

STATE OF DELAWARE



DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

for

**CM/GC SERVICES**

(Construction Manager/General Contractor)

BR 3-150N&S ON SR1 OVER LEWES-REHOBOTH CANAL

PROJECT: CM/GC-201407602  
(EBHN-S014013)

Advertisement Date: December 19, 2016

Bids will be received in the Bidder's Room at the Delaware Department of Transportation's Administration Building, 800 Bay Road, Dover, Delaware until 2:00 P.M. local time **January 24, 2017**

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## **1.0 INTRODUCTION**

### **CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)**

The Delaware Department of Transportation (DelDOT) is accepting Proposals in response to this RFP from qualified firms interested in providing CM/GC services to DelDOT for this project.

The CM/GC process is a unique method used to accelerate project delivery. In the CM/GC process DelDOT hires an experienced, qualified contractor to provide feedback during the design phase before the start of construction.

The CM/GC process is broken down into two phases. The first, the Design Phase, allows the CM/GC to work with the Designer and DelDOT to offer constructability and pricing feedback on design options, identify risks based on the contractor's established means and methods, and help refine the project schedule. The CM/GC is compensated for this effort as described in Appendix A, Pre-Construction Services Fee. The second, the Construction Phase, begins once DelDOT considers the design to be complete. The CM/GC then has an opportunity to submit a cost proposal on the project based on the completed design and schedule. If DelDOT, utilizing the Designer's and an Independent Cost Estimator's (ICE) project estimate, determines that the contractor has submitted a fair price, DelDOT will issue a construction contract to the CM/GC and construction can begin.

If a fair price cannot be agreed upon, the CM/GC services are ended, and the construction project will be advertised following DelDOT's Design-Bid-Build competitive bidding process.

#### **1.1 Advantages of CM/GC Procurement**

There are advantages to using the CMGC process with certain projects. The contractor serves in a consulting role during the design process and can offer new innovations, best practices and reduced costs and schedule risks as a result of the contractor's years of proven experience doing similar work. This process also allows the project owner to employ new innovations, assist in the design process, and make informed decisions regarding cost and schedule.

Additional anticipated benefits for using the CM/GC process include:

- **Fostering innovation:** The process encourages both contractor and project owner to look at all options including using innovative techniques or approaches that reduce time and cost.
- **Mitigating risk:** The project owner is able to understand the risk and explore mitigation options with feedback provided by the contractor.
- **Improving design quality:** The contractor is able to review the designs and provide feedback, answer designer questions, and provide changes. By including the contractor review, the designer can produce better designs that reduce issues in construction and prevent change orders that can lead to project overruns.
- **Improving cost control:** Value engineering is part of the CMGC process where budget shapes the design approaches. With the contractor as part of the design team, the contractor is able to provide cost estimates for all designs and alternatives within the design phase. The project owner can use the estimates to make informed decisions around projects costs.
- **Optimizing construction schedules:** The CMGC process allows the contractor to begin planning the construction schedule during the design phase. By planning during the design phase the team can view how construction will impact traffic and adjust the construction schedule accordingly to minimize traffic impacts.

#### **1.2 Authority**

Delaware's 148th General Assembly authorized a Construction Manager/General Contractor pilot program within 80 *Del. Laws*, c.78, §130, allowing this procurement mechanism for up to six projects. This is the third procurement.

The Federal Highway Administration has issued a Notice of Proposed Rule Making (NPRM) proposing several amendments in 23 CFR part 630 and 635 to account for the particular application of various Federal requirements to CM/GC projects. This procurement meets these proposals. The NPRM can be found on the Federal Register Web site at: <https://www.federalregister.gov/articles/2015/06/29/2015-15617/construction-managergeneral-contractor-contracting>.

## **2.0 PROJECT INFORMATION**

### **2.1 Questions, Clarifications, and Addenda**

Questions regarding this project are to be e-mailed to [dot-ask@state.de.us](mailto:dot-ask@state.de.us) no less than six business days prior to the proposal opening date in order to receive a response. Please include ‘CM/GC’ in the subject line. Responses to inquiries are posted on-line at [bids.delaware.gov](http://bids.delaware.gov).

Any changes, clarifications, or interpretations of this RFP that affect or change its requirements will be issued by DelDOT to the Project Web Site in the form of Addenda or in response to questions. Responses in any other form, including oral statements, will not be binding on DelDOT and should not be relied upon in preparing the Proposal.

All addenda and responses to questions issued by DelDOT before the Proposal Due Date are part of the RFP, and all requirements shall be incorporated into the Proposal. The Submitter shall acknowledge receipt of each addendum and the latest response to questions.

### **2.2 Project Schedule, Due Dates**

Advertise RFP: December 19, 2016

Last day for submittal of questions: January 17, 2017

<b>Proposals Due:</b>	<b>January 24, 2017</b> prior to 2:00 PM Local Time
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Anticipated Selection of CM/GC February 2017

Anticipated Notice to Proceed March/April 2017

Development of Plans and Specifications Current – October 2018 (estimated)

Proposed Construction Price (PCP) Negotiation November 2018 (estimated)

Construction Letting (if no PCP agreement) January 2019 (estimated)

Construction October 2019 to April 2020 (estimated)

### **2.3 Proposal Delivery**

Sealed Proposals must be delivered to the following location prior to the date and time indicated in Section 2.2 of this RFP:

Contract Administration  
 Proposal OPENING 1/24/2017  
 Delaware Department of Transportation  
 Administration Building  
 800 Bay Road  
 Dover, DE 19901

DelDOT will not accept Proposal’s submitted by facsimile or e-mail.

### **3.0 PROJECT REQUIREMENTS**

#### **3.1 Phase 1 - Pre-Construction Services, Design**

DeIDOT, its design consultant (Designer), and the awarded CM/GC will collaborate throughout the design phase of the Project. The CM/GC will be responsible to provide constructability reviews, cost estimates, and additional construction input during the design phase.

