

**STATE OF DELAWARE**



**DEPARTMENT OF TRANSPORTATION**

**DESIGN-BUILD PROJECT**

for

**Claymont Regional Transportation Center**

State Contract # T201651201

FTA FY 2016 TIGER Grant No. DTOS59-16-RA-TIGER8

CFDA No. 20.933

New Castle County

Advertisement Date: April 6, 2018

**REQUEST FOR QUALIFICATIONS**

**AN INFORMATIONAL PRE-SUBMISSION MEETING WILL BE HELD AT THE DeIDOT  
ADMINISTRATION BUILDING, 800 BAY ROAD, DOVER, DELAWARE 19901 AT  
3:00 PM on April 17, 2018**

Responses must be received by the Delaware Department of Transportation, Administration Building,  
800 Bay Road, Dover, Delaware 19901 prior to **2:00 P.M. local time, THURSDAY MAY 17, 2018.**



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## 1 INTRODUCTION AND GENERAL INFORMATION

The Delaware Department of Transportation (DelDOT) is soliciting Statements of Qualifications (SOQ) from entities (Submitters) interested in providing design-build services for the Claymont Regional Transportation Center (CRTC) Project located off of Philadelphia Pike and on Amtrak’s Northeast Corridor (NEC) in New Castle County, Delaware.

The selection of the successful Design-Builder for this project encompasses two phases: Request for Qualifications (RFQ) and Request for Proposals (RFP) as described in [Sections 2.1 and 2.2](#). This solicitation is for phase one, Request for Qualifications. Any firm that has not been short listed pursuant to this Request for Qualifications will not be permitted to provide a submission in response to the Request for Proposals.

This project is funded with State and Federal Transit Administration funds. State and federal requirements apply to this Project and resulting contract.

### 1.1 PROJECT DESCRIPTION

The CRTC will replace an existing obsolescent station, parts of which date from the early 1900s. Claymont is the northernmost of Delaware’s four train stations, served by Southeastern Pennsylvania Transportation Authority (SEPTA) trains that link Delaware and the Philadelphia metropolitan region. The station's deficiencies include poor vehicular and pedestrian access; parking area divided by Interstate 495, with many patrons having to use a long pedestrian bridge over the highway; a cramped tunnel under the Amtrak Northeast Corridor, subject to dampness and flooding; and marginal accessibility to trains from low-level platforms on a canted, curved section of track. Despite these shortcomings, the station has attracted a steady ridership of nearly 1200 weekday and about 100 weekend passengers.

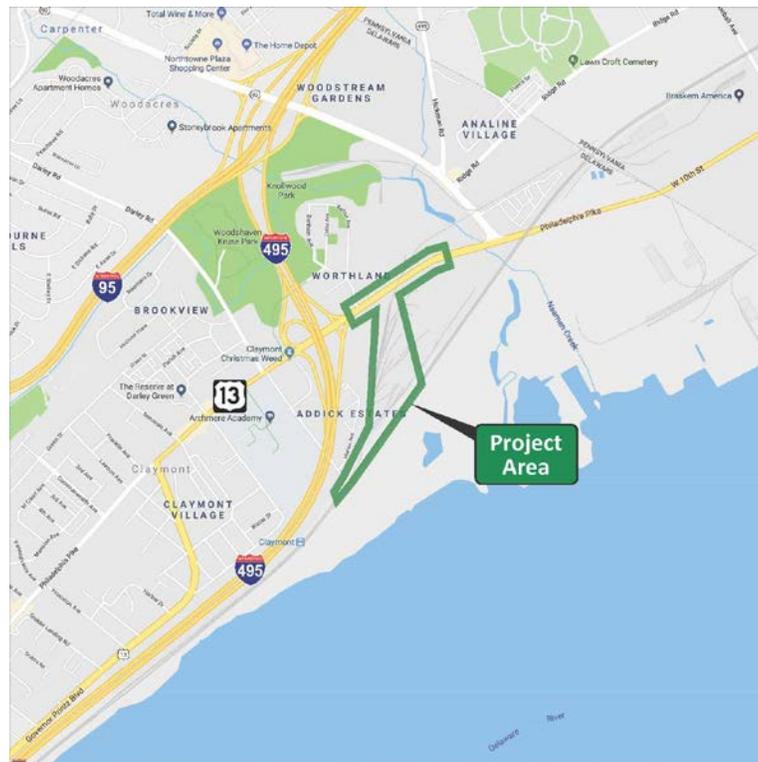


Figure 1. Project Location

A new, state-of-the-art station will attract even more ridership, all the more so since it will be integrated with the redevelopment of a 420-acre former industrial site. What was a century-old steel plant is being transformed into a modern mixed-use campus featuring office, commercial, and light industrial uses. It will have convenient access to the regional highway, public transportation, bicycle, and pedestrian networks. It will be both a commuter station and a destination for workers from across the region.



Redevelopments of the train station and the surrounding area have long been goals of the Claymont community. This is incorporated in WILMAPCO's North Claymont Area Master Plan. A station improvement plan begun in 2005 endorsed relocating the station one-half mile north; creating a facility in full compliance with the Americans with Disabilities Act (ADA); improving car, bus, pedestrian, and bike facilities; and providing a safe and aesthetically pleasing station for users and the community.

## **1.2 INFORMATIONAL MEETING**

An Informational Pre-Submission Meeting for this Project will be held at the date and time indicated in [Section 2.3](#) of this RFQ, at the Delaware Department of Transportation's Administration Building, 800 Bay Road, Dover, Delaware. Any firm that is interested in submitting a proposal when the Department issues its Request for Proposals (phase 2) should attend this meeting. A transcript of the meeting will be posted on-line approximately ten days following the meeting.

## **1.3 PROJECT GOALS**

The following are the Department's goals for the Project:

- a) Provide high quality, innovative, and cost efficient design and construction;
- b) Two new 630 foot-long, high-level platforms with canopies;
- c) A station building with restrooms, security provisions, ticketing area and other rider amenities;
- d) A grade-separated pedestrian bridge over the NEC with stairs and elevators;
- e) Construct a new roadway connection to Philadelphia Pike with full pedestrian amenities, designated bus travel lanes and layover areas with recharging stations for electric buses;
- f) A mix of structured and surface parking to accommodate 830 vehicles, including preferred spaces for carpool, car share, and electric vehicles;
- g) A trail connection to the existing I-495 pedestrian bridge at the former station site;
- h) A new station plaza with bicycle parking, landscaping and public art;
- i) Minimize impacts to vehicular and bicycle traffic during construction utilizing a safe and MUTCD compliant work zone;
- j) Coordination with Amtrak to minimize impacts to the NEC;
- k) Coordination with utility companies;
- l) Protect the environment through appropriate application of erosion and sediment controls, storm water management, and drainage design.

## **1.4 GOVERNING LAW**

This Project is authorized and governed by Section 6970A of Chapter 29 of the Delaware Code (the "Delaware Design Build Law"). The requirements of the Delaware Design Build Law along with other applicable federal and State of Delaware laws and regulations will govern this Request for Qualifications, the anticipated Request for Proposals, and the Contract resulting from the RFP process.

## **1.5 CONTRACT TYPE**

The Contract will be a fixed price, milestone payment, 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. The Department's Contract Administration section is the single source of contact regarding Project information and procurement.



