

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION  
IN AND FOR THE STATE OF DELAWARE**

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<b>In Re: JIMMY KROON</b>	)	<b>COMPLAINT 23-29</b>
	)	
Respondent	)	
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	)	

*Hearing and Decision By: Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair). Commissioners: Andrew T. Manus, Hon. Alex Smalls, Dr. Melissa Harrington.*

**I. PROCEDURAL POSTURE**

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Ch. 58., including the Public Integrity Commission (“PIC”).<sup>1</sup> The Commission’s Counsel generated a Complaint<sup>2</sup> against Jimmy Kroon after receiving information about improper fiscal conduct at the Delaware Department of Agriculture (“DDA”). At a Preliminary Hearing on July 24, 2023, the Commission found that it had both personal and subject matter jurisdiction over Mr. Kroon, a DDA employee. The Commission also made a preliminary finding

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<sup>1</sup> 29 Del. C. § 5810(a).

<sup>2</sup> See Appendix A for a copy of the Complaint with Attachments.

that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct.<sup>3</sup> The Commission then issued a Notice of Hearing for October 11, 2023, at 2 p.m. On Sept. 27, 2023, Mr. Kroon submitted a formal Answer to the Preliminary Hearing Letter Opinion denying the Complaint's allegations and relying upon the Secretary of DDA's emergency powers set forth in 29 *Del. C.* § 6907<sup>4</sup> and the fact that the State procurement manual omitted part of the State Code of Conduct.<sup>5</sup> Mr. Kroon appeared for his hearing on the appointed day and time. However, due to the PIC's scheduling error, Mr. Kroon graciously agreed to be rescheduled for October 12, 2023, at 11:00 a.m. The Hearing was held in the second-floor conference room at 410 Federal Street, Dover, DE 19901 on October 12, 2023. In addition to members of the Commission and Commission Counsel (Deborah J. Moreau, Esq.), the following individuals were present: Jimmy Kroon (Respondent); Joseph Stanley, Esq. (Attorney for Complainant); Carrie Gold (Stenographer); Andrea Brzoska (Mr. Stanley's law clerk).

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<sup>3</sup> As to each of the allegations, the Preliminary Hearing Letter Opinion stated that "this allegation is substantiated." Clearly, if the allegations were substantiated, there would be no need for a formal hearing. A better phrasing of the procedural posture would be: "the Commission made a preliminary finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct." See Appendix B.

<sup>4</sup> Emergency procedures and critical need for professional services. (a) An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property. (Emphasis added).

<sup>5</sup> See Appendix C for a copy of Mr. Kroon's Answer and a copy of the State Procurement Manual.

## II. THE COMPLAINT

The Complaint alleged that on February █, 2023, Mr. Kroon violated the State Code of Conduct when he approved a Memorandum of Understanding (“MOU”) █ between DDA and █, a DDA employee at the time. Specifically, the Complaint alleged: Mr. Kroon violated 29 *Del. C.* § 5805(b)(1) by assisting a private enterprise (█) before the state agency by which they both were associated by employment; Jimmy Kroon violated 29 *Del. C.* § 5805(c) by entering into a contract (MOU # █ with █ for more than \$2000 without public notice and competitive bidding; the Complaint further alleged that Mr. Kroon violated 29 *Del. C.* § 5806(a) which requires “[e]ach state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government; lastly, the Complaint alleged that Mr. Kroon violated 29 *Del. C.* § 5806(e) by using his public position to secure \$10, █.00 for █, for services unrelated to her State job duties at DDA. Appended to the Complaint, and incorporated by reference, were Attachments A, B and C. Attachment A to the

Complaint is a copy of disbursements<sup>6</sup> by the Division of Animal Health to [REDACTED], documenting the \$10, [REDACTED].00 payment on March [REDACTED] 2023. Attachment B to the Complaint is a copy of an invoice for animal care in the same amount. Attachment C to the Complaint is a copy of the MOU between [REDACTED] and DDA.

### **III. COMPLAINANT’S CASE**

#### **A. Jimmy Kroon**

Mr. Kroon was unrepresented at the hearing. As a consequence, Commissioner Smalls carefully read the allegations in the Complaint to Mr. Kroon and Mr. Kroon affirmed his understanding of the allegations. Mr. Stanley called Mr. Kroon as his first witness.

Mr. Kroon’s job title is Administrator of the DDA’s Department of Management, and he reports to Michael Scuse (Secretary of DDA). He has worked for DDA since 2003. Mr. Kroon is also a “back-up” approver for financial transactions if the DDA’s Comptroller’s position is vacant (Tr. 7:1-20) and he signs Memorandums of Understanding (“MOU”) if Mr. Scuse is not available. Tr. 54:7-9.

One of DDA’s responsibilities is to ensure that domestic agricultural

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<sup>6</sup> Taken from Delaware Open Checkbook. <https://opencheckbook.delaware.gov#!/year/2023/>.

animals are not subjected to cruelty or mistreatment.<sup>7</sup> Consequently, DDA has the ability to seize and impound animals pursuant to a court order.<sup>8</sup> According to Mr. Kroon, DDA's animal seizures are coordinated with the Office of Animal Welfare and the State Veterinarian. Tr. 8:10-14. Mr. Kroon's testimony then turned to the March 2023 animal seizure at issue in this matter.

DDA had been working for "a while" on obtaining a court order to seize the animals in question from the owner's property. Tr. 8:15-16. Generally speaking, DDA prefers to work with animal owners to bring their care into compliance with the law, rather than impounding the animals. Tr. 8:16-24. In this instance, DDA was unable to work with the owner of the animals while they were pending seizure. Consequently, the DDA made arrangements with a new vendor, ██████████, to place approximately 20 pigs. Tr. 9:1-6. The seizure took place on February ██████ 2023. Tr. 9:7-8. During the seizure it became clear that there were approximately 50 pigs, more than originally estimated. Tr. 9:7-14. ██████████ did not have the facilities or training to care for 50 pigs, so after ten days, DDA decided that the pigs would have to be moved to another location. Tr. 10:1-23.

Mr. Kroon stated that there are not "many places that can take livestock at

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<sup>7</sup> 16 Del. C. § 3031F.

<sup>8</sup> *Id.*

all...during these animal seizures.” Tr. 11:16-18. Mr. Kroon then went on to say that “after trying to find another location” DDA turned to a casual/seasonal employee, [REDACTED] because she had the appropriate facilities at her residence to care for the pigs. Tr. 11:20-24, 12:4-7.

Mr. Kroon’s testimony then shifted to the use of the Secretary of DDA’s “emergency powers” related to the procurement of goods or services for the State during an avian flu outbreak in 2022. Tr. 18: 7-17, 19: 10-17. When asked how prior procurement issues affected the pig seizure, Mr. Kroon stated “[w]e’ve had problems for years finding places that were willing to take livestock during an animal seizure.” Tr. 21: 20-24. Yet, despite the problems identifying an appropriate vendor, Mr. Kroon stated “it’s a bad idea to mix employee and vendor relationships. It could get very messy.” Tr. 23: 15-16. When queried as to why he engaged in the MOU despite his statement that employees should not be vendors, he stated that he thought the DDA had the ability to “waive procurement law so that [REDACTED] could be our vendor,” while also stating that the circumstance was one that neither he nor Mr. Scuse could have foreseen. Tr. 23: 17-22. Mr. Kroon then admitted he was not aware of other state agencies engaging in similar conduct. Tr. 23: 8.

At the conclusion of Mr. Stanley’s questioning, the Commissioners asked for clarification on several issues. In discussing the length of time that DDA

usually has investigatory contact with animal owners, Mr. Kroon stated DDA works with owners over the course of months and during that time there are visits from various department personnel at the site. Tr. 39: 17-24. Referring again to the seizure of the pigs, Mr. Kroon stated that he signed the MOU with [REDACTED] because Mr. Scuse was either on vacation or out of the office. Tr. 56: 12-24. Lastly, Mr. Kroon verified that DDA (or one of their partner agencies) had requested and obtained a search warrant for the seizure of the animals. Tr. 58: 16; 59: 1-20.

#### **IV. RESPONDENT'S CASE**

In his Answer, and at the hearing, Mr. Kroon claimed that the Secretary's emergency powers, pursuant to *29 Del. C. § 6907*, gave DDA the power to award the contract to one of their employees. Tr. 23: 17-22. Appended to Mr. Kroon's Answer was a copy of the Office of Management and Budget Government Support Services Procurement Manual.<sup>9</sup> Mr. Kroon pointed out that while a portion of the Code of Conduct is printed in the manual, the provisions regarding conflicts of interest set forth in *29 Del. C. § 5805*, were not. As a consequence, he argues that he was not on notice about the provisions of § 5805 while performing his state job duties. He further argues that he was acting on the

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<sup>9</sup> Appendix D, pp. 7-9.

direction of the Secretary of the DDA. Mr. Kroon did not call any witnesses to offer testimony during his hearing.

## **V. APPLICABLE LAW**

The Complaint alleged that Mr. Kroon violated the following provisions of the State Code of Conduct:

**29 Del. C. § 5805(b)(1).** State employees may not represent or otherwise assist a private enterprise on matters before the agency with which they are associated by employment.

**29 Del. C. § 5805(c).** For all contracts in excess of \$2000, public notice and bidding are required in order for a contract to be awarded to a State employee. The standard applies even if the State employee did not work for the department offering the contract. Delaware Courts have held that in judging the fairness of a government contract when a government employee seeks the contract, that the price "is not the exclusive test by which a vendor is chosen" because when government employees seek contracts with their governmental entity, the concern is that the award of such contracts "has been suspect, often because of alleged favoritism, undue influence, conflict and the like."<sup>10</sup>

**29 Del. C. § 5806(a).** Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

**29 Del. C. § 5806(e).** No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

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<sup>10</sup> *Commission Op. No. 98-23 (citing W. Paynter Sharp & Son v. Heller, Del. Ch. 280 A.2d 748, 752 (1971))*.



## VI. DISCUSSION

After the parties were excused, the Commission began reviewing and discussing the evidence presented at the hearing, Mr. Kroon's Answer and the OMB Procurement Manual.

The Commission dismissed the violations of 29 *Del. C.* § 5805(b)(1); § 5805(c) and 29 *Del. C.* § 5806(e) for insufficient evidence on the record. Mr. Kroon did not represent the private business before DDA. During testimony it was revealed that the idea to move the pigs to the home of a DDA employee was made by the State Veterinarian. Tr. 11:18-24. Nor was there evidence that Mr. Kroon benefitted from signing the MOU. Lastly, the Commission decided to give Mr. Kroon the benefit of the doubt regarding his belief that he was able to contract with a DDA employee because § 5805 was not included in the OMB Procurement Manual. While ignorance of the law is no excuse, the Commission decided that Mr. Kroon's status as a layperson weighed in favor of dismissal of those specific allegations given that they were not included in the official manual regarding procurement practices.

The Commission then turned to consideration of the remaining allegation, a violation of the appearance of impropriety standard in the State Code of Conduct. This statute is set forth in its entirety in OMB's Procurement Manual.<sup>11</sup>

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<sup>11</sup> Pp. 7-9.

Consequently, Mr. Kroon cannot argue that he was not aware of the provision. The statute is basically an appearance of impropriety test. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality.<sup>12</sup> In deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances.<sup>13</sup> Those circumstances are examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment.<sup>14</sup>

The Commission first considered the following mitigating factors. Mr. Kroon had a statutory duty pursuant to 16 *Del. C.* § 3031F to provide care to the animals DDA had previously seized from their owners. Therefore, his concerns that the public would likely be upset at the poor condition of the pigs left at [REDACTED] [REDACTED] were valid. In addition, Mr. Kroon had either implicit or explicit permission to engage in the MOU on behalf of the DDA. Although Mr. Scuse was either on vacation or out of the office at the time the pigs were moved from

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<sup>12</sup> *In re Williams*, 701 A.2d 825 (Del. 1997).

<sup>13</sup> *See, e.g., Commission Op. No. 97-23 and 97-42.*

<sup>14</sup> 29 *Del. C.* §§ 5802(1) and 5802(3).

██████████, the MOU signed by Mr. Kroon was not rescinded upon Mr. Scuse's return, and the payment was subsequently processed. Lastly, Mr. Kroon did not benefit monetarily from the transaction.

The Commission then turned to consideration of the aggravating factors. It appeared that the DDA had a long history of being unable to find suitable locations for seized livestock. Tr. 11:16-18. Yet, despite the difficulties they encountered in the past, the DDA, and Mr. Kroon as Administrator, did nothing to remedy the situation. Even when the DDA monitored the pigs for "a while" and obtained a search warrant, the decision of where to place them was clearly made in haste and with little forethought regarding the suitability of such placement. Tr. 8:13-27. Then, after having placed the pigs in an unsuitable environment, Mr. Kroon claimed the pig's relocation constituted an emergency situation which necessitated a suspension of the procurement rules. Mr. Kroon acknowledged during his testimony that the public perception regarding department contracts with department employees was likely to arouse the suspicions of the public. "It's a bad idea to mix employee and vendor relationships. It could get very messy." Tr. 23: 15-16.

Nor was the Commission swayed by Mr. Kroon's assertion that the 'emergency' waiver of the procurement rules allowed the DDA to waive the

entire State Code of Conduct, set forth in Title 29, Chapter 58. The emergency exception to the procurement statute specifically states:

An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against.<sup>15</sup>

Following Mr. Kroon's logic, the statute empowered the DDA to cast aside ALL provisions of the Delaware Code, or at a minimum, all provisions of Title 29, which is at odds with the plain reading of the statute. When a court is tasked with interpreting statutory language, it must first determine that the statute is actually ambiguous.<sup>16</sup> However, a statute is not ambiguous merely because the parties disagree about the meaning of the statutory language.<sup>17</sup> A statute is only ambiguous if it is *reasonably* susceptible to different interpretations.<sup>18</sup> It is the Commission's position that Mr. Kroon's belief that the cabinet secretary had the power to waive an entire *Title* of law is unreasonable. Title 29 not only includes the procurement law, it includes statutes setting forth the establishment and operation of the entire state government. Consequently, the Commission decided that Mr. Kroon's reliance on the Secretary's waiver powers was mistaken. As a

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<sup>15</sup> 29 Del. C. § 6907 (*emphasis added*).

<sup>16</sup> *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011).

<sup>17</sup> *Id.*

<sup>18</sup> *In re Port of Wilmington Gantry Crane Litigation*, 238 A.3d 921, 927 (Del. Super. 2020) (*emphasis added*).

result, Mr. Kroon engaged in conduct that created an appearance of impropriety and violated the State Code of Conduct.

## VI. CONCLUSION

Based upon the above facts, evidence and law, the Commission unanimously voted to find that Mr. Kroon created an appearance of impropriety by contracting with a DDA employee for work unrelated to their State job duties, a violation of 29 *Del. C.* § 5806(a). Pursuant to statute, 29 *Del. C.* § 5810(d), “[w]ith respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may...[i]ssue a written reprimand or censure of that person’s conduct.<sup>19</sup> Consequently, a copy of this opinion letter will be made available to the public.

It is so ordered, this 6<sup>th</sup> day of November 2023.  
FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke A. Moore*

Rourke A. Moore  
Vice-Chair (Acting Chair)



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<sup>19</sup> A redacted version of this opinion will be posted publicly to protect the identities of those whose hearings are still pending or those who have been found ‘not in violation’.

# APPENDIX A

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION  
IN AND FOR THE STATE OF DELAWARE**

**IN RE: JIMMY KROON**

**Respondent**

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**COMPLAINT 23-29**

**COMPLAINT**

1. This Complaint was initiated by the State Public Integrity Commission (“PIC”) pursuant to the statutory authority granted in Title 29, Ch. 58 of the Delaware Code. The PIC is the agency responsible for the enforcement and administration of the State Code of Conduct.<sup>1</sup> All attachments are hereby incorporated by reference.

**JURISDICTION**

2. The Commission’s jurisdiction is limited to interpreting Title 29, Del. C., Ch. 58.<sup>2</sup> It may only act if it has jurisdiction over the party charged and jurisdiction over the Complaint’s substance.

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<sup>1</sup> Delaware Code Annotated, Title 29, Ch. 58.

<sup>2</sup> See, e.g., 29 Del. C. § 5808(a) and § 5809(2).

3. Jimmy Kroon is an employee of the Delaware Department of Agriculture (“DDA”). A ‘State employee’ is any person who receives compensation as an employee of a state agency.<sup>3</sup> Mr. Kroon was a State employee during all relevant time periods at issue in this Complaint.
4. The Complaint sets forth violations of the State Code of Conduct, Title 29, Ch. 58.<sup>4</sup> over which this Commission has exclusive jurisdiction.

### **PROCEDURAL HISTORY**

5. The Commission met on July 24, 2023, to review this Complaint.

### **FACTS**

6. In May 2023, while investigating another matter, Commission Counsel discovered a payment from DDA to ██████████, a DDA employee, in the amount of \$10, ██████.00.<sup>5</sup>
7. Commission Counsel contacted the Division of Accounting to obtain the supporting documentation for ██████████ payment. ██████████ had submitted an invoice to DDA for payment. The invoice was titled “Invoice for Animal Care.”<sup>6</sup> The total of the invoice was \$ 10, ██████00.

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<sup>3</sup> 29 Del. C. 5804(12).

<sup>4</sup> 29 Del. C. § 5810(h).

<sup>5</sup> Attachment A.

<sup>6</sup> Attachment B.



8. MOU # [REDACTED] which authorized the payment, was signed by Jimmy Kroon on February [REDACTED] 2023.<sup>7</sup>
9. On March [REDACTED] 2023, payment was made to [REDACTED] via check number [REDACTED] pursuant to PO and MOU # [REDACTED].<sup>8</sup>

### LAW

10. *29 Del. C. § 5805(b)(1)*. No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.
11. *29 Del. C. § 5805(c)*. No state employee... shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations.
12. *29 Del. C. § 5806(a)*. Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or

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<sup>7</sup> Attachment C.

