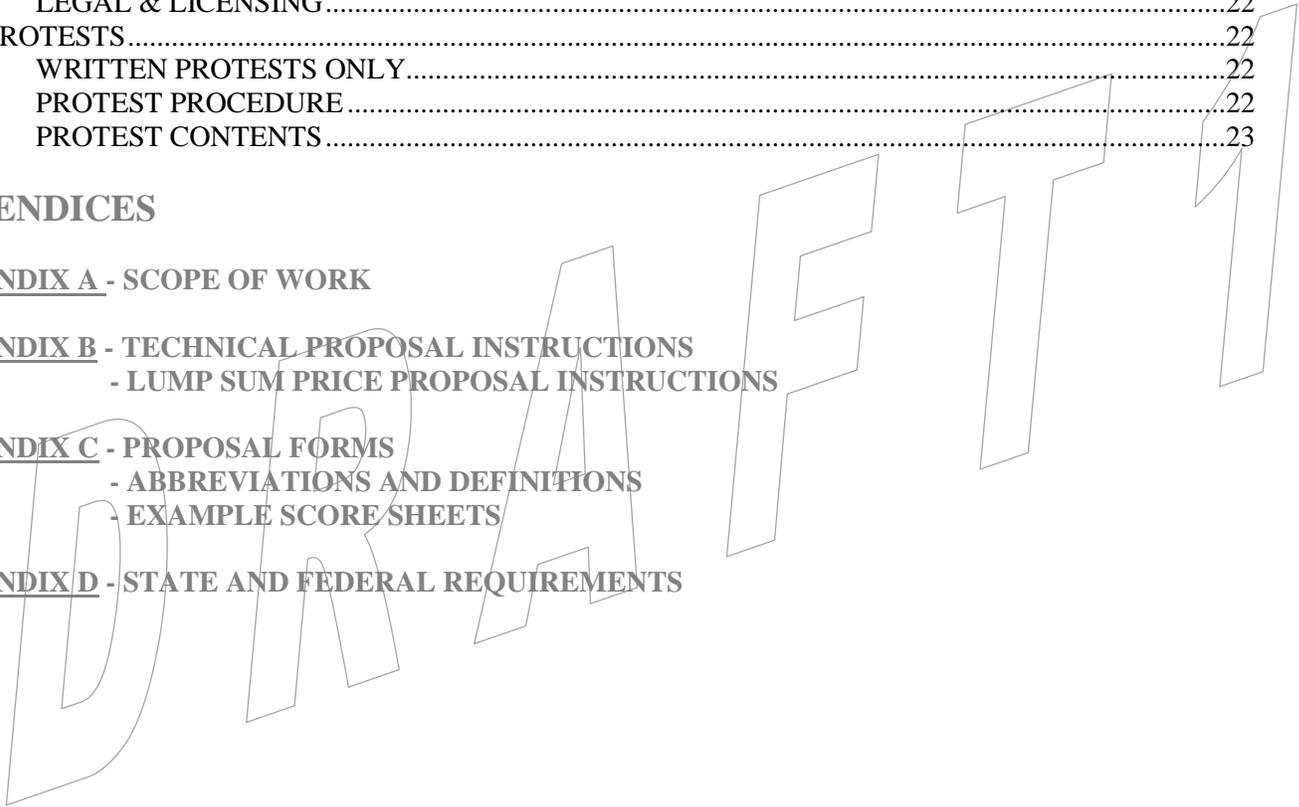
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Delaware Department of Transportation

DESIGN-BUILD PROJECT MID-COUNTY DMV FACILITY

1 GENERAL INFORMATION

This Request for Proposal (RFP) package is issued by the Delaware Department of Transportation (DelDOT) in cooperation with the Office of Management and Budget's Division of Facilities Management (DFM), to seek competitive Proposals for the design and construction of the new Delaware Division of Motor Vehicles facility (Project) to be located at DelDOT's Mid-County transit hub located on US 13 south of Route 72 in New Castle County. Proposals will only be considered from those Proposers that have been notified of their inclusion on the Short-List resulting from the previous Request for Qualifications (RFQ) phase of this process.

This project is funded with state and Federal Highway Administration, Congestion Mitigation and Air Quality Improvement program funds. State and federal requirements apply to this Project and resulting contract.

1.1 PROJECT DESCRIPTION

The Project involves designing and constructing a new Department of Motor Vehicles facility and inspection lanes to replace the existing facility along Airport Road in New Castle. The existing Airport Road facility was constructed in 1965 and can no longer accommodate the increased customer volumes generated by population growth within New Castle County. The Project is on approximately 23 acres located on a 64 acre state owned parcel that also houses the Delaware Transit Corporation's Mid-County Maintenance Facility.

Reference Material such as sample artist renderings, workshop display boards, land surveys, Traffic Impact Studies, soil borings, and other information can be found at the following link as they become available:
http://www.dmv.de.gov/newsy/coming_soon/boards_and_images.shtml.

1.2 LEED SILVER CERTIFICATION REQUIRED

The selected Design-Builder is required to receive LEED Silver certification by the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") practices for this Project.

1.3 PROJECT GOALS

- 1.3.1 Maximize the incorporation of design elements and technologies to increase energy efficiency, improve indoor air quality, and reduce potable water usage;
- 1.3.2 Maximize the integration of renewable resources, as geothermal, solar, and wind, into new construction;
- 1.3.3 Manage stormwater on-site through green infrastructure best practices to prevent flooding, reduce water pollution, and promote aquifer recharge;
- 1.3.4 Reduce solid waste generation during construction and integrate recycled content materials;
- 1.3.5 Protect and enhance biodiversity, restore and preserve natural habitats, wetlands and agricultural lands, and withstand and adapt to climate change effects, including sea-level rise;
- 1.3.6 Integrate best land use practices into project design by modeling smart growth approaches to development, including supporting walkable and cyclable communities, prioritizing infill

development close to existing infrastructure, ensuring access to public transit, and reducing urban heat island effects;

- 1.3.7 Meet or exceed all projected Project dates as identified in Section XX;
- 1.3.8 Design and construction of a Project of the highest quality that is both durable and aesthetic;
- 1.3.9 Construction that is safe;
- 1.3.10 A Project that is sensitive to the environment, creates a sense of place, and fits with the adjacent community.

1.4 GOVERNING LAW

This project is authorized by the 146th General Assembly Senate Bill # 130 (Bond Bill), Section 117, enacted July 1, 2011. The laws of the State of Delaware will govern the Request for Qualifications, Request for Proposals, and the resulting Contract.

1.5 CONTRACT TYPE

The Contract will be a fixed price, lump sum, Design-Build Contract.

