

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
TO PROVIDE ABANDONED PROPERTY EXAMINATION AND  
IDENTIFICATION SERVICES ISSUED BY STATE OF DELAWARE,  
DEPARTMENT OF FINANCE,  
DIVISION OF REVENUE**

**I. Overview**

The State of Delaware, Department of Finance, Division of Revenue (the "Division") seeks professional services to conduct examinations of holders (as defined in 12 *Del. C.* §1198) of abandoned and unclaimed property (a "Holder" or "Holders") and to identify abandoned and unclaimed property held by Holders that are required to report and deliver abandoned and unclaimed property to the Division under the Delaware Abandoned Property, 12 *Del. C.* §§1101 -- 1224.

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

Public Notice	Date: <b>May 1 &amp; May 8, 2009</b>
Deadline for Receipt of Proposals	Date: <b>May 15, 2009</b> 3pm EDT
Notification of Award	Date: <b>May 22, 2009</b>

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The Division reserves the right to deny any and all exceptions taken to the RFP requirements.

**II. Scope of Services**

**A. Identification of Abandoned and Unclaimed Property**

1. Successful bidder(s) will conduct examinations of Holders and identify abandoned and unclaimed property held by Holders that are subject to report and deliver such property under the Delaware Abandoned Property Law. All examinations to be performed by successful bidders will be assigned by the Division in writing. There is no guarantee that the Division will assign a particular examination, or any examinations, to the successful bidder(s) or that any assigned examination will be of a particular size or complexity. The Division will assign examinations to successful bidder(s) in the best interest of the State.
2. Successful bidder(s) will identify and examine, abandoned and unclaimed property from Holders that are, or have been, incorporated in Delaware and that have their principal place of business, and records located outside the State of Delaware; provided, however, that the

Division may identify Holders not meeting this description and assign in writing examinations of such Holders to successful bidder(s).

3. Successful bidder(s) must notify the Division, if a Holder company that is assigned to a successful bidder files for bankruptcy before or during an approved examination within seven (7) days of discovery by successful bidder(s) of the bankruptcy filing. In such a case, successful bidder(s) will prepare a proof of claim or provide such information to enable the Division to file a proof of claim within seven (7) days of discovery by successful bidder(s) of the bankruptcy filing.

4. Successful bidder(s) will examine Holders and identify unclaimed property for the current reporting cycle under the Delaware Abandoned Property Law as of the date of the written contract entered into following an award as well as any prior reporting cycles assigned in writing by the Division for which property remains unclaimed and unreported. Examinations may extend back as far as record year 1981.

5. Successful bidder(s) must adhere to the Delaware Abandoned Property Law in conducting examinations. The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), *Pennsylvania v. New York*, 407 U.S. 206 (1972), and *Delaware v. New York*, 507 U.S. 490 (1993), and any applicable federal legislation regarding which state has the right to escheat property shall be followed. These holdings, as they apply to a contract awarded under this RFP, are summarized as follows:

- a) Where the name and last known address of the apparent owner of property according to the books and records of the Holder is in the State of Delaware, it shall be deemed to be reportable to the Division.
- b) Where the name and last known address of the apparent owner of property according to the books and records of the Holder is in a foreign country, it shall be deemed reportable to the state of incorporation or formation of the Holder.
- c) If the Holder has never maintained records setting forth the name and last known address of the apparent owner of property, the property shall be deemed reportable to the state of incorporation or formation of the Holder. An address shall be deemed to mean a description of location sufficient for the delivery and receipt of mail. Where no addresses presently exist, but the Holder at one time maintained addresses of the apparent owners, the property shall be deemed reportable to the state of incorporation or formation of the Holder. Where no address exists, but the records of the Holder establish that the apparent owner resided in Delaware, successful bidder(s) shall advise the Division

and the Holder's state of incorporation or formation, for the purposes of determining which state possesses the priority claim to the funds.

d) If the above rules do not provide for a case, or the state having the priority claim cannot be determined, successful bidder(s) must notify the Division of such fact if the Holder is incorporated in or formed under the laws of Delaware or if an address in Delaware may be established from the books or records of the Holder.

e) In the event that the state of priority claim provides for an exemption, deduction, exclusion or otherwise does not choose to assert jurisdiction over the property, Delaware shall be the state for reporting this property where it is the state of incorporation or formation of the Holder.