<sup>8</sup> Attachment D.

honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

13. *29 Del. C. § 5806(e)*. No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

### ALLEGATIONS

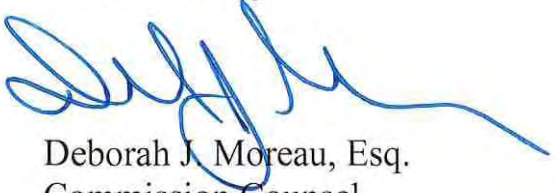
14. Jimmy Kroon, a State employee, did violate *29 Del. C. § 5805(b)(1)* by assisting a private enterprise ( [REDACTED] [REDACTED] before the state agency (DDA) by which she is associated by employment or appointment, a violation of the State Code of Conduct.

15. Jimmy Kroon did violate *29 Del. C. 5805(c)* by facilitating a contract in excess of \$2000 [REDACTED] between [REDACTED] and the DDA without public notice and competitive bidding, a violation of the Code of Conduct.

16. Jimmy Kroon did violate *29 Del. C. § 5806(a)* by pursuing a course of conduct (facilitating payments to a DDA employee) that will raise suspicion amongst the public and reflect unfavorably on State government, a violation

of the State Code of Conduct.

Attested To By:

A handwritten signature in blue ink, appearing to read 'Deborah J. Moreau', with a long horizontal flourish extending to the right.

Deborah J. Moreau, Esq.  
Commission Counsel

# ATTACHMENT A




# ATTACHMENT B

3/15/2023

### INVOICE FOR ANIMAL CARE



Impound Fee:	48 Swine @ \$25.00	\$ 1,200.00
February 16, 2023	1 Ram @ \$25.00	<u>\$ 25.00</u>
		\$ 1,225.00
Feeding, Housing and Care Fee: 19 days @ \$490.00		\$ 9,310.00
(\$10.00 per head per day)		
February 16 – March 6, 2023		
	Total Charge:	\$10,535.00

ok to pay  
GF 65625  
PO 0000   
King  
3/14/23

# ATTACHMENT C





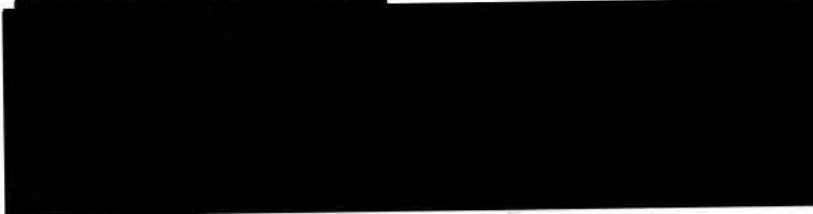
Poultry and Animal Health  
 2320 S. DuPont Highway  
 Dover, DE 19901  
 (302) 698-4500

**Instructions for boarding facility:**

- Prepare three (3) signed copies of this Agreement.
- Mail three (3) copies, with proof of authorized signer (copy of Articles of Incorporation and/or Corporate By-Laws of your organization), to: Delaware Department of Agriculture, Attn: Dr. Lopez, 2320 S. DuPont Hwy, Dover, DE 19901.
- One signed copy will be returned to you as approval to participate as a provider.
- Complete the online Delaware Substitute Form W-9 - link can be located under the "SERVICES & INFORMATION" section at

**Animal Boarding Facility Provider Agreement**

Animal Boarding Facility Name:



E.I.N. (Number): \_\_\_\_\_

**AGREEMENT**

1. [Redacted] (name of provider) agrees to provide veterinary care and animal boarding services for large animals received from the Delaware Department of Agriculture (hereafter called the Department). I understand that our organization will be receiving animals detained through the Department's enforcement activities.
2. My organization will be reimbursed for the medical procedure(s) and boarding services as outlined in the associated fee page. I understand my organization must submit invoices to the Department in order to receive reimbursement for services. The fee schedule will be in effect from the date of this Agreement unless 30 days written notice is provided to me by the Department prior to such change.
3. I understand that my organization must receive pre-approval from the Department before conducting any medical procedures not included in this agreement unless those procedures are necessary to stabilize an animal under immediate threat of death or irreversible harm. Upon stabilization of the animal, my organization will submit a recommended treatment plan to the Department for approval before further treatment will commence. The Department will reply within two hours of acknowledging receipt of the proposed treatment plan.
4. I agree to allow members of the Department to access medical records of animals treated pursuant to this Agreement upon request. I agree to have the veterinarian who provided treatment to an animal pursuant to this Agreement document the medical procedures, including tests and test results on the appropriate medical records at the facility. I also agree to record nutritional and behavioral services provided to the animal during boarding. The Department shall also have the ability to audit all claims and relevant financial documentation submitted for payment pursuant to this Agreement, as well as access to the organization's premises and staff, including all medical and personnel files.
5. I recognize that the Department may seek to criminally prosecute individuals for animal cruelty on behalf of the animals treated at my organization. For that reason, when euthanasia is requested by the Department, my organization will make every attempt to preserve the animal's carcass (cool, not frozen) until a Department employed inspector or investigator can retrieve the carcass in order to preserve possible evidence to the best of the organization's ability.
6. I agree to submit complete and correct invoices within 30 days following the end of the month in which the services were performed. I understand that my organization will forfeit reimbursement for any services that are not invoiced to the Department within 30 days following the end of the month the services were performed.
7. I understand that termination of my participation can occur at the request of either party and requires written notification within 10 days prior to the termination.
8. I agree to indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney fees) directly arising from: a) The negligence or other wrongful conduct of the organization, its agents or employees, or b) Organization's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that organization shall have been notified promptly in writing by the Department of any notice of such claim, and shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.



Poultry and Animal Health  
 2320 S. DuPont Highway  
 Dover, DE 19901  
 (302) 698-4500

9 I agree to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Agreement. I agree to immediately notify the Department in writing of any change in the status of any accreditations, licenses or certifications in any jurisdiction in which I provide service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure or certification is suspended, revoked, or otherwise impaired in any jurisdiction, I understand that such action may be grounds for termination of the Contract.

I certify that I have read, understand, and agree to all requirements stated above.

ON BEHALF OF



Impound Fee: \$25.00 per animal

Boarding Reimbursement & Physical Examination Fees (\$)						
Service	Horse	Cattle (adult)	Pig or calf <200 lb	Sheep/Goat	Camelid	Poultry?
Boarding Per Day	15/d	15/d	10/d	10/d	10/d	5/d
Physical Examination	50	50	50	50	50	25/cost covers up to 5 birds

LIST THE NAME AND DELAWARE VETERINARY LICENSE NUMBER OF EACH PARTICIPATING VETERINARIAN EMPLOYED, CONTRACTED, OR ASSOCIATED WITH THIS ORGANIZATION IN THE NEXT SECTION BELOW. If additional space is required, continue on separate sheet.

**Veterinarians employed, contracted, or associated with your organization:**

Timothy Mears  
 Name - Please print

DE veterinary license number

Name - Please print

DE veterinary license number

Name - Please print

DE veterinary license number

**STATE USE ONLY**

Karen M. Lopez  
 Signature of Karen M. Lopez, DVM, MPH, Dipl. ACVPM, State Veterinarian

2/13/23  
 Date of Approval

Jimmy Kroon  
 Signature of Jimmy Kroon, Administrator for Department Management

2/13/23  
 Date of Approval

# APPENDIX B

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION  
IN AND FOR THE STATE OF DELAWARE**

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<b>In Re: JIMMY KROON</b>	)	<b>COMPLAINT 23-29</b>
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Respondent	)	
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**PRELIMINARY HEARING ON EVIDENCE BEFORE THE  
COMMISSION**

*Hearing and Decision By: Hon. Rourke Moore (Acting Chair); Ron Chaney  
(Vice-Chair). Commissioners: Andrew T. Manus, Hon. Alex Smalls.  
Hon. F. Gary Simpson (Chair) (recusing)*

**I. PROCEDURAL POSTURE**

Commission Counsel has the statutory authority to review and investigate potential violations of the Code of Conduct.<sup>1</sup> After review and investigation of this matter, Commission Counsel, Deborah J. Moreau, Esq., drafted a Complaint for the Commission’s review.<sup>2</sup> All attachments to the original Complaint are hereby incorporated by reference.

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<sup>1</sup> 29 Del. C. § 5808A(2) & (3).  
<sup>2</sup> See Complaint 23-28 (enclosed).

On July 24, 2023, a quorum of the Commissioners met to review the Complaint against Jimmy Kroon a Department of Agriculture (“DDA”) employee.

## **II. JURISDICTION**

The Commission’s jurisdiction is limited to interpreting Title 29, Del. C., Ch. 58.<sup>3</sup> It may only act if it has jurisdiction over the party charged and jurisdiction over the Complaint’s substance.

### **A. Personal Jurisdiction**

Jimmy Kroon receives compensation as an employee of the DDA. A ‘State employee’ is any person who receives compensation as an employee of a state agency.<sup>4</sup> Jimmy Kroon was a State employee during all relevant time periods at issue in the Complaint.

### **B. Subject Matter Jurisdiction**

The Commission can only address alleged violations of "this chapter"- Title 29, Ch. 58.<sup>5</sup> The Complaint alleged that Jimmy Kroon violated: 29 *Del. C.* § 5805(b)(1); 29 *Del. C.* § 5805(c); 29 *Del. C.* §§ 5806(a) and (e). The alleged conduct fell within the Commission’s statutory jurisdiction.

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<sup>3</sup> See, e.g., 29 *Del. C.* § 5808(a) and § 5809(3).

<sup>4</sup> 29 *Del. C.* § 5804(12).

<sup>5</sup> 29 *Del. C.* § 5810(h).

### III. FACTS SPECIFIC TO THE VIOLATIONS

The Commission first examined the Complaint to determine if the allegations were frivolous or failed to state a violation.<sup>6</sup> At this stage of the proceedings all facts are assumed to be true.<sup>7</sup> Allegations that are deemed to be frivolous or that fail to state a claim should be dismissed.<sup>8</sup> The remaining allegations are then examined to determine if a majority of the Commission has reasonable grounds to believe a violation may have occurred.<sup>9</sup> "Reasonable grounds to believe" is essentially whether there is any reasonably conceivable set of circumstances susceptible of proof of the allegation.<sup>10</sup>

Generally, the Complaint alleged that Jimmy Kroon violated multiple provisions of the State Code of Conduct and enabled other employees to engage in similar unethical conduct. Specifically, the Complaint alleged that on February █, 2023, Jimmy Kroon signed an MOU (██████████) between the DDA and ██████████, also a DDA employee. The contract was in excess of \$10,000 but was not publicly noticed and bid, as is required when a State employee is awarded a State contract.

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<sup>6</sup> 29 Del. C. § 5809(3); *Commission Rules*, p.3, III(A).

<sup>7</sup> 29 Del. C. § 5808(A)(a)(4).

<sup>8</sup> 29 Del. C. § 5809(3).

<sup>9</sup> "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

<sup>10</sup> Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 Del. C. § 5810(h)(2). *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b))

## IV. APPLICABLE LAW

### A. Standard of Review

As noted, at this stage all of the proceedings are assumed to be true.<sup>11</sup> For the matter to move forward to a disciplinary hearing, a majority of the Commission must find reasonable grounds to believe a violation may have occurred.<sup>12</sup> "Reasonable grounds to believe" is essentially whether there is any reasonably conceivable set of circumstances susceptible of proof of the allegation.<sup>13</sup>

**B. 29 Del. C. § 5805(b)(1): No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.**

On February █, 2023, Jimmy Kroon, a State employee, did violate 29 Del. C. § 5805(b)(1) by assisting a private enterprise █  
█, as set forth in MOU # (█)) before the DDA, a state agency by which she is associated by employment or appointment; a violation of the State Code of Conduct.

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<sup>11</sup> 29 Del. C. § 5808A(a)(4).

<sup>12</sup> "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

<sup>13</sup> *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b)). Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 Del. C. § 5810(h)(2).

The Commission determined this allegation is substantiated through a signed copy of the MOU between the DDA and [REDACTED].

**C. 29 Del. C. § 5805(c). No state employee... shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations.**

On February [REDACTED], 2023, Jimmy Kroon did violate 29 Del. C. 5805(c) by entering into a contract (MOU # [REDACTED] with [REDACTED] for more than \$2000 without public notice and competitive bidding; a violation of the Code of Conduct. Through his work at the DDA, Jimmy Kroon knew that the contract was not publicly noticed and bid. As a result, this allegation was substantiated.

**D. 29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.**

This is basically an appearance of impropriety test.<sup>14</sup> The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality.<sup>15</sup> In deciding appearance of impropriety issues, the Commission

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<sup>14</sup> *Commission Op. No. 92-11.*

<sup>15</sup> *In re Williams*, 701 A.2d 825 (Del. 1997).



looks at the totality of the circumstances.<sup>16</sup> Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment.<sup>17</sup>

The PIC received several anonymous phone calls regarding payments to two other DDA employees. Obviously, the issue of paying employees as vendors is one in which the public is very interested. Consequently, the Commission substantiated this allegation.

**E. 29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.**

Jimmy Kroon used his position to secure over \$10,000 in State monies for [REDACTED], unrelated to her compensation. State records confirm that check # [REDACTED] in the amount of \$10 [REDACTED].00 was issued to [REDACTED]. As a result, this allegation was substantiated.

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<sup>16</sup> See, e.g., *Commission Op. No. 97-23* and *97-42*.

<sup>17</sup> 29 Del. C. §§ 5802(1) and 5802(3).

## V. CONCLUSION

Based on the above facts and law, a majority of the Commission found that there was reason to believe that violations of 29 *Del. C.* §§ 5805(b)(1); 29 *Del. C.* §5805(c); and 29 *Del. C.* §§ 5806(a) and (e) may have occurred. A notice of a formal hearing date will be sent to you (or your attorney) under separate cover.

It is so ordered, this 24<sup>th</sup> day of July 2023.

FOR THE PUBLIC INTEGRITY COMMISSION

*/s/ Rourke Moore*

Hon. Rourke Moore  
Vice-Chair (Acting Chair)

# APPENDIX C

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION  
IN AND FOR THE STATE OF DELAWARE**

**In Re: JIMMY KROON**  
  
Respondent

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**COMPLAINT**



23-29

**ANSWER TO PRELIMINARY HEARING EVIDENCE**

In regard to the allegations in this complaint, all actions taken by the Respondent were at the direction of the Secretary of Agriculture. The Department was executing an animal welfare seizure with timing and procurement requirements that were beyond its control and could not be reasonable foreseen. The Respondent understood that the Secretary was exercising emergency authority for procurement under 29 Del C. § 6907.

**1. C. 29 Del. C. § 5805(b)(1): No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.**

Denied: The MOU was executed at the direction of the Secretary of Agriculture while the Department was executing an animal seizure which created an emergency situation. The Respondent understood the Secretary to be exercising emergency procurement authority under 29 Del C. § 6907 because the need for animal boarding and care could not have been reasonably foreseen by the Department and did not allow time for a bid process.

The animal seizure was executed by Dr Karen Lopez (State Veterinarian) and Public Health's Office of Animal Welfare on Feb 3, 2023. Unfortunately, when executing the warrant it became clear that the property had 48 pigs and one ram, far more animals than previously known. These animals were placed in the care of

a vendor which had been previously arranged, but that lacked capacity to provide suitable care for 49 animals. This created an emergency situation where the Department was required to provide ongoing care for neglected animals, but did not have a suitable provider. Finding facilities to board seized livestock has always been extremely difficult, but the size of this seizure was also unprecedented. When animals are seized and live in the conditions at this property, they are very sick, infested with diseases, pests, malnourished and dehydrated. Specific biosecurity protocols must be followed to reduce the spread of these contagious illnesses. Biosecurity and livestock husbandry knowledge and protocol are a must.

The short timeframe made searching for new vendors very difficult and prevented any opportunity for a bidding process. The initial seizure was on February 3, the fact that the original facility was overwhelmed was recognized quickly and the animals were moved to [REDACTED] on February [REDACTED] after no other alternatives were found for care.

[REDACTED] was sent the standard MOU with terms and pricing that had been established in 2016 and was determined by information gathered from the Kent County SPCA at the time. The Department of Agriculture has been using this MOU since 2016 and has not negotiated terms or prices with any vendors, including [REDACTED]

**2. C. 29 Del. C. § 5805(c). No state employee... shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations.**

Denied: The MOU was executed at the direction of the Secretary of Agriculture while the Department was executing an animal seizure which created an emergency situation. The Respondent understood the Secretary to be exercising emergency procurement authority under 29 Del C. § 6907 because the need for animal boarding and care could not have been reasonably foreseen by the Department and did not allow time for a bid process.

The short timeframe made searching for new vendors very difficult and prevented any opportunity for a bidding process. The initial seizure was on February 3, the fact that the original facility was overwhelmed was recognized quickly and the animals were moved to [REDACTED] on February [REDACTED] after no other alternatives were found for care.

[REDACTED] was sent the standard MOU with terms and pricing that had been established in 2016 and using information gathered from the Kent County SPCA at the time. The Department of Agriculture has been using this MOU since 2016. No negotiations of terms or prices occurred between Department staff and any vendors, including [REDACTED]

**2. C. 29 Del. C. § 5806(a): Each state employee, state officer or honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, officer or official is engaging in acts which are in violation of the public trust and which will not reflect favorably upon the State and its government.**

DENIED: The Department exercised every option to place these animals in a safe and efficient manner within the timeline given. Understanding that the Secretary asserted that a critical need existed, the Respondent followed 29 Del C. § 6907 regarding emergency procedures and critical needs for professional services in the event of an emergency.

Delaware law requires the Department to provide temporary boarding and veterinary care for animals during an animal health seizure. The Respondent believed that failure to provide adequate care for neglected animals, which was required by law, would not reflect favorably upon the State.

The Respondent was also following the Delaware Procurement Manual section 1.4 Ethics which quotes the Code of Conduct "in its entirety" but omits section 5805 which limits employees contracting with the state. The Respondent was following the Delaware Procurement Ethics Policy, which also quotes the Code of Conduct "in its entirety" but again omits section 5805.



State of Delaware

Office of Management and Budget

Government Support Services

Procurement Manual

Revised: June 7, 2023



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET

TO: Authorized State of Delaware Procurement Personnel

FROM: Peter Korolyk  
Chief Procurement Officer

DATE: June 7, 2023

SUBJECT: OMB GSS Procurement Manual

The purpose of the State Procurement Delaware Code chapter is identified as the following:

- (1) Create a more efficient procurement process to better enable the State to obtain the highest quality goods, materials and services at the best possible price, thereby maximizing the purchasing value of public moneys; and
- (2) Create a single forum in which the procurement needs of state agencies and the technical and legal requirements of the Government Support Services are addressed simultaneously so as to increase mutual understanding, respect, trust and fair and equitable treatment for all persons who deal with the state procurement process.