1.6 RULES OF CONTACT

The following rules of contact shall apply during procurement for this Project. Contact includes face-to-face, telephone, facsimile, Electronic-mail (E-mail), or formal written communications.

The rules are designed to promote a fair, unbiased, legally defensible procurement process. DelDOT's Contract Administration Group is the single source of contact regarding Project information and procurement.

The selection process began with the advertisement of the RFQ, and is anticipated to be completed with the award and execution of the Contract. The following specific rules of contact continue to be in effect:

- 1.6.1 No Proposer or any of its members may communicate with another Proposer or members of another Proposer with regard to the Project except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer's team and performing less than 15% of design or construction for either team, so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Proposers;
- 1.6.2 Contact between the Proposers and DelDOT for questions and responses to questions, shall only be through DelDOT's and Proposer's designated representative;
- 1.6.3 The Proposers shall not contact DelDOT or DFM employees, including department heads, members of the Evaluation Committee, members of the Technical Review Committee, and any official who may evaluate responses regarding the Project except through the process identified in Section XX;
- 1.6.4 The Proposers shall not contact stakeholder staff regarding the Project. Stakeholder staff includes employees of the permitting agencies, DelDOT, the Division of Motor Vehicles, and the Office of Management and Budget's, Division of Facilities Management;
- 1.6.5 Any contact determined to be improper, at the sole discretion of DelDOT, may result in disqualification of the individuals, firms, or Proposer teams involved;

- 1.6.6 Any official contact regarding the Project will be disseminated from DelDOT's Contract Administration Group, in writing or E-mail, and signed by DelDOT's designated representative; and
- 1.6.7 DelDOT will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.

1.7 DELDOT DESIGNATED POINT OF CONTACT

DelDOT will only accept questions submitted via e-mail regarding this RFP, including requests for clarification and requests to correct errors. DelDOT will confirm receipt of all e-mailed questions.

All questions are to be sent to the following e-mail address:

www.DOT-ask@state.de.us

The subject line of the e-mail should display as: **T201259401 DMV Q**

E-mails must include the requestor's name, address, telephone, and facsimile numbers.

- 1.7.1 If you feel you are having trouble sending or receiving communications, or need to discuss an aspect of your Proposal, you may contact the following individual:

Jim Hoagland, Contract Services Administrator

jim.hoagland@state.de.us

302-760-2036 direct

302-739-2254 facsimile

- 1.7.2 Requests for information or clarification made to any other DelDOT or DFM office, consultant, or employee are not permitted.

- 1.7.3 Questions received by the date and time specified in Section XX will be addressed.

- 1.7.4 Responses to questions regarding RFP content or process issues will appear periodically on a document entitled 'Questions and Answers' posted on the Project's solicitation Webpage at: www.bids.delaware.gov.

- 1.7.5 It is the responsibility of the Proposer to check the above Webpage often for Addendums, Questions and Answers, and other information concerning this solicitation.

- 1.7.6 The final Questions and Answers will be posted no later than the end of the day, two working days prior to the Proposal Due dates.

- 1.7.7 All Questions and Answers posted by DelDOT on the Project's solicitation Webpage are included by reference and become part of the contract documents. The selected Design-Builder will receive a hard copy of the final posted Questions and Answers.

1.8 ORGANIZATIONAL CONFLICTS OF INTEREST

- 1.8.1 The following circumstances shall be deemed an Organizational Conflict of Interest disqualifying the affected Proposer(s) and/or individual firms involved:

Participation by any of the following Persons on more than one Proposer's team:

- Principal Participant;
- Lead Engineer;
- Lead Architect;
- Subcontractor performing 15% or more of the design or construction; or
- Participation of an Affiliate of any Person identified in another Proposer's team.

All Proposers affected by the conflict of interest may be disqualified, even if the Person or affiliate causing the conflict is intended to have a different or lesser role than that described.

- 1.8.2 Firms serving solely as environmental coordinator or public involvement/community relations coordinator may be on multiple teams so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Proposers.
- 1.8.3 The key management positions for the purposes of this RFP are the Principal-in-Charge, the Design-Builder's Project Manager, the QC Manager, the Lead Engineer, and the Lead Architect.
- 1.8.4 It is a strong desire that the Proposer's organization, including Principal Participants and key management personnel identified in the SOQ, remain intact for the duration of the procurement process and the subsequent Project duration.
- 1.8.5 A Proposer may propose substitutions for participants after the SOQ submittal in the event of unforeseeable situations. Such changes will require written approval by DelDOT. Approval may be granted or withheld in DelDOT's sole discretion. Requests for changes must be made in writing no later than 30 working days prior to the due date for submittal of the RFP Proposals, or as soon as the Proposer becomes aware of a need for change. Requests for changes in any of the Principal Participants, the Lead Engineer, the Lead Architect, or key personnel will be thoroughly scrutinized.

1.9 INELIGIBLE FIRMS

The Proposer is responsible to disclose all potential organizational conflicts of interest in its SOQ and RFP response. A potential organizational conflict of interest occurs when consultants and/or subcontractors assisted in the preparations of the RFQ or the RFP document. Said firms will not be allowed to participate as a member of a Proposer Team in response to this RFQ/RFP. However, the DelDOT may determine that there is not an organizational conflict of interest for a consultant or subcontractor under the following circumstances:

- 1.9.1 Where the role of the consultant or subcontractor was limited to provision of preliminary design, reports, or similar "low level" documents that will be incorporated into the RFP and did not include assistance in the development of the criteria at either the RFQ or RFP phase; or
- 1.9.2 Where all documents and reports that were delivered by the consultant or subcontractor are made available to all the Proposers through the RFQ or the RFP.
- 1.9.3 The RFP Proposers will be required to provide information concerning potential organizational conflicts of interest in its Proposal. The successful Proposer and its Principal Participants must disclose all relevant facts concerning any past, present, or currently planned interests that may present an organizational conflict of interest. The successful Proposer and its Principal Participants must state how their interests or those of their chief executives, directors, Key Personnel, or any proposed subcontractor may result, or could be viewed as, an organizational conflict of interest.

1.9.4 The following firm cannot participate as a member of a Submitter or Proposer team, as they are assisting the Department with the RFQ, RFP, and related services:

Becker Morgan Group, Inc

1.9.5 Any firm that is rendered ineligible through any state or federal action is ineligible to participate with any Submitter or Proposer.

1.10 PROJECT SCHEDULE

All dates listed in this RFP may be modified at DelDOT's discretion. Any date changes during this RFP selection process will be posted on the Project Webpage, or incorporated in an addendum.