6. If for certain periods the amount of reportable property cannot be ascertained from the books and records of the Holder, projection and estimation techniques may be used to determine the reportable amounts of abandoned and unclaimed property for such periods. If names and addresses exist with respect to the abandoned and unclaimed property used in the projection and estimation, the names and addresses shall not be used to determine which state has the priority claim to the abandoned and unclaimed property estimated to be due.

7. All sampling and projection and estimation techniques used by successful bidder(s) will use a method approved by the Division's Abandoned Property Audit Manager prior to their use.

B. Demand for Delivery of Unclaimed Property.

1. The Division will direct Holders or transfer agents to deliver all cash, safe deposit contents, securities, and related owner information to the Division.

2. The Division will direct Holders or transferors or transfer agents to deliver all other abandoned and unclaimed property to the Division.

3. Certificates for security must be registered, if at all possible, in the name of the Division. Certificates that cannot be transferred must still be remitted to the State of Delaware in the nominee or original owner's name.

4. The date that certificates are registered in the name of Division or credited in book entry form, must be retained, and must become a part of all reports relating to such certificates.

### C. Report Forms

1. Successful bidder(s) shall make a report of abandoned and unclaimed property payable to the Division within thirty (30) calendar days once the property is identified and the Holder agrees that it is subject to report and delivery to the Division under the Delaware Abandoned Property Law.
2. At the end of each month, a progress report of all examinations assigned, work in progress, and examinations completed containing such information as the Division may require will be submitted to the Division. The contact person designated by successful bidder(s) will consult, either by phone or in person, with the Division at least once at the end of each quarter to discuss the status of open and pending examinations.
3. Upon completion of an examination successful bidder(s) will deliver a completed Holder report, via electronic media, pursuant to the Division's specifications, unless written permission has been granted, in advance, by Division to report in a non-electronic or other format.
4. Successful bidder(s) must notify the Division, if a Holder's records are out-of-proof. Out-of-proof reports may be substituted with the Division's consent and only if marked as an "out-of-proof report."
5. The results of the examination will be contained in a Report of Examination to be provided to the Division with respect to each Holder examined. The Report of Examination will include findings resulting from the examination including the application of any sampling techniques and any other information, including contested matters not resolved with the Holder and the Holder's position thereon necessary to explain the findings to the Division. Successful bidder(s) will not direct the Holder to deliver property until such time as the Division has reconciled any disputed matters and determined in its sole discretion the report which should be filed and the amount of abandoned and unclaimed property that should be paid to the Division.

### D. Examination Procedures

1. The examination of the books and records of abandoned and unclaimed property and the demand for delivery of reportable property shall be made pursuant to the laws of Delaware and shall adhere examination standards to be established by the Assistant Director of Unclaimed Property.
2. Successful bidder(s) shall commence examination within 90 days from the date the Holder is notified of successful bidder(s)' assignment to examine, identify and demand abandoned and unclaimed property.

3. Successful bidder(s) shall complete the identification and reporting of abandoned and unclaimed property to the Division as soon as is practical after commencing the examination.
4. Successful bidder(s) may inform a Holder of Delaware law regarding penalties and interest; however, only the Division may assert penalties and interest against an examined Holder.
5. All findings in connection with the examination of Holders and the demands for payment of the abandoned and unclaimed property shall be made pursuant to the laws of Delaware.