It is essential that during the design phase, the CM/GC, the Designer, and DeIDOT will develop and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

The CM/GC is expected to deliver pre-construction services which typically may include:

- Review the Designer developed alternatives and identify potential construction issues and risks for each to assist the Project Team in selecting the appropriate option for the Project.
- Analyze and evaluate the constructability of the preliminary design.
- Provide information, cost estimates, and alternative options to help facilitate decisions regarding existing conditions, construction impacts, staging, timing, and traffic impacts.
- Provide input to the Project Team regarding current construction industry practices, labor market, and material and equipment availability.
- Review in-progress design plans and provide input and/or alternate design concepts and offer suggestions with respect to the means and methods, materials, innovations, and construction sequencing.
- Review design documents in-progress and offer suggestions to improve completeness or clarity.
- Notify the DeIDOT Project Manager of problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Assist the Designer and DeIDOT Project Manager in resolving problems, conflicts, and/or deficiencies identified during the review and evaluation of design drawings.
- Provide Opinion of Probable Cost (OPCC) estimates at significant phases of the project planning process.
- Provide recommendations for the plans or construction documents to ensure completion of the Project in the most efficient manner possible.
- Provide a review and evaluation of the final plans and construction documents.
- Provide preliminary schedule development and confirm feasibility of DeIDOT's desired completion date.

The scope of services in the preconstruction phase includes all alternatives identified and considered in the NEPA process. DeIDOT expressly declares that no commitments are being made to any alternative evaluated in the NEPA process and that the comparative merits of the alternatives will be evaluated and fairly considered.

#### **3.2 Phase 1A - Pre-Construction Services;**

##### **Early Work Packages**

An Early Work Package is an optional tool for a portion or phase of construction work (including material acquired for a construction phase) that is procured before all design work for the project is complete. Once NEPA is complete, Early Work Packages may allow DeIDOT to provide for; schedule acceleration; overall risk mitigation; cost savings related to inflation; acquiring long-lead items; or start a particular phase of construction; for which the risks are adequately identified and the scope of work is defined sufficiently to reasonably determine price. If desired, DeIDOT may request a price proposal from the CM/GC contractor (or negotiate a price) for the defined scope and schedule for an Early Work Package. If the price is reasonable, DeIDOT awards a construction contract for that portion of the project. Early Work Packages are procured, authorized, awarded, and contracted utilizing the same process as the Proposed Construction Price contract would be handled if awarded to the CM/GC.

### **Proposed Construction Price (PCP)**

As the design nears completion, DelDOT will request a PCP from the CM/GC when the plans and construction documents are completed to a level efficient enough to do so. The Proposed Construction Price will include all necessary materials, equipment, staff, and labor to complete the construction of the Project through DelDOT acceptance. The PCP will not be exceeded without prior approval from DelDOT through a written work order.

The Proposed Construction Price (PCP) shall include:

- All costs for the project's construction through to DelDOT acceptance, including all overhead and profit considered within specified pay items; as well as any subcontracted work.
- Written guarantee from the CM/GC that the total construction cost shall not exceed the PCP. All costs or expenses in excess of the PCP shall be borne by the CM/GC, unless adjusted by a previously approved written change order.
- The CM/GC will prepare and submit paper and electronic bid documents for identified items per DelDOT standard specifications.
- Construction schedule showing the proposed start and finished dates and any significant milestones.
- Staffing Plan during construction.
- Stated understanding of the project requirements including adherence to the soil erosion and sedimentation control plan requirements.
- Assurances that all environmental and mitigation measures identified in the NEPA documentation and committed to in the NEPA determination for the selected alternative will be implemented.
- Commitment to the identified Disadvantaged Business Enterprise (DBE) participation goal.
- The CM/GC is to make available all cost and budget estimates, including supporting materials and records, to DelDOT if requested.

Subject to a successful negotiation with DelDOT, the CM/GC will be awarded the construction portion of the project, responsible to complete the construction while directly performing at least 50 percent of the work with its own forces.

If DelDOT and the CM/GC cannot agree on a PCP, DelDOT reserves the right to terminate the CM/GC services without penalty or payment, except payment as identified in the Pre-Construction Services contract. DelDOT will then proceed with the project as necessary, and may advertise the Project construction using traditional Design-Bid-Build or other procurement methods. All information provided by the CM/GC during the Pre-Construction phase becomes the property of DelDOT, and may be used to develop the plans and specifications for the project.

### **3.3 Phase 2 - Construction Services**

Upon DelDOT's acceptance of the CM/GC's PCP, DelDOT will Award the construction contract to the CM/GC. The CM/GC shall, once award is made by DelDOT:

- Submit a Performance and Payment bond for 100% of the accepted PCP;
- Submit properly signed and notarized project Certification document;
- Submit a signed and notarized Affidavit Of Employee Drug Testing Program;
- Submit DBE participation information within the time specified in the Award;
- Enter into a standard project construction contract with DelDOT following DelDOT's Specifications and procedures;
- Attend pre-construction meeting;
- Request approval from DelDOT for all subcontractors prior to their on-site work;
- Manage all construction related contracts;
- Perform at least 50% of all construction work, excluding any identified specialty items;  
(The remaining percent of work may be completed by DelDOT approved subcontractors)

- Adhere to all federal, state, and local permitting and environmental requirements;
- Maintain a safe work site;
- Achieve Substantial Completion no later than date specified in the PCP;
- The CM/GC (and all Joint Venture members) will need to be registered with the Department and provide proof of a Delaware business license prior to entering into a construction contract.
- Delaware Standard Specifications for Road and Bridge Construction, August 2016 apply to all construction activity unless specifically addressed in this RFP or contract documents.
- The construction contract terms shall include provisions to pay prevailing wage rates as provided in 29 Del. C. § 6960, or the applicable Federal prevailing wage rate (if applicable), whichever is higher.
- The following additional provisions of 29 Del. C. c. 69 shall also be incorporated into these contracts:
  - § 6962(d)(4)a. (anti-pollution, conservation environmental measures);
  - § 6962(d)(7) (equal employment opportunity assurances); and
  - § 6962(d)(8) (performance bonding requirements).
- Any such contracts shall conform to all applicable Federal laws and regulations concerning CM/GC contracting, without regard to the source of funds.
- Any such contracts shall also be subject to the provisions of 17 Del. C. c. 8 (construction payments held in trust for protection of subcontractors and suppliers).