The Government Support Services Procurement manual is designed to complement the Delaware Code for State Procurement. The GSS manual goal is to provide a practical set of instructions to allow for the consistent execution of procurement practices. Accordingly, this manual shall be used as a tool to train GSS' procurement personnel. By standardizing training and processes, GSS seeks to improve quality outcomes and the delivery of GSS Contracting Services.

When changes become necessary, new pages and/or manual modifications covering such changes will be published.

All personnel responsible for the procurement of goods and/or services are encouraged to be familiar with applicable Delaware laws as they pertain to purchasing.

Sincerely,

Peter Korolyk  
Director  
Government Support Services  
Chief Procurement Officer

management  
budget

GOVERNMENT SUPPORT SERVICES – DIRECTOR'S OFFICE  
600A SOUTH BAY ROAD DOVER, DE 19904  
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## CHAPTER 1 – GENERAL PROVISIONS

### 1.1 – POLICY

The purpose of this policy is to establish uniform procurement procedures of material and services consistent with 16 *Del. C.* Chapter 96, 29 *Del. C.* Chapter 69, 29 *Del. C.* Chapter 63 and 29 *Del. C.* Chapter 63A. Further, GSS Contracting promotes best public procurement practices and a philosophy of partnering with agencies and vendors to maximize customer service, cost savings and product quality.

The purchase of goods, material, equipment and non-professional services with a cost of less than those established by the Small Purchase Procedures and are not covered by an existing contract administered by GSS Contracting are to be procured in accordance with the procedures outlined in the Budget and Accounting Manual <https://budget.delaware.gov/accounting-manual/index.shtml> .

For goods, material and non-professional services, the threshold is a yearly cumulative limit, and for those items not already under a state Mandatory Use Contract, purchases are made according to the following thresholds:

- Less than \$50,000 Open Market Purchase
- \$50,000 - \$99,999 3 Written Quotes
- \$100,000 and over Formal Bid

All single purchases of goods, material, equipment, and non-professional services by an Agency that exceed the Small Purchase Threshold (SPT) shall be procured in a manner consistent with 29 *Del. C.* § 6923 or § 6924. If total annual purchases made by 2 or more covered agencies of similar items or services exceed the SPT, the procurement shall be administered by Government Support Services (GSS) Contracting.

*29 Del. C. § 6911. Authority and responsibilities.*

*(a) The Section shall act as the exclusive contracting agent for all purchases of materiel and nonprofessional services not subject to the small purchasing procedures made by contracting agencies and as outlined in this subchapter and made by 2 or more covered agencies except for lodging and interstate and international travel and except as provided for in subsection (d) of this section.*

After review of the purchase specifications, for select commodities and/or services, GSS Contracting shall be responsible for either initiating the bid process or delegating that responsibility back to the appropriate Agency.

### 1.2 – KEY WEBSITES

The following Websites are referenced throughout this manual and are provided in this section. Additional hyperlinks or email addresses may also be identified throughout the text.

The Delaware Procurement Portal

<https://mymarketplace.delaware.gov/>

Delaware Online Code, Title 29, Chapter 69, State Procurement

<https://delcode.delaware.gov/title29/c069/index.shtml>

## 1.3 – JURISDICTION

### Mandatory Use

Every State department and Agency within the Executive Branch and Judicial Branch of the State government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, school districts, Delaware Transit Corporation, Department of Elections, the Legislative Branch, and the Board of Pension Trustees and their consultants are specifically exempted from the statutory mandate in 29 *Del. C.* § 6911(d).

### Technology Related Procurement, including Data Processing and Telecommunications

29 *Del. C.* § 9004C, provides the Department of Technology and Information (DTI) powers, duties, and functions including promoting cooperation between all state agencies, in order that work may be done by one Agency for another Agency and equipment and/or technical personnel in one Agency may be made available to another Agency, and promote such improvements as may be necessary in joint or cooperative technology operations. The Chief Information Officer (CIO) is authorized to purchase, lease or rent technology and related equipment in the name of DTI and to operate the equipment in providing services to any or all state agencies. When, in the opinion of the CIO, better and more efficient technology services can be performed, DTI may enter into lease or purchase agreements in the acquiring or the use of any technology equipment and use such equipment in a centralized statewide approach. When the Department acts in a centralized statewide approach, the cost of the operation shall be prorated among the State agencies benefiting from those services provided thereby.

### Available Use

Any municipality, political subdivision, or local government unit within the State shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by GSS, as identified in 29 *Del. C.* § 6910(e)

### Other Entity Use

Select grant-in-aid, bona fide non-profit(s), and any organization, entity, or person who is a participant in the Business Enterprise Program sanctioned by Division of the Visually Impaired (DVI) shall be entitled to use central contracts awarded by the Section, as outlined in 29 *Del. C.* 6910(b), (c), and (d).

## 1.4 – ETHICS

Pursuant to 29 *Del. C.* Chapter 58 Laws Regulating the Conduct of Officers and Employees of the State, the Code of Conduct for public officers and employees is reprinted in its entirety.

### 29 *Del. C.* § 5806 - Code of Conduct

(a) Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or

honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- 1) Impairment of independence of judgment in the exercise of official duties;
- 2) An undertaking to give preferential treatment to any person;
- 3) The making of a governmental decision outside official channels; or
- 4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state Agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the State Agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential, and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

(e) No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement, or gain.

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state Agency.

(i) Notwithstanding the provisions of Chapters 58, 59, and 69 of this title and the State Merit Rules of Personnel Administration, state employees may contract to provide foster care or respite care for individuals with fees paid for by the State provided further that the employee does so at other than assigned work hours. Additionally, these individuals are not permitted to participate in the review or disposition of any matter related to foster and/or respite care in which they have or may have a personal or private interest and may not be monitored or reviewed by other state employees who are more junior or related to them.

## 1.5 – FREEDOM OF INFORMATION ACT

In accordance with 29 Del. C. § 6303A(16) and 29 Del. C. § 10003(b), OMB has adopted policies and procedures regarding FREEDOM OF INFORMATION ACT (FOIA) requests. 8 Del. Admin. C. § 1501.

The State of Delaware’s Request for Public Records form can be found at:

[http://delaware.gov/help/foia\\_request.shtml?subj=OPA](http://delaware.gov/help/foia_request.shtml?subj=OPA)

## 1.6 – PROFESSIONAL SERVICES

For Professional Services purchases, the dollar amounts listed below are on a contract-by-contract basis, are not subject to an annual limit, but instead are based on the intended cumulative procurement limit to fulfill the professional service(s) need.

- Less than \$150,000 Open Market
- \$150,000 and over Formal RFP Process

29 Del. C. § 6980 - Small professional services procurement process.

Any state contract for which an Agency is a party with probable fees, including reimbursable expenses and amendments, less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council pursuant to 29 Del. C. § 6913 of this title for the completed job shall be excluded from all other portions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with 29 Del. C. § 6924 of this title.

29 Del. C. § 6981. Large professional service procurement process.

Any state contract for which an Agency is a party with probable fees, including reimbursable expenses and amendments, greater than the threshold amount(s) established by the Contracting and Purchasing Advisory Council pursuant to 29 Del. C. § 6913 of this title for the completed job will be subject to the provisions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with 29 Del. C. § 6924 of this title.

For contracts bid under 29 Del. C. § 6981, the selection process may differ based on the type of service bid. Personnel should review the selection processes and differences between 29 Del. C. § 6982(a) and 29 Del. C. § 6982(b) prior to establishing a solicitation to ensure adherence to Delaware Code.

## 1.7 – PUBLIC WORKS

For purchases related to Public Works projects, the dollar amount thresholds listed below are on a contract-by-contract basis.

- Less than \$150,000 Open Market Purchase
- \$150,000 - \$249,999 3 Letter Bids
- \$250,000 and over Formal Bid

29 *Del. C.* § 6960. Specifies the use of prevailing wage requirements.

(a) The specifications for every contract or aggregate of contracts relating to a public works project in excess of \$500,000 for new construction (including painting and decorating) or \$45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. As of January 1, 2016, the Delaware Department of Labor, Division of Industrial Affairs shall establish the prevailing wage for each respective craft or class of laborers and mechanics at the same rates established in collective bargaining agreements between labor organizations and their employers, or when collective bargaining agreement rates do not prevail, that govern work of a similar nature and similar crafts or classes of laborers and mechanics for the county where the public works contract will be performed if that particular labor organization's collective bargaining rate prevailed and they participated in the survey, for that particular trade or craft in that particular county for 4 consecutive years. When collective bargaining rates do not apply, the prevailing wage shall be the highest rate of the 4 years. If the agreed rate of pay is designated to be the craft's collective bargaining agreement, the annual rate adjustment will be determined by the collective bargaining agreement rate for each craft and county, each year. When collective bargaining rates do not prevail, the annual rate adjustment shall be the Consumer Price Index-Construction. If the prevailing wage cannot be reasonably and fairly determined in any locality because no such agreements exists or the collective bargaining rate has not prevailed for 4 consecutive years the Department shall use the prevailing wage as established by the Department's annual prevailing wage survey. There will be a 1-time challenge of the prevailing wage rate per cycle as in the Department regulations.

For each respective craft or class of laborers or mechanics, the craft or class whose collectively bargained wages as of January 1, 2015, for that particular labor organization's collective bargaining rate prevailed for that particular trade or craft in that particular county is the prevailing wage rate and whose rate has prevailed for 4 of the last 5 years, or will prevail in the future for 4 consecutive years, shall have their collective bargaining agreement adopted as the prevailing wage rate negotiated by industry standards between workers and employers and the raise be determined by the collective bargaining agreement rate as of September 1 for that craft, county, and year.

All other provisions of this law are to remain unchanged.

(b) Every contract based upon these specifications shall contain a stipulation that the employer shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often



than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics. The specifications shall further stipulate that the scale of wages to be paid shall be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be withheld from the employer so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed by the employer the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.

(c) Every contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly. The Department of Labor shall keep and maintain the sworn payroll information for a period of 6 months from the last day of the work week covered by the payroll.

(d) The Department of Labor shall investigate all claims that the prevailing wage rates as provided for under this section are not being or have not been paid. Upon finding that an employer has not paid or is not paying the prevailing wage rates, the Department of Labor shall notify the employer of the violations by certified mail and make an effort to obtain compliance. Upon failure to obtain compliance within 15 days of receipt of said certified mail, the Secretary may terminate all rights of the employer to proceed with the work under the public construction contract, and the employer shall be responsible for all damages resulting therefrom.

(e) Any employer who knowingly fails or refuses to pay the prevailing wage rates provided for under this section, or who fails to submit payroll reports or post notice of the wage rates which apply to the project shall, for each such violation, be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. No public construction contract in this State shall be bid on, awarded to or received by any contractor or subcontractor or any person, firm, partnership or corporation in which such employer has an interest who, within 2 years after entry of a judgment pursuant to this chapter, is adjudicated in violation of this chapter in a subsequent proceeding until 3 years have elapsed from the date of the subsequent penalty judgment. A civil penalty claim may be filed in any court of competent jurisdiction.

(f) Any laborer or mechanic employed by any employer, or the Department of Labor on behalf of any laborer or mechanic employed by any employer, who is paid in a sum less than the prevailing wage rates provided for under this section shall have a right of action against the employer in any court of competent jurisdiction to recover treble the difference between the amount so paid and the prevailing wage rate. Such action may be brought by the Department of Labor in the name and for the benefit of the laborer or mechanic with or without an assignment of the claim from the employee and upon notice to the aggrieved employee, the Department of Labor shall have the power to settle and adjust any such claim to the same extent as would the aggrieved employee. It shall not be a defense to such action that the underpayment was received by the laborer or mechanic without protest. Upon the filing of an action under this section, the employer shall post suitable bond approved by the court for the damages which may be recoverable thereunder. Any judgment entered for plaintiff shall include an award for reasonable attorney's fees and costs of prosecution. The Department of Labor shall not be required to pay the filing fee or other costs of the action or fees of any nature to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the

Department of any process in aid of such action or proceedings. The Department shall have the authority to join various claimants in 1 preferred claim lien and, in case of suit, to join them in 1 cause of action.

(g) Any wages collected under this chapter, but not claimed by the employee within 1 year from the date of collection, shall be retained by the Department of Labor for enforcement purposes.

(h) No action to recover wages and damages under this section shall be brought after the expiration of 2 years from the accruing of the cause of action.

(i) Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, he or she shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of treble damages, as required under this section, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section. If pursuant to this subsection a person becomes civilly liable to employees of another, such liability shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(j) A contract manager shall be responsible for monitoring compliance with this section, but shall not become civilly liable to the same extent as the contracting person. For purposes of this section, "contract manager" means any person who performs the function of the contracting person without becoming a party to the contract of performance, but rather contracts with the recipient of the goods or services to act as his or her agent. A contract manager who knowingly fails or refuses to monitor compliance with this section shall, for each such failure or refusal, be subject to a civil penalty of not less than \$100 nor more than \$500. A civil penalty claim under this subsection may be filed in any court of competent jurisdiction. A contract manager's liability for a civil penalty pursuant to this subsection shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(k) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department pursuant to this chapter, or because that employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

(l) [Repealed.]

(m) None of the specifications of this section shall apply to a project of the Department of Transportation wholly funded by Community Transportation Funds. None of the specifications of this section shall apply to a project wholly funded by the Municipal Street Aid Program authorized pursuant to Chapter 51 of Title 30

### 1.8 – PREVAILING WAGE DETERMINATION

The Department of Labor (DOL) establishes and enforces the payment of wage rates for laborers and mechanics employed on state-funded construction projects.

Prevailing rates must be paid on new construction projects costing more than \$500,000 and on alteration, repair, renovation, rehabilitation, demolition, or reconstruction projects costing more than \$45,000. For a project to be covered by the law, the State or any subdivision thereof must be a party to the public works contract; and, the State must have appropriated any part of the funds.

DOL determines the classification of workers and the type of construction on state-funded construction projects. Wage rates are established by an annual survey conducted by the Department.

### **Current prevailing wage rates**

DOL maintains prevailing wage rates which are published for the general public at <http://dia.delawareworks.com/labor-law/prevailing-wage.php>.

it shall be the practice of GSS that for all solicitations that may contain any element of covered activity defined as public works, that GSS shall seek a DOL determination as to the application/exemption of prevailing wage.

## **1.9 – SOLE SOURCE PROCUREMENT**

A contract may be awarded without competition if the Agency head, prior to the procurement, determines in writing that there is only 1 source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required contract and no other type of goods or service will satisfy the requirements of the Agency. The Agency shall examine cost or pricing data prior to an award under this subsection. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Agency for the sole source procurement shall be included in the Agency's contract file. 29 *Del. C.* § 6904(i)

A best practice would be for an Agency to advertise a perceived sole source for the normal advertising period of a procurement as market conditions may have changed or vendors may exist that Agencies did not discover who are capable of meeting the State's needs.

## **1.10 – EMERGENCY / CRITICAL NEED PROCUREMENT**

The authority to purchase urgently needed items arising from unforeseen causes, including, but not limited to, extreme weather conditions or official declared emergencies rests with each Agency head. An emergency procurement is handled outside of the normal competitive process because of the urgency of the circumstances, such as the immediate welfare of the general public. Therefore, an Agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. 29 *Del. C.* § 6907

Poor planning or the pending expiration of funds does not constitute a valid justification for an emergency purchase. It is always good business practice and considered to be in the best interest of the State to make any procurement as competitive as time permits. The emergency purchase process does not apply to requests for contract extensions or amendments, which require prior written approval.

An Agency head may waive any or all provisions of 29 *Del. C.* Chapter 69, State Procurement, to meet the critical needs of the Agency as required by emergencies or other conditions where it is determined to be in the best interest of the Agency. The Agency head may determine an emergency condition exists by

reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety, or property.

Agencies should consider the following conditions if proceeding with an emergency or critical need procurement:

- Emergency procurements shall be limited to those materials and/or nonprofessional services necessary to satisfy the emergency.
- Any public works project contracted under the emergency procurement authority are subject to the State's prevailing wage requirements.
- Any public works project contracted under the emergency procurement authority that qualifies as a large public works contract must comply with 29 *Del. C.* § 6962.
- In the case of professional services, an Agency head may waive any or all provisions of 29 *Del. C.* Chapter 69, Subchapter VI – Professional Services, to meet the critical need of the Agency as required by an emergency or other condition where it is determined to be in the best interest of the Agency.
  - Any professional services emergency procurement shall be limited to those professional services necessary to satisfy the critical need.
- A copy of each critical need determination processed under the emergency procurement procedures shall be kept on file by the Agency.

## 1.11 – PURCHASING OF USED EQUIPMENT

Any Agency may purchase used equipment or other materiel by negotiated purchase, rather than by competitive bidding, as provided in this chapter, if it is demonstrated to the satisfaction of the Agency head that the negotiated price is reasonable for the intended use. 29 *Del. C.* § 6934

The contracting Agency shall use lifecycle costing analysis as specified in 29 *Del. C.* § 6902(15) and 29 *Del. C.* § 6909A(b) of this title prior to demonstrating to the Agency head that the negotiated price is reasonable for the intended use.

Purchases of used equipment costing less than \$5,000 may be approved by the Cabinet Secretary or

Purchases of used equipment costing \$5,000 or more but less than \$10,000 must be requested by letter to the OMB Director. The letter will include a detailed description of the item purchased, cost, useful life, purpose for which the item was acquired, and the name, address, and telephone number of the seller.

Used vehicles employed by any Agency for undercover operations may be purchased by negotiation rather than by competitive bidding, provided that the negotiated prices are approved by the OMB Director and the Controller General. (29 *Del. C.* § 6906(c)).

All items costing \$10,000 or more must be presented to the OMB Director for approval

Used Equipment does not include demonstration, factory rebuilt, remanufactured or model year left over.

Reasons for the purchase of used equipment may be, but are not limited to:

- the inability to secure new equipment,
- the lack of adequate funds for new equipment, or
- used equipment will satisfy the Agency's need at a substantial savings.