E. Cooperation

1. The Division will send such notices that may be required to each examination candidate naming the successful bidder(s) as its agent and will assist successful bidder(s) in obtaining access to the records that are necessary to complete its audit. In addition, the Director or his designee will co-operate with successful bidder(s) during conduct of the audit and in assisting successful bidder(s) in making demand for delivery of the unclaimed property.
2. If a Holder refuses to subject itself to an examination by successful bidder(s), or is uncooperative in an ongoing examination by successful bidder(s), or refuses to remit funds or securities after demand, then successful bidder(s) will notify the Division within seven (7) days of such occurrence.

**III. Required Information**

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

A. Minimum Requirements—The following are minimum requirements for consideration of proposal:

1. *Delaware business license.* Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. *Professional liability insurance.* Provide evidence of professional liability insurance in the amount of \$1,000,000.00.
3. *Nonrepresentation of Holders.* A representation that (i) the proposing firm currently does not advise Holders or their representatives with respect to any abandoned or unclaimed property liability or reporting responsibility and (ii) the proposing firm does not control, is not controlled by and is not under common control with any person or entity that advises

Holders with respect to any abandoned and unclaimed property liability or reporting responsibility. For this purpose, control shall mean the ability of one person or entity to exercise forty percent (40%) or more of the voting power in another person or entity.

B. General Evaluation Criteria

1. *Criteria and Weighting*

<b><u>Evaluation Criterion</u></b>	<b><u>Weighting</u></b>
Experience and Reputation	25
Expertise in conducting Abandoned And Unclaimed Property or Forensic Accounting Examinations	25
Demonstrated Ability in Conducting AbandonedAnd Unclaimed Property or ForensicAccounting Examinations	20
Financial Condition	10
References	10
Thoroughness of the specific proposal response, in particular to the Scope of Services described in the RFP	10

2. *Specific Responses to Criteria*

a) Experience and Reputation-Explain the experience in the area of abandoned and unclaimed property accounting or forensic accounting of both the proposing firm and the individuals who will conduct abandoned and unclaimed property examinations for the Division.

b) Expertise-Explain the expertise of the individuals who will supervise teams and who will conduct examinations. In particular explain the education, training and relevant experience of these persons.

c) Demonstrated Ability-Describe examinations of abandoned or unclaimed property or forensic examinations or other relevant investigative activity over the past three years and the size of the examined or investigated company.

d) Financial Condition-provide evidence of the financial capacity of the proposing firm to complete examinations that may potentially require more than one year to complete.

e) References-Provide three references of persons familiar with the work of the proposing firm or the principals of the proposing firm.

#### **IV. Professional Services RFP Administrative Information**

##### **A. RFP Issuance**

###### *1. Obtaining copies of the RFP*

This RFP is available in electronic form through the State of Delaware, Division of Revenue website

<http://www.revenue.delaware.gov/contracting.shtml>

and/or the State of Delaware Procurement website at

<http://www.delaware.gov/egov/portal.nsf/portal/doingbusiness>

Copies of this RFP will be available for printing on the above websites as a PDF document. Paper copies of this RFP will also be available by contacting Patrick Carter through the contact information shown below.

###### *2. Public Notice*

Public notice has been provided in accordance with 29 Del. C. § 6981.

###### *3. Assistance to Vendors with a Disability*

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

###### *4. RFP Designated Contact*

All requests, questions, or other communications about this RFP shall be made in writing to the Division. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

**NAME:** Patrick Carter, Director  
**DEPARTMENT:** Delaware Division of Revenue  
**ADDRESS:** 820 N. French St., Wilmington, DE 19801

**EMAIL ADDRESS: patrick.carter@state.de.us**

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

5. *Consultants and Legal Counsel*

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

6. *Contact with State Employees*

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

7. *Organizations Ineligible to Bid*

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

8. *Exclusions*

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

a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract

b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;

- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
  - (1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

**B. RFP Submissions**

*1. Acknowledgement of Understanding of Terms*

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, if any, and has fully informed itself as to all existing conditions and limitations.

*2. Proposals*

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The Division reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 2 paper copies and 1 electronic copy on CD as a PDF Document.