### **3.4 Project Scope of Work**

The Scope of Work, Project Goals and Key Issues for this Project are contained in Appendix A.

### **3.5 Sample Contract**

A sample Pre-Construction Services contract is contained in Appendix B.

## **4.0 PROPOSAL SUBMISSIONS**

### **WRITTEN PROPOSAL SUBMISSION**

Proposals should be prepared simply and economically, providing a straightforward, concise description of proposer capabilities to satisfy the requirements of this project. To be considered, all submittals must be in writing and respond to the items outlined in this RFP using the requested format. Emphasis should be on completeness and clarity of contents.

Proposals are required to address the following items in the order shown:

#### **4.1 Cover Letter**

Each Proposal should have a cover letter on the letterhead of the Proposer's company. At the top of the first page, list the Proposer's contact name, telephone number and e-mail address. This will be the main contact representing the Proposer. The cover letter shall summarize your ability to provide Pre-Construction Services and explain the advantages offered by your team. Proposer should describe their ability to coordinate with the Designer and DelDOT to improve constructability and provide input for design details.

#### **4.2 Proposer's Team**

Describe how the key members of your team will help address the Goals and Key Issues described in Appendix A, Scope of Work. Discuss the qualifications and experience of the below listed Key Personnel. When Proposers list personnel in the Project Team section of the Proposal, the Proposer is agreeing to make the personnel available to complete work on the Contract at whatever level the Project requires. Personnel changes will be reviewed and approved by DelDOT's Project Manager. Re-negotiation of the Pre-Construction Services Fee or termination of the contract may occur if a change in Key Personnel does not meet DelDOT's determination of "equal to" or "better than" the qualifications of the individual who was submitted in the Proposer's proposal.

#### Project Manager:

This will be the primary member of the CM/GC's team for the CM/GC preconstruction services, and is expected to lead the construction services phase of the project.

- Demonstrate recent experience managing the construction of projects of similar scope and complexity. Experience does not have to be CM/GC experience.
- Demonstrate experience working collaboratively with project owners and stakeholders.
- Demonstrate experience identifying and mitigating project risks.

#### Construction Manager:

Must have experience as a construction manager, including managing the construction of at least one project of similar scope and complexity (5 years preferred).

- Demonstrate experience with design plan constructability reviews.
- Demonstrate experience identifying and mitigating project risks.

#### Lead Estimator:

Must have experience as a lead estimator, including estimating at least one project of similar scope and complexity (10 years preferred).

- Demonstrate experience in current local construction pricing.
- Demonstrate experience in developing "take off" quantities.
- Demonstrate experience identifying and mitigating project risks.

#### Other Personnel:

Up to two other persons that the proposer considers as key to the stated goals of the project (ATTSA Certified Traffic Control Supervisor or construction phasing expert preferred).

- Describe any past experience collaboratively working with owners and/or design firms on highway and/or bridge projects (does not have to be CM/GC experience).

#### Organizational Conflict of Interest

- Proposers are required to disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflict of interest. Proposers shall state how their interest, activities, or relationships, or those of the chief executives, directors, key project personnel, or proposed firms may result, or could be viewed as, an organizational conflict of interest. Must describe details, or state if not applicable.

### **4.2.1 Resumes**

Provide resumes for the Proposer's Team.

## **4.3 Preconstruction Approach**

How the CM/GC supports the process to achieve the Project Goals is critical to the Project Team's success. This section is an opportunity for the Proposer to demonstrate their qualifications to be successful in a CM/GC contracting environment during the preconstruction phase.

#### Collaboration -

The CM/GC process is based on the principles of collaboration, cooperation, and trust between DeIDOT, the design team, and the CM/GC.

- Describe the Proposer's approach for accomplishing this objective.

#### Design and Constructability Review -

The CM/GC's involvement during the preconstruction phase of the project should help streamline the design process, reduce errors and omissions, improve constructability and quality, reduce the cost of construction, and optimize the project delivery schedule.

- Describe the Proposer's approach for accomplishing these objectives on the Project.

### Risk Management -

The CM/GC process benefits from the contractor's engagement in risk management.

- Explain the approach the Proposer will use to help the Project team identify, price, and mitigate risks.

### Cost Control -

The CM/GC plays a key role in partnership with the Project design team, and the ICE in developing and managing the project cost through the development of the design.

- Describe the Proposer's preconstruction approach to deliver this project within a controlled budget.

## **4.4 Construction Approach**

Address the following regarding your approach to construction and how you will address the Project Goals and Key Issues.

- Describe the project approach which may include sequencing, Maintenance of Traffic (MOT) strategies, staging area(s), construction phasing, etc.
- Describe your approach to safety of workers and traveling public.
- Describe your approach to support DeIDOT in working with other stakeholders as it applies to Project Goals and Key Issues. Discuss how your approach will help local governments, utility companies, adjacent property owners, and local businesses achieve their goals.
- Describe the capabilities and resources that your company will bring to the project and how these resources and capabilities will be beneficial in achieving Project Goals and Key Issues. This narrative may also include discussion of any unique business advantages or construction methods that will benefit the project.

### **4.4.1 Similar Past Performance**

List up to ten (10) projects where you performed a significant amount of work similar to that expected on this project.