## 1.12 – SMALL PURCHASING PROCEDURE

The "Small Purchase Procedures" are issued pursuant to the authority provided in 29 *Del. C.* § 6922, as approved by the Contracting & Purchasing Advisory Council. The Council establishes thresholds that trigger formal bidding procedures in the areas of Materiel and Non-Professional Services, Public Works, and Professional Services.

State agencies are only required to use the formal bidding procedures when a purchase is made or plans to be made, in an amount that exceeds the threshold limit.

Purchases under established thresholds shall follow the procedures set forth in the State Budget and Accounting Manual and consistent with Agency supplier diversity plans.

The Budget and Accounting Manual is published at:

<https://budget.delaware.gov/accounting-manual/index.shtml>

The Agency Supplier Diversity Plans are published at:

<https://business.delaware.gov/osd/supplier-diversity-plans/>

The Small Purchase Thresholds are published at:

<https://mymarketplace.delaware.gov/agencies/spp.shtml>

NOTE:

- (Non-professional) Goods and Services' thresholds are determined by anticipated annual expenditure limits.
- Professional Services' thresholds are determined by the total expenditure associated with the professional service sought and is for the duration of the need. **It is not limited to expenditures within an annual period.**
- Public Works' thresholds are determined based on the expense associated with the project.

## 1.13 – CONTRACT AUDIT PROCEDURES

Pursuant to 29 *Del. C.* § 6930, GSS Contracting may request an audit be performed on any contract. This audit may be performed during the contract period or up to three (3) years from the date that the final payment was made to the contractor or subcontractor. The following steps should be used when a decision to audit has been made:

A written request must be sent from the Contract Officer to the Auditor of Accounts requesting an audit. This request should state:

- The contract name and number
- The contract period
- The contractors name, address, contact and telephone number

- The reason for requesting the audit
- Specific items to be audited should be identified
- When the audit is to be performed

When the Auditor of Accounts receives the request for audit, they should notify the Contract Officer in writing of receipt of notification, who will perform the audit and when the audit is to be performed.

Upon completion of the audit, the Contract Officer should receive notification from the Auditor of Accounts. This notification should be in writing and should include the audit finding and what action will be taken.

A copy of the audit finding should be maintained in the contract file.

The State may choose through terms and conditions to require access to records for a period longer than 3 years if in the best interest of the State (i.e., Sarbanes-Oxley, SECC, etc.). In situations where periods longer than 3 years are required the procedures outlined in section 1.11 shall be followed to conduct any audits. (Current templates identify an audit period of five years.)

Otherwise, GSS Contracting currently has a central contract titled Contract Compliance Audits and Cost Recovery Services. The current contract information is available at <https://mmp.delaware.gov/Contracts/Details/5910>

## CHAPTER 2 – ESTABLISHING A NEW CONTRACT

### 2.1 – TYPES OF SOLICITATIONS

#### DISTINCTION OF TYPES

There are distinct types of formal procurements, each with specific sections of Delaware Code. It should be observed within this manual the distinct use of bids, proposals, and professional services as they pertain to the different procurement types. The type, Delaware Code reference, and language distinction is clarified below. Wherever possible, the Delaware Code reference is provided throughout this manual for clarity.

Type	Solicitation	Response	Del. C. Reference
Competitive Sealed Bidding (Material and Non-Professional Services)	Invitation to Bid (ITB)	Bid	29 <i>Del. C.</i> § 6923
Competitive Sealed Proposal (Material and Non-Professional Services)	Request for Proposal (RFP)	Proposal	29 <i>Del. C.</i> § 6924
Professional Services	Request for Proposal (RFP)	Proposal	29 <i>Del. C.</i> § 6981

#### INVITATION TO BID

An Invitation to Bid, or ITB, (29 *Del. C.* § 6923 Competitive Sealed Bidding) is a solicitation for material or non-professional services for which cost is the overriding consideration in making an award. Organizations are invited to submit bids reflecting aggressive pricing for products or non-professional services that meet the requirements detailed in the ITB. The bidder with the lowest price is awarded the contract provided the bidder meets the minimum criteria established in the ITB.

#### NON-PROFESSIONAL SERVICES REQUEST FOR PROPOSAL

A Non-Professional Services Request for Proposal, or RFP, (29 *Del. C.* § 6924 Competitive Sealed Proposals) is a solicitation made through a proposal process used by an Agency interested in the procurement of a commodity or service. It invites potential suppliers to submit business proposals that address the agencies needs and provides a solution to the business problem presented in a specification or statement of work along with associated pricing and costs. The Request for Proposal process brings structure to the procurement decision and is meant to allow the risks and benefits to be identified and addressed in a formal process. The proposal evaluation is a combination of qualitative (i.e. response times, service metrics, experience, etc.) and quantitative measures (i.e. price).

Typically, for a non-professional service RFP the price component will be limited to not less than 30% and not more than 50% of any scoring criteria.

#### PROFESSIONAL SERVICES REQUEST FOR PROPOSAL

Professional Services are more complex and are a separate type of RFP with direction in 29 *Del. C.* § 6980 and § 6981, and are divided into small and large procurement processes.

The threshold for Small Professional Services is less than \$50,000. The amount is determined by the total cost of the proposed contract for the completed job, which would include extensions of the contract.

Large Professional Services RFP procurements are those valued at \$50,000 or more. The amount is determined by the total cost for the complete job and are categorized in two sections. In Delaware Code, they are sections § 6982(a) and § 6982(b).

§ 6982(a). These are professional services within the scope of the practice of architecture, construction management, and professional engineering. These are typically related to Public Works projects, and not currently within the activities of Government Support Services. Procurements under subsection 6982(a) shall not include a price/cost component in the evaluation of the proposals. Instead, prices for services are negotiated “at a price the Agency determines to be fair and reasonable”.

§ 6982(b). These professional services are those that do not fall within the 6982(a) category. They are services which generally require specialized education, training or knowledge and involve intellectual skills. Procurements under subsection 6982(b) may consider price as an evaluation factor. Price is recommended as best practice between 10% but not more than 30% of the scoring criteria.

Professional Services are negotiated in a different manner with different requirements based on category utilized, and the methodologies are spelled out in greater detail in § 6982(a) and (b).

## 2.2 – MARKET RESEARCH

A new contract typically begins with a request from an Agency. Below you will find a GSS’ basic outline for how the request should be evaluated.

- A good(s) or service(s) request from an Agency is sent to the State Contract Administrator (SCA).
- The SCA forwards the request to a State Contract Procurement Supervisor, who then conducts an initial review of the request.
  - The Supervisor determines if the good(s)/service(s) are/aren’t on a central contract.
  - If on a central contract, Supervisor notifies the Agency (copying the State Contract Procurement Officer (SCPO) responsible for the central contract), and the Agency is directed to use the central contract.
    - If a central contract exists, but the requested good or service is not covered, the Supervisor can consider adding the line item to a current awarded contract. However, prior to addition and/or a request for contract pricing from the awarded vendor(s), the Supervisor shall engage the SCA for approval.
  - If no central contract exists, the Supervisor determines if there are any Agency Contracts available that will allow another Agency to piggyback.
  - If an Agency contract exists, and the contract can be utilized or piggybacked, the SCPO directs the Agency to utilize the existing Agency Contract.
    - Utilization of an Agency Contract is subject to 29 *Del. C.* § 6904(e).
  - If no Agency contract exists and the procurement need is not common to two or more agencies, the Requesting Agency will be encouraged to issue an RFP/ITB unless the procurement need is time sensitive for reasons other than delayed action on the part of the Requesting Agency in which case the State Contract Procurement Supervisor will check to see if an eligible cooperative of GSA schedule offers the good(s)/service(s).
- The Supervisor notifies the SCA of the recommended course of action;



- If a cooperative or new GSS contract is approved, SCA will assign a contract number and SCPO to work through the contract process.
- SCPO starts the Contracting Process Checklist and follows the Contract Process Flow Chart.

## 2.3 – PROCUREMENT PLANNING

Factors to consider in developing a procurement timeline include:

- how soon will the product(s) be needed?
- standard industry lead times
- the level of detail required in the scope of work,
- how many agencies will be involved in the user group?
- whether a pre-bid meeting or site visit will be required
- whether the solicitation will require unique review(s) by other agencies such as Department of Technology and Information, Attorney General’s Office, Division of Facilities Management, etc., whether samples will be required, and anticipated competition

A preliminary cost estimate (benchmark) should be prepared to assist in determining if the bids received are reasonable to market conditions.

## 2.4 – USER COMMITTEE [29 Del. C. § 6911(c)]

GSS Contracting shall provide reasonable opportunity for each Covered Agency anticipating the purchase of materiel covered by a central contract to participate in development, evaluation, and award of the contract. To facilitate this participation GSS will establish a User Group for the contract to perform at least the following functions during the ITB process.

GSS Contracting shall establish, convene, and chair User Groups [29 Del. C. § 6912] for the purchase of materiel or service or group of materiel and/or services by a central contract or contracts. Convention of a user group may include, but is not limited to, a formal meeting, e-mail among User Group members, and/or a teleconference among User Group members. A user group shall perform at least the following functions:

- Make recommendations on the specifications of the contract
- Rate vendors, materials and/or services
- Rate the effectiveness of the contract; and
- Qualify a materiel and/or service

Prior to the first meeting and/or engagement of the User Group participants, the SCPO shall provide intended user group members with the user group guidelines established by the Section. A User Committee Attendance Sheet should be used for all meetings, and user group members should be reminded that all activities that occur in participation, interaction, including notes, emails, scoring comments, etc. are subject to FOIA disclosures.

## 2.5 – SCOPE DEVELOPMENT

Taking into consideration the market research initially completed, a draft scope of work is developed. This will provide the agencies a basic framework or guideline to work with, rather than starting from nothing.

In addition to product and/or service specific requirements, the user committee should provide feedback on things such as:

- Delivery (and set up)
- Warranties
- Service location requirements
- Response time
- Maintenance
- Customer service
- IT requirements
- Licensing/certifications

## 2.6 – BONDS

Evaluate the need to require a bid and / or performance bond. Considerations should include but are not limited to the criticality of the materiel, the infrastructure a bidder may need to have in place, and competition in the marketplace.

When applicable, if supported by market research, precedence, etc., requests to waive bond requirements are to be submitted to the Director's Office for approval to waive. In the absence of an approved waiver the provision of a bond is required for all procurements.

### BID BONDS

- A bid bond is issued as part of a bidding process by the surety to the project owner, to guarantee that the winning bidder will undertake the contract under the terms at which they bid.
- 29 *Del. C.* § 6927(a) states "For the purchase of materiel and nonprofessional services, in accordance with 29 *Del. C.* § 6923 of this title, the Agency or a representative delegated by the Agency may, at their discretion, require that bids be accompanied..."
- A deposit of either a good and sufficient bond to the State for the benefit of the Agency involved; such bonds shall be issued with a corporate surety authorized to do business in this State, the surety shall be approved by the Agency, and the bond form used shall be the standard form included as part of the bid documents issued by the Office of Management and Budget for this purpose; or
- A security of the bidder assigned to the Agency for a sum equal to at least 10% of the bid.
- The bid bond or bid security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid.
- Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility. If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

- Upon the execution of a formal contract and performance bond, the bid bond shall be returned to the successful bidder.
- The bond or certified check from an unsuccessful bidder(s) shall be returned immediately upon award of the contract to the successful bidder no later than 30 days after the opening of the bids.
- In lieu of a bid bond, the bidder may submit a certified check.
- The decision to waive the requirement of a bid bond must be clearly stated in the bid special provisions.

## PERFORMANCE BONDS

- A performance bond is a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor.
- 29 Del. C. § 6927(d) specifies that “Simultaneous with the execution of the formal contract..., the procuring Agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the Agency.”
- Performance bonds shall:
  - Be with a corporate surety authorized to do business in this State.
  - Be in a sum equal to 100% of the contract award, except contracts for the purchase of material with a value less than the threshold amount(s) may reduce or waive this bond requirement from the successful bidder. Such reduction or waiver shall be stated in the bid specifications.
  - Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the projects’ bid documents.
- The contents of performance bonds. – The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and material. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the State and the Agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.
- Other security for contracts under threshold amount(s). Contracts for the purchase of materiel and nonprofessional services valued less than the threshold amount(s) set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful vendor post with the State an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no later than 3 years subsequent to the date of delivery of such materiel or nonprofessional service or to the extent of the warranty period, whichever is greater. In no event shall such

security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the bid specifications. 29 Del. C. § 6927(g).

- **Public Works performance bonding requirements.** Simultaneous with the execution of the formal contract, the successful bidder shall also execute a good and sufficient bond to the contracting agency for the benefit of the agency, with corporate surety authorized to do business in this State, in a sum equal to 100% of the contract price and the bond form used shall be the standard form issued by the Office of Management and Budget. 29 Del. C. § 6962(d)(9). The Division of Facilities Management (DFM) has waiver authority.

## 2.7 – PRE-BID MEETINGS

In the event a pre-bid conference or site visit is necessary, requested or desired, indicate date, time, place, and whether attendance is mandatory or optional.

An Agency may conduct a pre-bid conference [29 Del. C. § 6923(f)] within a reasonable time but not less than 7 days before a bid opening to explain the requirements of an invitation to bid or request for proposal. An Agency may require mandatory attendance by bidders at such pre-bid conferences to qualify as a responsible and responsive bidder. Statements made at the pre-bid conference shall not be considered amendments to the solicitation unless a written amendment is issued.

Attendance may be mandatory or optional and shall be stated as such in both the solicitation or MyMarketPlace advertisements. It should be clearly noted that failure to attend a “mandatory” pre-bid meeting shall preclude the opportunity to submit a proposal.

All parties attending a pre-bid meeting must sign a Pre-Bid Conference Attendance Sheet. At bid openings which require a mandatory pre-bid meeting, only bids from those who attended and signed the pre-bid register are to be opened. Unopened bids should be returned with an explanation of rejection.

The completed sheet should be submitted to [contracting@delaware.gov](mailto:contracting@delaware.gov) along with the My Market Place Document Submission form for posting on the State procurement website.

If, as a result of the pre-bid meeting, the Division realizes that a change needs to be made, an addendum to the provisions of the ITB/RFP needs to be posted on the Bid Solicitation Directory in a timely manner.

All questions at the pre-bid meeting must be answered to the prospective bidders’ satisfaction with the questions and answers captured for inclusion in the Q&A document to be posted online. All unanswered questions that need either further clarification or additional research shall be responded to in writing by posting on the Bid Solicitation Directory.

## 2.8 – MULTIPLE SOURCING

Pursuant to 29 Del. C. § 6926 an Agency may award a contract for a particular materiel or nonprofessional service to 2 or more firms, if the Agency head determines such an award is in the best interest of the State. If such a determination is made, the advertisement shall include a notification of the right of the Agency to make such an award and the criteria upon which such an award shall be based.

The solicitation must specify that: “Agency reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.”

The last sentence should not be included if multiple sourcing is intended. Multiple awarding is a valuable way to require vendors continue to compete for the provision of goods and services by ensuring competition within the formal award. Multiple awarding also provides for additional supply opportunities if one awarded vendor becomes unable to service the contract.

## 2.9 – PREPARE SOLICITATION

The most current solicitation templates can be found on the Agency Bid Process Forms webpage which can be accessed via the Agency Resources section on <https://mymarketplace.delaware.gov>.

The templates have been vetted by legal counsel and include terms and conditions crafted to ensure compliance with the varied laws, rules, and policies applicable to the procurement of materiel and/or services.

The template includes areas for insertion of Technical Specifications / Scope of Work. It is within this section of the template that information specific to an individual contract should be placed.

The template also prompts for insertion of the contract number, contract name, key dates, and information pertaining to pre-bid meetings and the delivery of bids/proposals.

- **Contract ID:** The construct for the contract number is provided in the Agency Solicitation Request.
- **PERIOD OF CONTRACT:** The solicitation must state from "contract execution" or a specified date through a specified date, a specified number of days after execution or "final acceptance."
- **SEALED BIDS WILL BE RECEIVED UNTIL:** Specify the exact time and date in the solicitation and advertisement [29 *Del. C.* § 6923(c)]. Best practices identify this bid receipt date should be a minimum of 14 days after initial advertisement on [www.bids.delaware.gov](http://www.bids.delaware.gov). 29 *Del. C.* § 6923(b) identifies advertisement for “2 consecutive weeks.” However, exceptions allow for a shorter time, if “a shorter time is deemed necessary for a particular procurement as determined in writing by the Agency.”
- **PRE-BID CONFERENCE or SITE VISIT:** In the event a pre-bid conference or site visit is necessary, requested or desired, indicate date, time, place, and whether attendance is mandatory or optional. Pre-bid conferences should not occur less than seven days after the initial posting of a bid on [www.bids.delaware.gov](http://www.bids.delaware.gov), to comply with procurement code and public notice guidelines.
- **BOND FORMS:** Ensure bond forms are included where applicable or required waivers are obtained.
- **EVALUATION CRITERIA (RFP only):** The request for proposals shall state the relative weight given to the factors in evaluating proposals. [29 *Del. C.* § 6924(b)(4)].

While the requirements within the Technical Requirements / Scope of Work can introduce terms and conditions beyond those appearing elsewhere in the template, it is recommended that those terms and conditions appearing elsewhere in the template not be altered or removed unless there is a specific prompt making an allowance for such.

## 2.10 – DEVELOP OUTREACH

While the completed solicitation will be posted on the State's procurement portal, there are benefits by reaching out to potential vendors in an effort to gain visibility of the solicitation and maximize potential competition. Outreach procedures are found in Chapter 9 of this document.

## 2.11 – MANAGEMENT REVIEW AND APPROVAL OF CONTRACT SUMMARY FORM

Submit the solicitation along with Agency Solicitation Request to Contract Supervisor for review and sign off on the Contract Process Checklist.

## 2.12 – ISSUE THE SOLICITATION

Submit the solicitation and any stand-alone appendices along with the Agency Solicitation Request to: [contracting@delaware.gov](mailto:contracting@delaware.gov). The request for approval to post the solicitation **must include a 10-business day period** to review existing state contracts for aggregation opportunities. Failure to submit a request for publication inclusive of this timeline should not be considered grounds for an emergency purchase or critical need as defined in 29 *Del. C.* § 6907. Public notice of solicitation shall be accessible to the public in a manner prescribed pursuant to § 6902(10) of this title for 2 consecutive weeks.