All properly sealed and marked proposals are to be sent to the Division and received no later than **May 15, 2008**, 3:00 P.M. EDT. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), Certified or Registered US Mail, or by hand to:

**DEPARTMENT** Delaware Division of Revenue  
Attn: Patrick Carter, Director  
**ADDRESS** 820 N. French St. 8th Floor  
Wilmington, DE 19801

Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk

of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

### *3. Proposal Modifications*

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

### *4. Proposal Costs and Expenses*

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

### *5. Proposal Expiration Date*

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through July 31, 2009. The Division reserves the right to ask for an extension of time if needed.

### *6. Late Proposals*

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

### *7. Proposal Opening*

The Division will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the

Division's personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

#### *8. Non-Conforming Proposals*

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

#### *9. Concise Proposals*

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

#### *10. Realistic Proposals*

It is the expectation of the Division that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

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

#### *11. Confidentiality of Documents*

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the Division/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The Division is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the Division's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the Division and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection.

Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the Division will open the envelope to determine whether the procedure described above has been followed.

## *12. Multi-Vendor Solutions (Joint Ventures)*

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

Division caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

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

*a) Primary Vendor*

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

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

Nothing in this section shall prohibit the Division from the full exercise of its options under Section IV B, 17 of this RFP, regarding multiple source contracting.

*b) Multiple Proposals*

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

*13. Subcontracting*

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

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any subcontractors must be approved by the Division. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.**

#### *14. Discrepancies and Omissions*

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

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

#### *15. RFP Question and Answer Process*

The Division will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the Division's State's website at: <http://www.revenue.delaware.gov/contracting.shtml> by 12:00 PM each Friday. Vendors' names will be removed from questions in the responses released. Questions should be framed by the following manner. Deviations from this format will not be accepted.

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

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

#### *16. Division's Right to Reject Proposals*

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

project which may include portions of the originally proposed project as the Division may deem necessary in the best interest of the State of Delaware.

*17. Division's Right to Cancel Solicitation*

The Division reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The Division makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the Division. Vendor's participation in this process may result in the Division's selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the Division to execute a contract nor to continue negotiations. The Division may terminate negotiations at any time and for any reason, or for no reason.

*18. Division's Right to Award Multiple Source Contracting*

Pursuant to 29 Del. C. § 6986, the Division may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware. There is no guarantee that the Division will assign a particular examination, or any examinations, to the vendor(s) that are awarded a contract or that any assigned examination will be of a particular size or complexity. The Division will assign examinations to vendor(s) in the best interest of the State.

*19. Notification of Withdrawal of Proposal*

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

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

## *20. Revisions to the RFP*

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the Division's website at:

<http://www.revenue.delaware.gov/contracting.shtml>

The Division is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

## *21. Exceptions to the RFP*

Any exceptions to the RFP, or the Division's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

## *22. Award of Contract*

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

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

The award of a contract does not give assurance to a successful bidder that the Division will assign a particular examination, or any examinations, to the successful bidder(s) or that any assigned examination will be of a particular size or complexity. The Division will assign examinations to successful bidder(s) in the best interest of the State.

## *23. RFP Award Notifications*

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

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

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

After a final selection is made, the winning vendor will be invited to negotiate a contract with the Division; remaining vendors will be notified in writing of their selection status.

### C. RFP Evaluation Process

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

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

#### *1. Proposal Evaluation Team*

The Proposal Evaluation Team shall be constituted of representatives of the Division. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Director of the Division, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

#### *2. Proposal Selection Criteria*

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

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the Division to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this

RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

a) The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs or the highest points.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* §6986. Such selection will be based on the following criteria:
  - Particular expertise or capability of the vendor in performing abandoned and unclaimed property audits of Holders in a particular industry.
  - The capacity of a particular vendor to efficiently perform abandoned and unclaimed property audits of particular size or complexity.

b) Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The evaluation criteria are shown as evaluation items in Section III B. of this document.