### **4.4.2 Performance Issues**

List each project in the past five (5) years the Proposer has defaulted or failed to complete a contract and the reasons why.

### **4.4.3 Current Projects**

Provide a list of contracts currently in progress, and their respective associated dollar amounts

## **4.5 Approach to Price**

Project estimating on CM/GC projects is a collaborative process where the CM/GC is expected to provide an open and transparent Cost Model at each estimating milestone to clearly document the means, methods, and assumptions that were used to derive the proposed pricing.

- Describe Proposer's approach to providing an open and transparent estimating environment that will assure DeIDOT is receiving a fair price for the work.
- Provide a sample estimate for the two bid items listed below, showing how the CM/GC will breakdown direct costs such as labor, equipment, material, trucking, small tools and supplies, etc, as well as the approach to applying indirect costs and markup associated with the items and any other detailed costs used to develop a fully loaded cost for the items. The costs and markups provided should be conceptual and will not be evaluated or considered "contractual". The purpose of the sample estimates is to demonstrate the CM/GC's approach to estimating/bidding is open and transparent and will be evaluated for the structure of the breakdown rather than the costs.
  - 610008 Portland Cement Concrete Masonry, Parapet, Class A (CY)
  - 211000 Removal of Structures and Obstructions (LS)
    - Assume full removal of existing concrete decks, parapets, and approach slabs for both bridges when developing the approach to price for Item 211000.
- Subcontractor Plan: The CM/GC has a minimum self-performance requirement of 50 percent. Discuss the approach to developing a subcontractor selection plan that will allow for competitive solicitation of

bids from quality subcontractors. How will the Proposer demonstrate that the subcontractor's prices are competitive? What specific commitments will the Proposer provide that enhance DBE participation, during construction?

#### 4.6 Surety Company Bonding Information

Provide a letter from a surety company indicating that the Proposer is capable of obtaining Payment and Performance Bonds for at least \$8,000,000. The surety must be such surety company or companies as are acceptable to the State of Delaware and are authorized to transact business in this State. Letters indicating “unlimited” bonding/security capability are not acceptable.

#### 4.7 Proposal Required Format

- **Language:** All information shall be in English.
- **Font:** All narrative text shall be a minimum of eleven (11) point font and single spaced. The style and size of headings and figures are not prescribed.
- **Page Size:** 8.5-inch x 11-inch paper. Charts, exhibits, etc. may be 11-inch x 17-inch paper, folded to 8.5-inch x 11-inch and will be counted as one (1) sheet. Pages may be single or double sided.
- **Page Margins:** Set at 0.75 inches minimum, not including headers or footers.
- **Table of Contents:** Include a Table of Contents that provides page number references.
- **Page Limit:** Do not exceed 20 pages. Staff resumes and forms are not included in page limits.
- **Dividers:** Section dividers or tabs are required.
- **Binding:** Each copy of the Proposal shall be bound separately, with the exception of the “Original” which shall be submitted in a three ring binder.
- **Front Cover:** Front cover shall be clearly labeled with the Project name and Submitter’s name. The Front and Back Cover may contain photos, graphics, and logos but no written content and will not be considered part of the page count.
- **Appendices:** Any additional appendices or information included but not requested by DeIDOT will be removed from the Proposal and will not be reviewed by the Evaluation Team.

#### 4.8 Submittal of Proposal

- One Proposal submission in 3 ring binder bearing original forms and signatures. This shall be identified as “Original” on its front cover;
- Five additional hardbound copies of the Proposal submission;
- One CD containing;
  - Electronic copy of the exact submitted Proposal in PDF format with sections bookmarked;
  - Electronic copy of the submitted Proposal in PDF format with proprietary or confidential information redacted. The PDF to be marked as “Redacted Copy”, required even if the submission contains no proprietary or confidential information. [*Firms should review Delaware’s Freedom of Information Regulations, section 6, Requests for Confidentiality, on the DeIDOT Website [www.deldot.gov](http://www.deldot.gov) to determine what information may be considered proprietary or confidential and may be redacted.*]
- The unbound original, the bound copies, and CD shall be placed in one (1) sealed package for delivery to DeIDOT as set forth in Section 2. The outside of the sealed package shall be clearly labeled with the Project name, as well as the name and return address of the Submitter.

### 5.0 SELECTION AND AWARD

#### 5.1 Selection Process

### 5.1.1 Proposal Submittal

Proposal submittals must be received by the time and at the location identified in Section 2.2. The proposals should contain all the essential information in which the award decision shall be made. The information that is required to be submitted in response to this RFP has been determined by DeIDOT to be essential for use by the Committee in the evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible proposer and participate in the consideration for award. Proposals that do not meet or comply with instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Committee.

### 5.1.2 Selection Committee

The Selection Committee will individually review each Proposal, and then meet as a group to review and discuss the submitted Proposal's. The Committee will discuss the Proposers' strengths and weaknesses in each scoring category based on the selection criteria. The committee will decide if interviews will be required. If any of the Proposer's submittals is missing information or is not complete, the Committee may request clarification and/or submittal of corrected, supplemental, or missing documents. Alternatively, the Proposal submittal may be declared non-responsive and not considered for award, and the Proposer will be advised of the Committee's decision.

### 5.1.3 Proposer Interviews

An interview of all Proposers may be requested by the Selection Committee. The interview will allow the Proposer the opportunity to present on the qualifications of their team, project approach or on other areas they feel will add value. DeIDOT will have the opportunity to ask each Proposer general questions or questions that are specific to their proposal.

If interviews are required, DeIDOT will notify all firms to arrange an interview. Proposers not participating in an interview will have their Proposal declared non-responsive and will no longer be considered for selection. Interviews are not expected to exceed 60 minutes. If interviews are held, the Selection Committee will meet after all interviews have been completed to review and discuss the submitted Proposal's, and the information gained from the interviews.