Section XX contains the procurement date and time schedule.

1.11 CURRENT STATUS

The following is a summary of the current status of activities on this Project pertaining to Proposers' areas of interest; this list is not intended to be all-inclusive:

1.11.1 Survey

A topographic survey has been completed and is available on the Reference Material Website.

1.11.2 Master Plan

A Master plan of the project has been developed based on the sample artist renderings shown on the Reference Material Website. An Exploratory Plan based on this Master Plan has been submitted to New Castle County Department of Land Use for approval.

1.11.3 Utilities

Proposers shall be responsible for identifying all aboveground and underground utilities.

1.11.4 Right-Of-Way

The parcel and Right of Way is owned by the state. There is a lessee on a portion of the property whose lease expires December 31, 2012.

1.11.5 Environmental

In accordance with the procedural provisions for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, DelDOT is currently working with federal and state authorities to obtain NEPA environmental approval for this project. It is anticipated NEPA approval and permitting will be in place prior to the RFP submission date.

1.11.6 Geotechnical Information

Some Soil Borings have been taken and results are provided on the Reference Material Web page.

1.11.7 Site Design and Construction

Design and construction of the project's site work will follow DelDOT requirements which can be found under 'Manuals' at the following link: http://www.deldot.gov/information/pubs_forms/.

1.11.8 Building Design and Construction

Building design and construction shall generally follow the Office of Management and Budget, Division of Facilities Management requirements, with the following exceptions;

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- Annual Prequalification or Supplemental Prequalification;
- Selection of Professional Services, Contractors, and Sub Contractors.

The RFP document will prevail in the event of a conflict regarding requirements. The Office of Management and Budget, Division of Facilities Management requirements can be found at the following links: <http://dfm.delaware.gov/profsrv/psae.shtml>
http://dfm.delaware.gov/profsrv/documents/proj_design_review_sched.pdf

1.12 DELDOT AND DFM RESPONSIBILITIES

In the context of the Project, DelDOT and DFM are responsible to provide:

- 1.12.1 Appropriate environmental clearances and permits, except those specifically assigned to the Design-Builder;
- 1.12.2 Overall Project administration;
- 1.12.3 Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of the Short-List, and selection of the Design-Builder;
- 1.12.4 Contract procurement and administration;
- 1.12.5 A Quality Assurance program including; verification of sampling, testing, and the Design-Builder's Quality Control system;
- 1.12.6 Approval and acceptance of Work; and
- 1.12.7 Processing payments for Work.
- 1.12.8 At DelDOT's and DFM's discretion, either may delegate certain activities to its consultants, but retain responsibility for this Contract.

1.13 DESIGN-BUILDER RESPONSIBILITIES

The successful Design-Builder shall be responsible for furnishing all labor, material, plant, equipment, services, expense, and support facilities for the following; this list is not intended to be all-inclusive:

- 1.13.1 Design and construction;
- 1.13.2 Design and construction management;
- 1.13.3 Associated aesthetics and landscaping;
- 1.13.4 Project-related Public Outreach, in coordination with DelDOT's Public Relations Section;
- 1.13.5 Coordination with Project stakeholders and other contractors adjacent to the Work;
- 1.13.6 Environmental investigations, mitigation, and compliance monitoring associated with or resulting from the Design-Builder's actions;
- 1.13.7 Maintenance of traffic, access to property (both temporary and permanent);

- 1.13.8 Project safety and security;
- 1.13.9 The Design-Builder shall be responsible for completing any; surveys, geotechnical investigations, identifying underground utilities, and soil borings beyond that provided in the RFQ or RFP.
- 1.13.10 All harmful and hazardous material remediation created by the design-builder or identified in the RFP Package (design and construction);
- 1.13.11 Drainage and erosion control;
- 1.13.12 Construction waste recycling, disposal, and handling;
- 1.13.13 Required clearances, licenses, construction easements, and permits for the Design-Builder's Work, Work sites, and storage areas on- or off-site;
- 1.13.14 All modifications to existing permits previously obtained by DeIDOT and/or as a result of the Design-Builder's design, actions, or construction scheduling; including expenses and any modifications to the County Master Plan or Exploratory Plan. Proposers may propose any concepts, but are responsible for acquiring plan approval by the County as well as any additional costs, and/or delay.
- 1.13.15 All ancillary Work, such as, access roads, driveways, temporary fencing, relocation of drainage, Work sites, and temporary Work;
- 1.13.16 Location, acquisition, permits, and transportation for Material;
- 1.13.17 Coordination of the relocation of any utilities and municipal drainage facilities and the design and relocation of any utilities as designated in the RFP Package;
- 1.13.18 Site clearing and restoration;
- 1.13.19 Building commissioning;
- 1.13.20 Maintenance of the Project during the Contract period; and
- 1.13.21 All other activities, functions, or elements necessary for the successful completion and subsequent approval of the Project by DeIDOT and/or DFM.

1.14 INSURANCE, BONDING, AND LICENSING

- 1.14.1 Insurance - The selected Design-Builder shall provide specified insurance, including, but not necessarily limited to, professional liability insurance covering design as well as commercial general liability, property (including builder's risk), umbrella/excess liability, environmental liability, public liability, automobile liability, owner's protective liability, employer's liability, and workers' compensation. The Design-Builder may use multiple insurance providers to provide the various types of insurance; however, the Design-Builder shall use one single insurance provider for each type of insurance (i.e., the Design-Builder may have one insurance provider for professional liability and a different insurance provider for commercial general liability, but the Design-Builder may not have two different insurance providers for professional liability insurance). The types of insurance, insurance limits, and named insured will be commensurate with this Project and its level of risk.

1.14.2 Bonding - Proposers shall provide Proposal bonds or other forms of security acceptable to DelDOT in the amount shown in Table 1.13. The Design-Builder will be required to provide performance and payment bonds and/or other security acceptable to DelDOT, each in the amount of 100% of the Contract amount.

Proposer's Bond/Security	Design-Builder's Payment Bond/Security	Design-Builder's Performance Bond/Security
Ten Percent of Proposal Amount	100% of Contract Amount	100% of Contract Amount

1.14.3 Licensing - One or more of the individuals or firms of the Single Legal Entity with which DelDOT will contract for services must be licensed or certified, as appropriate, with the following; Delaware Association of Professional Engineers, the Division of Professional Regulation Board of Professional Land Surveyors, Delaware Board of Architects. The Single Legal Entity must have a valid Delaware Business License prior to the award of any contract.