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

- a) After submittal of SOQs in response to this RFQ, no Submitter or any of its team members may communicate with another Submitter or members of another Submitter with regard to the Project or the SOQs, except that a Submitter may communicate with a subcontractor that is on both its team and another Submitter's team, so long as those Submitters establish a protocol to ensure that the subcontractor will not act as a conduit of information between the Submitters;
- b) Contact between the Submitters and the Department for questions and responses to questions, shall only be through the Department's and Submitter's designated representative;
- c) The Submitters shall not contact Department employees, including department heads, members of the Evaluation Committee, members of the Technical Review Committee, and any official who will evaluate SOQs regarding the Project except through the process identified in Section 1.7;
- d) The Submitters shall not contact stakeholder staff regarding the Project. Stakeholder staff includes employees of the permitting agencies, the Department, its consultants, Wilmington Area Planning Council (WILMAPCO), and the FTA;
- e) Any contact determined to be improper, at the sole discretion of the Department, may result in disqualification of the individuals, firms, or Submitter teams involved;
- f) Any official contact regarding the Project will be disseminated from the Department's Contract Administration section, via e-mail, and issued by the Department's designated representative; and
- g) The Department 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 QUESTIONS & INFORMATION

The Department will only accept questions submitted via e-mail regarding this RFQ, including requests for clarification and requests to correct errors. The Department will confirm receipt of all e-mailed questions. **All questions are to be sent to the following e-mail address: [DOT-ask@state.de.us](mailto:DOT-ask@state.de.us).** The subject line of the e-mail should display as: **Claymont**. E-mails must include the requestor's name, e-mail address, telephone, and firm they are representing.

Requests for information or clarification made to any other Department office, consultant, or employee are not permitted.

Questions received by the date and time specified in Section 2.3 will be considered by the Department. Responses to project questions will appear periodically on a document entitled 'Questions and Answers' posted on the Project's solicitation Webpage at: [www.bids.delaware.gov](http://www.bids.delaware.gov). The final Questions and Answers document will be posted no later than the date shown in Section 2.3.

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

All Questions and Answers posted by the Department on the Project's solicitation webpage are included by reference and become part of this RFQ.

If you feel you are having trouble sending or receiving communications, or are a potential Submitter that does not have access to the internet, you may contact Jim Hoagland at 302-760-2036.



**1.8 ORGANIZATIONAL REQUIREMENTS**

Only Submitters with demonstrated ability to complete this Project in its entirety will be eligible for the Short-List.

All members of the Submitter's organization, including Principal Participants, Lead Architect, Lead Engineer, and Key Staff as identified in the SOQ shall remain intact for the duration of the procurement process and the subsequent Project duration.

In the event of an unforeseeable situation, a short listed Submitter may propose substitutions for Principal Participants, Lead Architect, Lead Engineer, and Key Staff after the SOQ submittal and notification of short listing. Such changes require written approval by the Department. Approval may be granted or withheld in the Department's sole discretion. Requests for changes shall be made in writing as soon as the Submitter becomes aware of a need for change.

**1.9 ORGANIZATIONAL CONFLICT OF INTEREST**

The following circumstances shall be deemed an Organizational Conflict of Interest disqualifying the affected Submitter(s) and/or individual firms involved, in the sole discretion of the Department:

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

- a) Principal Participant;
- b) Lead Engineer;
- c) Lead Architect
- d) Subcontractor responsible for performing more than 15% of the design;
- e) Subcontractor responsible for performing more than 15% of the construction; or
- f) Participation of an Affiliate of any Person identified in another Submitter's team.

All Submitters 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.

**1.10 INELIGIBLE FIRMS**

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

- a) 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;
- b) Where all documents and reports that were delivered to the Department by the consultant or subcontractor are made available to all the Proposers through the RFQ or the RFP.

Proposers for the RFP 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 Staff, or any proposed subcontractor may result in, or could be viewed as, an organizational conflict of interest (see also [Section 1.9](#)).



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

Rummel, Klepper & Kahl, LLP (RK&K)

Systra S.A.

DESMAN

Tevebaugh Associates, Inc.

Any firm that is rendered ineligible through any state or federal action, including but not limited to suspension or debarment, is ineligible to participate with any Submitter or Proposer.

### **1.11 PROJECT SCHEDULE**

All dates listed in this RFQ may be modified at the Department's discretion. Any date changes during this RFQ selection process will be posted on the Project's solicitation webpage, or incorporated in an Addendum. Section 2.3 contains the procurement date and time schedule.

### **1.12 CURRENT STATUS**

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

#### **1.12.1 SURVEY**

The Department has performed topographic surveys which will be provided for informational purposes only with the RFP.

#### **1.12.2 UTILITIES**

The Department will provide utility record plans as well as New Castle County's proposed concept for their relocated sewer line with the RFP.

#### **1.12.3 RIGHT OF WAY**

The Department will acquire right of way for the Project based on the concept plans. The Project shall be contingent upon the Department's successful acquisition of all necessary rights of way required for the Project. Additional information will be provided during the RFP phase.

#### **1.12.4 ENVIRONMENTAL**

In accordance with the procedural provisions for implementing the National Environmental Policy Act of 1969 (NEPA), as amended, the Department has obtained NEPA environmental approval for this project. A Site Remediation Plan has been approved by DNREC. A Contaminated Materials Plan will be provided during the RFP phase.

#### **1.12.5 GEOTECHNICAL INFORMATION**

The Department has obtained limited Soil Borings which will be provided with the RFP for informational purposes.

#### **1.12.6 DESIGN AND CONSTRUCTION**

Design and construction criteria will be provided as part of the RFP.

The contractual status of the above mentioned items will be indicated in the RFP. The RFP document will prevail in the event of a conflict regarding requirements.



**1.13 DESIGN-BUILDER RESPONSIBILITIES**

The successful Design-Builder (DB) 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):

- a) Design and construction;
- b) Design and construction management;
- c) Design and Construction Quality Control;
- d) Aesthetics and landscaping;
- e) Participation in the Department’s Project-related Public Outreach including a ground breaking ceremony and a ribbon cutting ceremony;
- f) Coordination with Project stakeholders;
- g) Environmental investigations, mitigation, and compliance monitoring associated with or resulting from the Design-Builder's actions;
- h) Maintenance of traffic;
- i) Project safety and security;
- j) All necessary surveys, geotechnical investigations, and soil borings to the extent not provided or warranted by the Department;
- k) All harmful and hazardous material remediation created by the design-builder or identified in the RFP;
- l) Storm Water Management, Drainage, and erosion control;
- m) Construction waste recycling, disposal, and handling;
- n) All required permits, approvals, clearances, and licenses required for the Design-Builder's Work, Work sites, and storage sites not previously obtained by the Department;
- o) All modifications to existing permits and approvals previously obtained by the Department and/or as a result of the Design-Builder's design, actions, or construction scheduling;
- p) Location, acquisition, permits, and transportation for Material;
- q) Coordination, identification, avoidance, design and relocation of all utilities and municipal drainage facilities as required by the RFP;
- r) Site clearing and restoration;
- s) Maintenance of the Project from Notice to Proceed (NTP) until final acceptance; and
- t) All other activities, functions, or elements necessary for the successful completion and subsequent acceptance of the Project by the Department.

**1.14 INSURANCE, BONDING, LICENSING, AND SECURITIES**

One or more of the Principal Participants of the Single Legal Entity with which the Department will contract for services must be licensed, as appropriate, with the following; Delaware Association of Professional Engineers, the Division of Professional Regulation Board of Professional Land Surveyors, and the Delaware Division of Revenue, prior to the award of any contract.

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 identified in the RFP; 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. Details of the insurance requirements will be provided in the RFP.

There is no bonding requirement for the RFQ Statement of Qualifications. Submitters selected for the Short-List submitting a Proposal shall provide Proposal bonds or other forms of security acceptable to the Department in the amount shown on Table 3.5.4. The Design-Builder will be required to provide performance and payment bonds and/or other security acceptable to the Department, each in the amount of 100% of the Contract amount.

Prior to award of any Contract, all entities participating on the Design-Build Team must obtain all licenses and permits and take all necessary steps to conduct business in the State of Delaware and perform the Work required under the Contract, including proposing and carrying out contracts consistent with the laws of the State of Delaware and applicable FTA regulations.

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

- a) Parent company and other guaranties;
- b) Statements of joint and several liability by Principal Participants (see Section 3.5.3(e));
- c) Parent company securities; and
- d) Warranties.

#### **1.15 PAYMENT AND LIQUIDATED DAMAGES**

The Contract will provide for periodic payments to the Design-Builder. The Design-Builder shall be familiar with Title 17 Chapter 8 of the Delaware Code for information regarding payments.

The Contract will provide for Liquidated Damages (LD) relating to failure to meet specified completion or milestone dates. The amount of LD's will be specified in the RFP.

#### **1.16 ROLE OF THE DEPARTMENT**

In the context of the Project, the Department is responsible to provide:

- a) Environmental clearances and permits specified in the RFP. All others shall be obtained by the Design-Builder;
- b) Contract oversight;
- c) Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of the Short-List, and selection of the Design-Builder;
- d) Contract procurement and oversight;
- e) Design and Construction Quality Acceptance;
- f) Quality Acceptance verification for Asphalt and Concrete Materials Testing;
- g) Coordination of Public Outreach Efforts;
- h) Acceptance of the Work; and
- i) Processing payments for Work.



At the Department's sole discretion, it may delegate certain activities to its consultants, but the Department will remain responsible for this Project.

**1.17 ADDENDA**

If necessary, the Department will post Addenda to modify conditions or requirements of this RFQ to the Project's solicitation Webpage at [www.bids.delaware.gov](http://www.bids.delaware.gov) not later than the date identified in Section 2.3.

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

**1.18 NOTIFICATION OF FIRMS ON THE SHORT-LIST**

Each Submitter will be notified whether or not it has been selected for the Short-List.

**1.19 PROPOSAL STIPEND**

The Department will provide stipends for this Project at the RFP stage.

**1.20 ALTERNATE TECHNICAL CONCEPTS**

The Department will accept alternate technical concepts for this Project during the RFP stage.

**2 PROCUREMENT PROCESS**

The process for procurement of the Contract will be in accordance with 29 Del.C. § 6970A, 23 CFR Part 636, and the Federal Transit Administration. The intent of the Department is to award the Contract to the Proposer that provides the Proposal with the best combination of price and technical score. The procurement process will include two phases: Request For Qualifications (RFQ), and Request For Proposals (RFP).

Pass/fail and technical evaluation factors may be present in both the RFQ and RFP phases. Evaluation of the Statement of Qualifications (SOQ) and Proposals will be based on information submitted in the SOQs and Proposals or otherwise available to the Department. The selection of the Design-Builder for the Contract will be based on both pass/fail evaluation factors and a combined evaluation of technical factors and price.

**2.1 REQUEST FOR QUALIFICATIONS PHASE**

This RFQ sets forth what is required during the RFQ phase of the procurement.

Statements of Qualifications will be accepted from Submitters intending to provide all services required for this Project as outlined in this Request for Qualifications. Only Submitters with demonstrated ability to complete this Project in its entirety will be eligible for selection to the Short-List. Responses from individual engineering, construction, or consultant firms not offering to provide all required services will not be eligible for selection to the Short-List. It is anticipated interested firms will join together and create a team to become a Submitter.

Requirements for the Statement of Qualifications are addressed in Section 3.0.

Statements of Qualifications submitted in response to this RFQ must include a response to each pass/fail and technical evaluation factor. The Department will evaluate the SOQ's using the pass/fail and technical factors set forth herein. The Department will determine a Short-List of no more than three (3) of the most highly qualified Submitters.

**2.2 REQUEST FOR PROPOSALS PHASE**

Only the Short-Listed Submitters will receive and may respond to the Request for Proposals. Following the requirements to be defined in the Request for Proposals, the Department will select the successful Design-Builder.

The RFP will provide specific instructions on Proposal requirements, Proposal evaluation factors, the objectives and requirements for the evaluation, and the evaluation rating and scoring guidelines for the RFP phase of the procurement.



Price, time and other technical factors will be used by the Department to select the best value proposal as will be specified in the RFP.

2.3 PROCUREMENT SCHEDULE

The following represents the anticipated schedule for the Project. The schedule is subject to change at the discretion of the Department.

Activity	Due Date/Time
RFQ Released	April 6, 2018
Pre-Submission Meeting *	April 17, 2018 3:00 P.M.
Final Date for Receipt of Submitter’s Questions	May 4, 2018
Issue Final Addendum and/or Questions & Answers	May 10, 2018
<b>Statement of Qualifications Due prior to 2:00 pm *</b>	<b>May 17, 2018 prior to 2:00 P.M.</b>
Notify Submitters of Short List	June 14, 2018
Issue Final RFP to Short Listed Proposers	June 26, 2018
Conceptual Plan due no later than 2 pm	August 2, 2018 2:00 P.M.
One-On-One Meetings with Short Listed Proposers	Week of August 6, 2018
<b>Final Proposal Due prior to 2:00 pm *</b>	<b>August 28, 2018 prior to 2:00 P.M.</b>
Apparent Winner is Notified	September 25, 2018
Notice to Proceed Issued	October 26, 2018

NOTE: Only asterisk (\*) marked date changes will be communicated via posted addendums.

3 STATEMENT OF QUALIFICATIONS SUBMITTAL REQUIREMENTS

This section describes the specific information that must be included in response to this RFQ. Required forms for the SOQ are contained in APPENDIX B. Any unauthorized modification to the forms may result in the SOQ being declared non-responsive.

Submitters shall provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the criteria described herein. Lengthy narratives containing extraneous information are discouraged.

3.1 DATE AND TIME OF RECEIPT

SOQ’s must be received no later than the Local Time as specified in Section 2.3. The SOQs shall be clearly identified as such and be enclosed in sealed packages. It is the Submitter's sole responsibility to ensure delivery of its SOQ to the Department at the time and place specified. Late submittals will not be considered and will be returned unopened to the address indicated on the cover of the package.

E-mailed/electronic responses will not be accepted.



**3.2 SUBMITTAL ADDRESS**

The SOQs must be delivered to the following:  
Delaware Department of Transportation  
Administration Building  
800 Bay Road, Dover, DE 19901  
Attn: Contract Administration

Each Submitter shall be responsible for obtaining written proof of delivery showing date, time, and location of delivery.

**3.3 PAGE LIMIT, FORMAT, AND QUANTITIES**

The SOQ shall be organized to correspond with information required by Section 3.5. The SOQ shall be limited in pages as described, per section, in Section 3.5 including required forms but exclusive of dividers. The sections shall consist of loose-leaf pages. The six sections shall be placed together in one three-ring binder. One original and six copies of the SOQs shall be provided in loose-leaf binders. The signed original copy shall be identified as the original on the cover and marked as "Copy 1 of 7 Copies". Each copy shall be sequentially marked on the cover as "Copy # of 7 Copies." In addition, an electronic copy in PDF format shall be provided on a CD affixed to the signed original.

Text shall be in a standard font, a minimum of eleven points, single-spaced. Pages shall be 8.5 inch by 11 inch (excepting the organizational chart which may be 11inch by 17inch per Section 3.5.8(b)) white paper, single sided, with simple lettered/numbered dividers for each section. Content on dividers will not be evaluated. The Submitter shall number each page in each section consecutively (i.e., 1-1, 1-2; 2-1, 2-2; 3-1, 3-2, and so on) at the bottom of the page.

Submitters shall make every effort to present information clearly and concisely. Documentation that is not legible may lead to disqualification. The information shall be easily reproducible by normal black and white photocopying machines.

Statements Of Qualifications will become the property of the Department. Electronic copies of the SOQ will be retained for the Project files.

**3.4 CONFIDENTIALITY OF SUBMITTED DOCUMENTS**

The Department will maintain a confidential process for the duration of this procurement. The Department may require each Submitter to furnish sufficient information that shall indicate the financial and other capacities of the Submitter to perform the proposed Work. This information shall be subject to audit and shall be submitted in a format clearly marked "confidential". If later requested under the Delaware Freedom of Information Act (FOIA), 29 Del. C. §10002, the information will be reviewed to determine if such material is exempt under FOIA. DelDOT will inform the provider if there is a request.

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

- a) Clearly mark all proprietary or trade secret information as such in its SOQ at the time the SOQ is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identify each section and page which has been so marked;
- b) Include a statement with its SOQ 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>).
- c) Submit on electronic copy that has all the proprietary or trade secret information redacted from the SOQ and label such copy of the SOQ "Public Copy", and;



- d) Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless the Department 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 the Department's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting an SOQ, the Submitter 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 exempt from production. Any records marked as proprietary or trade secret information by a Submitter in its SOQ and, if Short-Listed, in its Proposal, will be destroyed or returned to the unsuccessful Submitters after the execution of the Contract with the Design-Builder upon request. The records marked proprietary or trade secret information by the successful Submitter in its SOQ and Proposal will remain confidential.

### 3.5 STATEMENT OF QUALIFICATIONS CONTENT

In providing the SOQ, Submitters shall be guided by the Project goals in [Section 1.3](#) and the objectives, criteria, requirements and information described below. The requirements for each criteria and the information to be submitted are listed and described below in detail.

#### 3.5.1 COVER LETTER

The cover letter is limited to two single-sided pages.

The Submitter shall provide a cover letter indicating its desire to be considered for the Project and stating the names and roles of all Principal Participants, the Lead Engineer, the Lead Architect and subcontractors performing 15% or more of the design or construction. The Submitter shall identify a single point of contact for the Submitter and the address, telephone, facsimile, and email where notifications and/or inquiries will be directed during the RFQ process. Authorized representatives of the Submitter's organization shall sign the letter. This cover letter shall serve as the Letter of Interest.

#### 3.5.2 ADDENDA ACKNOWLEDGEMENT

The addenda acknowledgement has no page limit.

The Submitter shall complete and attach *FORM A - ADDENDA ACKNOWLEDGMENT* acknowledging receipt of the RFQ and all addenda issued by the Department.

#### 3.5.3 SECTION 1 – LEGAL

Section 1 – Legal has no page limit.

The objective of Section 1 – Legal is to identify legally constituted Submitters able to submit Proposals and enter into the Contract and complete the Work, and that has obtained or will obtain all required licenses and certificates. Section 1 – Legal shall include:

- a) **FORM B - SUBMITTER'S ORGANIZATION INFORMATION**

One form for the Submitter's organization identifying the Lead Principal Participant(s), and the percent equity share held. Each member of a Joint Venture (JV), Limited Liability Company (LLC), or partnership must be an equity partner in the organization.



b) **FORM C - PRINCIPAL PARTICIPANT AND DESIGN CERTIFICATION**

Include a separate form for each Principal Participant, Lead Engineer and Lead Architect.

- c) Certification that the Submitter and its Principal Participants, if Submitter is a JV, LLC, or partnership, are or will become registered in accordance with the following;
- i. "A person desiring to engage in business in this State as a contractor shall obtain a license upon making application to the Division of Revenue. Proof of said license compliance to be made prior to, or in conjunction with, the execution of a contract to which he has been named."
  - ii. If the Submitter is a JV, LLC, or partnership which has not yet been legally formed, the Submitter's registration with the Delaware Secretary of State is nonetheless required as stated above.
- d) Certification that one or more Principal Participants of the Submitter, appropriate member of the Submitter's team, or the Submitter itself will 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, including but not limited to, the appropriate licenses from; the Delaware Association of Professional Engineers; the Division of Professional Regulation Board of Professional Land Surveyors; and the Delaware Division of Revenue.
- e) If a Joint Venture, Limited Liability Company, or partnership; include an express statement from each of the Principal Participants as to their joint and several liability.
- f) Notarized Power(s) of Attorney for each Principal Participant indicating the authority of the Principal Participant's representative to sign for that Principal Participant.
- g) Notarized Power(s) of Attorney for each Principal Participant indicating the authority of the Submitter's designated point of contact to sign documents for and on behalf of the Submitter's organization.
- h) If a JV, LLC, or partnership, provide full details of the organizational structure and supporting organization/formation documents including a copy, as applicable, of the JV agreement, LLC operating agreement, or partnership agreement or, if said documents have not yet been executed among the parties, a draft of such JV agreement, LLC operating agreement, or partnership agreement or a Memorandum Of Understanding (MOU) stating the terms of such JV agreement, LLC operating agreement, or partnership agreement.

**3.5.4 SECTION 2 – FINANCIAL**

Section 2 – Financial has no page limit.

The objective of Section 2 - Financial is to identify Submitters with demonstrated capability to undertake the financial responsibilities associated with the Project. Section 2 – Financial shall include:

- a) Surety Letter

The Submitter shall submit *FORM H- BACKLOG INFORMATION* and a letter



from a single surety or co-sureties indicating that the Submitter is capable of obtaining Proposal, performance, and payment bonds covering the Contract. The bonding/security capacity levels in Table 3.6.2.1 represent minimum levels required. Surety bonds written for the Project shall be written by a surety or insurance company that is licensed to do business in the state of Delaware. The letter must specifically state that the surety/insurance company has evaluated the Submitter's and each Principal Participant's backlog and work-in-progress in determining its bonding capacity and the letter must expressly identify the Submitter's and each Principal Participant's amount of current backlog and utilized bonding capacity. If the letter is submitted by co-sureties or a joint venture of sureties, the letter must clearly state that the sureties making up the co-surety or the joint venture are bound in solido for the full amount of the bond. Letters indicating "unlimited" bonding/security capability are not acceptable.

Table 3.5.4		
Proposal Bond/Security	Payment Bond/Security	Performance Bond/Security
Ten Percent of Proposal Amount	100% of Contract Amount	100% of Contract Amount

b) Financial Statements

The Submitter shall provide *FORM I- PAST REVENUE* and financial statements for the Submitter and Principal Participants as described below, for the three most recent Fiscal Years, audited by a Certified Public Accountant (CPA) in accordance with US Generally Accepted Accounting Principles (GAAP). Financial statements must be provided in US dollars. If audited financials are not available, the SOQ shall include unaudited financials for such member, certified as true, correct, and accurate by the Chief Financial Officer (CFO) or treasurer of the entity. The Submitters are advised that if any equity member of the selected Design-Builder does not have audited financials, or if it fails to meet the minimum financial requirements stated in the RFP, the Department will require a guaranty of the Contract to be provided by a separate entity acceptable to the Department. The SOQ shall identify the proposed guarantor for each equity member that does not have audited financials and shall include audited financials for each proposed guarantor.

If the Submitter, a Principal Participant, or any other entity for which financial information is submitted as required hereby files reports with the Securities and Exchange Commission (SEC), then such financial statements should be provided through a copy of their annual report on Form 10K. For all subsequent quarters, the Submitter, Principal Participant, or other entity for which financial information is submitted shall provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.

The following are the required financial statements:

- Opinion letter (auditor's report);
- Balance sheet;



- Income statement;
- Statement of changes in cash flow;
- Footnotes;
- Information on any proposed or anticipated changes in the financial condition of the Submitter, its team members, and any other entity for which financial information is submitted as required hereby for the next reporting period;
- If financial statements are prepared in accordance with principles other than US GAAP, a letter from the CPA of the applicable entity discussing the areas of the financial statements that would be affected by a conversion to US GAAP; and
- A letter from the CPA for each entity for which financial information is submitted, identifying all off balance sheet liabilities.

The Submitter shall package the information separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Submitter's organization.

### 3.5.5 SECTION 3 – PAST PERFORMANCE

Section 3 – Past Performance has no page limits.

The objective of Section 3 – Past Performance is to demonstrate a record of managing contracts to minimize delays, claims, dispute proceedings, litigation, and arbitration. The Department seeks to avoid Submitters with firms or personnel with a history of legal, financial or safety problems that could adversely impact the Project. The Department also requires the commitment of the Submitter, Principal Participants, and Lead Engineer regarding representations made in the SOQ.

For Section 3 – Past Performance, Submitter shall include *FORM F - PAST PERFORMANCE* as identified in the following sub sections. If the Submitter has no record of relevant past performance or if the information relative to a category is not available the Submitter shall enter a declarative statement to that effect on Form F. The Submitter shall attach additional sheets to Form F as necessary. For each instance of litigation, claim, dispute proceeding, arbitration, assessment of Liquidated Damages, or termination for cause or default, the Submitter shall provide the owner's name and the name of its current representative (and current email, telephone and facsimile numbers) who can be contacted for additional information.

With respect to the information solicited in this section, failure to provide this information, conditional or qualified submissions to requests or questions posed (i.e., "to our knowledge," "to the extent of available information," "such information is not readily available," or "such information is not maintained in the manner requested,"), incomplete or inaccurate submissions, or non-responsive submissions may, in the sole discretion of the Department, lead to a lower evaluation rating for this technical evaluation factor or result in a Deficiency that would cause the Department to declare the SOQ non-responsive.

- a) Awards, Citations and/or Commendations

The Submitter shall list awards, citations, and/or commendations for performance on projects of a similar nature to this Project received by any Principal Participant, Lead Architect, Lead Engineer, or subcontractors performing 15% or



more of the design or construction, within the last five years. The Submitter shall describe the work for which award(s), citation(s), and/or commendation(s) were received. Copies of award(s), citation(s), and/or commendation(s) may be included and will not count towards the page limit; and

b) Claims, Dispute Proceedings, Litigation, and Arbitration Proceedings

The Submitter shall provide a complete list of all claims, dispute proceedings, litigation, and arbitration proceedings related to performance in which any Principal Participant, Lead Engineer, Lead Architect or subcontractors performing 15% or more of the design or construction, has been involved on all design-build contracts within the last ten years. The Submitter shall include all claims, dispute proceedings, litigation, and arbitration proceedings initiated by owners and federal, state, and local regulatory agencies against the Submitter or all claims, dispute proceedings, litigation, and arbitration proceedings initiated against owners and federal, state, and local regulatory agencies by third parties and in which the Submitter was involved. The Submitter shall indicate whether the claim, dispute proceeding, litigation, or arbitration proceeding was resolved against the participant(s) or its insurers/sureties or resulted in reduction in compensation to the participant. The Submitter shall indicate any unresolved, outstanding claims, dispute proceedings, litigation, and arbitration proceedings; and

c) Liquidated Damages

The Submitter shall describe any contract which resulted in assessment of Liquidated Damages against any Principal Participant over the past five years. The Submitter shall describe the causes of the delays and the amounts assessed. The Submitter shall describe any outstanding damage claims by or damages due and owing to any owner/agency; and

d) Termination for Cause or Default

The Submitter shall describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Lead Engineer, Lead Architect or subcontractors performing 15% or more of the design or construction, over the past ten years that has been terminated for cause or default or which required completion by another party. The Submitter shall describe the reasons for termination and the amounts involved; and

e) Disciplinary Action

The Submitter shall indicate any disciplinary action taken against any Principal Participant, Lead Engineer, Lead Architect or subcontractors performing 15% or more of the design or construction within the past ten years, by any governmental agency or licensing board, including suspension from the right to propose/bid or removal from any Submitter/bid list; and

f) Form G – Safety Questionnaire

Submit *FORM G - SAFETY QUESTIONNAIRE*, for each Principal Participant and construction subcontractor performing 15% or more of the Work.

**3.5.6 SECTION 4 – KEY STAFF**

Section 4 – Resumes shall be a maximum of one page each. The page limit for Section 4 – Resumes is 10 pages.



The objective of Section 4 – Key Staff is to identify the proposed and committed staff for key management positions on the Project. Key Staff shall have demonstrated experience and expertise in producing quality work on transit projects of a similar scope, nature and complexity to this Project. Design-Build experience is desirable but not required for all Key Staff. Section 4 - Key Staff shall include resumes for the following Key Staff:

a) Design-Build Manager

The Design-Build Manager is responsible for all aspects of the overall design and construction of the CRTC. The Design-Build Manager must be assigned to the Project full time. The Design-Build Manager shall be the primary point of contact with DelDOT and shall have a minimum of 15 years of experience in construction and management. Experience in coordinating with rail on projects is desirable. The Design-Build Manager shall have served in a similar role in a minimum of one prior design-build project in similar scope, nature and complexity.

b) Lead Architect

The Lead Architect shall be a registered Professional Architect in the State of Delaware prior to performing work, with a minimum of 15 years architectural design and project management for large commercial/retail buildings. The Lead Architect shall have served in a similar role in a minimum of one prior design-build project in similar scope, nature and complexity.

c) Lead Engineer

The Lead Engineer must be registered as a professional engineer in the State of Delaware prior to performing work, and shall be responsible for the site design of the CRTC as well as the connecting roadway to Philadelphia Pike. The Lead Engineer shall have a minimum of 15 years of experience in roadway and site design and construction.

d) Utility Manager

The Utility Manager shall have a minimum of 10 years of experience managing utility coordination, design and construction on projects of similar scope, nature, and complexity as this Project. They shall have experience with Amtrak coordination.

Submitters may provide resumes for up to six additional personnel.

### 3.5.7 SECTION 5 – TEAM EXPERIENCE

Section 5 – Team Experience is limited to 14 pages, inclusive of Form D but exclusive of Form E.

The objective of Section 5 – Team Experience is to identify Submitters with demonstrated technical, construction and management expertise to plan, organize, and execute the design and construction of transportation center projects of a similar nature to this Project in a quality, safety, time and budget conscious manner. Design-Build experience is desirable but not required.

The following information is to be submitted and labeled as Section 5 –Team Experience:

a) FORM D - PAST PROJECT DESCRIPTION

Using Form D, Submitter shall provide a total of 8 past project descriptions for



projects completed within the past 10 years having a scope comparable to that anticipated for the Project. The total of 8 past projects shall include a minimum of two projects for each Principal Participant, Lead Engineer, Lead Architect and subcontractor performing 15% or more of the design or construction.

b) **FORM E – SUBCONTRACTOR INFORMATION**

For purposes of the RFQ, Submitter shall provide the names of the lead design firm and design or construction sub-contractors expected to perform more than 15% of the contract work.

**3.5.8 SECTION 6 – PROJECT UNDERSTANDING AND APPROACH**

Section 6 – Project Understanding and Approach is limited to 4 pages inclusive of the organizational chart.

The objective of Section 6 – Project Understanding is to identify submitters demonstrating an understanding of the management, design, construction and quality issues associated with the Project. Project specific technical solutions are not required or desirable. The following information shall be included in the Submitter’s narrative for Section 6 – Project Understanding:

- a) The Submitter shall provide a narrative description of the Submitter’s approach to Design-Build contracting for this Project. The narrative shall describe the methodology for integrating the various entities and areas of expertise within the Submitter’s team into an efficient and effective organization considering the Department’s Project goals listed in Section 1.3.
- b) The Submitter shall include an organizational chart reflecting the major Project functions, reporting relationships, lines of communication, and other elements critical to successful completion of the Work. The organizational chart shall reflect, at a minimum, all Key Staff identified in the SOQ. The organizational chart shall not exceed one page and may be 11”x17”.
- c) The Submitter shall briefly describe the significant issues and risks facing the selected Submitter and/or the Department and how the Submitter’s approach may serve to mitigate such risks.

**4 EVALUATION PROCESS FOR THE STATEMENT OF QUALIFICATIONS**

**4.1 REVIEW AND EVALUATION**

The Department has identified for this Project the following evaluation factors that are of particular importance to the Department. This information is provided to assist Submitters in organizing their teams and preparing their SOQs.

Information submitted in accordance with Section 3.0 will be evaluated in accordance with both the pass/fail evaluation factors listed in Section 4.2, and the technical evaluation factors in Section 4.3.

The Department will determine a Short-List of no more than 3 of the most highly qualified Submitters.

**4.2 PASS/FAIL EVALUATION FACTORS**

An SOQ must receive a ‘pass’ rating for all pass/fail evaluation factors before being further evaluated using the technical evaluation factors in Section 4.3. If an SOQ receives a ‘fail’ rating for any single pass/fail evaluation factor this will be considered a Deficiency, the SOQ will be considered unacceptable, and the SOQ will not be further evaluated and will not be included on the Short-List.



**4.2.1 The pass/fail evaluation factors and criteria are as follows:**

a) Proposal Responsiveness

The SOQ is complete, in the specified format, and does not deviate from the RFQ requirements in any material respect.

b) Section 1 - Legal

The SOQ presents evidence showing the Submitter's organization has the legal ability to enter into and perform the Contract to design and build the Project, and will comply with state licensing requirements. This includes:

- Proper identification of all Principal Participants;
- Demonstrated capability to enter into a contractual relationship with the Department and a declaration of willingness to do so; and
- Proper licensure of all participating firms.

c) Section 2 - Financial

The SOQ demonstrates the ability of the Submitter to provide required bonds and meet other financial requirements of undertaking and completing the Work.

The Department may allow certain deficiencies in the SOQs relating to the above pass/fail evaluation factors to be corrected through Clarifications (see Section 4.7) but shall have no obligation to do so.

**4.3 TECHNICAL EVALUATION FACTORS**

The technical evaluation factors and criteria are as follows:

**4.3.1 Section 3 - Past Performance**

The complete record of Submitter's design, construction, and safety performance as provided on Form F and Form G.

**4.3.2 Section 4 - Key Staff**

The proposed Key Staff demonstrates design and/or construction experience relevant to the size, complexity, nature, scope, and composition of this Project with an emphasis on previous work experience relevant to the role and function proposed for this Project.

**4.3.3 Section 5 - Team Experience**

The Submitter, its Principal Participants, the Lead Engineer, the Lead Architect and subcontractors performing 15% or more of the work have demonstrated technical, construction and management experience relevant to the size, complexity, nature, scope and composition of this Project.

**4.3.4 Section 6 - Project Understanding and Approach**

The Submitter demonstrates an understanding of and approach to how the Design-Build process and the team's organization will contribute to meeting the Department's Project goals, identifying project risks, and mitigating project risks.

The Submitter's organizational chart appropriately reflects the communications, relationships and functions required to implement the Submitter's approach and successfully complete the Work.



**4.4 RELATATVE IMPORTANCE OF TECHNICAL EVALUATION FACTORS**

The technical evaluation factors of Section 3 - Past Performance, Section 4 - Key Staff, Section 5 - Team Experience, and Section 6 - Project Understanding and Approach are of equal importance.

**4.5 EVALUATION RATINGS**

Ratings for each technical evaluation factor and the overall rating for the SOQ will be based on the following rating criteria:

**EXCEPTIONAL:** The Submitter has provided information relative to its qualifications which is considered to significantly exceed stated objectives/requirements in a beneficial way and indicates a consistently outstanding level of quality. There are essentially no Weaknesses.

**GOOD:** The Submitter has presented information relative to its qualifications which is considered to exceed stated objectives/requirements and offers a generally better than acceptable quality. Weaknesses, if any, are very minor and no correction is necessary.

**ACCEPTABLE:** The Submitter has presented information relative to its qualifications which is considered to meet the stated objectives/requirements and has an acceptable level of quality. Weaknesses are minor and can be readily corrected.

**UNACCEPTABLE:** The Submitter has presented information relative to its qualifications that contains significant Weaknesses and/or Deficiencies and/or unacceptable quality. The SOQ fails to meet the stated objectives and/or requirements and/or lacks essential information and is conflicting and/or unproductive. Weaknesses/Deficiencies are so major and/or extensive that a major revision to the SOQ would be necessary and/or are not correctable.

The evaluators may use a plus (+) or minus (-) suffix to differentiate the strengths or limitations within a technical rating.

Provided that all pass/fail factors have been rated as ‘pass’, the technical evaluation factor ratings assigned to each technical evaluation factor will be compiled to determine an overall rating for the SOQ. The ratings of each of the technical evaluation factors and the overall rating for the SOQ will be arrived at through a consensus process. Numerical scores will not be assigned.

Any SOQ that receives a ‘fail’ for any pass/fail factor will receive an overall SOQ rating of Unacceptable and will not be included on the Short-List.

Any SOQ that receives a consensus rating of Unacceptable in one or more technical evaluation factors shall receive an overall SOQ technical rating of Unacceptable and shall not be included on the Short-List.

**4.6 DETERMINATION OF THE SHORT-LIST**

The Department will establish a Short-List of up to three of the highest rated Submitters. Neither the overall ratings nor the ranking of the Submitters on the Short-List will be disclosed until the procurement process is complete and the Contract is executed.

**4.7 REQUESTS FOR CLARIFICATION**

If Submitter provided SOQ information is not complete, the Department may, at its discretion, notify the Submitter that it will not be allowed to participate further in the procurement of this Project until all information required is provided.

The Department may waive technical irregularities in the form of the SOQ of the Submitter that do not alter the quality or quantity of the information provided.

The Department may, at its sole discretion, request Clarifications and/or supplemental information from Submitters during the SOQ evaluation and Short-List process; however, the Department is not obligated to do so. Any insufficient statements or incomplete affidavits may be returned to the Submitter by the



Department with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, supplemental, or missing documents. If a response is not provided prior to the deadline given for submission of the response, the SOQ may be declared non-responsive.

All requests and responses shall be by e-mail unless otherwise specified. Responses are limited to answering only the specific information requested by the Department.

The Department does not anticipate conducting interviews during the RFQ phase, but reserves the right to do so. If the Department elects to conduct interviews, it may interview only those Submitters that are likely to be considered for the Short-List.

In the event a material error is discovered in the RFQ during the SOQ evaluation process, the Department will issue an Addendum to all Submitters that have submitted SOQs requesting revised SOQs based upon the corrected RFQ.

**4.8 CHALLENGE**

The decision of the Department on the Short-List and the subsequent award of the Contract shall be final and shall not be appealable, reviewable, or reopened in any way, except as provided in Section 5.0 of this RFQ (for challenges to the Short-List) or as provided in the RFP (for the award of the Contract). Parties participating in the RFQ phase of this procurement shall be deemed to have accepted this condition and the other requirements of this RFQ.

Contents of SOQs, including non-proprietary information will remain confidential until final execution of the Contract. Proprietary information in the SOQs will remain confidential to the extent permitted under applicable Delaware state law.

**5 PROTESTS**

This section sets forth the exclusive protest remedies available with respect to this RFQ. Each Submitter, by submitting its SOQ, 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 RFQ expressly in consideration for such waiver and agreement by the Submitters. If a Submitter disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFQ, 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 Submitter's actions. The submission of an SOQ by a Submitter shall be deemed the Submitter's irrevocable and unconditional agreement with such indemnification obligation.

**5.1 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 protest by the Department's Director of Finance (Director) or his/her designee whose decision shall be final and conclusive.

**5.2 PROTEST PROCEDURE**

A Submitter may protest the results of the above-described evaluation and qualification process by filing a written notice of protest by hand delivery or courier to the Department's Contract Services Administrator. The Department's Contract Services Administrator shall promptly forward copies of the written notice to the other Submitters. The notice of protest shall specifically state the grounds of the protest.

- a) Notice of protest of any decision to accept or disqualify an SOQ on responsiveness grounds must be filed within five calendar days after the earliest of notification of non-



responsiveness or the announcement of the Short-List. Notice of protest of the decision on Short-Listing must be filed within five calendar days after the announcement of Short-Listing.

- b) Within seven calendar days of the notice of protest, the protesting Submitter must file with the Department's Contract Services Administrator, a detailed statement of the grounds, facts and legal authorities, including all documents and evidentiary statements, in support of the protest. The Department's Contract Administrator will promptly forward copies of the detailed statement to all other Submitters. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Submitter shall have the burden to prove that the decision of the Department was arbitrary and capricious.
- c) Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions hereunder, other than any protest based on facts not reasonably ascertainable as of the date of contract execution.
- d) Other Submitters may file by hand delivery or courier to the Department's Contract Services Administrator, a statement in support of or in opposition to the protest. Such statement must be filed within seven calendar days of receipt of the protesting Submitter's detailed statement of protest from the Department's Contract Administrator. The Department will promptly forward copies of any such statements to the protesting Submitter.
- e) Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole and absolute discretion of the Director, a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Submitter or the Department. The Director will issue a written decision regarding the protest within 30 calendar days after the Department receives the detailed statement of protest or any allowed (discretionary) evidentiary hearing or oral argument. Such decision shall be final and conclusive. The Director will deliver the written decision to the protesting Submitter and copies to the other Submitters.
- f) If a notice of protest regarding responsiveness is filed prior to release of the RFP, the Department may proceed with issuance of the RFP before the protest is withdrawn or decided, unless the Director determines, in his or her sole discretion, that it is in the public interest to postpone issuance of the RFP. Such a determination shall be in writing and shall state the facts on which it is based.
- g) If the Director concludes that the Submitter filing the protest has established a basis for protest, the Director will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for qualifications or taking other appropriate actions.

For the purposes of this Section 5.1 of the Request For Qualifications, the terms "file" and "deliver" can mean transmitting the materials via e-mail, facsimile, courier, or hand-delivery to the Department's Contract Administrator if initiated by the Submitter, or to the Submitter's primary contact if initiated by the Department. If the initial correspondence is delivered via e-mail or facsimile, a hard-copy shall also be sent within a reasonable time after the initial notification.

### **5.3 PROTEST CONTENTS**

All Protests shall include the following information:

- a) The name and address of the Submitter;



- b) The Contract number;
- c) A detailed statement of the nature of the protest and the grounds on which the protest is made;
- d) All factual and legal documentation in sufficient detail to establish the merits of the protest;
- e) Evidentiary statements must be provided under penalty of perjury;

The Director will not be obligated to postpone the SOQ due date or Short-List announcement 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 may be liable for Department 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.

## **6 DEPARTMENT OF TRANSPORTATION RIGHTS AND DISCLAIMERS**

### **6.1 DEPARTMENT OF TRANSPORTATION RIGHTS**

The Department may investigate the qualifications of any Submitter under consideration, may require confirmation of information furnished by a Submitter, and may require additional evidence of qualifications to perform the Work described in this RFQ. The Department reserves the right, in its sole and absolute discretion, to any of the following:

- a) Rejection of any or all Statements Of Qualifications;
- b) Issuance of a new Request For Qualifications;
- c) Cancellation, modification, or withdrawal of the Request For Qualifications;
- d) Issuance of Addenda, supplements, and modifications to this Request For Qualifications;
- e) Modification of the Request For Qualifications process (with appropriate notice to Submitters);
- f) Appointment of the Primary Design-Build Evaluation Committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluation;
- g) Approval or disapproval of the use of particular subcontractors and/or substitutions and/or changes in SOQs;
- h) Revision and modification, at any time before the SOQ due date, of the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Department shall issue an Addendum by a posting on the Project solicitation Webpage, setting forth the changes to the evaluation criteria or methodology. The Department may extend the SOQ due date if such changes are deemed by the Department, in its sole discretion, to be material and substantive;
- i) Correspondence with the Submitters responding to this SOQ, including holding meetings, to seek Clarifications and an improved understanding and evaluation of the SOQs;
- j) Seeking or obtaining data from any source that has the potential to improve the understanding and evaluation of the SOQs;
- k) Waiver of Weaknesses, informalities, and minor irregularities in Statements Of Qualifications;



- l) Disqualification of any team that changes its SOQ without Department written approval;
- m) Waive the Request For Proposals phase of the procurement process and immediately enter into negotiations with a sole short-listed Submitter in the event the RFQ process results in only one (1) final Short-Listed Submitter; and/or,
- n) Refusal to issue an RFQ to a prospective Submitter and to refuse to receive or open an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based upon, but not limited to, the following:
  - 1. Failure on the part of the Submitter or 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 with the Department (or the State of Delaware);
  - 2. Default on the part of the Submitter, a Principal Participant, Lead Engineer or Lead Architect under previous contracts with the Department (or the State of Delaware);
  - 3. Unsatisfactory performance by the Submitter, a Principal Participant, Lead Architect, and/or a Lead Engineer under previous contracts with the Department (or the State of Delaware);
  - 4. Issuance of a notice of debarment or suspension to the Submitter, a Principal Participant, Lead Architect, and/or a Lead Engineer;
  - 5. Submittal by the Submitter of more than one SOQ for the same Work under the Submitter's own name or under a different name;
  - 6. Existence of an organizational conflict of interest under [Section 1.9](#) or evidence of collusion between a prospective Submitter (or any Principal Participant or Lead Architect, and/or Lead Engineer) and other Submitter(s) (or Principal Participants or Lead Architect, and/or Lead Engineer) in the preparation of an SOQ, proposal, or bid for any Department construction project; and/or
  - 7. Uncompleted work or default on a contract in any jurisdiction for which the prospective Submitter 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.
- o) The RFQ does not commit the Department to enter into a Contract nor does it obligate the Department to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Submitter disclaims any right to be paid for such costs.
- p) The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent upon sufficient appropriations and authorizations being made by the Delaware State Legislature for performance of a Contract between the successful Submitter and the Department.
- q) In no event shall the Department be bound by or be liable for any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Department, has been executed and authorized by the Department and approved by all required parties and then only to the extent set forth therein.

## 6.2 DELAWARE DEPARTMENT OF TRANSPORTATION DISCLAIMERS

In issuing this RFQ and undertaking this contemplated procurement process, the Department specifically disclaims the following:



- a) Any obligation to award or execute a Contract pursuant to this Request For Qualifications; and
- b) Any obligation to reimburse a Submitter for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Submitter is specifically acknowledging these disclaimers.

## 7 GENERAL NOTICES

The following apply to the Project and will be incorporated, along with other requirements, in the RFP.

### 7.1 PREVAILING WAGES

Included in the RFP will be minimum wages to be paid various classes of laborers and mechanics as determined by the Department of Labor of the State of Delaware in accordance with 29 Del.C. §6960, relating to wages and the regulations implementing that section. Federal Davis-Bacon Labor Standard Provisions will also apply.

It is the Department's understanding that the Davis-Bacon Act is not a preemptive statute in the broad sense, and does not preempt or displace State of Delaware prevailing wage requirements. When a contract for a project contains both Federal Davis-Bacon and State of Delaware prevailing wage standards because of concurrent Federal and State coverage, the employer's minimum wage obligations are determined by whichever standards are higher.

### 7.2 DELAWARE CODE PROVISIONS

The following Delaware Code provisions, among others, will be incorporated in the RFP;

- a) 29 Del. C. §6962(d)(4)a. (anti-pollution, conservation environmental measures);
- b) 29 Del. C. §6962(d)(7) (equal employment opportunity assurances);
- c) 29 Del. C. §6962(d)(8) (performance bonding requirements);
- d) 17 Del. C. c.8 (construction payments held in trust for protection of subcontractors and suppliers).

### 7.3 RFP CONFIDENTIALITY

The Proposer may be given access to records that are confidential under state laws solely for the purpose of performing the required services under the Contract. The Proposer shall be required to sign a nondisclosure statement prior to its receipt of such documents obligating each employee, agent, or subcontractor of the Proposer not to make inappropriate use of or improperly disclose any of the contents of such documents. All Proposers unwilling to comply with this requirement and/or found to violate the nondisclosure statement will be subject to disqualification at the Department's sole discretion

### 7.4 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

The Design-Builder is advised that Federal Funding will be utilized on this project and relevant contract requirements will be included in the RFP, and in APPENDIX C of this document.

### 7.5 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM SPECIFICATION

The U.S. Department of Transportation (DOT) requires that the Delaware Department of Transportation continue the established Disadvantaged Business Enterprise (DBE) Program for participation in U.S. DOT programs and that the programs follow the final rules as stated in 49 CFR Part 26 and the Department's approved DBE Program plan. The Department will establish specific goals for each particular DOT-assisted project which will be expressed as a percentage of the total dollar amount of contract bid. DelDOT continues to reserve the right to approve DBE subcontractors and all substitutions of DBE subcontractors prior to award and during the time of the contract. Follow this link for additional



information on the DelDOT Disadvantaged Business Enterprise Program:  
<https://www.deldot.gov/Business/dbe/index.shtml>

**7.6 DBE PARTICIPATION GOAL**

A DBE participation goal of **ten percent (10%)** 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.

**7.7 EQUAL EMPLOYMENT OPPORTUNITY**

As a condition of this RFQ, the forthcoming RFP, and the resulting contract, Submitters and Proposers shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, or marital status. Proposers shall take affirmative action to insure that all applicants are treated during employment without regard to their race, creed, color, sex, national origin, age, disability, or marital status. Such action includes, but is not limited to, the following: layoff or termination; rates of pay or other forms of compensation; employment, job assignment, upgrading, demotion, transfer recruitment/recruitment advertising and selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training.

**7.8 DEPARTMENT POLICY**

The Department does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT) assisted contract or in the administration of 49 CFR Part 26. The Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

**7.9 COMPLIANCE WITH APPLICABLE LAWS**

In connection with this RFQ, the RFP, and the Contract, Submitters shall comply with all applicable laws in all aspects in connection with the procurement process of this Project and the performance of the Contract, as well as applicable regulations of the Federal Transit Administration.

**7.10 DRUG TESTING**

Regulation 4104; The Delaware Office of Management and Budget has developed regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds pursuant to 29 Del.C. §6908(a)(6). Refer to the full requirements at the following link:  
<http://regulations.delaware.gov/register/december2017/final/21 DE Reg 503 12-01-17.htm>

**7.11 LICENSES**

A person desiring to engage in business in this State as a contractor on a project designated to include federal funds, shall obtain a Delaware business license upon making application to the Division of Revenue. Proof of said license compliance to be made prior to, or in conjunction with, the execution of a contract to which he has been named.

**SUBCONTRACTOR LICENSE.** Per 29 DEL.C. §6967 (c); Any contractor that enters a public works contract must provide to the agency to which it is contracting, within 30 days of entering such public works contract, copies of all occupational and business licenses of subcontractors and/or independent contractors that will perform work for such public works contract. However, if a subcontractor or independent contractor is hired or contracted more than 20 days after the contractor entered the public works contract the occupational or business license of such subcontractor or independent contractor shall be provided to the agency within 10 days of being contracted or hired.

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