## 5.2 Selection Criteria

<b>Evaluation Item</b>	<b>Weight</b>	<b>Maximum Points</b>
Proposer's Team	<b>25%</b>	<b>30</b>
Preconstruction Approach	<b>25%</b>	<b>20</b>
Construction Approach	<b>25%</b>	<b>30</b>
Approach to Price	<b>25%</b>	<b>20</b>
<b>Total Points</b>		<b>100</b>

## 5.3 Scoring

After the Selection Committee meeting, committee members will individually score each Proposal submittal according to the Selection Criteria and utilizing the Qualitative Assessment Guidelines found below, which will rank each Proposal from highest to lowest (highest score receives ranking of 1 for first choice). Individual rankings are submitted to DeIDOT's Contract Administration section for compilation. The Proposal rankings of all committee members will then be averaged. The lowest average ranking will indicate the selected firm. In the event of a tie, highest total points will indicate the selected firm. This will be the Committee's recommendation for award. Upon approval of the appropriate DeIDOT Director, Contract Administration will notify all proposers of the Award.

<b>Qualitative Assessment Guidelines</b>	
Evaluation Team members will individually review and score each submission according to the criteria set forth in the RFP. Team members will evaluate each category and assign a Qualitative Assessment Percentage considering the scoring range listed below:	
<b>90-100%</b>	The Proposer's qualifications are exceptional. The Proposer demonstrates a complete understanding of the subject and an approach that significantly exceeds the stated requirements and objectives of this project. The Proposal communicates an outstanding level of quality.
<b>70-89%</b>	The Proposer's qualifications are above average. The Proposer demonstrates a strong understanding of the subject and an approach that meets the stated requirements and objectives of this project. The Proposal communicates a high level of quality.
<b>40-69%</b>	The Proposer's qualifications are adequate. The Proposer demonstrates a general understanding of the project and an approach containing some weaknesses/ deficiencies regarding the stated requirements and objectives of this project. The proposal communicates an average level of quality.
<b>20-39%</b>	The Proposer's qualifications raise questions about the Proposer's ability to successfully complete the work. The Proposer demonstrates a vague understanding of the project and an approach containing significant weaknesses/ deficiencies regarding the stated requirements and objectives of this project. The Proposal communicates a below-average level of quality.
<b>0-19%</b>	The Proposer's qualifications do not indicate the likelihood that the work will be completed successfully. The Proposer demonstrates insufficient understanding of the subject and an approach that fails to meet the stated requirements and objectives of this project. The Proposal communicates a low level of quality.

#### 5.4 Award

DelDOT intends to award the agreement to the most responsive and responsible Proposer in accordance with the listed selection criteria. DelDOT shall make this award in writing and for the selected Proposer. Concurrence from the FHWA Division Administrator is required prior to award, including agreements to proceed to the construction services phase or decisions to not proceed with an agreement for construction services.

#### 5.5 Organizational Conflicts Of Interest

Organizational conflict of interest means that because of other activities or relationships with other persons or entities, an Organization:

- Is unable, or potentially unable, to render impartial assistance or advice to DelDOT;
- Is, or might otherwise be, impaired in its objectivity in performing the contract work;
- Has an unfair competitive advantage.

If an Organizational Conflict of Interest is determined to exist, DelDOT may, at its sole discretion: offer the Proposer the opportunity to avoid or neutralize the Organizational Conflict of Interest; disqualify the Proposer from participation; or, if award has already occurred, declare the Proposer nonresponsive and negotiate with the next highest scoring Proposer, or cancel the contract.

No firm that is ineligible for State or Federal contracts may be part of any Proposal. Each Proposer is responsible for determining eligibility of its team members.

#### **6.0 RIGHTS AND DISCLAIMERS**

DelDOT reserves the right, in its sole and absolute discretion, to:

1. Reject any or all submittals;
2. Issue a new RFP;

3. Cancel, modify, or withdraw the RFP;
4. Issue addenda, supplements, and modifications to this RFP;
5. Modify the RFP process (with appropriate notice to Proposers);
6. Appoint an Evaluation Committee and evaluation teams to review submissions;
7. Approve or disapprove substitutions and/or changes in submissions;
8. Revise and modify, at any time before the RFP due date, the factors it will consider in evaluating submittals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, DelDOT will provide an addendum setting forth the changes to the evaluation criteria or methodology. DelDOT may extend the RFP due date if changes are substantial;
9. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the submissions;
10. Waive weaknesses, informalities, and minor irregularities in submissions;
11. Retain ownership of all materials submitted in hard-copy and/or electronic format;

**DelDOT Disclaimers:**

The RFP does not commit DelDOT to enter into a Contract, nor does it obligate payment for any costs incurred in preparation and submission of the RFP submittals or in anticipation of a Contract. By submitting a response, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract is contingent upon sufficient appropriations and authorizations being made by the state General Assembly, and/or the Congress of the United States.

In no event shall DelDOT be bound by, or liable for, any obligations with respect to the Work or the PROJECT until such time (if at all) as the Contract has been executed by both parties, and then only to the extent set forth in a written Notice to Proceed.

In submitting responses to this RFP, the Proposer is specifically acknowledging these disclaimers.

- end -

## **APPENDIX A – Project Scope of Work**

### **Project Description**

Bridges 3-150N&S were identified by DelDOT's Bridge Management System as needing work. There is significant delamination of the decks and damage to the approach slabs due to misalignment. The existing beams, abutments, and piers have significant spalls and need repair. The abutments and piers are also exhibiting significant cracks due to alkali silica reactive concrete. There is also misalignment of the drop-in spans of the concrete girders and the bearings need to be replaced. In addition, there is guardrail damage and the joints need replacement.