1.15 COMMITMENTS

The selected Design-Builder may be required to provide a number of other commitments including the following, where applicable:

1.15.1 Statements of joint and several liability by Principal Participants;

1.15.2 Parent company securities;

1.15.3 Warranties.

1.16 COSTS

Short-Listed Proposers are solely responsible for all costs and expenses of any nature associated with responding to this RFP.

1.17 PAYMENTS

The Contract will provide for monthly or milestone payments to the selected Design-Builder for work completed. The Design-Builder should be familiar with Title 17 Chapter 8 of the Delaware Code regarding their required payments to subcontractors for labor and material (<http://www.delcode.delaware.gov>).

1.18 ADDENDA

If necessary, the Department will post Addenda to modify conditions or requirements of this RFP to the Project's solicitation Webpage at www.bids.delaware.gov not later than the date identified in Section XX.

It is the responsibility of the Proposers to check the Webpage often for addendums and other information concerning this solicitation.

1.19 PROPOSAL STIPEND

The Department will not provide stipends for this project.

1.20 REQUEST FOR PROPOSAL (RFP) DOCUMENTS

The Request for Proposal Package and other information is provided by DeIDOT to entities that have been notified of their inclusion on the Short-List from the person designated as the DeIDOT point of contact in Section XX. DeIDOT will provide the RFP Package on one set of Compact Discs – or via other electronic media, such as e-mail or Website postings.

Proposers are hereby notified that all administrative requirements, notices, and warnings contained in the RFQ remain in effect throughout this RFP process unless specifically addressed otherwise. The documents issued as part of this RFP Package are identified below.

- 1.20.1 RFP Instructions to Proposers;
- Defines the procurement; proposal; selection; and award processes.
- 1.20.2 RFP Instructions to Proposers APPENDIX A - Scope of Work;
- Defines the required finished product and requirements for design and construction.
- 1.20.3 RFP Instructions to Proposers APPENDIX B – Proposal Instructions;
- Technical and Lump Sum Price Proposal Instructions.
- 1.20.4 RFP Instructions to Proposers APPENDIX C – Forms, Abbreviations;
- Required Forms and referenced Abbreviations.
- 1.20.5 - Any additional documents issued by Addenda to the RFP Package.

2 PROCUREMENT PROCESS

2.1 METHOD OF PROCUREMENT

The Contract will be procured through a “Best Value” Design-Build (DB) Contract per the Delaware Code. The intent is to award the Contract to the Proposer providing the Proposal that best meets the goals and selection criteria of this Project. This RFP process is the second phase of the selection. The previous Request for Qualifications (RFQ) phase required Statements of Qualifications be submitted in response to the RFQ that included a response to each pass/fail and technical evaluation factor. The selected Short-Listed Submitters to the RFQ have been invited to participate in this RFP selection process.

The RFP process results in selection of the Design-Builder from Proposers on the RFQ Short-List that submit Proposals in response to the RFP Package. The Design-Builder will be selected based on pass/fail evaluation factors, evaluation of Technical Proposals, and Price Proposals that together result in the highest Total Score.

2.2 ERRORS

If the Proposer identifies any mistake, error, or ambiguity at any time during the Proposal process in any of the RFP documents, the Proposer shall have a duty to notify DeIDOT of the error and any recommended correction in writing in accordance with Section XX.

2.3 IMPROPER CONDUCT

If the Proposer, or Person(s) representing the Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to DeIDOT or DFM, including its agents or Person(s) representing them at any time during this procurement process, DeIDOT shall immediately disqualify the Proposer; the Proposer shall forfeit its Proposal Security; and DeIDOT may recommend debarment to state and/or federal agencies.

2.4 CHANGES TO THE PROPOSER'S ORGANIZATION

If the Proposer wishes to change the organization represented in its SOQ by adding, deleting, or substituting a Principal Participant, Lead Architect, Lead engineer, or if the role of a Principal Participant changes from the role identified in the Proposer's SOQ, the Proposer must submit a request to change its organization not later than 30 working days prior to the Proposal due date identified in Section XX. If a request is made to add to the organization, the Proposer shall submit with its request that information specified for the addition in the RFQ, including legal and financial data as well as the information for quality evaluation. If a Principal Participant, Lead Architect, or Lead engineer is being deleted, the Proposer shall submit such information as may be required by DeIDOT to demonstrate that the changed team continues to meet the RFQ criteria (pass/fail and technical). If a request is made to change key personnel, the Proposer shall submit with its request that information specified for that key personnel in the RFQ, including a resume.

2.5 CLARIFICATIONS

The Proposer shall provide accurate and complete information. If information is not complete, DeIDOT shall either declare the Proposal non-responsive or notify the Proposer that it will not be allowed to participate further in the procurement of this Project until all information required is provided. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, additional, or missing documents. If a response is not provided prior to the deadline for submission of the response, the Proposal will be declared non-responsive.

DeIDOT may waive technical irregularities of the Proposal that do not alter the quality or quantity of the information provided.

DeIDOT may, at its sole discretion, request Clarifications and/or corrected, additional, or missing information from Proposers during the Proposal evaluation and selection process.

All requests and responses shall be in writing. Responses shall be limited to answering the specific information requested.

In the event a material error is discovered in the RFP Package during the Proposal evaluation process, DeIDOT will issue an Addendum to all Proposers that have submitted Proposals requesting revised Proposals based upon the corrected RFP Package.

2.6 MEETINGS WITH PROPOSERS

DeIDOT will hold a joint informational meeting with the selected Proposers at the issuance of the RFP as scheduled in Section XX. This meeting is mandatory.

DeIDOT may hold meetings with individual Proposers at any time prior to the Proposal due date. If individual meetings are offered to any Proposer, they will be offered to all Proposers.

2.7 ATTENDEES

When a meeting is held, the Proposer is expected to attend with appropriate members of its proposed key personnel as requested by DelDOT.

2.8 QUESTIONS AND RESPONSES

Proposer questions asked and not answered at joint informational meetings will be recorded and the question and response will be provided in writing to all Proposers.

Proposer questions asked and not answered at individual meetings will be recorded and the question and response will be provided in writing only to the Proposer asking the question.

2.9 PUBLIC OPENING OF PRICE PROPOSALS

Technical Proposals shall be opened on the date listed in Section 1.5.1. After review and scoring of the Technical Proposal, the Price Proposals will be opened publicly at 2:00 P.M. local time at DelDOT's Administration Building located at 800 Bay Road, Dover Delaware. Each Price Proposal will be assigned a point value (or score) in accordance with ITP Section 6.1.3. The apparent successful Proposer will be determined as the Proposer with the highest Total Score.