GSS will conduct a solicitation review for compliance with the Procurement Code prior to posting

## 2.13 – GSS SOLICITATION REVIEW

**Certain solicitations require specific additional approvals.** If you are soliciting for any of the services / products below include a copy of the required approval(s) with your submission.

**Technology Related Procurements.** In addition to the requirements of Title 29, Chapter 69 of the Delaware Code for procurement, technology related solicitations require project review by the Delaware Department of Technology and Information pursuant to [29 Del. C. 9004\(c\)](#) and Governor Markell Administration [Executive Order 20](#). In order to complete this section for solicitation approval agencies must have completed the DTI Business Case process and have a status of Approves or Pending Approved for the solicitation to be released.

- Technology solutions impacting the First State Financial System (FSF) in any way must have approval from the Government Support Services (GSS) Director.

**Public Works.** In addition to the review of Title 29, Chapter 69 of the Delaware Code for procurement, public works solicitations require:

- Review and approval by the OMB Division of Facilities Management (DFM) pursuant to [29 Del. C. § 6307A](#), [29 Del. C. § 7419](#), [29 Del. C. § 6962\(d\) \(4\) \(a\) \(5\)](#), and Governor Markell Administration [Executive Order 18](#).
- Review and approval by the Delaware Architectural Review Board (AAB) pursuant to [20 Del. C. § 7308](#)

**Legal Services.** In addition to the requirements of Title 29, Chapter 69 of the Delaware Code for procurement, legal services require prior approval by the Governor’s Office as well as the Office of the Attorney General pursuant to [20 Del. C. § 2507](#).

**Audit Services.** In addition to the requirements of Title 29, Chapter 69 of the Delaware Code for procurement, audit services solicitations require prior approval of the Auditor pursuant to [29 Del. C. § 2906](#). In order to receive approval for publication of a solicitation for Audit Services, agencies must provide approval documentation from the Office of the Auditor.

- Audit Services solicitations must include the requirement for the awarded vendor to comply with the published DTI Security Clearance Policy inclusive of completion of a criminal background check when the vendor will have access to non-public data.
- If the awarded vendor will have access to the State Network, the vendor must additionally sign and comply with published DTI [Acceptable Use Policy](#).
- 

**Asbestos.** In addition to the requirements of Title 29, Chapter 69 of the Delaware Code for procurement, asbestos solicitations require review and approval by the Division of Facilities Management (DFM) pursuant to [16 Del. C. § 7805](#). In order to receive approval for this type of solicitation, agencies must have approved plans from DFM for the solicitation to be released.

**Architecture & Engineering Services.** In addition to the requirements of Title 29, Chapter 69 of the Delaware Code for procurement, Architecture and Engineering Services contracts require review and approval by the OMB Division of Facilities Management (DFM) pursuant to [29 Del. C. § 7419](#).

**Utilities.** Solicitations for electricity, gas, and other sources of fuel and energy procured on both retail and wholesale energy markets require the approval of both the Director of the Office of Management and Budget and the Controller General. Reference 75 Delaware Laws [Chapter 243](#).

## 2.14 – COMPLETE OUTREACH

Send e-mail notifications of availability of the solicitation to organizations identified in step 2.10 above.

## 2.15 – ISSUE ADDENDA

Changes, modifications, or addenda to the posting of a solicitation may be completed prior to bid opening by properly noticing on <https://mymarketplace.delaware.gov>. Vendors remain responsible to be aware of all changes issued for an active solicitation. However, proper notice should be provided wherever possible to give all vendors the best opportunity to respond to the changes from the original posting in their proposals.

Issue addenda to correct errors, change bid due date or to make any other necessary changes that were identified during the pre-bid meeting, site visit, etc.

Addenda to solicitations [29 *Del. C.* § 6923(g)] shall be so identified, numbered consecutively, and shall be submitted to [contracting@delaware.gov](mailto:contracting@delaware.gov) along with the MyMarketplace Document Submission form for posting on the State's procurement portal.

If the addenda change the bid due date, this should be clearly identified in the Document Submission form so that the related fields on the website can be updated.

## 2.16 – RECEIVING AND OPENING BIDS

### RECEIVING, OPENING AND RECORDING OF BIDS [29 *Del. C.* § 6923(j)].

- Each hardcopy bid shall be time stamped upon receipt and stored by the Agency unopened in a secure place until the time and date set for bid opening. Bids received virtually will use the date and time of receipt by the Agency. Electronic signatures can be considered as described in section 9.9 of this manual.
- A hardcopy bid envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened or read solely for the purpose of identification. A record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
- Bids shall be opened publicly and in the presence of 1 or more witnesses at the time, date and location designated in the invitation. Only the proposer's name shall be announced at the public bid opening. The bid information made available at the public opening shall be recorded on a Bid Opening Register and recorded electronically if virtual which shall be published on the Bid Solicitation Directory.
- Bids, bid summaries, and bid tabulations shall not be available for public inspection before contract(s) have been fully executed. 29 *Del. C.* §6923(c)(3). For Competitive Sealed Proposals, this is addressed in 29 *Del. C.* §6924(j)(3).
- After contract execution(s), the bids shall be available for public inspection, except to the extent that withholding of information is permitted by 29 *Del. C.* Chapter 100 or otherwise permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

### RECEIVING LATE BIDS 29 *Del. C.* § 6923(i).

- A bid or withdrawal of a bid is late if it is received at the location designated in the solicitation for receipt of bids after the bid submission deadline identified in the ITB/RFP.
- No bids are to be accepted after the bid submission deadline identified in the ITB/RFP.



- Bidders submitting bids or withdrawals of bids that are late shall be notified as soon as practicable and they have ten business days to arrange for pickup of the bid if hardcopy.
- Documentation concerning a late bid or late withdrawal of a bid shall be retained in the appropriate procurement file.

## 2.17 – CANCELLATION OF THE SOLICITATION

Solicitations may be canceled or any or all bids may be rejected in whole per reference to applicable section of Delaware Code:

- 29 Del. C. § 6923(l) – for ITB
- 29 Del. C. § 6924(k) – for RFP
- 29 Del. C. § 6962(d) (13) (f) – Public Works
- 29 Del. C. § 6982(a) (3) – Professional Services

For reason of Best Interest of the State, if cancelling prior to the opening of bids, all responding bidders must be notified in writing.

The reason for cancellation shall be posted on My Marketplace.Delaware.gov with the solicitation and made part of the contract file.

In the event of cancellation of a bid, any bids that have been received shall be returned unopened to the bidders. Individual bidders will be given an opportunity to recover their bids from the Agency, or after a reasonable time period, have their submitted bid destroyed.

Should it become necessary to recompute the solicitation, a previously cancelled solicitation does not impact the requirement to follow the standard ITB/RFP procedures.

## 2.18 – BID EVALUATION

It shall be the responsibility of the contracting officer to keep all bids and bid tabulations strictly confidential and no information is to be revealed to anyone, outside of the evaluation team, until the award is finalized.

### RESPONSIBILITY OF OFFERORS

An Agency shall determine that an offeror is responsible before awarding a contract to that offeror. Factors to be considered:

- The offeror's financial, physical, personnel or other resources, including subcontracts
- The offeror's record of performance and integrity
- Whether the offeror is qualified legally to contract with the State
- Whether the offeror supplied all necessary information concerning its responsibility; and
- Any other specific criteria for a particular procurement which an Agency may establish provided, that the criteria shall be set forth in the solicitation and is otherwise in conformity with state and/or federal law

## INITIAL BID OR PROPOSAL REJECTION FOR MATERIAL OR NON-PROFESSIONAL SERVICES

Determine Responsiveness. Before doing a complete evaluation of bids/proposals submitted in response to a solicitation, it is appropriate to complete a preliminary review of the proposals received. The following may negate the need to complete a bid tabulation.

- It shall be the policy of Government Support Services, Contracting, that the Director and Deputy Director's office be notified within (24) twenty-four hours after completion of the bid/proposal review when a vendor's bid appears to be necessary for rejection under:
  - 29 *Del. C.* § 6923(i) Late Bids and Late Modifications, (n) Rejection of Individual Bids (o) Responsiveness of Bidders; and/or
  - 29 *Del. C.* § 6924(e) Late Proposals or Late Withdrawals (l) Rejection of Individual Proposals (m) Responsibility of Offers.
- A complete package containing all relevant documentation regarding the rejection should be forwarded to the Deputy Director's office for review.
- The GSS Director will provide final authority on determination of responsiveness of a vendor proposal. If a vendor package has been determined to be non-responsive the vendor shall be notified in accordance with 29 *Del. C.* § 6923(o).

Regardless of the condition for disqualification the bidder must be notified in writing that his bid has been determined to be non-responsive as explained in the letter.

Once an initial responsiveness has been determined, evaluators shall proceed with the next steps of the bid evaluation.

### FOR ALL BIDS – BID REVIEW 29 *Del. C.* § 6923(k)

Review all bids to determine if the bids conform in all material respects to the solicitation. Evaluate responsive bids in accordance with the bid evaluation procedure contained in the solicitation.

Any of the following causes, but not limited to those listed, may be considered sufficient for the disqualification of a bid or proposal:

- More than one proposal for the same contract from an individual, firm or corporation under the same or different names
- Failure to submit a signed and notarized non-collusion statement.
- Evidence of collusion among bidders
- Unsatisfactory performance record as documented by past experience
- If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values
- If there are any unauthorized additions, interlineations, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning

- Non-attendance of mandatory pre-bid meetings
- Failure to adhere to any mandatory requirements as noted in the solicitation

FOR ITB, 29 *Del. C.* § 6923(k)

- A bid tabulation form should be prepared showing at a minimum the bidders and bid prices.
- The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation to bid. If the Invitation to Bid so provides, award may be made by individual line item, by group of line items, by county, zone or any other way designated by the Agency or for the aggregate total of all line items; otherwise, award shall be made in lump sum. A formal contract shall be executed with the successful bidder within 20 days after the award of the contract.
- A contract may be awarded to a firm other than the lowest responsible and responsive bidder if, in the opinion of the Agency, the interests of the State shall be better served by awarding the contract to some other bidder provided the Agency head makes a written determination of the reason or reasons for granting the contract to a firm other than the lowest responsible and responsive bidder.
- A product acceptability evaluation may be conducted to determine whether a bidder's product meets the bid specifications. Any bidder's offer that does not meet the bid specifications shall be rejected as nonresponsive.
- Bids shall be evaluated to determine which bidder offers the lowest cost to the Agency in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria that are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates based upon information the Agency has available concerning future use. Prior unsatisfactory performance on a state contract by a bidder may be included in the evaluation criteria to determine if a bidder is responsible.
- A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under this section. The Agency may seek clarification of a bid, but negotiations are not permitted with any bidder.
- If 2 or more responsible firms bid an equal amount and such amount is the lowest bid, the Agency may award the contract to any 1 of them or reject all bids.
- A record showing the basis for determining the successful bidder shall be retained in the Agency procurement file.
- A written notice of award shall be sent to the successful bidder. For procurement greater than the threshold amount(s), each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

FOR RFP, 29 *Del. C.* § 6924(f)

- A bid tabulation form should be prepared showing at a minimum the bidders and bid prices.
- There should always be only one version of the bid tabulation.
- The bid tabulation should be done on an Excel spreadsheet. The format is variable and depends on the contract specifications and commodities.

- The User Group must complete independent evaluation of reviewable bids and score the bids in all areas of the evaluation except for pricing. Pricing shall be completed by the SCPO in a blind method separate from the evaluation group, and not shared with the user group until after qualitative evaluations have been completed and the full scoring summarized.
- If the Bid Tabulations are incomplete, due to lack of complete response from any evaluator, it must be brought to the attention of the Director's office prior to proceeding. For the purpose of conducting negotiations, the Agency shall determine that proposals are either likely to be selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the Agency determines that an offeror's proposal is unacceptable, the Agency shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

FOR PROFESSIONAL SERVICE, 29 Del C., § 6982(a), § 6982(b)

There are two types of Professional Services, (a) professional services within the scope of the practice of architecture, or professional engineering and (b) professional services not of the previous described type. They are commonly referred to by their section of Delaware Code, 6982(a) and 6982(b).

#### 6982(a) BID EVALUATION

- The Agency ranks in order of preference the qualified applicants
- Beginning with the qualified firm designated first on the list, the Agency negotiates at fair compensation
- Should the Agency be unable to negotiate a satisfactory contract, negotiations are terminated
- The Agency may negotiate with remaining firms by order of ranking
- After completing negotiations, the Agency shall select 1 applicant and prepare public notice within 10 days after awarding the contract.
- The Agency may negotiate with the next firm and continue the selection process until the required number of vendors have been selected

#### 6982(b) BID EVALUATION

- The Agency determines all applicants that meet minimum requirements
- The Agency interviews at least 1 of the qualified firms. The Agency may negotiate with 1 or more firms during the same period. At any point, the Agency may terminate negotiations with any or all firms.
- All professional services contracts shall provide the original contract price at time of contracting.

NOTE: Unlike the other forms of solicitations identified, for bids involving 6982(a), the bidding Agency shall not ask for any pricing at the time proposals are submitted. As referenced above, final determination of price is subject to negotiated fair compensation. Further, for facilities related architectural and engineering related contracts, the bidding Agency is directed to work with the Division of Facilities Management for contract approval prior to the execution of any contract with a selected vendor. For more information, please refer to the following site: [Architectural and Engineering Services](#)

## 2.19 – CONTRACT AWARD

The negotiated award is reviewed and approved by the Contract Administrator. Once an award is determined and signed off by Section leadership, all bidders must be notified regarding the status of their bid.

ITB (29 Del. C. § 6923). The Award must be made within thirty (30) days after bids are opened for Invitation to Bids.

RFP (29 Del. C. § 6924). The Award must be made within ninety (90) days for Request for Proposals after the bids are opened. The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the State Agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals. The award of a contract may be made upon criteria which do not include price. [29 Del. C. § 6924(b)(6)]

PROFESSIONAL SERVICE, 29 Del. C. § 6982(a). After accomplishing the evaluation and conducting discussions and negotiations, the Agency shall select 1 applicant and prepare a public notice within 10 days after awarding the contract stating the firm selected. Agency. This notice will appear in a statewide news publication or by letter to all applicants. If the Agency has elected to select multiple firms, the Agency shall continue the selection process by negotiating with the next firm on the preference list.

PROFESSIONAL SERVICE, 29 Del. C. § 6982(b). This type of professional service does not require a specific date an award. The Agency shall then interview at least 1 of the qualified firms. The Agency may negotiate with 1 firm without terminating negotiations with another firm and may negotiate with 1 or more firms during the same period. Once the Agency negotiates an agreement, an award can be made.

#### SCPO AWARD ACTIONS

- Contracts shall be awarded to the bidder(s) whose bid meets the requirements and evaluation criteria set forth in the solicitation. A formal material and non-professional services contract shall be executed with the successful bidder within 20 days after the award of the contract.
- The appropriate letter, including legal forms and any other enclosures are to be mailed to the successful bidder(s):
  - Contract Award Letter
  - Contract Award Letter - Multiple Award
  - Contract Award Letter with Bond
- The signed contract and performance bond (if required) must be returned within twenty (20) days of the award letter date.
- A Notice of Award or Contract Award Letter shall be sent to [contracting@delaware.gov](mailto:contracting@delaware.gov).
- All of the following are sent the [contracting@delaware.gov](mailto:contracting@delaware.gov) for award using the following Input Documents:
  - MY Marketplace Document Submission form
  - Vendor Information form
  - Award Notice
  - Pricing Schedule, if separate
- If an unsuccessful bidder should protest or question an award, and after discussing the protest/award with that bidder the matter cannot be resolved, the procedures outlined in Chapter 5 – Protests & Appeals, shall be followed.

#### CONTRACT NON-AWARD LETTER

Once all contracts have been received and countersigned, Contract Non-Award Letters are prepared and mailed to all unsuccessful vendors, notifying them of the award.

## 2.20 – AWARD NOTICE

The award notice must include all pertinent details relative to utilizing the contract. The award notice shall not be released for distribution until all bonding and signed contract forms have been received and executed.

Upon contract award, the award must be announced on the State's My Marketplace website by sending an Award Notice or copy of the award letter. This must be accompanied by the following documents, as applicable:

- My Marketplace Document Submission form
- Vendor Information form (one for each awarded vendor)
- Award Notice
- Pricing Spreadsheet, if applicable.

An announcement must then be sent through LISTSERV ([contract@lists.delaware.gov](mailto:contract@lists.delaware.gov)) to all registered contacts.

A copy of all award notices and addendums must be separately maintained by the SCPO in the paper contract file and in the contracts folder on the electronic shared directory.

The contract file on the electronic shared directory shall include copies of all pertinent electronic communications relevant to the contract.

## CHAPTER 3 – COOPERATIVE PROCUREMENT

### 3.1 – AUTHORITY

29 *Del. C.* § 6933, authorizes GSS to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.

29 *Del. C.* § 6987, authorizes GSS to participate in, sponsor, conduct or administer a cooperative agreement for the procurement of professional services with 1 or more public procurement units either within this State, within another state, or with a consortium of other states in accordance with an agreement entered into between the participants. Such agreement may include material and/or nonprofessional services with professional services. The other provisions of this subchapter shall not apply when an Agency participates in an existing cooperative agreement for the procurement of professional services with a contractor holding a current contract as part of such cooperative agreement.

The Director, Government Support Services and the State Contract Procurement Administrator may choose to participate in any cooperative procurement that meets the requirements of 29 *Del. C.* § 6933 or 29 *Del. C.* § 6987, so that local units of government may have access to a cooperative contract but might restrict or limit the participation of any state Agency.

The Section's Director may delegate the authority to sign a cooperative agreement if it is in the best interest of GSS Contracting.

### 3.2 – BACKGROUND

A purchasing cooperative is a type of arrangement where entities aggregate their demand to obtain lower prices from suppliers. The Cooperative purchasing process offers Delaware agencies, counties, municipalities, school districts, public libraries, and other political subdivisions, the benefits, and costs savings of buying goods and services through contracts administered by other governmental entities, purchasing cooperatives and consortiums.