### 3. *Proposal Clarification*

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

#### 4. *References*

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the Division may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the Division will pay travel costs only for Division personnel for these visits.

#### 5. *Oral Presentations*

Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the Division are the vendor's responsibility.

### D. Contract Terms and Conditions

#### 1. *General Information*

a) The term of the contract between the successful bidder(s) and the Division shall be for one year with three extensions for a period of one year for each extension agreed upon in writing and each extension added as an addendum to the original contract.

b) The selected vendor(s) will be required to enter into a written agreement with the Division. There is no guarantee that the Division will assign a particular examination, or any examinations, to the selected vendor(s) under contract or that any assigned examination will be of a particular size or complexity. The Division will assign examinations to selected vendor(s) in the best interest of the State. The Division reserves the right to incorporate standard State of Delaware contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the Division. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

c) The selected vendor or vendors will be expected to enter negotiations with the Division, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected

vendor's response to this RFP will be incorporated as part of any formal contract.

d) The successful vendor(s) shall promptly execute a contract incorporating the terms of this RFP. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

e) If a vendor to whom an award is made fails to enter into the agreement as herein provided, the award to that vendor will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

## 2. *Collusion or Fraud*

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

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

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

## 3. *Lobbying and Gratuities*

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a

contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the Division shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

#### *4. Solicitation of State Employees*

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

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

#### *5. General Contract Terms*

##### *a) Independent Contractors*

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be

responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

b) Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State of Delaware requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

c) Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

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

Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

d) Notice

Any notice to the Division required under the contract shall be sent by registered mail to:

**NAME** Patrick T. Carter, Director  
**DEPARTMENT** Delaware Division of Revenue  
**ADDRESS** 820 N. French Street  
Wilmington, DE 19801

e) Indemnification

(1) General Indemnification.

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agencies and instrumentalities, agents' and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.

(2) Proprietary Rights Indemnification

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

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively ""Products") is or in vendor's reasonable judgment is likely to be, held to constitute an

infringing product, vendor shall at its expense and option either:

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

f) Insurance

(1) Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

(2) The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

(3) During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	\$1,000,000
b.	Professional Liability/Misc. Error & Omissions/Product Liability	\$1,000,000/\$3,000,000

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage:

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

(4) The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

g) Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h) Warranty

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

i) Costs and Payment Schedules

A fee structure will be negotiated in awarded contracts. Fee terms may include contingent fee provisions, and no payment will be made under contracts until the Division receives the abandoned property paid to the Division as a result of the examination performed by the Vendor(s). All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the Division. The Division will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed.

j) Liquidated Damages

The Division may include in the final contract provisions for non-performance, such as liquidated damages.

k) Termination for Cause

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

l) Termination for Convenience

The Division may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, reports or other material prepared by the Vendor under the contract shall, at the option of the Division, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the Division.

m) Non-discrimination

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n) Covenant Against Certain Contingent Fees

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

o) Vendor Activity

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

p) Work Product

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

q) Contract Documents

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

r) Applicable Law

The laws of the State of Delaware shall apply, without regard to the principles of conflicts of laws thereof, except where Federal Law has precedence. The successful vendor consents to jurisdiction of and venue in the courts of the State of Delaware in New Castle County.

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

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

If any vendor fails to comply with (1) through (5) of this paragraph, the Division reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

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

s) Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the

scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

t) Other General Conditions

(1) Current Version – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.

(2) Regulations – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.

(3) Changes – No alterations in any terms, conditions, delivery, price, quality, or specifications of services ordered will be effective without the written consent of the Division.

(4) Additional Terms and Conditions – The Division reserves the right to add terms and conditions during the contract negotiations.

E. **Miscellaneous RFP Information**

1. *No press Releases or Public Disclosure*

Vendors may not release any information about this RFP. The Division reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the Division with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the Division.

2. *Definitions of Requirments*

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.