2.10 EXAMINATION OF THE SCOPE OF SERVICES PACKAGE AND WORK SITE

The Proposer shall carefully examine the Site of the proposed Work, and the complete RFP Package, including Reference Documents, before submitting a Proposal.

DelDOT furnished information does not relieve the Proposer's responsibility for further verifications and inquiries as the Proposer may deem necessary to properly address Geotechnical issues, or permanent and temporary Utility appurtenances in the preparation of the Proposal.

The submission of a Proposal shall carry with it the presumption that the Proposer has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract. The Proposer must so certify in the Proposal Certification in order for the Proposal to be valid.

2.11 ADDENDA AND RESPONSES TO QUESTIONS

2.11.1 Addenda

DelDOT reserves the right to issue Addenda at any time during the period of the procurement up to 2 calendar days prior to the Final Technical Proposal submittal date, by certified delivery, facsimile transmission or by other verifiable electronic means. DelDOT will provide Addenda only to the Short-Listed Proposers.

2.11.2 Responses to Questions

Each Proposer is responsible for reviewing the RFP Package prior to the dates specified for submission of questions in Section XX and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand. Any such request must be submitted in accordance with Section XX. DelDOT will provide written responses to questions received from Proposers as specified above. Responses to Technical Concept questions will not be considered part of the Contract but may be relevant in interpreting the Contract.

2.11.3 Technical Concept Questions and Responses

The Technical Concepts submitted by the Proposer and all subsequent communications regarding that Technical Concept will be considered confidential in accordance with Section XX. However, if an accepted Technical Concept changes the scope of the requirements of the final RFP Package, the change in the requirements will be communicated to all Proposers. The Technical Concept itself will not be shared with other Proposers.

2.12 DELDOT RIGHTS

DelDOT may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP Package. DelDOT reserves the right, in its sole and absolute discretion, to do any of the following:

- Reject any or all Proposals;
- Issue a new RFP Package;
- Cancel, modify, or withdraw the entire RFP Package;
- Issue addenda, supplements, and modifications to this RFP Package;
- Modify the RFP Package process (with appropriate notice to Proposers);
- Appoint a Technical Review Committee and evaluation teams to review Proposals and seek the assistance of outside technical experts in Proposal evaluation;
- Approve or disapprove the use of subcontractors and/or substitutions and/or changes in SOQs;
- Revise and modify, at any time before the Proposal due date, the factors it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, DelDOT shall circulate an addendum to all Proposers on the Short-List setting forth the changes to the evaluation criteria or methodology. DelDOT may extend the Proposal due date if such changes are deemed by DelDOT, in its sole discretion, to be material and substantive;
- Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- Waive weaknesses, informalities, and minor technicalities in Proposals;
- Disqualify any Proposer that changes its organization (as represented in its SOQ) without DelDOT written Approval;
- Hold the Proposals under consideration for a maximum of one hundred twenty (120) calendar days after the Proposal due date until the final Award is made; and/or
- Refuse to issue a RFP Package to a prospective Proposer, refuse to consider a Proposal once submitted, and/or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
 - Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
 - Default on the part of a Principal Participant or Designer under previous contracts;
 - Unsatisfactory performance of previous work by the Proposer, a Principal Participant, and/or a Designer;

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- Issuance of a notice of debarment or suspension under Department or federal regulations to the Proposer, a Principal Participant, and/or a Designer;
- Submittal by the Proposer of more than one Proposal for the same Work under the Proposer's own name or under a different name;
- Evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designers) in the preparation of an SOQ or RFP proposal, or bid for any DeIDOT project; and/or
- Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible, which in the judgment of the Department might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

3 THE PROPOSAL

3.1 PROPOSAL SCHEDULE

The following is the current schedule (subject to change via addendum):

Activity	Due Date
Issue Request For Proposals by	September 07, 2012
Concept Plan Submittal Due	September 28, 2012
Last Day for Technical Questions	October 15, 2012
Issue Final RFP/Addendum by	October 22, 2012
Final Technical Proposal Due	November 13, 2012 4:00 P.M.
Final Lump Sum Cost Proposal Due	November 27, 2012 4:00 P.M.
Notice to Apparent Successful Proposer by	December 07, 2012
Protest Deadline of RFP	December 14, 2012
Submittal of DBE Subcontracts	December 17, 2012
Award by	December 21, 2012
Final Execution	January 14, 2013
Issue Notice-to-Proceed	February 18, 2013
Work begins on or about	March 04, 2013
Project Complete and Accepted by	May 01, 2014

3.2 COMPLIANT PROPOSAL

The Proposer shall submit a Proposal that provides all the information required by this RFP Package.

Each Proposal must be submitted in the described format. The Proposer shall sign each copy of the Proposal submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

- If the Proposal is submitted on a form other than that furnished or specified; if it is not properly signed; if the Proposal Certification is altered except as contemplated hereby; or if any part thereof is deleted from the Proposal package;
- If the Proposal or any portion thereof is illegible or contains any omission, alterations, or items not called for in the RFP Package or contains unauthorized additions, conditional or alternate Proposals, or other irregularities of any kind, and if DeIDOT determines that such irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
- If the Proposer adds any provisions reserving the right to accept or reject an Award or to enter into a Contract following award;
- If the Proposer attempts to limit or modify the required form of any required surety bond, if the Proposal Security is not provided, and/or if requested information by the Department is not provided; and
- If for any other reason DeIDOT determines the Proposal to be non-compliant.

3.3 CONFIDENTIALITY

DeIDOT will maintain a confidential process for the duration of this procurement and will require each Proposer to furnish sufficient information that shall indicate the financial and other capacities of the Proposer to perform the proposed Work. This information shall be subject to audit and shall be submitted in a format clearly marked "CONFIDENTIAL" and the information contained therein shall be treated as Confidential and shall not be considered a "public record" as defined in 29 Del.C. Section 10002(g)(2).

Further, if the Proposer submits information in its Proposal that it wishes to protect from disclosure, the Proposer must do the following:

- Clearly mark all proprietary or trade secret information as such in its Proposal at the time it is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identifying each section and page which has been so marked;
- Include a statement with its Proposal justifying the Submitter's determination that certain records are proprietary or trade secret information according to Delaware's Freedom of Information Act for each record so defined; (<http://regulations.delaware.gov/AdminCode/title2/2000/2100/2101.shtml>)
- Submit one additional hardcopy, and a copy on electronic CD, of the Proposal that has all the proprietary or trade secret information redacted (and so marked) from the Proposal and label such copy of the Proposal "Public Copy", and;
- Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless DeIDOT and the State of Delaware and its agents and employees from any judgments awarded against the Department and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of the State.