The scope of work includes deck replacement, joint replacement, barrier reconstruction, guardrail replacement, bearing replacements, realigning the concrete girders, substructure repairs and strengthening, sealing all exposed concrete, and correcting the profile and replacing the approach slabs. Additional work includes placing riprap on the canal banks for erosion protection. Work will have to be done such that traffic impacts are kept to an absolute minimum. Public outreach will be a key component of the project, both during design and construction. The project is expected to be open to traffic and construction substantially complete by the spring of 2020.

### **Goals**

- Extend the service life of the bridges through repair and rehabilitation of the existing structures
- Use Accelerated Bridge Construction (ABC) and other innovative techniques to minimize the impacts to vehicular and pedestrian traffic during construction
- Provide extensive public outreach during design and construction

### **Key Issues**

- Maintaining a safe work zone for workers and the travelling public
- Minimizing disruptions in service to the high daily vehicular and pedestrian traffic volumes, particularly during the peak season (May through October)
- Coordinating with resource agencies including Delaware Department of Natural Resources, Army Corps of Engineers, and US Coast Guard
- Coordinating with the public including the City of Rehoboth, state legislators, and area businesses

### **Estimated Cost**

The estimated construction cost for the project is between \$6,000,000 and \$8,000,000.

### **Pre-Construction Services Fee**

The Pre-Construction Services Fee for this project is \$75,000. Compensation for the pre-construction work shall be on a **monthly** basis, paid during the pre-construction services.

DelDOT may authorize incremental payments if the design phase is delayed due to circumstances beyond the CM/GC's control. Payment to the CM/GC for services rendered shall not exceed the maximum amount unless an increase is approved in accordance with the contract with the CM/GC.

### **Pre-Construction Services**

As part of the Project team, the CM/GC will provide input on schedule, constructability, stream diversion, materials availability, staging, cost, etc. throughout the Pre-construction services phase of the Project. The CM/GC tasks during the Pre-construction services phase include: As part of the Project team, the CM/GC will provide input on schedule, phasing, constructability, materials availability, cost, etc. throughout the Pre-construction services phase of the Project. The CM/GC tasks during the Pre-construction services phase include:

- A. Provide a Project Manager and associated staff to consult with, advise, assist, and provide recommendations to the Project Team on all aspects of the planning, preconstruction, and proposed construction.

- B. Attend a Project Kick-Off workshop for the City of Rehoboth, state legislators, and area businesses that may include the following agenda items:
  - 1. Introduction of the Project Team
  - 2. Introduction of the Project Stakeholders
  - 3. Project status, goals, objectives, funding, etc.
  - 4. Presentation of project elements
  - 5. Identification of project risks and provide input that will be used to develop a risk management plan
  - 6. Question and answer session
- C. Participate in Project Team meetings.
- D. Work collaboratively with the Project Team in the development of the plans and specifications.
- E. Participate in formal milestone reviews meetings, which will coincide with the anticipated preliminary, semi-final, and final design submissions. For each milestone review meeting, provide the following services:
  - 1. Participate in formal constructability, material, equipment and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for pricing, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the project.
  - 2. Participate in formal risk analysis meetings with the Project Team. The focus of the risk analysis meetings will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency.
  - 3. Assist the Project Team with the selection process of preconstruction elements that meet Project Goals.
  - 4. Provide progressively refined Opinion of Probable Construction Cost estimates (OPCC) and participate in pricing reconciliation meetings for each milestone submission.
  - 5. Prepare and submit a Critical Path Method (CPM) schedule that supports each OPCC and bid.
  - 6. Provide written comments and recommendations of the plans, including conflicts and/or deficiencies.
- F. Continually provide oversight and constructability reviews on various specific elements of the project and provide recommendations, including providing input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, accelerated construction techniques, and materials that may be cost-effectively recycled during construction.
- G. Identify any long lead items that may cause schedule impacts.
- H. Develop and formulate a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet any DBE contract goals for each separate and severable work package.
- I. Help ensure that environmental commitments can be implemented during construction through the review of design and permit applications. Provide input on temporary construction or staging activities that may require additional environmental permits based on the proposed construction operations. Clearly reflect in

the CPM Schedule the times required to obtain these clearances and permits. Identify time and cost impacts associated with schedule slippage and propose mitigation measures to minimize these impacts. Provide constructability feedback on mitigation measures proposed in the design plans.

- J. Develop, propose, and track innovations for project construction. Document and track cost savings and schedule impacts associated with innovations in a written report to the Project Team.
- K. Coordinate with project stakeholders in conjunction with the Project Team. This may include intermittent project update meetings.

### **Proposed Construction Price (PCP)**

When the Project Team determines that the Project has been designed to a sufficient level of detail to allow for a constructible and biddable project or work package, the CM/GC will be given an opportunity to provide a PCP to construct the project. It is anticipated that the cost proposal required on this project will be a unit priced proposal. However, the Project Team will determine the final form of the cost proposal and may also elect to utilize other contract payment provisions, including Lump Sum or Fixed Plan Quantity items.

When preparing to submit a bid for the work, the following tasks must be completed:

- A. Participate in pre-proposal plan workshop in order to review and provide final input on the final plans and specifications.
- B. Participate in the final risk workshop for the project or work package. Provide final input to the Project Team regarding project risks and clarify risk assumptions and assignments in preparation for submitting a cost proposal for the work.
- C. Submit a cost proposal utilizing DelDOT required documents including DBE goal attainment for the entire project or work package.

After submission of the cost proposal for the work, the following tasks must be completed:

- A. DelDOT will review the CM/GC's proposal.
- B. Participate in the pricing reconciliation process, if needed to reconcile differences.
- C. Based on the outcome of A. and B. above, DelDOT will either:
  - 1. Award the Construction Contract to the CM/GC, or
  - 2. Reject the CM/GC's proposal and advertise the Construction Contract per DelDOT's Design-Bid-Build advertisement process.