### 3.3 – PROCESS OVERVIEW

The SCPO reviews the sourcing request and conducts market research to determine that likely providers of goods or services in need are available through an eligible consortium. The SCPO completes the Benchmarking process to determine if the cooperative option makes financial and operational sense to the State. If the cooperative is beneficial, the SCPO should make a recommendation to the Director's Office to utilize an available consortium in lieu of the formal bid process. The Director's Office will make a final determination to use a consortium in lieu of a formal bid.

Separately, an Agency shall also have the ability to submit a Cooperative Request form to GSS Contracting. The Cooperative Request form is available on [MyMarketplace.delaware.gov](http://MyMarketplace.delaware.gov) under the Agency resources section. Should an Agency have an interest and ask GSS to join a cooperative, the Agency shall fully complete the Cooperative Request form and provide a benchmark analysis to justify the request. Once

submitted to GSS Contracting, the review may be delegated to a Supervisor or SCPO to review for sufficiency prior to making a recommendation to join or reject the use of the cooperative.

If through this process, the cooperative option is superior to that available on existing contract(s) or through GSA, and the Director's Office approves, then the declaration of an Intent to Participate and subsequent Participating Addendum should be developed.

In the case of a competitive procurement where a vendor has proposed in response to a formal RFP the solution and pricing from an available consortium, the SCPO should conclude the bid tabulation to determine that the consortium offering is the best value. If it is determined to be, a participating addendum shall be executed to formalize the competitive solicitations award.

"INTENT TO PARTICIPATE" means the form executed by the Deputy Director, GSS, which describes the cooperative procurement and signifies the State's willingness to enter into the cooperative procurement.

"PARTICIPATING ADDENDUM" means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned (e.g., ordering procedures specific to that State) and may add other state-specific language or other requirements.

The Participating Addendum (PA) form is to be used and sent to the Deputy Director, GSS to forward to those contractors under the awards with whom we wish to contract. Delaware includes our own additional terms and conditions as an attachment or in the space provided on the form, if it is required. Once fully executed, a copy of the PA is sent to the Lead State contract officer, the Contractor and cooperative's point of contact. The PA form is listed with each cooperative contract. Some of the clauses in "changes" paragraph of the PA may be negotiated by the vendor.

An Award Notice is developed, including any special terms and condition from the Master Price Agreement. The Notice should include all special ordering, shipping, pricing, etc. and posted on My Marketplace as a GSS and cooperative contract.

Other than the process detailed above, the procedures established by GSS Contracting are followed in contract numbering, benchmarking, ERP submission, award notice posting, etc.

### 3.4 – ECONOMIC IMPACT STATEMENT

ECONOMIC IMPACT - A vendor executing a participating addendum for an eligible cooperative award with the State of Delaware shall provide within 90 days of execution and annually as defined by the participating addendum thereafter an economic impact statement which contains at a minimum the following:

- Company Name
- Number of Delaware Locations
- Number of Delaware Employees
- Taxes, Licenses & Fees Paid to Delaware
- Rent Paid within Delaware or Value of Real Property
- Utilities Paid within Delaware
- Major Delaware Investments/Partnerships



- Amount paid to Major partners or suppliers in Delaware

### 3.5 – PARTICIPATING ON ANOTHER STATE’S CONTRACT

Other states may have contracts that would be beneficial to the State of Delaware. A Participating Addendum/Agreement may only be executed if the other state’s laws allow. If allowed, the participating addendum must conform to that state’s laws with Delaware specific changes included. Contact the other state’s procurement official concerning participating.

<a href="#">Alabama</a>	<a href="#">Hawaii</a>	<a href="#">Massachusetts</a>	<a href="#">New Mexico</a>	<a href="#">South Dakota</a>
<a href="#">Alaska</a>	<a href="#">Idaho</a>	<a href="#">Michigan</a>	<a href="#">New York</a>	<a href="#">Tennessee</a>
<a href="#">Arizona</a>	<a href="#">Illinois</a>	<a href="#">Minnesota</a>	<a href="#">North Carolina</a>	<a href="#">Texas</a>
<a href="#">Arkansas</a>	<a href="#">Indiana</a>	<a href="#">Mississippi</a>	<a href="#">North Dakota</a>	<a href="#">Utah</a>
<a href="#">California</a>	<a href="#">Iowa</a>	<a href="#">Missouri</a>	<a href="#">Ohio</a>	<a href="#">Vermont</a>
<a href="#">Colorado</a>	<a href="#">Kansas</a>	<a href="#">Montana</a>	<a href="#">Oklahoma</a>	<a href="#">Virginia</a>
<a href="#">Connecticut</a>	<a href="#">Kentucky</a>	<a href="#">Nebraska</a>	<a href="#">Oregon</a>	<a href="#">Washington</a>
<a href="#">District of Columbia</a>	<a href="#">Louisiana</a>	<a href="#">Nevada</a>	<a href="#">Pennsylvania</a>	<a href="#">West Virginia</a>
<a href="#">Florida</a>	<a href="#">Maine</a>	<a href="#">New Hampshire</a>	<a href="#">Rhode Island</a>	<a href="#">Wisconsin</a>
<a href="#">Georgia</a>	<a href="#">Maryland</a>	<a href="#">New Jersey</a>	<a href="#">South Carolina</a>	<a href="#">Wyoming</a>

The table below is a partial list of cooperatives available for benchmarking purposes that may or may not meet the requirements of § 6933 and § 6987. This information is provided for research purposes only. Any procurement through these existing cooperatives requires GSS authorization (Director or Deputy Director).

<b>Cooperative</b>	<b>Link</b>
Association of Educational Purchasing Agencies	<a href="https://aepacoop.org/purchasing-categories/">https://aepacoop.org/purchasing-categories/</a>
Baltimore Regional Cooperative Purchasing Committee	<a href="https://www.baltometro.org/purchasing/about/contract-awards">https://www.baltometro.org/purchasing/about/contract-awards</a>
Educational & Institutional Cooperative Service, Inc.	<a href="http://www.eandi.org">www.eandi.org</a>
Houston-Galveston Area Council Cooperative Purchasing Program	<a href="http://www.hgacbuy.org/">http://www.hgacbuy.org/</a>
Minnesota Multistate Contracting Alliance for Pharmacy	<a href="http://www.mmd.admin.state.mn.us/mmcap/">http://www.mmd.admin.state.mn.us/mmcap/</a>
NASPO ValuePoint (formerly National Association of State Procurement Officials)	<a href="http://naspovaluepoint.org/#/home/contracts">http://naspovaluepoint.org/#/home/contracts</a>
National Cooperative Purchasing Alliance	<a href="http://www.ncpa.us">www.ncpa.us</a>
OMNIA Partners	<a href="https://www.omniapartners.com/solutions/contract-offerings">https://www.omniapartners.com/solutions/contract-offerings</a>

Cooperative	Link
NPPGov	<a href="https://nppgov.com/">https://nppgov.com/</a>
Pennsylvania Education Purchasing Program	<a href="http://www.peppm.org">www.peppm.org</a>
Sourcewell	<a href="https://www.sourcewell-mn.gov/">https://www.sourcewell-mn.gov/</a>
Texas Department of Information Resources	<a href="https://dir.texas.gov/">https://dir.texas.gov/</a>
The Interlocal Purchasing System	<a href="http://www.tips-usa.com/">http://www.tips-usa.com/</a>

### 3.6 – COOPERATIVE USE OF GSS CENTRAL CONTRACT

Publicly competed GSS central contracts awarded in compliance with 29 Del. C. Chapter 69, are available for use by other states and/or governmental entities through a participating addendum. Final approval for permitting participation resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

Another state/government entity wishing to use a GSS central contract shall make written request to GSS on their formal letterhead referencing the Contract Number, Contract name. The statement below shall be included with their request.

[AGENCY/ENTITY NAME] agrees that it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all debts, liabilities, demands, suits, actions, causes of actions, obligations, losses, damages, injuries, death, penalties or claims together with all costs and expenses (including reasonable attorneys’ fees) of whatsoever kind and nature, arising out of the [AGENCY/ENTITY NAME], its agents and employees’ performance, work or services in connection with the use of this Contract, the subsequent procurement, including financing of any [PRODUCT/SERVICES REQUIRED] as well as the use of those [PRODUCT/SERVICES REQUIRED] regardless of whether such suits, actions, claims, or liabilities are based upon acts or failures to act attributable, in whole or in part, to the State, its employees or Agents.

The SCPO managing the contract shall review the request and submit for GSS Director approval. Approval if appropriate, shall be granted in writing signed by the GSS Director on GSS letterhead to the requesting entity.

The SCPO managing the contract will ensure the administrative tasks of providing the documents to the requesting entity and recording the event in the Bid Summary Reporting spreadsheet, GSS Authorized Coops tab. Documents will be managed in the appropriate contract file and in the contracting Shared Drive.

## CHAPTER 4 – GENERAL SERVICES ADMINISTRATION (GSA) CONTRACTS

29 *Del. C. § 6935* permits an Agency to purchase materiel from an existing federal contract vendor approved by the General Services Administration. This statute permits that “The Director [Office of Management and Budget] may enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor”. In order to effectively evaluate an Agency request to purchase materiel from a GSA approved manufacturer or distributor, the Director must ensure that all applicable bid laws are followed, and negotiations have occurred.

29 *Del. C. § 6988* permits an Agency to purchase materiel from an existing federal contract vendor approved by the General Services Administration. This statute permits that “The Director [Office of Management and Budget] may enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase professional services at prices approved by the General Services Administration of the United States government or its successor.

The terms and/or a copy of any such contract or portion thereof shall be made available and administered only through GSS Contracting. To facilitate the review of any GSA request, Agencies are required to complete a GSA Request Questionnaire and Approval form (Process Request). Any GSA pricing offer made by a manufacturer or distributor to any purchasing official does not give that Agency the authority to make the purchase without first adhering to the State of Delaware bid laws or to the small purchase procedure. The availability of GSA contract pricing does not preclude the necessity to competitively bid any item unless that item is defined as being sole source procurement.

The GSA Administrator has authorized state, local, territorial, and tribal governments as eligible ordering activities to access all Federal Supply Schedules for the purchase of goods and services when expending Federal grants funds in response to Public Health Emergencies (PHE) declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act, codified at 42 *U.S.C. § 247d*.

The following language should be included on all task or delivery orders placed by state, local, territorial, and tribal governments purchasing with grant funds in support of Public Health Emergencies (PHE) declared by the Secretary of Health and Human Services under 319 of the Public Health Services Act, 42 *U.S.C. § 247d*:

This order is placed under Federal Supply Schedule number \_\_\_\_\_ pursuant to GSA policy that authorizes state, local, territorial, and tribal government entities, as authorized users for purchasing goods and services, when expending Federal grant funds in response to Public Health Emergencies (PHEs) declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act, codified at 42 *U.S.C. § 247d*.

## CHAPTER 5 – PROTESTS & APPEALS

The processes outlined in this section are for GSS central contracts. Agencies should adopt their own procedures and are encouraged to use the processes below for guidance.

### 5.1 – WRITTEN PROTEST

A vendor may file a written protest challenging a compliance with applicable procurement procedures subject to the vendor's compliance with the following provisions. Any such written protest will be resolved in accordance with the following provisions.

At a minimum, the written protest must include the following:

- The name and address of the protestor
- Appropriate identification of the solicitation (solicitation number)
- Specific objection or challenge with supporting evidence. Note: Prior contractual relationships alone are not a basis for a protest; and the desired remedy

The State, at its discretion, may deem issues not raised in the initial protest as waived with prejudice by the protesting vendor.

### 5.2 – FILING PROTESTS

Vendors filing a protest for GSS central contracts shall reference protest guidance provided in the Procurement Portal, <https://mymarketplace.delaware.gov/>, Vendor Resources.

A protest is considered to be properly filed when it is in writing, signed by a company officer authorized to sign contracts on behalf of the vendor, and is received by the Director, Government Support Services. The protest may be sent by any of the following means:

MAIL: Director, Government Support Services  
Office of Management and Budget  
100 Enterprise Place  
Suite # 4  
Dover, DE 19904-8202  
FAX: 302-739-3779  
EMAIL: [contracting@delaware.gov](mailto:contracting@delaware.gov)

### 5.3 – VENDOR PROTEST DEADLINES

The vendor must observe the following deadlines when filing a protest. Protests not filed in writing within the time frames identified will not be accepted.

Challenge to Competitive Solicitation Process

- Two (2) business days prior to the closing date and time of the solicitation, as published on bids.delaware.gov

#### Challenge to an intended or actual contract award

- In the event GSS posts an award, the protest must be filed within ten (10) calendar days of the intent to award a contract.
- In the event GSS does not post an award, the protest must be filed within ten (10) calendar days of the date of the date the notice of award is issued.

NOTE: As a matter of policy, even if a protest has passed the appropriate window for a vendor to protest an award, the Director will at a minimum complete an informal review of the protest and determine the validity of the protest/complaint. Such review practices ensure that standard contracting processes, and individual/team performance, have been fulfilled properly and are in alignment with their intent as were the contracting standards were originally created.

### 5.4 – STAY OF PROCUREMENT DURING PROTEST REVIEW

Protest filed at least two (2) business days prior to the public bid closing or proposal deadline date, no award of a contract shall be made until a final decision has been issued, unless the Director, Government Support Services or his designee makes a written determination, after consulting with the user Agency, that the award of the contract without delay is necessary to protect the interests of the State.

When a protest has been filed in a timely fashion within ten (10) calendar days following the issuance of an Award, the SCPO shall consult with the user Agency to determine if performance of the contract without delay is necessary to protect the interests of the State. If it is determined that it is necessary to proceed with the issuance of the contract and contract performance without delay, the bidder with this contingent contract may proceed with performance and receive payment for work performed in strict accordance with the terms of the contract; however, such bidder shall not be entitled to reimbursement for any capital outlay costs, or other up-front expenditures incurred in performing the contract. The provisions of the paragraph are not applicable to a protest pertaining to events or facts arising during the solicitation process.

### 5.5 – PROTEST RESOLUTION

Below are Government Support Services best practices. Agencies are encouraged to adopt the below policies or develop their own with the below as reference.

The Director of Government Support Services shall review and issue a written decision on the protest as expeditiously as possible after receiving all relevant requested information. Available remedies for sustained protests are as follows:

- If a protest is sustained prior to the closing date and time of the solicitation, available remedies may include, but are not limited to, the following:
  - Modification of the solicitation document, including but not limited to specifications and terms and conditions
  - Extension of the solicitation closing date and time (as appropriate); and
  - Cancellation of the solicitation

- If a protest of the intended/actual contract award is sustained, available remedies may include, but are not limited to, the following
  - Revision or cancellation of the award
  - Re-evaluation and re-award or re-solicitation with appropriate changes to the new solicitation

The decisions made the Director of Government Support Services are final and permanent regardless of the protest being accepted or denied. However, the objecting party may appeal the decision by initiating legal proceedings with a Court in Delaware's jurisdiction.

#### 5.6 – COSTS

In no event shall a vendor be entitled to recover any costs incurred in connection with the solicitation or protest process, including, but not limited to, the costs of preparing a bid/proposal, the costs of participating in the protest/request for formal review process or any attorneys' fees.

Decisions at each step of the process must be in writing, occur within stipulated time frames and be provided to all interested parties.

## CHAPTER 6 – CONTRACT ADMINISTRATION

### 6.1 – OVERVIEW

Contract administration encompasses the management of all aspects of the vendor and State relationship throughout the entire life cycle of the contract. This life cycle spans from initial scope of services (requirements) development to issuance of the Request for Proposal (RFP) or other solicitation document and through the term of the contract or extension or other modification. The purpose of contract administration is to ensure that the State obtains the required performance from the contractor, on time, at the correct quality level in accordance with the contract requirements and the contractor receives proper compensation and addresses changes in market conditions where pricing or other factors may change. Effective contract administration ensures that both parties fulfill their contract obligations in a timely manner. This includes the responsibilities of the State as outlined in the contract terms and conditions.

Contract administration requires that both parties clearly understand the contract, cooperate, and act in good faith and maintain mutual confidence and respect. The roles and responsibilities in administering each contract should be clearly understood by all parties before performance begins.

The specific nature, extent and effort required to administer the contract depends on the requirements, complexity, value, and importance of the contract. Simple contracts for delivery of off-the-shelf products may require minimal administration. Complex contracts may require full-time monitoring and administration.

Contract administration is a partnership involving the contractor, the SCPO and the ordering Agency.

Areas of specific interest for all awards are including but not limited to:

- Required reports at the required intervals. This includes usage and spend reports, 2nd tier spending reports for Office of Supplier Diversity and reports of completion of identified milestones.
- Corrective Action Requests and complaints regarding non-performance of either party and resulting actions and communications of same, including identification of opportunities to improve contractual language for future solicitations.
- Price and/or Scope change requests of the State and ordering agencies.
- Communications from vendors in the market (even if not awarded) and customers on opportunities to enhance the award at appropriate times.
- Monitoring and taking appropriate action on contract leakage. This is defined as identifying when purchases are made off contract to ensure appropriate prices are paid and performance expectations are met.
- Depending on the contract value (spend), chairing quarterly or semi-annual business reviews to explore opportunities for efficiencies, avoid potential corrective action situations and address market changes in advance.

When evaluating whether or not to renew an existing contract factors to consider include:

- The performance of the current vendor(s)
- How the existing price structure and/or specifications compare to the current market

- How the existing specifications compare to the State's current needs, and
- Recommendations for improvement that may have been included in the contract file

## 6.2 – AMENDMENTS TO CONTRACTS

Contract amendments are used to modify an existing contract when it becomes necessary to add, delete, or change a particular item or procedure as long as the scope or original contents of the contract remain the same. Amendments can be used for extensions, change in ownership, change in vendor name, etc.

Once the contract amendment is signed, addended Award Notices are used to communicate the change by posting an addendum to the existing Award Notice and submitting the addendum and MyMarketplace input forms to [contracting@delaware.gov](mailto:contracting@delaware.gov) for posting on MyMarketplace.

After the Award Notice is updated to reflect the change, GSS sends a list serve notice to all registered subscribers within the State to notify of the change.

## 6.3 – EXTENSION OF CONTRACTS

A contract may be extended under the terms and conditions stated in the Special Provisions section of the original contract.