All records pertaining to this procurement will become public information after execution of the Contract, unless such records are proprietary or trade secret information. Any records marked as proprietary or trade secret information by a Proposer in its SOQ or Proposal will be returned to the unsuccessful Proposers after the execution of the Contract with the Design-Builder. The records marked proprietary or trade secret information by the successful Proposer in its SOQ and Proposal will remain confidential and will be returned to the Design-Builder upon completion and final acceptance of its Work under the Contract.

3.4 SUBMISSION OF PROPOSALS

The Proposals shall be submitted in accordance with the instructions in APPENDIX B and the following requirements:

- The Technical Proposal shall be sealed and clearly marked as "Technical Proposal – Mid-County DMV".
- The Technical Proposal shall be submitted as specified in APPENDIX B - Proposal Instructions.
- The Lump Sum Price Proposal shall be sealed and clearly marked as "Price Proposal - Mid-County DMV".
- The Lump Sum Price Proposal shall be submitted as specified in APPENDIX B - Proposal Instructions.
- The Proposer shall provide as part of the supporting information the completed Proposal Certification Form.

The completed Technical, and Lump Sum Price Proposals shall be delivered to the address specified below, no later than xxxxx p.m. (Local Time), on the date specified in Section 3.1:

Delaware Department of Transportation
Administration Building
Attention: Contract Administration
800 Bay Road, Dover, DE 19901

Each Proposer shall be responsible for obtaining written proof of delivery showing date, time, and location of delivery. **It is the Proposer's sole responsibility to ensure delivery at the time and place specified.**

3.5 MODIFICATIONS TO PROPOSAL

A Proposer may modify its Proposal in writing to the person specified in Section XX prior to the time on the Proposal due date identified in Section XX. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms as described in Appendices A and B of this ITP. Line item changes will not be accepted. The Department will not consider telegraphic, facsimile, or other electronically transmitted modifications as modifications.

3.6 WITHDRAWAL OF PROPOSAL

A Proposer may withdraw its Proposal only by a written and signed request that is received by the person specified in Section XX prior to the Proposal due date identified in Section 1.5.1 and time specified in Section 1.5.2. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the time designated in Section XX on the Proposal due date identified in Section 1.5.1. The Proposer agrees that its Proposal will remain valid for xxx calendar days following the Proposal due date identified in Section 1.5.1. In the event a Proposer withdraws all or any part of its Proposal within xxxx calendar days following the Proposal due date identified in Section XX without written consent of the Department, the Proposer shall forfeit its Proposal Security.

3.7 LATE PROPOSALS

DelDOT will not consider any late Proposals. Proposals received after the time for submittal of Proposals, or delivered to the wrong location, will be returned to the Proposer.

3.8 LEGAL AUTHORITY

The Proposal shall include an opinion of counsel for the purpose of providing assurance to DelDOT regarding the formation of the Proposer's entity and, if applicable, its JV members and partners and its ability to execute and deliver the Contract if awarded. The opinion may be provided by in-house counsel or by an outside law firm.

3.9 PROPOSAL SECURITY

A Proposal Security must accompany each Lump Sum Price Proposal that is submitted for the Project. The Proposal Security must be presented in the form of a check (certified or treasurers), a valid money order, or a bond.

3.9.1 Return of Proposal Security

Proposal Security presented in the form of a check (certified or treasurers) or valid money order, except those of the apparent successful Proposer and the apparent "next" successful Proposer, will be returned immediately following the announcement of the award. The retained security of the Proposer that is not awarded the Contract, if presented in the form of a check, will be returned within ten working days following the execution of the Contract. The retained security of the successful Proposer, if presented in the form of a check, will be returned after satisfactory payment and performance bonds have been furnished and the Contract has been executed. DelDOT WILL cash any check or valid money order provided as a security, and will return funds to the Proposer in the form of a check or electronic fund transfer instead of returning the original check.

Security presented in the form of a bond will be returned only upon the request of the unsuccessful Proposers after execution of the Contract.

3.9.2 Surety Requirements

Proposal Security shall be issued by a Surety listed on the United States (US) Department of Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register or by an insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide. No surety or insurance company shall write a Proposal Security which is in excess of the amount indicated as approved for it by the US Department of the Treasury Financial Management Service list of approved bonding companies. In addition, any insurance

company not on the US Department of Treasury Financial Management Service list of approved bonding companies shall write Proposal Securities exceeding ten percent of the policyholder's surplus as shown in the A.M. Best's Key Rating Guide. In addition, any Proposal Security written for the Project shall be written by a surety or insurance company that is currently licensed to do business in the State of Delaware.

3.10 DBE PARTICIPATION GOAL

A DBE participation goal of **Seven percent (7%)** has been established for this Project. The Design-Builder is required to make good faith efforts to involve Department Certified DBE professional service and construction firms in the prosecution of the Work. The Proposers shall describe the DBE commitments that have been made as of the Proposal Due Date and shall describe the efforts taken by the Proposer to ensure that the dollars committed to DBEs on the Project are representative of the available design and construction DBEs.

3.11 SIGNATURES REQUIRED

The Proposal Certification and the Lump Sum Price Proposal shall be signed by all parties or Person(s) constituting the Proposer (i.e., by authorized representatives of all JV members or general partners, if the Proposer is a JV or partnership). If any signatures are provided pursuant to a power of attorney, the original or a certified copy of the power of attorney shall be provided, together with evidence of authorization.

3.12 SUBMITTAL COPIES

- 3.12.1 Executive Summary - Eight copies.
- 3.12.2 Proposal Security - One original with three certified copies.
- 3.12.3 Technical Proposal - One original and seven certified copies.
- 3.12.4 Lump Sum Price Proposal - One original and three certified copies.

3.13 RESOURCE AVAILABILITY

DelDOT is concerned that the resources in terms of people, equipment, material, and supplies planned to be used on the Contract (if awarded to the Proposer) be available and not also be committed to other projects. The Proposer shall affirmatively state that, if the Proposer is awarded the Contract, the resources shown or indicated in the Proposal will be available, to the extent within Proposer's control. The Proposer shall affirmatively commit to undertake all reasonable efforts to provide all the key personnel identified in its SOQ and Proposal on a full time basis for the periods necessary to fulfill their responsibilities.

3.14 RIGHTS RESERVED

Each Proposer understands and agrees, by submitting its Proposal, that DelDOT reserves the right to reject any and all Proposals, or part of any Proposal, and that the Proposal may not be withdrawn for a period of 120 calendar days subsequent to the Proposal due date without written consent of DelDOT.

Each Proposer further understands and agrees that if it should withdraw any part or all of its Proposal within 120 calendar days after the Proposal due date without the consent of DelDOT; should refuse or be unable to enter into the Contract; should refuse or be unable to furnish adequate and acceptable performance and payment bonds; should refuse or be unable to furnish adequate and acceptable insurance, as provided herein;

or should refuse or be unable to furnish the Proposal Information or all Pricing Information specified, it shall forfeit its Proposal Security.

The Proposer understands that any material alteration of documents or any of the material contained on the Proposal Security, other than that requested, will render the Proposal non-responsive and non-compliant.

This RFP Package does not commit DeIDOT to enter into a Contract, nor does it obligate DeIDOT to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of a Contract. By submitting a Proposal, Proposer disclaims any right to be paid for such costs.

4 PROPOSAL EVALUATIONS

4.1 INTERVIEWS & PRESENTATIONS

The selection committee will meet with Proposers and receive presentations and conduct interviews regarding their technical concepts. When presentations and interviews are conducted, the Proposer will be expected to attend with appropriate members of its proposed Key Personnel.

4.2 TECHNICAL CONCEPT REVIEW

The Proposer shall present and submit their initial Technical Concepts regarding engineering solutions, construction solutions, and design and construction management on the date specified in Section 3.1. Up to three (3) Technical Concepts may initially be presented for consideration. Questions, or clarifications regarding the procurement process and procedures, or related to contractual language not specific to a proposed engineering solution, construction solution, or design and/or construction management shall be submitted through the standard question and response process.

The Proposer may submit questions related to Technical Concepts and shall clearly identify such submissions as Technical Concepts. If the Proposer does not clearly so designate the questions as related to Technical Concepts, such submissions shall not be treated as Technical Concepts by DeIDOT.

DeIDOT shall review each Technical Concept as presented within one week of the submittal due date. If a Technical Concept is summarily accepted or rejected, DeIDOT's comments will inform the Proposer that its Technical Concept appears to be generally acceptable and within the requirements of the final RFP Package or DeIDOT will identify areas in which the approach appears to be inconsistent with the RFP Package. If DeIDOT needs more information to determine whether or not the Technical Concept will be accepted or rejected, DeIDOT will request the information verbally at the time of the presentation or submit written questions to the Proposer following the presentation.

If a Technical Concept is rejected and the Proposer feels that the rejection was an incorrect conclusion by DeIDOT, it may re-submit the Technical concept for one additional review to the Department representative at the E-mail address identified in [Section 3.3](#). The Proposer shall re-submit such Technical Concept within one week and the Proposer shall clearly identify such submission as a Technical Concept submitted for an additional review. Any Technical Concept submitted for more than one additional review will not be considered.

If a Technical Concept is rejected and the Proposer would like to submit another concept for acceptance, it may submit the Technical Concept within one week for review to the DeIDOT representative at the E-mail address identified in [Section 3.3](#). The Proposer shall clearly identify such submission as a Replacement Technical Concept submitted for review. Proposers may submit no more than two Replacement Technical

Concepts for review.

DelDOT will strive to return its acceptance, rejection, or additional questions pertaining to any specific Technical Concept within one week after receipt of that Technical Concept.

The Proposer may submit additional questions related to Technical Concepts to DelDOT until one week prior to the date identified in Section 2.9 as the date for Final Technical Proposal submission. All questions related to the Technical Concepts and identified as such shall be submitted in writing to the DelDOT representative and at the E-mail address identified in Section 3.3.

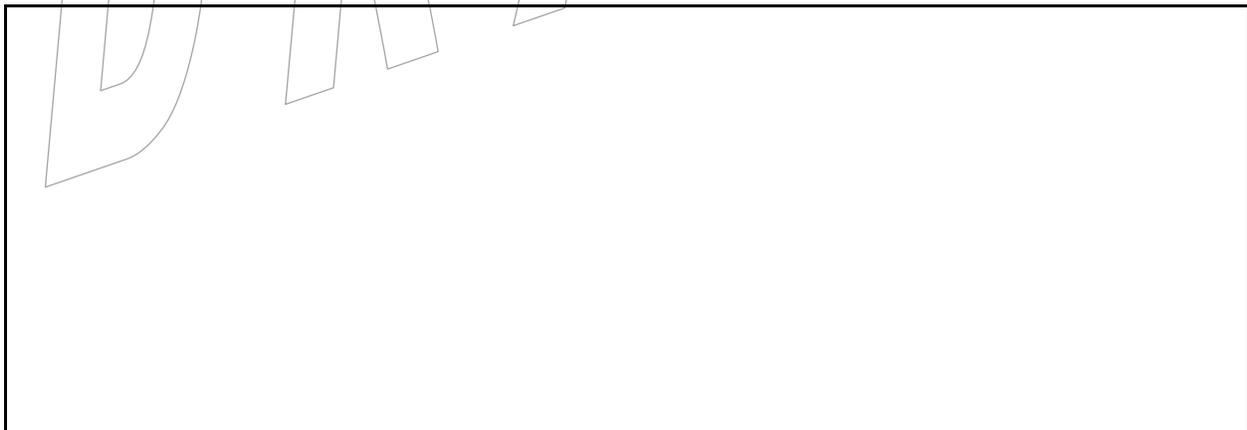
The Technical Concepts submitted by the Proposer and all subsequent communications regarding that Technical Concept will be considered confidential in accordance with Section 2.6. However, if an accepted Technical Concept changes the scope of the requirements of the final RFP Package, the change in the requirements will be communicated to all Proposers. The Technical Concept itself will not be shared with other Proposers.

For a Technical Concept to be considered for review by the Department, certain minimum requirements must be met. The minimum requirements shall include details of building type, size, and location; primary types of materials; general traffic configurations; and proposed Project Limits as defined in Part 1, of the Contract Documents. Additional sketches or renderings may also be provided. For each Technical Concept submitted, a total of eight (8) separately bound sets of all applicable details, sketches, and renderings are to be provided on 8 ½ " x 11" or 11" x 17" bound sheets.

4.2 TECHNICAL PROPOSAL REVIEW

The Proposals shall be submitted in two separate parts, the written Technical Proposal and the Lump Sum Price Proposal. The information contained in the Technical Proposal will not be disclosed to the public or any other Proposer until after Contract execution.

The written Technical Proposal will be evaluated on the pass/fail and technical factors. The Technical Review Committee will determine the pass/fail status and final total technical score of each Proposal before the public opening of the Lump Sum Price Proposals. A sample combined Technical and Price Proposal score sheet is provided below.



4.3 EVALUATION FACTORS AND CRITERIA

4.3.1 Pass/Fail Evaluation Factors

4.3.2 Legal

4.3.3 Financial

4.3.4 Responsiveness to Instructions to Proposers Requirements

4.3.5 Minimum Technical Score

4.3.6 Minimum Project Completion, Milestone, and Schedule Requirements

4.3.7 Technical Proposal Evaluation Factors (100 Points)

4.4 PRICE PROPOSAL EVALUATION

4.4.1 Price Proposal Score

4.4.2 Currency

The Pricing Information shall be priced in United States dollars (US\$) currency only.

4.5 REQUIRED FORMS

Failure to provide all the information and all completed forms in the format specified may result in rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms shall be filled in as noted and no change shall be made in the phraseology of the RFP Package or in the items mentioned therein.

4.6 LANGUAGE IN PROPOSAL

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

4.7 PROPERTY OF THE DEPARTMENT

All documents submitted by the Proposer in response to this RFP Package will become the property of DelDOT except for the Escrow Proposal Documents and any documents that have been properly identified as containing confidential, proprietary, or trade secret information.

4.8 SELECTION DETERMINATION

The selection committee will rate the Proposals for pass/fail and technical capability. In determining the successful Proposer, the committee will evaluate the technical evaluation factors and sub factors and assign an overall technical rating and score for each Proposer using the guidelines in Section xxxx.

The selection committee will also determine whether the Lump Sum Price Proposals are responsive. The Lump Sum Price Proposal will then be scored on the criteria in Section xxxx. The value from the Price Proposal Score will be combined with the Final Technical Score to equal the Total Score as specified in Section xxxx.

The committee will not recommend award to any Proposer that receives a fail rating on any pass/fail evaluation factor, or to any Proposer that has submitted a Proposal deemed non-responsive in any category (Price Proposal or Technical Proposal).

DeIDOT will award the Contract based on the highest Total Evaluation Score. The time frame to complete the Project and the importance of quality in the completed Project require that the maximum possible flexibility be afforded the Design-Builder to plan, design, construct, and control the Project. The Department's procedures for the evaluation and selection of Proposals are structured to provide a comprehensive evaluation of quality that when combined with price will result in the selection of the appropriate Design-Builder.

5 CONTRACT AWARD AND EXECUTION

5.1 PRE-AWARD MEETINGS

DeIDOT may meet with the apparent successful Proposer prior to award at any time after selection, and may require the awarded Proposer to meet prior to Contract Execution.

5.2 CONTRACT AWARD

Unless all Proposals are rejected or this procurement is cancelled, the Contract shall be awarded to the responsive Proposer offering a fully compliant Proposal that, after evaluation of the pass/fail and technical evaluation factors, results in the highest Total Evaluation Score.

Within 15 working days after DeIDOT notifies the selected Proposer that DeIDOT will award the Contract to the Proposer, the selected Proposer shall deliver to DeIDOT one original and three certified copies of the following:

- A)
- B)
- C) Required Payment and Performance Bonds;
- D) Insurance certificates;
- E) Full details of who will sign the Contract, if executed, and evidence as to the authority, power, and capacity of said individuals to bind the Proposer to a Contract;
- F) Updated opinion of counsel with regard to Contract; and

Failure to comply with the above may result in cancellation of the notice of award and forfeiture of the Proposal Security.

Refer to Contract Documents Part 1 Appendix A - Agreement for a sample of the Agreement that the selected Proposer will be required to sign. The selected Proposer shall not make any additions to, deletions from or changes in the required Agreement, but shall submit a letter providing the information necessary to complete the appropriate blanks in the form. After receiving the completed Contract from DeIDOT, the selected Proposer shall sign the form and attach exhibits.

At the time of the return of the executed Contract, the successful Proposer shall furnish a Payment Bond and a Performance Bond on the form provided by DeIDOT. The surety must be acceptable to the Department.

Proposers shall be licensed as required by applicable federal and state laws, rules, and regulations including, but not limited to, the Delaware Code. Evidence of proper licensing shall be required to be provided prior to execution of the Contract.

5.3 EXECUTION OF CONTRACT

The successful Proposer will be required to execute four originals of the Contract and to comply in all respects with the statutory provisions relating to the Contract within 20 calendar days of the date of the delivery of the Contract Documents by DelDOT. In case of failure or refusal on the part of the successful Proposer to deliver the duly executed Contract to the Department within the 20 calendar day period herein mentioned, the amount of the Proposal Security may be forfeited and paid to the Department.

If the Contract is not executed by DelDOT within 20 calendar days following receipt from the successful Proposer of the signed Contract and appropriate and satisfactory payment and performance bonds, the Proposer shall have the right to withdraw the Proposal without penalty.

If the Department and the apparent successful Proposer fail to execute the Contract within the time periods identified above, DelDOT reserves the right to make award of the Contract to the "next" apparent successful Proposer, or the Work may be re-advertised and completed under a different contract or otherwise, as DelDOT may decide.

The Contract will be effective as of the date of final execution by DelDOT.

5.4 LEGAL & LICENSING

5.4.1 Concurrently with execution of the Contract, an updated opinion of counsel shall be provided stating that the Contract has been validly executed and delivered.

6 PROTESTS

This Section sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend, and hold the Department and its directors, officers, officials, employees, agents, representatives, and consultants harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer's actions. The submission of a Proposal by a Proposer shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

6.1 WRITTEN PROTESTS ONLY

All protests must be in writing. Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered.

The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but it shall be decided on the basis of the written submissions of the protestor by the Chief Engineer or his/her designee whose decision shall be final and conclusive.

6.2 PROTEST PROCEDURE

A Proposer may protest the results of the above-described evaluation process by filing a written notice of

protest by hand delivery or courier to the DelDOT Chief Engineer with a copy to the Contract Services Administrator. The protesting Proposer shall concurrently file a copy of its notice of protest with the other Proposers. The notice of protest shall specifically state the grounds of the protest.

- A)
- B)
- C)
- D)

6.3 PROTEST CONTENTS

All Protests shall include the following information:

- A) The name and address of the Proposer;
- B) The Contract number;
- C) A detailed statement of the nature of the protest and the grounds on which the protest is made; and
- D) All factual and legal documentation in sufficient detail to establish the merits of the protest.

Evidentiary statements must be provided under penalty of perjury.

The protestor must demonstrate or establish a clear violation of a specific law or regulation. The Protest Official will not be obligated to postpone the Contract Award date or any other step in the execution process in order to allow a protestor an opportunity to correct a deficient protest or appeal unless otherwise required by law or regulation.

If the protest is denied, the protestor shall be liable for the Department's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs.

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