### **Construction Services**

If DelDOT is able to successfully validate the CM/GC's PCP and the CM/GC complies with DBE requirements and all other conditions of award, the CM/GC shall:

- A. Execute a Construction contract with DelDOT within fourteen (14) days of Award.
- B. Construct and manage all construction related contracts while meeting all Project/Contract requirements.
- C. Substantially complete the construction no later than specified in the contract.
- D. Participate in a post-construction lessons learned meeting outlining the positives and negatives of the CM/GC process.

- end -

AGREEMENT

for

CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

State Project Number: CM/GC-XXXXXXXX

Federal-Aid Number: ESTP-XXXXXX

THIS AGREEMENT is made and executed in quadruplicate, the day, month, and year affixed by the signature of the Department of Transportation's representative, by and between the **DELAWARE DEPARTMENT OF TRANSPORTATION (Department)**, a department created under the laws of the State of Delaware, party of the first part, and XXXXXXXXXX of Street City State Zip ("**CM/GC Contractor**"), party of the second part.

**WITNESSETH:**

**WHEREAS**, the **CM/GC Contractor** has been selected pursuant to state and federal guidelines and regulations to provide services to the **Department** as a Construction Manager/General Contractor as defined in the advertised Request for Qualifications (RFP) for this project, which advertisement and RFP are hereby incorporated by reference as part of this Agreement, and

**WHEREAS**, CM/GC is a contracting method that allows the **Department** to use a single procurement to secure pre-construction and construction services, and

**WHEREAS**, this Agreement covers pre-construction services, where the **Department** has procured the services of a construction contractor early in the design phase of a project in order to obtain the contractor's input on constructability issues that may be affected by the project design. The CM/GC contractor does not provide any preliminary or final design engineering. As part of the pre-construction services, the CM/GC contractor provides information for consideration in the design and environmental review processes on construction-related aspects of a project, including the potential effects of design elements on construction costs, schedule and quality, and

**WHEREAS**, construction services may begin once environmental review is complete and risks are adequately defined. If the **Department** and the **CM/GC Contractor** are able to agree on a price for a given scope and schedule for construction, the **CM/GC Contractor** and the **Department** will execute a separate contract for the construction of the project.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, hereinafter are stipulated to be kept and performed, it is agreed between the parties as follows:

**ARTICLE ONE.** The TERM of this Agreement shall be from its effective date until either; this Agreement is terminated by the **Department** or mutual agreement of the parties in writing and signed by the parties; or, the **CM/GC Contractor** and the **Department** executes a final Agreement for Construction Services for this project (not including Early Work Packages). Should the **Department** desire to suspend the work, but not terminate the contract, this will be done by verbal notification followed by written confirmation from the **Department**. The work may be reinstated upon 30 days advance written notice from the **Department**.

**ARTICLE TWO.** Payment to the **CM/GC Contractor** is addressed in the RFP. The **CM/GC Contractor** certifies that they have thoroughly investigated the **Department's** requirements and shall claim no compensation in addition to the amounts for work and services as set forth in this Agreement. Compensation provided to the **CM/GC Contractor** herein shall be the total compensation payable hereunder by the **Department**. It is further mutually agreed between the parties hereto that no payment made under this Agreement shall be conclusive evidence of the performance of this Agreement either wholly or in part.

ARTICLE THREE. The **CM/GC Contractor** shall and will provide and furnish all services as described in the referenced RFP prepared by the **Department**. Following the execution of this Contract, the **CM/GC Contractor** shall begin work within ten (10) days from the Notice to Proceed, at such points as the Engineer may direct, and shall thereafter prosecute the work at such points and in such order as the Engineer may from time to time prescribe in accordance with the RFP.

ARTICLE FOUR. The **CM/GC Contractor** shall hold its work and records open at all times for the inspection and/or audit by the **Department** and other authorized State and Federal auditors. The location of the inspection will be at the **Department's** discretion. Retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this Agreement for a minimum period of three years after final payment by the **Department** and shall make the material available upon request for inspection and audit by the **Department**.

ARTICLE FIVE. It is understood and agreed by and between the parties hereto that drawings, plans and specifications as may be necessary to detail and illustrate the work to be done are and remain the property of the **Department** whether furnished by the Engineer or **CM/GC Contractor**, as it may be consistent with the purpose and intent of the original RFP incorporated by reference as part of this Contract. The **CM/GC Contractor** shall furnish the **Department** with copies of any studies, design information, cost analysis, surveys, documents, reports, designs, plans, specifications, maps, computations, digital media, charges and the like prepared or obtained under the terms of this Agreement upon request of the **Department**.

ARTICLE SIX. If the work to be done under this Contract shall be abandoned, or if this contract, or any part thereof shall be sublet without the previous written consent of the **Department**, or if the Contract shall be assigned by the **CM/GC Contractor**, otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the work, or any part thereof, is unnecessarily or unreasonably delayed, or that the **CM/GC Contractor** has violated any provision of this contract, the **Department** may notify the **CM/GC Contractor** to discontinue all work or any part thereof; and thereupon the **CM/GC Contractor** shall discontinue such work or such part thereof as the **Department** may designate, and the **Department** may thereupon terminate this contract, and payment to the **CM/GC Contractor** will be a percentage of the Pre-Construction Services Fee matching the percentage of project plans completed at that time, unless otherwise specifically described in the RFP.

ARTICLE SEVEN. The **CM/GC Contractor** agrees that it shall:

- Comply with all Federal and State laws applicable to the work and services to be done under this Agreement.
- Meet with the **Department** and others in the event that any matters arising out of this Agreement cannot be resolved in a mutually satisfactory manner. At such meetings, all interested parties shall be present with the SECRETARY of the Delaware Department of Transportation, who shall hear all arguments and render a final decision on the controversy that shall be binding on all parties concerned.
- Provide the standard of performance and degree of care and skill ordinarily exercised under similar conditions by contractors currently practicing in this state.
- Save harmless the State of Delaware and the **Department**, their agents, officers and employees, from all claims or liability. In meeting this obligation the **CM/GC Contractor** shall secure and furnish the **Department** a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, and Automobile insurance coverage from an insurance company authorized to do business in the State of Delaware. The **Department** must be named a certificate holder on the certificate of insurance. The **CM/GC Contractor** shall provide the **Department** with 30 days' notice in the event the policy is cancelled or not renewed. Nothing contained in this section shall be construed as limiting the **CM/GC Contractor's** obligation to indemnify the **Department** due to the **CM/GC Contractor's**, its agents', assignees', servants' or employee's negligence.