If a contract is to be extended by mutual consent for an optional term, agreement on this optional term must be in writing from both the contractor(s) and the GSS Contracting and must be initiated ninety (90) days prior to the expiration of the current contract. (Renew bonding, if required.)

The following steps are to be followed when processing an existing contract:

- State Contract Procurement Officer (SCPO) monitors his/her milestone chart for scheduling of contract requirements, working on a 10-month out review cycle.
- SCPO should use the Process Checklist (which provides more finite detail on what steps to take)
- SCPO, with concurrence of the user committee, determines whether contract should be renewed or re-bid. (If it is determined the contract is to be renewed, contact present vendor, negotiate, and request proposal for renewal, get concurrence, compliance, Supervisor and Deputy Director approval and then send contract amendment to be signed and returned. This process must be initiated ninety (90) days prior to contract expiration.)
- Once contract amendment has been countersigned by Deputy Director, SCPO prepares Award Notice and Pricing Spreadsheet (if applicable) updates to be posted on MyMarketplace, with Supervisor approval. A Contracting LISTSERV communication is sent to notify agencies the extension is complete.

**Price Adjustments** - If any price adjustments are to be made to the extended contract, the method by which those adjustments are to be determined must be clearly stated in the original contract. In cases where price is increasing, the SCPO should include an analysis of changed market conditions and demonstrate the upward price change is justified by the change in the Adjusted Consumer Price Index for the prior 12-month period.

A 30-day extension option (up to 3 months) may be utilized, with advanced approval of Deputy Director for emergency situations. In these instances, a one-month extension letter is sent directing the vendor



that an extension is being exercised, rather than sending a contract amendment where vendor concurrence is agreed to.

It is a best practice to use each optional extension considered to seek a price/cost reduction as a condition of extending since the cost of doing business with the State should have gone down. The consideration of CPI should not prevent the attempt to negotiate a price reduction on all extensions.

## 6.4 – RE-BID OF CONTRACT

If it is determined to re-bid, SCPO contacts major users (user committee) to set up fact finding meeting, review usage reports (vendor supplied), contractor performance, Corrective Action Request (CAR), and changed market conditions that demonstrate a need to rebid and review/update milestones.

- SCPO completes the ITB/RFP boilerplate and schedules a pre-bid meeting, if necessary
- SCPO sends ITB/RFP draft to Agency or user group for approval
- Agency or user group approves and sends approval back to SCPO
- SCPO submits ITB/RFP to State Contract Supervisor for approval
- SCPO sends ITB/RFP bid information with the Agency Solicitation Request form to [contracting@delaware.gov](mailto:contracting@delaware.gov) for website posting
- SCPO completes market outreach by utilizing the Outreach Process in Chapter 9 of this manual
- As bids are received, they are manually recorded in the bid log by the Administrative Assistant and/or SCPO showing date and time received
- At bid opening, SCPO reads bidders/offerors name. SCPO completes the Proposals Received List and submits to the contracting mailbox for publishing on MyMarketplace. From this point, the SCPO has 30 days to award contract if Invitation to Bid (ITB) or 90 days if Request for Proposal (RFP)
- SCPO checks validity of bid surety, if applicable, and that all required documents have been received with the bid. SCPO notifies the Director's Office of intention to declare any bidders nonresponsive prior to notifying vendor(s) of this determination
- SCPO checks references, if ITB, or if RFP, SCPO either checks or selects one evaluation committee member to check references
- SCPO scores pricing component for RFP's and sends the remainder of the proposals and evaluation criteria that had been established by the solicitation to the user group to independently score. The user group should not receive the pricing scores prior to providing their independent review and scoring of the remaining criteria. The user group members are to be instructed to evaluate proposals individually and not in a group setting

- SCPO tabulates bids or evaluation scoring for RFP's (either manually or using (Excel) computerized spreadsheet)
- For ITB, SCPO reviews bid tab and recommended award with Agency and obtains their concurrence
- For an RFP, user committee selects bidder or bidders most likely to be considered for award. Best and Final Offers can be sought for all proposals and schedule oral presentations if appropriate
- SCPO makes recommendations/award during review with State Contract Supervisor and obtains Deputy Director's approval
- SCPO sends out award letter(s) and two (2) original copies of contract form to successful vendor(s). Sends out "no award" notices to unsuccessful vendors after receipt of executed contract(s) from the intended awarded vendor(s). Return bid surety to unsuccessful vendors, if applicable. At this point, the vendor has 20 days to return executed contract to SCPO and provide any required documentation such as Valid Delaware Business license if required
- When contract forms (performance bond) are returned, check to see if documents are signed correctly, notarized, and performance bond is correct as applicable
- SCPO has contracts signed by the Deputy Director of GSS and witnessed by Supervisor or SCPO. Return one signed copy to vendor and retain one signed copy in contract file. Return Bid Surety, if applicable
- SCPO prepares Award Notice and Pricing Spreadsheet (if applicable) to be posted on MyMarketplace, with Supervisor approval
- A Contracting Listserv communication is sent to notify agencies the extension is complete

A [flowchart](#) and Process Steps Document of these procedures are maintained by GSS.

## 6.5 – VENDOR PERFORMANCE

When an ordering entity first experiences a relatively minor problem or difficulty with a vendor, the entity will contact the vendor directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the purchase order and the merchandise received. Ordering entities should stress to vendors that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded contract.

It is imperative that all Agency or SCPO communications be documented at the time of communication. This should include listing the issue, contact name, date of contact (re-contact), expected resolution and ultimately, the results expected or agreed to between the parties.

The State has several remedies available to resolve non-performance issues with the contractor. The Agency should refer to the Contract Terms and Conditions to view these remedies. The SCPO may not usually exercise these remedies until/unless the contractor has been provided with an opportunity to cure

the deficiency. When a default occurs, the Agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the State cannot expect the contractor to perform outside the contract. If the issue is a part of the contract, the Agency or SCPO must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue.

If there is a performance deficiency, a Corrective Action Request (CAR) may be used. Complete this form to report concerns with vendors or commodities furnishing as much detail as possible.

In the event that a contractor fails to respond to the complaint or correct a minor deficiency that would not create contract termination or cancellation, the SCPO shall take this factor into consideration in determining the contractor's eligibility for future contracts. The seriousness of the complaint is determined by the State Contract Procurement Administrator and recorded in the contractor's history file.

Each SCPO will administer a vendor performance file for use by all ordering entities as part of their contract administration responsibilities. The Vendor performance file will rely on the ordering entity's participation in gathering information on vendor performance throughout the term of the award.

To facilitate the documentation and completion of any corrective action responsibilities of the Agency, Vendor and GSS have been outlined in Chapter 6.5. This process recognizes that the State Agency also has responsibilities to perform under an award and a CAR may also be initiated by a vendor.

## 6.6 · DISPUTE RESOLUTION / CORRECTIVE ACTION REQUEST

### AGENCY RESPONSIBILITY

- Contact the vendor (phone, written communication).
- Advise the vendor of the concern and where the contract requires the services/performance in question.
- Find out the problem.
- Provide the vendor an opportunity to correct it.
- Follow up to ensure correction has been made.
- If correction is made, process is complete.
- If correction is not made, elevate to Government Support Services (GSS).
- Provide completed Corrective Action Request to Government Support Services (GSS).

### VENDOR RESPONSIBILITY

- Contact the Agency (phone, written communication).
- Advise the Agency of the concern and where the contract requires the services/performance in question.
- Find out the problem.
- Provide the Agency an opportunity to correct it.
- Follow up to ensure correction has been made.
- If correction is made, process is complete.
- If correction is not made, elevate to Government Support Services (GSS).
- Provide completed Corrective Action Request to Government Support Services (GSS).

## GOVERNMENT SUPPORT SERVICES RESPONSIBILITY

- Evaluate Corrective Action Request.
- If Agency/Vendor request is appropriate and prerequisite steps have been taken, GSS will follow up with vendor/Agency in writing, and place established timeline for Corrective Action Request document in the vendor file.
- Government Support Services will follow-up based on timeline and advise the Agency/Vendor of the result of the Corrective Action.
- If dispute is not resolved, Government Support Services will review contract terms and conditions to determine options available regarding future business with the vendor or changes required by the State to subsequent awards.
- Actions may include but not limited to Notice to Cure, Suspension, or Termination.

## 6.7 – OPPORTUNITY BUYS/ I FOUND IT CHEAPER (IFIC)

The Director for the State of Delaware, Office of Management and Budget, Government Support Services may waive use of a central contract pursuant to 29 *Del. C.* § 6911(e).

A process has been developed to permit any State employee or Vendor to identify a lower price for material and or services for consideration despite the existence of a central contract. See the Opportunity Buy/I Found It Cheaper [flowchart](#).

- Requesting Agency/vendor completes the Opportunity Buy/ I Found It Cheaper Waiver Request form and submits via instructions on the website.
- Contracting office staff receives notification of the IFIC, they log the information from the email into the appropriate spreadsheet found on the Contracting Shared Drive.
  - The email forwarded to State Contract Procurement Officer with a copy to the State Contract Procurement Supervisor.
  - The email is electronically saved in the appropriate file on the Contracting Shared Drive.
- The SCPO reviews the form for completeness, verifying that comparable commodities, products or services are being analyzed, and the total acquisition costs are being considered.
- If necessary, the SCPO will require the submitter to provide quotes from other contracted vendors for the same products being reviewed.
- The SCPO provides the current contracted vendor(s) the opportunity to match the special offer price.
- If the contracted vendor is willing to match the special offer price, the submitter is directed to purchase the requested item from the matching vendor. If the contracted vendor is not willing to match the price, the "opportunity buy" request is forwarded to the Director of Government Support Services with the recommendation to approve a waiver.
- The Director approves (or denies) the waiver request, which is then returned to the originating Agency.

- A hardcopy of the signed waiver is maintained in a centrally located Contracting Unit file entitled "OPPORTUNITY BUY" REQUESTS.
- The Agency purchaser attaches the waiver with any financial documentation regarding the purchase.

Any Opportunity Buy/I Found it Cheaper submitted by an Agency or Vendor that is not directly related to a necessary and imminent purchase need of the State shall be accepted for market research and informational purposes only. Waivers will not be granted for items that are not currently awaiting a purchase from a State Agency.

#### Right to Limit I Found It Cheaper Requests Purchase Thresholds

At the discretion of the Director of Government Support Services, all I Found It Cheaper requests that exceed \$25,000.00 in total value may be denied. (The dollar limit is the current threshold that requires a competitive bid to procure Non-Professional goods and services; reference: Small Purchase Thresholds).

The Director shall independently review each request in excess of this amount and make a determination to allow an IFIC waiver process review or to require a new bid prior to completing a purchase.

The opportunity for GSS to consider IFIC requests provides agencies with an outlet to seek savings in the best interest of the State but shall not be used as a method to avoid a competitive bid. Nor shall the IFIC process allow a vendor to attempt to avoid competitively bidding on contract(s), but instead look to sell products to an Agency without fully complying with the intended procurement scope of work and/or bid requirements.

## 6.8 – CANCELLATION OF CONTRACT

If the contractor entering into a contract neglects or refuses to perform or fails to comply with the terms, the GSS Contracting may terminate the contract and proceed to award a new contract or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. [29 Del. C. § 6928]

All documentation regarding attempts to cure any concerns or performance deficiencies should be part of the contract file. Termination should be a last resort and only recommended after careful consideration has been given to all available options to complete any existing awards that have been established through the competitive procurement process. A recommendation to proceed with termination must be obtained by the Director's Office prior to initiating the formal action. If approved, the termination recommendation and notice to the vendor should be prepared for the Director's signature after review by the appropriate DAG.

The Division may consider award the contract to the next lowest responsible bidder or re-advertise for new bids. Any emergency situation created by the need to terminate an existing award may trigger an emergency procurement only for the duration to satisfy the immediate period of need while the competitive process is completed for a new award.

## 6.9 – TRANSFER OF OWNERSHIP OF CONTRACTOR OR NAME CHANGE

Throughout the term of the contract, it may be necessary to make changes to the contract when the ownership of the contractor changes or the contractor changes the company name. Should there be a name change or change in ownership, etc., to the present contractor, written notification by the contractor is required. Upon receipt of written notification, signed contracts (2) must be obtained.

Old Contractor. Written notification is required and must include:

- Sold the business and to whom
- Cancellation of contractor
- Effective Date and confirmation new contractor has agreed to take on all contractual obligations.

New Contractor. The new owner/vendor/contractor must:

- Send written notification
- Signed Assignment of Contract
- New FEIN
- New Surety, if applicable
- New ordering procedure
- Certificate of Insurance
- Business License
- New signed Non-Collusion Statement

SCPO's procedure

- Determine appropriateness of award/assignment to new vendor (ensure the new contractor is not on the excluded parties list, does not have prior performance concerns that would otherwise prevent award and that all appropriate documentation is provided such as Delaware business license, non-collusion statements, company officers and affirmations, etc.)
- New contracts signed and sealed
- Issue addendums notifying agencies of change, as well as website posting to My Marketplace

Name change

- Must have written notification from contractor for file.
- Addendum sent to agencies informing of name change as well as, posting an Award Notice Addendum to My Marketplace, using the form.
- Vendor must complete the W-9 process to accept payment as new company.
- Update Business License and Certificate of Insurance

## CHAPTER 7 – LEVELS OF GSS CONTRACTING ASSISTANCE TO AGENCIES

### LEVEL 1 – AGENCY PROCESS HOLDER

#### GSS RESPONSIBILITY

- Direct Agency to GSS Website
- Process Guidance
- Forms & Documents
- ITB / RFP Template
- Guidance in Selecting ITB/RFP
- Consult and Respond to Questions
- Delaware Procurement Code Title 29, Chapter 69
- Contracting Process
- Review Agency Documents (if requested)
- Bid Solicitation Package

#### AGENCY RESPONSIBILITY

- Assemble Bid Solicitation Package
  - Specifications
  - Terms and Conditions
- Complete Bid Process
  - Advertise two (2) weeks (consecutive) on [mymarketplace.delaware.gov](http://mymarketplace.delaware.gov)
  - Hold Pre-bid Conference (if applicable)
  - Hold Bid Opening
  - Award Contract
  - Execute and Administer throughout the term of contract
  - Place order with Awarded Vendor

### LEVEL 2 – AGENCY PROCESS HOLDER

#### GSS RESPONSIBILITY

- Provide Contracting Process Guidance
  - Reference Delaware Code
  - Website Processes
- Provide a “Draft Package” (Agency requested)
  - Standard Terms and Conditions
  - General / Special Provisions
- Ensure Document is Effective
  - Terms and Conditions

#### AGENCY RESPONSIBILITY

- Supply Specification (if draft requested)
- Supply Mailing List of Vendor
- Maximizes Completion (Agency should have responsibility)
- Viable Vendor Sourcing (Agency should have responsibility)
- Approve “Draft” (if requested)
  - Specifications

- Terms and Conditions
- Complete Bid Process
  - Advertise two (2) consecutive weeks on mymarketplace.delaware.gov
  - Hold Pre-bid Conference (if applicable)
  - Hold Bid Opening
  - Award Contract
  - Execute and Administer throughout term of contract
  - Place order with Awarded Vendor

### LEVEL 3 – GSS PROCESS HOLDER

#### GSS RESPONSIBILITY

- Provide Draft of Bid Package
  - Specification
  - Terms and Conditions
  - General / Special Provisions
- Complete Bid Process
  - Advertise two (2) consecutive weeks(consecutive) on mymarketplace.delaware.gov
  - Hold Pre-bid Conference (if applicable)
  - Hold Bid Opening
  - Obtain Agency Award approval
  - Award Contract
  - Execute Contract

#### AGENCY RESPONSIBILITY

- Provide GSS
  - Specifications
  - Timeline
  - Mailing List of Vendors
  - Signature documents from Agency head that cedes Administrative responsibility to Government Support Services.
- Approve
  - Bid Package
  - Contract Award
- Place Order with Vendor
  - Credit Card
  - Purchase Order

#### LEVEL 3 PARTICIPATION FORM

Agencies can begin their request for assistance by completing a Request for Help form <https://mymarketplace.delaware.gov/help/agencies.shtml> .



## CHAPTER 8 – DEFINITIONS

TERM	DEFINITION
Agency	<p>Every board, department, bureau, commission, person or group of persons or other authority which directly receives monies under any budget appropriation act or supplemental appropriation act and which was created and now exists or hereafter is created</p> <p>a. Execute, supervise, control and/or administer governmental functions under the laws of this State; and/or</p> <p>b. To perform such governmental functions under the laws of this State, or to perform such other duties as may be prescribed; and/or</p> <p>c. To collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or</p> <p>d. To administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any Agency of the State.</p> <p>Includes Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or Agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this subsection shall be deemed to exempt any entity that is otherwise required to comply with § 6960</p>
Agency Head	<p>The top official in an Agency whether elected, appointed or otherwise. The Agency head may delegate duties under this chapter to a designee within the Agency</p>
Agency Official	<p>Any employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards</p>
Compensation	<p>The total amount paid by an Agency for professional services, including reimbursed expenses, unless otherwise stated in the contract</p>
Contractor	<p>Any person, partnership, firm, corporation, nonprofit Agency or other business association who has a contract with an Agency.</p>

TERM	DEFINITION
Covered Agency	Any Agency except school districts, Delaware Technical & Community College, the Delaware State University and the Legislative Branch of State government.
Director	The Director of the Office of Management and Budget, except as provided by § 6960 of this title, in which case it shall mean the Secretary of the Department of Labor.
Electronic Bid	The bidder, in response to an advertised invitation to bid, submits all documentation, except for information and documents specified in the invitation to bid, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office until the close of the bidding period. In this process, no hard copy documentation shall be submitted to the Office prior to the award of the contract.
Electronic Submission	The vendor, in response to an advertised request for proposal, submits all documentation, except for information and documents specified in the request for proposal, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office until the close of the request for proposal submittal period. In this process, no hard copy, except for information and documents specified in the request for proposal, shall be submitted to the Office prior to the award of the contract.
Firm	A person, organization, partnership, limited partnership, corporation, association, nonprofit Agency or other business association.
Internet	The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web.
Labor Supply Ratio	The number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor pursuant to Chapter 2 of Title 19 or has otherwise documented 8 years of experience in a particular craft, shall be deemed a skilled crafts person for the purposes of this definition.
Lifecycle Costing Analysis	The contracting Agency's evaluation of costs associated with the cost of acquisition, the cost of energy consumption required for operation, the cost of maintenance and the cost of consumables that affect the State's overall cost of ownership of equipment or public works projects. Such evaluation is used by the contracting Agency or project

TERM	DEFINITION
	architect or project engineer for the development of contract specifications.
LISTSERV	An electronic mailing list of contact information of the person(s) responsible for procuring goods and services for their Agency. Included in the list are contacts for Municipalities, Fire Companies, School Districts, and State Agencies; Procurement Unit Contacts.
Local Government Unit	Any municipality incorporated in this State under the authority of the General Assembly and any of the 3 counties.
Materiel	Materials, equipment, tools, supplies, or any other personal property, but does not include real property or electric, gas, water, telephone or similar utilities.
<u>NAICS</u>	The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
<u>NIGP</u>	The National Institute of Government Purchasing established commodity codes in 1999 to bring purchasing procedures into greater conformity with national standards
On-line Bidding Method	A procurement process in which the Office receive vendors' bids for goods and nonprofessional services electronically over the Internet as either a substitute for a hard copy bid submission or in a real-time, competitive bidding event.
P-Card	State of Delaware Procurement Card (Credit Card)
Professional Services	Services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management and arbitration services. Professional services subject to the provisions of § 2507 of this title or which require compliance with Delaware Supreme Court Rule 52 or a substantially similar rule of another state shall not be included in this definition and shall not be subject to this chapter

TERM	DEFINITION
Public Building	Any edifice or building which is or is to be constructed, reconstructed, altered or repaired pursuant to a public works contract. It does not mean the act or process itself of constructing, reconstructing, altering or repairing.
Public Funds	Funds of the State, of any Agency within the State, of any public school district, of or from the United States government or of or from any department or representative body thereof.
Public Works Contract	Construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.
Reverse Auctioning	An on-line procurement method wherein bidders bid on specified goods and non-professional services through real-time electronic competitive bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are public and are revealed electronically, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the auction.
SCPO	State Contract Procurement Officer
Section	Section of Government Support Services in the Office of Management and Budget
Third Tier Contractor	A firm that has contracted with a subcontractor to provide services and/or materiel in connection with a public works contract.
<a href="#">UNSPSC</a>	The United Nations Standard Products and Services Code provides an open, global multi-sector standard for efficient, accurate classification of products and services.
User Group	2 or more Agency or non-Agency representatives, one of whom shall be an Agency representative who provides technical advice to the Government Support Services concerning the requirements of certain materiel and nonprofessional services contracts. Non-Agency representatives shall be limited to expected users of the materiel and/or services being procured and/or persons having technical expertise deemed necessary by the Agency. In no event shall non-Agency representatives be affiliated with a vendor or prospective vendor of the contract.
Volunteer Ambulance/Rescue Companies	A volunteer ambulance or rescue company certified as such by the State Fire Prevention Commission.

TERM	DEFINITION
Volunteer Fire Department	A volunteer fire department recognized as such by the State Fire Prevention Commission.
Z Score	A calculation used to assess a bidder's fiscal health. The calculation is based on the following weighted ratios: return on total assets, sales to total assets, equity to debt, working capital to total assets, and retained earnings to total assets.

## CHAPTER 9 – POLICIES, PROCEDURES AND MEMOS

### 9.1 – BEST AND FINAL OFFER POLICY

Best and Final Offers are applicable only to material and nonprofessional services procurements. Best and Final Offers must be made to all responsive and responsible vendors responding to the RFP. It shall be the policy of Government Support Services Contracting that the Contracting Supervisor will verify, by initialing the Bid Tabulation, that the Best and Final Offer matches the information as presented and that no changes or alterations to the original RFP Specification(s) occurred as a result of the acceptance of the Best and Final Offer.

### 9.2 – BID CANCELLATION

All bid cancellations shall be thoroughly vetted prior to any actions being taken, which may include any and/or all of the following steps:

- Review all received proposals for responsiveness, including
  - Completeness of Vendor Response Provided
  - Pricing
  - Vendor Exceptions to Scope of Work or stated contractual terms
- Contracting Section to Consider if Adequate Competition was present
- Legal Review of Vendor Response/Exceptions

Prior to making any bid cancellation decision, GSS Contracting consider all factors and provide a recommendation prior to engaging the contract sponsor and/or user group. Such cancellation recommendations shall include a complete list of identified deficiencies and/or risk with continuing the process and may include legal opinion if appropriate.

The GSS Contracting representative will seek consensus from the contract sponsor(s) and request their assent that the bid be cancelled but will allow the sponsor and/or user group to ask questions, seek alternative(s), and/or disagree with the planned path forward. It is important for GSS Contracting to document and let the identified user group know that advancing toward a contract award is contradicted by Code, legal review or precedence, as appropriate. (As necessary, a meeting can be established to discuss the path forward to meet the best interests of the State.)

If a determination to cancel an active bid is suggested, and the user group agrees, a brief synopsis shall be provided to the Deputy Director, Government Support Services for their approval or denial. Such documentation shall be maintained in the contract file, in physical or electronic copy for future reference.

**NO BIDS SHALL BE CANCELLED PRIOR TO USER GROUP/AGENCY SPONSER ENGAGEMENT, AND GSS DEPUTY DIRECTOR APPROVAL.**

### 9.3 – NON-AWARD REASONS

Cancellation of ITB Prior to bid opening:

Under 29 Del. C. § 6923(m) (1), this solicitation is cancelled in the best interest of the State.

After bid opening:

Under 29 Del. C. § 6923(l), this solicitation is cancelled due to the lack of adequate responses.

Procurement Cancelled:

29 Del. C. § 6923(l), the proposed procurement is cancelled.

Cancellation of RFP:

29 Del. C. § 6924(k), this RFP is hereby cancelled in the best interest of the State.

Cancellation of Public Works solicitation:

29 Del. C. § 6962(d) (13) (f), this solicitation is cancelled in the best interest of the State.

Cancellation of Professional Services solicitation:

29 Del. C. § 6982(a)(3) or §6982(b)(3), this solicitation is cancelled due to termination of negotiations with listed qualified firms.

Request for Information (RFI):

This announcement was for information only.

Request for Qualifications (RFQ):

This Request for Qualifications was to identify qualified firms and will not result in a contract award.

Cooperative Solicitation Announcements:

This solicitation was advertised to provide local vendors with national contracting opportunities. The State of Delaware reserves the right to participate, if in the best interests of the State.

## 9.4 – CONTRACT TRANSFER CHECKLIST POLICY

It is the policy of Government Support Services/Contracting that the State Contract Procurement Officer and Supervisor will utilize the Contract Transfer Checklist when transferring Contracting file from one SCPO and Supervisor to another.

## 9.5 – DEBARMENT

Other than with Public Works contracts, there are no provisions in Delaware code authorizing formal debarment of a vendor. Consideration must be given and evaluated to past performance.

Actions to be taken against a vendor for nonperformance on a central contract shall require the Director of GSS' approval. Required for the Director's review will be all documentation including Agency attempts to resolve the issues and the Corrective Action Request (CAR).

While not a formal requirement of Delaware code for nonpublic works procurements to check for vendor debarment in other states and through the federal government, it shall be the policy of GSS that all vendors considered for award shall be checked using the same procedures outlined for public works. Should a vendor be identified as debarred it shall be brought to the Director for a responsibility determination of the vendor.

If during the current term of an existing central contract, another jurisdiction debar a vendor, it shall be brought to the Director for a determination of the impact to the current GSS central contract.

With Public Works contracts, any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the Agency in the invitation to bid may be subject to suspension or debarment for 1 or more of the following reasons:

- Failure to supply the adequate labor supply ratio for the project
- Inadequate financial resources; or
- Poor performance on the project
- Failure to provide required craft training under paragraph (d)(13)i

29 Del. C. § 6962(d)(14).

Upon such failure for any of the above stated reasons, the Agency that contracted for the public works project may petition the Director of the Office of Management and Budget for suspension or debarment of the contractor. The Agency shall send a copy of the petition to the contractor within 3 working days of filing with the Director. If the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The Agency shall have the burden of proving, by a preponderance of the evidence that the contractor failed to perform or complete the public works project within the time schedule established by the Agency and failed to do so for 1 or more of the following reasons:

- Failure to supply the adequate labor supply ratio for the project
- Inadequate financial resources
- Poor performance on the project; or
- Failure to provide required craft training under paragraph (d)(13)i

Upon a finding in favor of the Agency, the Director may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense. The Director shall issue a written decision and shall send a copy to the contractor and the Agency. Such decision may be appealed to the Superior Court within 30 days for a review on the record.

To search for exclusions, use the System for Award Management (SAM) following the steps listed to see if an entity is subject to any active exclusions (e.g., suspensions, debarments) imposed by a federal Agency:

- Go to <https://sam.gov/SAM/>
- On the Home Page click the Search Records icon, type the Entity's name, DUNS number, or CAGE code in the search bar and click on the Search icon. (IMPORTANT NOTE: Individuals are not assigned DUNS numbers. If you are checking for an exclusion for an individual, search by typing in the name.)
- If no exclusion record is found for the entity, the entity does not have an active exclusion submitted in SAM by a federal Agency.
- If an exclusion record is found, it will display in a box marked "Exclusion" in purple; check the status in the top-right corner of the box. If the status indicates "Active", there is an active exclusion for that entity.
- Below the search results, options to export results or save as a PDF are available for recordkeeping.



**NOTE:** Vendors with an active debarment may be denied prequalification for large public works, and thereby affecting the ability to be awarded. Agencies should refer to 29 Del. C. § 6962 Large public works contract procedures, and/or contact the Division of Facilities Management for guidance related to the debarment policies.

Otherwise, the identification of a debarment record may not immediately disqualify a vendor from consideration for an award bid through other non-public works sections of the procurement code. Should a debarment record be identified, the SCPO shall notify their supervisor and bring the matter to the attention of the GSS Director for a final determination about the vendor's ability to continue to be considered for an award.

## 9.6 – DISPUTE RESOLUTION POLICY

The following language is included in all formal bid solicitation templates regarding dispute resolution available upon award under the terms of a contract.

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties to the Agreement can elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

## 9.7 – DRUG TESTING FOR LARGE PUBLIC WORKS POLICY

Pursuant to 29 Del. C. § 6908(a)(6), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del. C. § 6962.

## 9.8 – CRAFT TRAINING

Craft training must be provided by a contractor and/or subcontractor for each craft on a project for which there are Delaware Department of Labor approved and registered training programs. A list of crafts for which there are approved and registered training programs is maintained by the Delaware Department of Labor and can be found at <https://labor.delaware.gov/divisions/employment-training/apprenticeship-and-training/apprenticeship-benefits/>

In accordance with Title 29, Chapter 69, Section 6962(d)(13)(i) of the Delaware Code, contractors and subcontractors must provide craft training for journeyman and apprentice levels if **all** of the following apply:

- A project meets the prevailing wage requirement under Title 29, Chapter 69, Section 6960 of the Delaware Code
- The contractor employs 10 or more total employees
- The project is not a federal highway project

## 9.9 – ELECTRONIC SIGNATURES

The U.S. Code defines an electronic signature for the purpose of US law as "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

The Uniform Electronic Transactions Act ("UETA") was released by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999 and established the definition of what qualifies as an electronic signature. 47 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted it. Only New York, Washington State, and Illinois have not enacted UETA, but each of those states has adopted its own electronic signatures statute.

6 *Del. C.* Chapter 12A. Uniform Electronic Transaction Act allows for the use of electronic signatures in contracting. Please refer specifically to § 12A-107, § 12A-108, and § 12A-111 It does not require the use of electronic signatures.

It shall be the policy of Government Support Services to use electronic signatures to the maximum extent possible, except where prohibited by 6 *Del. C.* Chapter 12A.

## 9.10 – ELECTRONIC STORAGE OF CONTRACT DOCUMENTS

It shall be the policy of GSS Contracting that an electronic copy of all vendors' bid/proposals and associated bid/procurement document are to be saved on the Contracting Share Drive in the appropriate folder.

## 9.11 – BENCHMARKING

It will be the policy of GSS Contracting, that prior to presenting a contract for the advertising/posting process, the Contract Officer will conduct market research. This research will be formalized by completing

the Benchmarking spreadsheet which includes, but is not limited to, a review of the GSA and NASPO ValuePoint websites for price comparisons. The websites are listed below.

GSA: [www.gsaadvantage.gov](http://www.gsaadvantage.gov)

NASPO ValuePoint: [www.naspovaluepoint.org](http://www.naspovaluepoint.org)

Further, the Contract Officer shall retrieve the IBIS World report, if available, for the good, commodity and/or service to review pricing and market factors that may affect any bid or extension decision.

## 9.12 – THIRTY (30) DAY EXTENSIONS

No thirty (30) day contract extensions will be utilized without prior approval of the Director or Deputy Director of Government Support Services.

## 9.13 – VENDOR OUTREACH PROCEDURES

Outreach is intended to provide proposal response opportunities to potentially interested vendors. Vendors are identified by using methods not limited to Supplier Diversity registrations, GSA identified vendors, Small Business registered vendors, vendors on existing contracts, vendors on prior contracts, and other methods as applicable. The SCPO reaches out to potential vendors via e-mail to notify of solicitation opportunities.

SCPO reports (after award) outreach efforts by updating the Bid Summary Excel Spreadsheet.

Delegated contract officers will provide the summary information to the appropriate State Contract Supervisor.

- Contract number and name
- Number of potential vendors emailed through each Category Type
- Delaware companies
- Small Businesses
- Minority companies
- Woman owned companies
- Veteran owned companies

An email can be sent to each of the listed vendors, announcing the solicitation and recommending that they subscribe to our subscription service.

The State of Delaware has a free Vendor Subscription service to notify interested parties of solicitations in specific areas of interest as you determine when registering. You may select as many areas of interest as you like. Please take a moment to register at [bids.delaware.gov](http://bids.delaware.gov). Registration will enable you to receive an email notification when a solicitation is posted that matches the areas of interest you identified.

DO NOT recommend a UNSPSC code to any company that inquires. This choice is theirs.

## 9.14 – VENDOR REGISTRATION

The State of Delaware launched a free Vendor Subscription service August 1, 2009 to advise vendors of solicitations in specific areas of interest as defined by the vendor. Once registered, any area of business that the vendor wishes to receive notification on will be automatically provided by an email notification. Vendors may subscribe at [www.bids.delaware.gov](http://www.bids.delaware.gov).

## 9.15 – VENDOR SPEND USAGE REPORT POLICY

It is the practice of GSS Contracting Management that vendors submit their usage reports, monthly unless otherwise specified in the contract, to [vendorusage@delaware.gov](mailto:vendorusage@delaware.gov) by the 15th of each month. While not mandatory for Agency contracts, the practice is highly encouraged for effective contract management, business intelligence, and transparency. For GSS central contracts, Vendors are required to use the template provided and must submit each month, including those with no spend to report.

SCPOs shall be responsible for:

- following up with vendors who have reports with errors
- collecting reports that have not been submitted; and
- forwarding any corrected and missing reports, sent to the SCPO only, to the VendorUsage mailbox

SCPOs may coordinate with MMPAs to avoid duplicate efforts in the collection and correction of monthly usage reports.

## 9.16 – W-9 FORM POLICIES AND PROCEDURES

It is the practice of Government Support Services to require vendors to comply with the policy direction of the Division of Accounting regarding the submission of W-9 Forms for all vendors on state contracts.

Vendors must register or manage their information through the eSupplier Portal. Detailed instructions for submitting new registrations, obtaining user IDs and passwords, and submitting change requests are located on the FAQs/Contact Us page of the eSupplier Portal.

## 9.17 – MY MARKETPLACE VENDOR DIVERSITY REPORTING

The State of Delaware is committed to supporting its diverse business community by identifying and recording the diverse vendors that have responded to formal bid opportunities and/or have been awarded contracts. The collection and analysis of vendor participation provides transparency in the state's formal bid solicitation process and may provide additional business partnership opportunities within the vendor community.

Vendors have an opportunity to report their business' diversity classification(s) within their bid responses to formal procurements. This is accomplished by identifying a diversity status on the bid solicitation's Non-Collusion statement, as on the form section shown below, which is intended to be notarized prior to bid submission. NOTE: A Vendor's self-identification of diversity status on the Non-Collusion does not certify or guarantee the legitimacy of the diversity claim, but instead only identifies the Vendor's assertion that the business believes itself to be diverse. This diversity claim may or may not be substantiated by outside entity certification policies and/or practices.

For purposes of the central Contracting section’s internal reporting and My Marketplace (MMP) transparency, if a Vendor self-identifies itself as a diverse business classification(s) on the Non-Collusion statement, the Contract Officer will record a business’ diversity status as diverse. The result will require a recording of “Y” in the M/WBE and/or Vets/SDV columns on My Marketplace and the tracking of the business’ claimed diversity on all internal reports.

## 9.18 – HEALTHY VENDING/FOOD SERVICE

The Department of Human Resources instituted a Workplace Wellness Policy in June 2022 based on Governor Carney’s [Action Plan for Delaware](#). The policy provides guidance on the foundation and infrastructure for Executive Branch agencies to establish and maintain workplace wellness initiatives. Workplace wellness initiatives focus on promoting a healthy lifestyle — including exercise, healthy eating, tobacco cessation, and preventive care — as well as supporting employees’ social and emotional wellness — including stress management and mental health. Agencies are permitted and encouraged to develop wellness initiatives that are based on the needs, wants, health status, and risks of their specific employee population. The procedures section details a model approach based on best practices that agencies may adopt for their own workplace wellness initiatives. Agencies have the flexibility to adopt all or some of the practices, based on their agencies and employees’ unique needs and preferences. Language from the policy is recommended as applicable:

### Improving Access to Healthier Food Options in the Workplace:

Vending and Food Service – State entities are encouraged to make available healthy snacks/foods at catered events, in cafeterias, and in snack bars. Clear identification of healthy snacks is strongly encouraged. It is recommended that vending machines in State buildings with food products offer healthy options that comprise at least 40% of all options offered. Procurement with external vendors for catered events may specify healthy options to be included for prepared foods and drinks.