ARTICLE EIGHT. The **Department** and the **CM/GC Contractor** each binds itself, its successors, legal representative, agents, employees, officers, and assigns, to each other to this Contract. The **CM/GC Contractor** shall not assign, sell or in any way transfer its interest in this Agreement without the prior written consent of the **Department**.

ARTICLE NINE. Compliance with Title VI of the Civil Rights Act of 1964 and implementing regulations issued by the Department of Transportation. During the performance of this Agreement, the **CM/GC Contractor**, its assignees, agents, members, partners, officers, and successors, in interest hereinafter referred to as the **CM/GC Contractor**, agrees as follows.

**COMPLIANCE WITH REGULATIONS:** The **CM/GC Contractor** shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as amended from time to time, hereinafter referred to as the **REGULATIONS**, which are incorporated by reference and made a part of this Agreement.

ARTICLE TEN. The **CM/GC Contractor** shall be an independent contractor, and as such, shall have no authority, express or implied to bind the **Department** to any agreement, settlement, liability, or understanding whatsoever; and agrees not to perform any acts as agent for the **Department**, except as specifically authorized and set forth herein. Persons employed by the **Department** and acting under the direction of the **Department** shall not be deemed to be employees or agents of the **CM/GC Contractor**.

ARTICLE ELEVEN. This Agreement and the terms thereof shall be construed in accordance with the laws of the State of Delaware. In addition, **CM/GC Contractor** agrees to the jurisdiction and venue of a competent court within the State of Delaware. The declaration by any court, or other binding legal source, that any provision of this Agreement is illegal and void and shall not affect the legality and enforceability of any other provision of this Agreement, unless said provisions are mutually dependent.

*signature page follows*

SAMPLE

**IN WITNESS WHEREOF**, the parties to these presents have duly executed this **agreement cm/gc-XXXXXXXXXX** in quadruplicate the day, month and year affixed by their signatures.

SEALED, AND DELIVERED IN THE presence of

\_\_\_\_\_  
Name of CM/GC Contractor

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

CORPORATE SEAL

\_\_\_\_\_  
Title

Dated: \_\_\_\_\_

In the case of a corporation, firm, or partnership, this contract must be signed by the appropriate officials of such corporation, firm, or partnership and their corporate seal must be affixed hereto.

**FOR THE STATE OF DELAWARE, DEPARTMENT OF TRANSPORTATION**

SEAL

Attest:

By:

\_\_\_\_\_  
Shante Hastings, Acting Director,  
Finance

\_\_\_\_\_  
Robert B. McCleary, Director  
Transportation Solutions

Dated: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Annie Cordo  
Deputy Attorney General

Dated: \_\_\_\_\_

**CM/GC CONTRACTOR'S CERTIFICATION STATEMENTS**

**SUSPENSION AND DEBARMENT**

I, under penalty of perjury under the laws of the United States, certifies that, except as noted below, (the company) or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds):

- *is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;*
- *has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency;*
- *has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;*
- *does not have a proposed debarment pending; and*
- *has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.*

Exceptions will not necessarily result in denial of award, but will be considered in determining consultant responsibility. For any exception noted, indicate below to who it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. *Insert Exceptions:*

\_\_\_\_\_  
=====

**TRUTH-IN-NEGOTIATION CERTIFICATION**

**KNOW ALL MEN BY THESE PRESENCE**, that the company hereinafter listed, by and through the undersigned, its lawful agent and pursuant to this Agreement by and between said company and the State of Delaware, Department of Transportation,

**HEREBY CERTIFIES THAT:**

- Wage rates and other factual unit costs supporting the compensation under the aforesaid Agreement are accurate, complete and current at the time the Agreement was executed.
- The undersigned, on behalf of the company hereinafter listed below, further **CERTIFIED** that said firm **AGREES** that:  
  - In the event that the State of Delaware, Department of Transportation determines the compensation was, in fact, increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs, the original compensation and additions thereto shall be adjusted to exclude any such sum. All such adjustments shall be made within one year following the termination of said Agreement.
- **IT IS AGREED** that this document be attached to the aforementioned Agreement and become a part thereof.

=====

COMPANY: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_  
(enter name of company) (authorized signature)

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SWORN TO AND SUBSCRIBED before me, a Notary Public this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My Commission Expires \_\_\_\_\_.

Signature of Notary Public \_\_\_\_\_

**CERTIFICATION OF CM/GC CONTRACTOR**

I hereby certify that I am an officer and duly authorized representative of the firm of XXXXXXXXXXXXXXXXXXXXXXXXXX, whose address is XXXXXXXXXXXXXXXXXXXXXXXXXX and that neither I, nor the above firm I hereby represent, has:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State **DEPARTMENT OF TRANSPORTATION** and the **FEDERAL HIGHWAY ADMINISTRATION** in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable, State and Federal Laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signature)

**CERTIFICATION OF STATE DIVISION OF:**

I hereby certify that I am the Director of the Division of Transportation Solutions of the State of Delaware's Department of Transportation, and that the above firm or the firm's representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay, or agree to pay, to any firm, person or organization any fee, contribution, donation, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the **FEDERAL HIGHWAY ADMINISTRATION**, in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable State and Federal Laws, both criminal and civil.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**

SAMPLE

**Certification of Federal-Aid Contracts**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer of employee of Congress, or an employee of the Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. code. Any persons who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE