

Delaware Energy Office

Delaware Sustainable Energy Utility Contract Administrator

Request for Proposals

August 1, 2008

SCHEDULE

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1.0 INTRODUCTION

1.1 Purpose of This Request for Proposals

The State of Delaware Energy Office (the “DEO”) as part of the Department of Natural Resources and Environmental Control (the “Department”) issues this Request for Proposals (RFP) to solicit competitive proposals for a Contract Administrator (the “CA”) for the Delaware Sustainable Energy Utility. The purpose of the Sustainable Energy Utility is to acquire end-user energy savings and renewable energy solutions that can lower customers’ bills and reduce the environmental impacts of energy production, delivery, and use. The Contract Administrator will manage the functions and responsibilities of the Sustainable Energy Utility (the “SEU”). The Contract Administrator will operate under a contract initiated by the DEO on behalf of the Sustainable Energy Utility, a non-profit entity created by Delaware law. The contract will be co-signed by the Secretary of Natural Resources and Environmental Control and the State Energy Coordinator. A copy of the Department’s standard contract is exhibited in Appendix C of this document. Since the SEU is not a State entity, the CA will not be required to adhere to all State contracting procedures.

This document presents the project objectives, terms and conditions, specific deliverables, and the required format to submit a proposal to the Delaware Energy Office. Potential bidders should read the entire RFP carefully, along with its Appendices in order to gain a clear understanding of the project requirements. Potential bidders should review the Sustainable Energy Utility’s website (<http://www.seu-de.org/>) which has a variety of background documents on the development of the Sustainable Energy Utility.

1.2 Term of Contract

The winning bidder of this RFP will provide the full scope of services described within this document, for the period of November 24, 2008 to November 30, 2012, with the Delaware Energy Office, in consultation with the Sustainable Energy Utility Oversight Board, reserving the option of renewing the contract for the period of December 3, 2012 to December 4, 2015.

1.3 Statutory Authority

This RFP is promulgated under authority of 29 Delaware Code, Section 8059.

1.4 Overview of Institutional Structure

Potential Bidders need to understand the roles and responsibilities of the Delaware Sustainable Energy Utility, Delaware Energy Office, Sustainable Energy Utility Oversight Board, Contract Administrator, Fiscal Agent, and Implementation Contractors:

The Delaware Sustainable Energy Utility (“SEU”) is the non-profit entity tasked by the State of Delaware to operate programs to deliver comprehensive end-user energy efficiency and customer-sited renewable energy services to Delaware’s households and businesses. A Contract Administrator will manage the SEU’s programs under a contract initiated by the DEO under the direction of the State Energy Coordinator. Routine administration of the SEU shall be performed by the Contract Administrator. The SEU is designed by the State of Delaware to leverage public and private funds and to utilize special purpose bond proceeds

(see below for details regarding the SEU's bond authority) to fulfill the goal of comprehensive, affordable sustainable energy services provided to energy users regardless of conventional fuel type or end use. Any bidder for the Contract Administrator cannot be affiliated with a utility, public or private, that operates in Delaware, or any agency of the State of Delaware, or any entity providing power or fuel to Delaware's distribution utilities or residents.

The State of Delaware Energy Office ("DEO") is the operable unit within the Department tasked by Delaware law to propose and implement a number of energy-related initiatives including energy efficiency, energy conservation, and customer-sited renewable energy programs. The DEO has a number of responsibilities relating to the development, implementation, and monitoring of the SEU including (but not limited to):

- Generation of RFPs for the Contract Administrator and Fiscal Agent that detail the roles of each contractual position;
- Hiring and terminating (if appropriate) the Contract Administrator and Fiscal Agent;
- Development of criteria for evaluation of bid proposals and the annual reporting requirements;
- Defining performance incentives such that if the SEU exceeds program targets by 120% it shall receive a bonus, and if the SEU achieves less than 80% of program targets it shall be charged a penalty. By written agreement between the DEO and the SEU, performance incentives may be passed through to implementation contractors when the DEO and SEU decide this is in the best interest of the State's development of sustainable energy resources;
- Reporting biannually to the SEU Oversight Board on the progress of the SEU;
- Management of the Contract Administrator and Fiscal Agent contracts;
- Development of appropriate means to issue Renewable Energy Certificates and Solar Renewable Energy Certificates, as defined in Title 26 § 352 of the Delaware Code, for renewable energy technologies sited in Delaware;
- Ensuring continuity of program implementation and sufficient carry-over funding during the transition period between the end of one SEU contract term and the beginning of another SEU contract term, so that Delawareans may still have regular access to sustainable energy services during transitional periods;
- Ensuring that adequate evaluation, monitoring, and verification mechanisms are in place so that:
 - The Energy Office and Oversight Board can verify that both SEU and Implementation Contractor expenditures result in verifiable energy savings over the expected lifetime of each energy-saving measure.
 - The CA and implementation contractors are held responsible for the energy savings reportedly achieved through program activities and expenditures

The DEO is headed by the State Energy Coordinator, who is specifically and exclusively tasked by Delaware law to provide direction to the CA.

The SEU Oversight Board ("the Board") is comprised of public, non-profit, academic, and private sector representatives that sets performance targets for the SEU's programs and monitors overall effectiveness. The Board reviews and approves: RFPs for the Contract

Administrator and Fiscal Agent; annual and contract-term SEU performance targets recommended by the Contract Administrator; and any proposed modifications to SEU performance targets or program designs during the contract term of the Contract Administrator. The Board also contracts with an independent professional agency to monitor and verify results reported by the Contract Administrator in annual and contract-term reports, receives biannual reports from the DEO, and may offer recommendations to the DEO regarding the management of the SEU.

The SEU Contract Administrator ("CA") will manage the day-to-day functions and responsibilities of the SEU. The CA's chief responsibilities are program research and design, administration of the Implementation Contracts, and oversight to ensure the Implementation Contractors meet appropriate performance and budgetary targets. The CA may implement education and public outreach programs with approval of the DEO. All other SEU programs must be delivered by competitively selected Implementation Contractors. If an Implementation Contractor is not successfully selected through an RFP bidding process, the CA may implement its own program delivery process subject to approval by the DEO. The DEO and the Board will review the CA's proposed program designs, performance targets, and RFPs before the CA submits RFPs for bidding by Implementation Contractors. Subject to the approval of the DEO, the CA will develop and maintain a management information system (MIS) to collect all performance, market, and financial data necessary to monitor and evaluate SEU performance and make such data available to the DEO and Board upon request. Any MIS systems developed by the CA shall conform to Department standards relating to information technology systems.

The SEU Fiscal Agent ("FA") is an independent contractor who assists the DEO with the financial management of the SEU. The FA is the SEU's "Treasury." The FA may be contracted by fee only or by a fee-plus-incentive structure as determined by the DEO. The FA's primary responsibilities are: to receive funds for the SEU; disburse these funds to the CA under the direction of the DEO; interface with bonding and revenue authorities; oversee financial transactions involving renewable energy certificates; and pay SEU invoices.

An SEU Implementation Contractor ("IC") means any entity competitively contracted by the SEU to implement specific programs and services. Any entity, including individuals, electricity or gas utilities, local governments, non-profit corporations, and private businesses, may bid for an Implementation Contract. Entities affiliated with the CA are prohibited from bidding for any of the Implementation Contractor positions.

The ultimate responsibility for oversight of the CA and the ICs resides with the State Energy Coordinator and the Board. This structure is intended to protect not only the SEU's independence, but also to assure that its performance is continually and closely monitored and that it always has the strongest incentives to operate as efficiently as possible. A legal analysis of the responsibilities of the principals of this institutional structure is available at: http://www.seu-de.org/docs/minutes/2008_SEU%20Oversight%20Board_Legal%20Analysis_FINAL_F%20Murphy.pdf

1.5 Mandatory Requirements

Mandatory Requirements are explicitly stated within this RFP. Bidders should consider the following general mandatory requirements prior to deciding to respond to this RFP.

- 1.5.1** The SEU shall be unaffiliated with any of the State's electric or gas utilities, public or private. Similarly, utilities or their affiliates and any entity providing power or fuel to Delaware's distribution utilities or residents are not eligible to bid to be the CA. However, utilities and their affiliates are eligible to bid on Implementation Contracts.
- 1.5.2** To maintain independence between each of the administrative functions, any CA bidder and any bidder's affiliates, shall not concurrently hold or be awarded the FA contract.
- 1.5.3** The CA shall be prepared to operate the SEU in an independent capacity and not as officers or employees of the State. The CA shall be prepared to indemnify, defend and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the CA or an IC's acts and/or omissions in the performance of its duties.
- 1.5.4** The CA shall agree to contract with the State of Delaware for a period of four (4) years with an optional renewal of three (3) years. The CA contract shall be rebid through an RFP process after two consecutive terms by one contractor. For the purposes of this RFP, a consecutive term includes the optional renewal of 3 years.
- 1.5.5** The transition to a new CA at the end of a winning bidder's contract term shall be performed in an organized and efficient manner with a minimum of disruption to SEU participants, ICs, and SEU programs and services. All bidders will be expected to describe in detail a transition process that maintains full access of SEU participants and ICs to SEU programs and services, This transition process shall also apply in the event of termination of a CA's contract for performance failure (see section 8.5.4 and 8.5.5 below).
- 1.5.6** Due to the size of the SEU budget and potential liabilities surrounding project services, the selected bidder is required to provide general liability insurance coverage. This general liability insurance coverage shall not exclude professional judgment. Upon completion of contract execution with the DEO, the bidder must acquire general liability insurance coverage in the amount of \$5,000,000.00 and shall provide a copy of its insurance certificate to the DEO.

1.6 Performance Contract

Bidders should be aware that the winning bidder's contract with the DEO will be performance-based. That is, the contract will contain tightly-specified indicators of performance designed to reflect and weight the multiple policy, resource acquisition and market transformation objectives of the SEU. How well the contractor performs with

respect to these targets will determine how much it earns of a performance award set aside as an incentive for superior performance, payable at the end of each year and/or the contract period.

1.7 Legislative and Regulatory Appearances

The CA may be asked to provide testimony to the Delaware General Assembly, regulatory agencies or other forums. Bidders should expect that the DEO's contract with the CA will include guidelines regarding the provision of testimony to prevent confusion regarding whether testimony is being presented on behalf of the SEU or the winning bidder as an independent company.

2.0 SEU INITIAL PROGRAM TARGETS

The SEU was created to become the point-of-contact for energy efficiency and conservation services and renewable energy self-generation in the same way that conventional utilities are the point-of-contact for traditional energy supply. Energy users/consumers will build a relationship with a single organization whose direct interest is to help residents and businesses use less energy, generate their own energy cleanly, serve environmental goals, and lower consumers' conventional energy bills (compared to a baseline of previous use adjusted for local weather changes, family size, etc.). The SEU is authorized by law to provide energy services for all fuel types – the SEU is not intended to be a simple repackaging of traditional electric and natural gas utility demand-side management.

The CA will design and develop programs that are available to all energy users in Delaware. Program design includes participation and/or performance targets for the programs. The law that authorized the SEU included several initial program design concepts and targets that need to be part of a bidder's proposal. Therefore the following targets shall be included in any proposal.

2.1 Energy Efficiency and Conservation

By December 31, 2015, the SEU will achieve an average 30% reduction in annual energy usage for *SEU participants*, with an expectation of one-third (1/3) of the participant savings occurring for residential clients, based on 2008 baseline levels (adjusted for relevant factors agreed upon by the CA, the DEO and the Board). The DEO and the Board may increase or accelerate this target if a comprehensive resource analysis indicates a greater cost-effective end-user energy efficiency and conservation potential exists or if the SEU achieves performance targets ahead of schedule. Performance awards are available for early achievement of targets.

2.2 Affordable Energy

The SEU will assess strategies and funding mechanisms to weatherize approximately eight hundred (800) low-income households per year, including those households served with Weatherization Assistance Program funding, subject to the availability of certified contractors and their capability to meet this annual target. The SEU will target services to households living in single-family owner-occupied units and mobile homes, single-family rental units, rental buildings with five (5) units or less, and large multifamily buildings with greater than five (5) units. The SEU has the authority to target three low-income levels: 200% of the federal poverty level, 60% of the state median income, and 80% of the state median income.

2.3 Green Buildings

For the purposes of this RFP, "Green Buildings" are defined as meeting a third-party certification program, e.g., the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Green Building Rating System or the U.S. Environmental Protection Agency's Energy Star New Home Program. Bidders for this RFP are required to propose performance targets for Green Buildings in residential, commercial, industrial and institutional/public sectors. Not all sectors need to be initially served. Bidders may propose using other certification programs and/or standards than the two cited above. Proposals should identify the percentage of the target in 2.1 that will be met by Green Building

standards and the applicable programs to meet that target. The program is expected to show measurable reductions in conventional energy use, serve environmental goals, and lower consumers' conventional energy bills (compared to a baseline of previous use adjusted for relevant factors agreed upon by the CA, the DEO and the Board). Performance awards are available for early achievement of targets.

2.4 Clean Vehicles/Green Transport

For the purposes of this RFP, "Clean Vehicles" are defined as meeting the California Low Emission Vehicle standard. Bidders for this RFP are required to propose performance targets for Clean Vehicles. Bidders may propose using another standard(s) than the California standard. Additionally, bidders are invited to propose programs to incentivize the use of public transit, carpooling, carshare, bicycling and/or walking to the extent that these options can be shown to measurably reduce conventional energy use, serve environmental goals, and lower consumers' conventional bills. Proposals should identify the percentage of the target in 2.1 that will be met by Green Transport/Clean Vehicles standards and the applicable programs to meet that target. The program is expected to show measurable reductions in conventional energy use, serve environmental goals, and lower consumers' conventional energy bills (compared to a baseline of previous use adjusted for relevant factors agreed upon by the CA, the DEO and the Board). Performance awards are available for early achievement of targets.

2.5 Customer-Sited Renewable Energy

Customer-sited Renewable Energy Technologies ("Customer-sited Renewables") are defined as solar electric, solar thermal, geothermal, and wind energy systems. The initial target for SEU-supported Customer-sited Renewables is 300 MW installed by 2019. The DEO will specify a certain fraction of SEU-supported customer-sited Renewables to be located at residential locations. The program is expected to show measurable reductions in conventional energy use, serve environmental goals, and lower consumers' conventional energy bills (compared to a baseline of previous use adjusted for relevant factors agreed upon by the CA, the DEO and the Board). Performance awards are available for early achievement of targets.

The SEU shall furnish three services to participants who purchase Customer-sited Renewables. First, it will provide incentives, normally no higher than fifty (50) percent of initial capital cost, that are sufficient to cover the incremental cost of investing in Customer-sited Renewables, in accord with DEO incentive tiers and Green Energy Fund policies and current retail energy prices. Second, the SEU shall obtain, on behalf of participants, Renewable Energy Certificates ("RECs") and Solar Renewable Energy Certificates ("SRECs"), as defined in Title 26 § 352 of the Delaware Code. Third, the SEU shall negotiate the wholesale price for RECs and SRECs for SEU participants, using its ability to aggregate Customer-sited Renewables to the best advantage of SEU participants. In many cases, Customer-Sited Renewable Energy Systems may generate insufficient volumes of energy to secure REC or SREC buyers; through aggregation, the SEU creates the opportunity for a revenue source for owners of such systems that would otherwise not be available. For these services, the SEU shall charge a fee sufficient to pay its costs and to maintain incremental cost investments in Customer-sited Renewables. This fee can be

assessed as a one-time charge or an annual payment at the discretion of the DEO. The DEO shall determine a fair and reasonable rate that the SEU may charge for aggregating RECs and SRECs. The SEU fee shall not exceed 35% of the retail value of RECs or SRECs.

3.0 SCOPE OF SERVICES

3.1 Mission and Objectives

The CA shall manage the day-to-day functions and responsibilities of the SEU. Among the CA's chief responsibilities are program research and design, selection of ICs (with DEO approval), administration of the Implementation Contracts, and oversight to ensure the ICs meet appropriate performance and budgetary targets. Another primary responsibility of the CA is to develop and maintain reliable administrative and monitoring procedures that will document its accomplishments, allow evaluation of the effectiveness of its efforts, and provide a basis for program modification.

The CA is expected to fulfill the following goals and responsibilities through program designs, RFPs for ICs, and program implementation:

- 3.1.1** To be responsive to customers and market forces in implementing and redesigning the programs it delivers;
- 3.1.2** To design a portfolio of programs to allow users of all major conventional fuels (e.g., electricity, natural gas, gasoline, heating oil and propane) and all market segments (e.g., residential, commercial, industrial, and agricultural, as well as buildings, transport, etc.) to participate in the SEU's programs;
- 3.1.3** To promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation;
- 3.1.4** To promote coordinated program delivery, including coordination with low income weatherization programs, energy efficiency and conservation programs, utility programs, and customer-sited renewable energy programs;
- 3.1.5** To coordinate with relevant regional and national energy efforts and markets, including markets for pollution emissions offsets and credits, and renewable energy credits;
- 3.1.6** To consider innovative approaches to delivering sustainable energy services, including strategies to encourage third party financing and leveraged customer contributions to the cost of program measures, as consistent with principles of sound program design;
- 3.1.7** To offer "one-stop shopping" and be the point-of-contact for sustainable energy services in Delaware;
- 3.1.8** To create a comprehensive website that provides easy access to SEU programs and information for all Delawareans, allowing them to participate in SEU programs electronically. This may include capabilities such as on-line applications for SEU participants.
- 3.1.9** To emphasize "lost opportunity" markets, which are sustainable energy measures that can only be cost-effectively captured at particular times, such as during new construction or extensive remodeling; and
- 3.1.10** To emphasize market strategies to deliver services.

The following sections provide the project objectives and define the scope of the CA's responsibilities, services, and business functions.

3.2 General Administration

The CA shall be responsible for the development and monitoring of its own management and operational systems. This includes: (1) budgeting; (2) financial management; (3) contract management; (4) dispute resolution; (5) information technology, data collection and management; and (6) preparation and submission of required reports.

3.2.1 Budgeting

The CA shall develop, monitor and manage the overall four-year budget for its operation, within parameters established by the DEO that will be embodied in the DEO's contract with the CA. These parameters are likely to include fund shifting limitations between residential and non-residential energy services, and may include other spending requirements to address equity considerations. These parameters are likely to apply to the four-year budget as a whole, not necessarily to each estimated annual component of the four-year budget.

After contract negotiations and at the start of operations, a detailed budget (shown on an estimated annual and four-year basis) must be developed and provided to the DEO, the Board, and the FA. This detailed budget must be divided into the following areas among others: (1) general administration; (2) information technology ("IT") development and maintenance; (3) energy efficiency and conservation service delivery and monitoring, divided into residential and non-residential sectors; (4) customer-sited renewable energy service delivery and monitoring, divided into residential and non-residential sectors; and (5) and any specific startup costs or costs related to the transition to a new CA.

Even though the DEO and the Board anticipate granting the CA considerable discretion to manage its budget on a four-year basis, as part of the Annual SEU Plan (which is described in Section 3.3.2, of this RFP), the CA must annually submit to the DEO, the Board, and the FA revised estimated annual budgets, showing the expected budget for each energy service area for the following calendar year. The CA should also include its proposed treatment of unspent budget amounts.

3.2.2 Financial Management

Bidders' proposals shall detail the tools and mechanisms they will employ to satisfy the financial management requirements. The CA shall develop, implement, and maintain the necessary budgeting, invoicing, expenditure approval, payroll, and financial accounting systems to review, approve, and track budgets, invoices and payments to subcontractors, ICs, employees, and, in some cases, SEU participants (e.g., in the case of RECs and SRECs aggregated on behalf of and shared with SEU participants). It shall maintain financial and accounting records consistent with general accounting standards. The CA shall provide information and documentation required for independent audits, which the FA and the Board shall perform annually.

Consistent with the specific terms of its contract with the DEO, the CA shall prepare and submit detailed documentation and invoices for administrative, management, and program costs to the FA and DEO for review in order to receive payment. All invoicing

data along with proper supporting documentation must be kept by the CA and made available to the DEO and the Fiscal Agent upon request.

3.2.3 Contract Management

The CA will solicit, hire and/or contract with all necessary staff and ICs to perform effectively the scope of services outlined in this RFP. The CA shall maintain the administrative capability to manage these resources and ensure the completion of each task and sub-task effectively. The CA shall develop and implement procedures to assign, monitor, review, and approve completed work, and to ensure ICs are compensated in a timely manner.

3.2.4 Dispute Resolution

In conjunction with the DEO, the CA shall develop protocols according to which it will deal with complaints concerning performance of its responsibilities from SEU participants, subcontractors, trade allies, and ICs. The protocols shall include notification of their right to appeal to the DEO. The CA shall have 30 days to respond to complaints from, or disputes among, affected persons or entities. After 30 days any unresolved complaints shall be presented to the DEO. The DEO reserves the right to resolve any disputes under the negotiated contract.

3.2.5 Information Technology, Data Collection and Management

The CA shall collect and electronically compile data needed to monitor, assess, and evaluate its performance, to report on its activities, and to improve the design and delivery of SEU programs and services. The CA shall develop and maintain an information management system that at a minimum is capable of fulfilling its responsibilities described in this RFP.

Data will be the property of the SEU and shall be kept in a relational database format and be organized in such a way that a third party could easily utilize necessary information for performing assessment tasks. Information in this system should include, but not be limited to, tracking data on SEU participants, and program services, and general program operation, and financial and management data. Proposals should identify what type of data systems the CA will require for the ICs and how such data will be integrated into the CA's system. In addition, the system should have the ability to produce *ad hoc* reports for periodic information requests from the DEO, the Board, or the FA.

The types of CPUs, storage peripherals, communication devices, network equipment, software, printers and any other products necessary for SEU data processing shall be chosen by the bidder, in consultation with the DEO. The acquired equipment and IT services must have the capabilities necessary to perform the tasks set forth in this section of the RFP, and shall be configured so that additional elements can be added without undue hardship, cost, or difficulty. All data systems developed by the CA should conform to established Department standards and information must be transferrable to the DEO for further analysis, maintenance or archiving purposes.

In the future, the DEO may request that the CA collect and maintain additional specific data elements for the purposes of reporting and evaluation. In the event the CA is required to significantly expand its data processing system, the IT budget component may be adjusted accordingly. The CA will be held to the specifications detailed in its initial proposal.

3.2.5.1 Managing SEU Participant and Competitively Sensitive Information

The CA shall develop and maintain protocols that provide appropriate privacy protections in the collection, processing, storage and retrieval of information that is participant-specific. Additional protocols for competitively sensitive information must be developed and maintained so that such information is protected and no ICs are provided unfair competitive advantages.

3.2.5.2 Administrative and Financial Data

The CA shall keep records of administrative and financial data consistent with the needs outlined in the scope of services section of this RFP and with Generally Accepted Accounting Principles ("GAAP") as defined by both the Governmental Accounting Standards Board and the Financial Accounting Standards Board. This includes systems to track general project management, invoicing, payroll and subcontractor payments, and the ability to promptly produce the necessary reports for monitoring these duties.

3.2.6 Required Reports

The CA shall prepare and submit Monthly, Quarterly, and Annual Reports. The contents of these reports as well as the entities that are to receive each of them are described below. The CA, DEO, and the Board will jointly develop standard formats for each report after execution of CA contract. The CA shall establish reporting procedures required of the ICs necessary to for the preparation of the Monthly, Quarterly, and Annual Reports.

3.2.6.1 Monthly Reports

The CA will prepare and submit Monthly Reports to the DEO and the FA. These reports shall include: (1) actual expenditures for administrative, information technology, and service delivery costs compared to the budget amounts; (2) energy savings estimates in energy units and dollar amounts; and (3) customer-sited renewable energy development estimates in energy units and dollar amounts. Monthly Reports include numerical data that documents progress toward achieving the SEU's overall targets, and are considered to be activity monitoring reports.

3.2.6.2 Quarterly Reports

The CA will prepare and submit Quarterly Reports to the DEO and the FA. Quarterly Reports shall include: (1) actual expenditures for administrative, information technology, and service delivery costs compared to the annual component of the approved four-year budgets; (2) an SEU balance sheet; (3) a report of progress made towards achieving energy savings and customer-sited renewables targets, and other agreed-upon indicators of performance; (4) a

summary of activity highlights for the quarter; and (5) a summary of any significant changes or anticipated changes in implementation strategies and services.

3.2.6.3 Annual Reports

The CA will prepare and submit Annual Reports to the DEO, the Board, and the FA. Annual Reports shall include: (1) actual expenditures for administrative, information technology, and service delivery costs, compared to the annual component of the approved four-year budget; (2) a detailed financial report for the SEU; (3) a summary of progress and highlights for the year, including any significant changes in strategies or services and indirect savings acquisition activities; (4) a report of progress toward achieving targets, and other agreed-upon indicators of performance; and (5) annual savings and customer-sited renewable energy estimates (expressed in energy units and dollar amounts) with supporting data.

3.2.6.4 Information Requests

The CA will respond in a timely and complete manner to any information requests regarding program budgets, expenditures, savings, and activities submitted by the DEO, the Board, or the FA.

3.3 Service Planning, Operations and Implementation

The CA shall be required to manage, oversee, and implement services to meet the program targets described in this RFP or approved by the Board. The SEU's programs should provide packaged services. Rather than simply providing the most cost-effective or easiest-to-provide energy services, packaged services are designed to provide customers with as many relevant end-use services at once, each time the CA or the ICs have contact with a customer. Important aspects of delivering these packaged services include: (1) ensuring consistent and effective service designs; (2) using creative and effective marketing strategies; and (3) providing accessible and widespread program delivery. The CA shall develop methods to ensure that the services and initiatives are meeting SEU objectives, and that SEU funds are being spent effectively.

3.3.1 Program Research and Design

The CA shall undertake a comprehensive resource analysis ("Analysis") to support initial program planning for the SEU. The Analysis shall include energy use assessments, population and economic growth estimates, energy consumption forecasts, trend analyses in regional energy efficiency, conservation and customer-sited renewable energy development, technical and economic potential estimates for energy efficiency, conservation and customer-sited renewables in Delaware, and market potential assessments for energy efficiency, conservation and customer-sited renewable energy development in Delaware. The comprehensive resource analysis shall:

- Assess energy end-user markets, including electricity end-uses, natural gas end-uses, clean vehicle purchases, green buildings development, completed weatherizations for low- and moderate-income residents, and other affordable energy services;

- Assess energy end-user demographic sectors, including low-income, residential, commercial, industrial, agricultural, and transportation sectors; and
- Assess energy end-use equipment, including appliances, lighting, heating, cooling, industrial processes, vehicles and technologies and strategies affecting building envelope performance.

Using the results from this Analysis, the CA shall select markets, end-users, and end-use equipment for the SEU to target through its programs. The CA shall develop a comprehensive suite of program designs based on the Analysis and selected markets, end-users, and end-use equipment. Each program design must specify, at minimum, program goals, performance targets, an estimated budget, an implementation strategy, and an evaluation strategy. The CA is not required to design or initiate all programs at once, but it must demonstrate how each program fits within the CA's overall strategy to meet its own performance targets as well as the SEU's long-term performance targets. The CA will have primary responsibility for the development and revision of service offerings, including discontinuing existing services and offering new services, when appropriate, in consultation with the DEO. By the end of the third year of the CA's initial contract, all programs of the SEU shall be fully operational and shall have attracted sufficient participation to meet the general goals of the SEU for energy efficiency, conservation and Customer-sited Renewables.

3.3.2 Annual Plan

The CA will undertake research on a periodic basis to: assess the resources and market needs for sustainable energy services in Delaware; assess the impacts and effectiveness of SEU programs; and review the services offered and their effectiveness for the purpose of improving and modifying service designs. The CA, the DEO, and the Board will use this research to make adjustments to SEU program performance targets; to reassess targeted markets, end users, and end uses; and to recommend further policy initiatives for consideration by the Delaware General Assembly. Using this research, the CA shall prepare and submit an Annual Plan to the DEO and the Board. The Annual Plan will summarize the SEU's market intervention strategies, service offerings, emerging markets initiatives, and other planned implementation activities, including competitive solicitations, for the coming year.

3.3.3 Technical Reference Manual

The Technical Reference Manual is a regularly-updated, comprehensive list of all measure and program assumptions used in determining measure and program cost-effectiveness. The CA will develop and continue to update the Technical Reference Manual so that it contains current documentation on all measure and program assumptions.

3.3.4 Administration of Implementation Contracts

With the exception of education and public outreach programs and the MIS system, which the CA may implement itself with approval of the DEO, all other SEU programs are expected to be delivered by competitively selected ICs.

3.3.4.1 IC RFPs

The CA will propose rules to the DEO to guide the IC bidding process and criteria to guide bid selection. The RFPs shall specify a contract term of no less than one year, and, in order to ensure program continuity during transition periods, no longer than six (6) months beyond the CA's contract term with the DEO. The CA will be responsible for selecting winning IC bids. Any entity, including individuals, electricity or gas utilities, businesses, non-profit corporations, and local governments, in the State of Delaware, may bid for an Implementation Contract. If an affiliate of the CA bids, or intends to bid, for an Implementation Contract, both the CA and its affiliate must ensure that the affiliate does not benefit from any unfair advantage resulting from insider information. RFPs for competitively bid Implementation Contracts should include provisions for performance-based incentives as appropriate to ensure that program targets are achieved or exceeded.

3.3.4.2 Alternatives to RFPs

RFPs are the preferred tool for selecting ICs. However, the CA may propose, to the DEO, alternative methods for selecting ICs. If an IC is not successfully selected through the RFP bidding process, the CA may implement its own program delivery process subject to approval by the DEO.

3.3.4.3 IC Performance

The CA shall develop appropriate mechanisms to accurately evaluate, monitor, and verify program performance and IC performance. The CA should conduct site visits and review the files of the ICs as necessary to ensure contract compliance.

3.3.4.4 IC Contracting Procedures

Since the SEU is not a State entity, the CA will not be required to adhere to State contracting procedures when engaging ICs. Nevertheless, contract agreements with ICs must be consistent with prudent business practices, employ fair employment practices and include adequate insurance coverage for all subcontractors.

3.3.5 Monitoring and Evaluation

The CA will be responsible for collecting data to monitor, assess, and evaluate program performance. The CA will develop monitoring and evaluation protocols that must be approved by the DEO no later than the sixth month of the start-up year of the CA's contract. Excessive expenditures on monitoring and evaluation should be avoided – monitoring and evaluation costs should not exceed 8% of the SEU's annual budget. Monitoring and evaluation protocols should be designed to support shared savings mechanisms and the determination of appropriate CA compensation and performance incentives discussed in Section 4.0.

Proposals should include performance criteria for measuring the success of market transformation activities and programs that are included in bidders' proposals. The effectiveness of these programs often cannot be measured in participant energy savings alone, so additional performance criteria are particularly important.

3.4 Program Marketing and Education

The CA shall develop and implement a public and consumer information strategy to: (1) promote customer participation in and market awareness of SEU services; (2) increase consumer awareness and understanding of the benefits of energy efficiency and renewable energy both for participants and non-participants; and (3) increase consumer demand for SEU services; and (4) affect consumer decision-making in consumer-driven energy efficiency choices. When appropriate, the CA will develop and implement energy education and technical training services and initiatives in cooperation with Delaware educational institutions.

3.5 Green Energy Fund (GEF)

The DEO will contract with the CA to assist in the administration of the Green Energy Fund in accordance with Title 29 §8057. The purpose of the contract is to enable the DEO and the SEU to partner for the purpose of leveraging GEF funds so that more consumers can be served, larger projects can be accommodated, and/or more efficient promotion of customer-sited renewable energy use can occur.

3.6 Funding for the SEU

The current primary funding resource for working capital for the SEU is special purpose bonds. Revenue sources contributing to the SEU for the purpose of paying off bond debt and helping the SEU to grow will include shared savings and other savings-focused agreements and partial proceeds from the sale of RECs in local and regional markets. Other funding resources are or may become available that may allow different program design and incentive levels. These funds can be evaluated for leveraging in accordance with the rules governing their use and can include, but are not limited to, federal and state tax credits, federal and state grants (e.g., federal weatherization funds which can be supplemented by SEU funds), charitable or other grants, and auction proceeds associated with Delaware's participation in the Regional Greenhouse Gas Initiative.

3.6.1 Special Purpose Bonds

The SEU, through the CA and the Bond Underwriter and Bond Counsel selected by the SEU Oversight Board will raise a series of special purpose bonds, tax-exempt if eligible, with a cumulative initial value between 2007 and 2015 capped at thirty million real 2007 dollars (\$30 million in 2007\$). Information on the Bond Counsel and Bond Underwriter can be obtained at www.seu-de.org/SEUOVERSIGHTBOARD.html. It is possible that the SEU's Special Purpose Bonds might be sold in two or more lots. The first may involve \$10-20 million and should be sold in 2008 or early 2009. The remainder will likely be sold before 2014. The CA shall provide financial warranty to pay its first year of administrative costs in the event of failure to perform according to contract terms and conditions. Any such bond monies shall only be used to fund the CA and its ICs to meet SEU responsibilities including administrative costs and overhead, implementation costs including the cost of contracting ICs, operating expenses, and incentive costs. Bond monies will not fund the FA, or internal DEO responsibilities or staff, or the Board's budget that is specified in 29 Delaware Code, Section 8059 (which includes funding for independent SEU evaluation, monitoring, and verification by the

Board). All bond monies will be held and disbursed by the FA. The State of Delaware's general funds shall not be liable for the repayment of the special purpose bonds, tax-exempt if eligible, by the DEO on behalf of the SEU.

3.6.2 Development of Shared-Savings and Other Savings-Focused Mechanisms

A primary responsibility of the CA will be to propose and develop shared-savings and other savings-focused mechanisms that allow for repayment of bond debt. Viable and effective shared-savings and other funding mechanisms are vital for the financial health of the SEU. Bidders need to provide detailed shared-savings models and other models in their proposals.

3.6.3 RECs and SRECs

The SEU shall obtain, on behalf of participants, Renewable Energy Certificates ("RECs") and Solar Renewable Energy Certificates ("SRECs"), as defined in Title 26 § 352 of the Delaware Code. The SEU will negotiate the wholesale price for RECs and SRECs for SEU participants, using its ability to aggregate Customer-sited Renewables to the best advantage of SEU participants. For these services, the SEU shall charge a fee sufficient to pay its costs and to maintain incremental cost investments in Customer-sited Renewables. This fee can be assessed as a one-time charge or an annual payment. The DEO, under direct supervision of the State Energy Coordinator, shall determine a fair and reasonable rate that the SEU may charge for aggregating RECs and SRECs. The SEU fee shall not exceed 35% of the retail value of RECs or SRECs.

3.6.4 Auction Proceeds from Delaware's Participation in the Regional Greenhouse Gas Initiative (RGGI)

The SEU shall receive 65% of the proceeds from auctions of emission allowances by the State of Delaware as part of its participation in the Regional Greenhouse Gas Initiative. The role of the SEU in the State's implementation of its responsibilities as a RGGI member and the uses to which the auction proceeds can be applied can be found in the legislation (which can be found at http://www.seu-de.org/docs/legislation/2008_SB%20263_passed_engrossed%20version.pdf).

3.7 SEU Property

Any logos, trademarks, databases, copyrighted material or material eligible for copyright, physical equipment, computer software purchased or developed with SEU monies, surveys, survey results, program designs, and any SEU work product determined by the DEO and the Board to be necessary to the success of SEU programs will be the property of the SEU and used only with permission of the DEO and the Board. The CA shall be required to transfer such items to the winning bidder of a future CA RFP.

4.0 CA COMPENSATION AND PERFORMANCE INCENTIVES

The structure of the SEU is different from other programs operated by states, utilities, and local governments that provide similar services. The SEU will operate more like a business than a governmental agency:

- The SEU shall offer products that appeal to consumers, provide real energy savings and clean energy services;
- Successfully market its products and services; and
- Collect revenues sufficient to pay for the costs to provide its products and services including CA compensation.

4.1 CA Compensation

To encourage creative and innovative proposals, the DEO has not predetermined a particular compensation model and will allow bidders to explain in detail how the CA will be compensated in their proposal. Possible compensation models include:

- A fixed amount for each unit of energy savings or renewable energy production provided or unit of emissions reduced.
- Time and materials with an annual or four-year cap.
- Costs plus a fixed fee.

Bidders may propose that more than one type of compensation model be used or propose a different model than the ones cited above.

4.2 Performance Incentives

The law authorizing the SEU allows for performance incentives. The DEO defines such incentives as indicated in the following. If the SEU exceeds program targets by 120%, the CA will receive a bonus, and if the SEU achieves less than 80% of program targets, the CA will be charged a penalty. By written agreement between the DEO and the CA, performance incentives may be separately made available to ICs. Distinct and different criteria shall be used for the evaluation of CA and IC performance. Bidders should include suggestions for performance incentives, within the parameters discussed above, in their proposal.

4.2.1 Performance Metrics

Bidders should propose annual and four-year performance metrics and associated performance incentives. Different performance metrics may require different performance incentives. There may be several ways to measure performance in a market segment. For example, for the transportation market segment, performance could be measured in the number of clean vehicles purchased with support of the SEU or a reduction in vehicle miles traveled due to an SEU program. Possible performance metrics include (but are not limited to):

- Number of SEU participants served
- Market share increases in sustainable energy use
- Energy unit measures (e.g., kWh, RECs, CCFs, gallons, etc.) specifying impacts on a total and per participant basis (compared to an agreed upon baseline)
- Energy bill impacts (specifying impacts on a total and per participant basis compared to an agreed upon baseline)

- Cost-effectiveness (e.g., based on the Societal Test used in utility program evaluations)
- Emissions reduced, specifying impacts on a total and per participant basis (compared to an agreed upon baseline)

4.2.2 Initial Performance Metrics and Incentives

Based on a winning bidder's proposal, contract negotiations will determine the initial performance metrics and incentives.

4.2.3 Annual Review and Adjustment of Performance Metrics and Incentives

Regardless of whether the winning bidder and the DEO agree to an annual performance incentive or four-year incentive, the CA will be responsible for calculating its annual performance based on metrics agreed upon by the CA, the DEO and the Board. The Board will hire a third-party to monitor and verify the CA's performance calculations. Performance incentives for the following year may be adjusted after a performance metric and incentive determination by the DEO, in consultation with the Board.

5.0 RESPONSE FORMAT AND PROPOSAL REQUIREMENTS

Bidders are required to present their proposals in accordance with this Section. Proposals should be prepared simply and economically to provide a concise description of the bidder's approach and capabilities for satisfying the required services outlined in this RFP. Bidders should address any and all anticipated difficulties and/or problem areas along with potential approaches to their resolution.

5.1 Proposed SEU Program Portfolio

Based on Sections 1.0 to 4.0 of this RFP, bidders should propose realistic examples/samples of program designs providing program goals, performance targets, a potential budget, an implementation strategy, and an evaluation strategy. Bidders are encouraged to describe innovative program designs and market transformation strategies in their proposals. Bidders must provide indicators of experience in operating these types of programs. Design specifics of programs submitted by bidders under this RFP will not be included in bid summaries released to the public.

5.1.1 Required SEU Program Portfolio Components

Bidders are required to include the following broad categories of programs.

5.1.1.1 Initial SEU Program Targets

The portfolio should include the program concepts and targets discussed in Section 2.0.

5.1.1.2 Quick Launch Programs

The portfolio should also include “Quick Launch” programs – programs that can begin providing incentives for energy saving and customer-sited renewable energy services within 60 days of CA contract execution. A Quick Launch could be a program that leverages an existing program, e.g., the State’s weatherization program or a program such as the US DOE/ EPA Home Performance with ENERGY STAR Program that is currently being developed by the DEO. Proposals should identify potential funding sources to be used for potential “Quick Launch” programs.

5.1.1.3 Near-Term Programs

“Near-Term” programs are those that can be fully operational within 180 days of execution of the CA contract. Greater weight will be given to bidders who can demonstrate the ability to establish Near-Term programs.

5.1.2 Package Service Offerings and Cost-Effectiveness

Bidders should be aware that programs are not always required to pass cost-effectiveness tests. For example, a particular program might not pass a traditional cost-effectiveness test but is very popular with the public and this program could allow the SEU to market more cost-effective programs once customer contact is made. Bidders should emphasize package service offerings and other methods to maximize energy savings for each SEU participant. Greater weight will be given to bidders who can demonstrate the ability to establish Package Service programs.

5.1.3 Administration and Program Implementation

The purpose of this component is to assess the appropriateness of the bidder's approach to the Scope of Services with respect to achieving savings and customer-sited renewable energy development and creation of a concrete and achievable work plan. It will also allow bidders to demonstrate their understanding of market transformation effects and strategies to achieve these effects in specific markets. Bidders should prepare a proposed Work Plan that describes how they will accomplish the tasks and sub-tasks set forth in the Scope of Services.

5.2 Proposed SEU Funding Approach

Bidders shall propose and detail shared-savings models, shared RECs/SRECs models, and other relevant funding approaches to fund the SEU and repay bond debt. Bidders should detail relevant experience with similar funding mechanisms. Innovative approaches, such as online systems linking participant projects with funding options (e.g., a variant of MicroPlace <https://www.microplace.com/> or Kiva <http://kiva.org/> focused on Delaware's needs and population) are encouraged. Greater weight will be given to program funding models that have a higher probability of to repay bond debt while also offering new strategies and serving multi-dimensional projects.

5.3 Organizational and Management Capability

Bidders are required to demonstrate the capability of their company/organization to perform the services described in this RFP. Two or more companies/organizations may team up on one bid. It is highly desirable that the physical structure of the SEU be located within the State of Delaware.

5.3.1 Bidder Qualifications and Experience

Bidders shall describe their firm and/or team's experience and capabilities in managing, delivering, and implementing energy services as well as planning, administering and coordinating energy services targeted at various markets over a multi-year period.

5.3.2 Qualifications and Experience of Key Personnel

Bidders shall identify key personnel to be assigned to this project, describe their primary responsibilities, and include résumés that describe the individuals' experience and qualifications in managing and delivering energy services. Bidders should also provide an estimate of assigned hours of key personnel on the project by task set forth in the Scope of Services.

5.3.3 Client References

Bidders should provide references from previous (or current) clients for whom they have performed projects that are relevant to the Scope of Services. References should include specific services provided, company name and location, contact name, contact title, telephone number and, where available, email address. In the event the bidder is forming a new organization to bid on this proposal, the bidder should provide relevant references for key staff members.

5.3.4 Financial Information Requirements

Bidders shall demonstrate that they have the financial resources to perform the proposed work and must provide three (3) years of financial statements for their organization and any significant subcontractors, which should include a profit and loss statement, a cash flow statement, and a balance sheet (e.g., SEC form 10-K is acceptable). A non-profit entity shall provide adequate information comparable to the information required above, that allows an assessment of financial status and capability. In the event a bidder is forming a new organization to bid on this proposal, the bidder should provide comparable documents from investors, partners, and/or principals.

5.3.5 Management Structure

In this section, bidders shall describe the business structure under which they typically operate (i.e., for-profit corporation, not-for-profit corporation, partnership, etc.). If a new organizational structure is planned by a bidder for operation of the SEU, that structure should be described fully and clearly.

5.3.6 General Administration Budget Information

The purpose of this subsection is to provide a basis for the DEO to evaluate bidders' budgeting capabilities and to identify clearly the portion of the SEU budget allocated to General Administration.

5.3.7 IT Budget Information

Although IT might normally be included with other General Administration costs, bidders should separate IT costs in their proposals to an assessment of the comparative costs of different IT system proposals relative to the IT services those systems will provide. IT expenses should be divided, at a minimum, into hardware, software, and system management costs.

5.3.8 Unique Assets

Bidders are invited to describe specific unique capabilities and resources that they bring to the delivery of energy services. Examples might include specific MIS skills, financing capabilities, proven marketing experience, and experience developing partnership and/or co-marketing approaches to energy efficiency, conservation and renewable energy promotion.

5.3.9 Marketing and Consumer Information Strategy

Bidders should describe their public and consumer information strategy to promote awareness of, and participation in, the SEU's services and initiatives.

6.0 PROPOSAL EVALUATION

6.1 Selection Process

Overall, bidders' proposals will be evaluated in light of the statutory goals and the general good of the State. Bidder proposals will be initially evaluated by an RFP Screening Committee ("Committee") consisting of the State Energy Coordinator and other public or private individuals chosen by the State Energy Coordinator. The Committee will rank bidder proposals using a percentage weighting system (see the table in section 6.2). Each section is given a percentage weight, and within each section, individual items have been ordered according to their importance. Each proposal will be scored individually. Once the proposals are evaluated, the Committee will interview up to five bidders with the highest ranking scores and assess each bidder's ability to perform the tasks outlined in their proposals.

Based on the interview/oral presentation, the Committee may revise their ranking of the proposals. The Committee will submit its review to the DEO with a recommendation on the candidates.

The Committee's recommendation will not be binding on the DEO. The DEO will review the Committee's recommendation and may, at its sole discretion, choose to further review and evaluate any and/or all bidder proposals before making the final decision or make no decision and rebid the same RFP or an amended RFP.

6.2 Evaluation Criteria

The RFP Screening Committee and the DEO will base their evaluation of bids on the following three basic criteria: Proposed SEU Program Portfolio, 35%; Proposed SEU Funding Approach, 35%; Organizational and Management Capability, 30%.

The following table summarizes the evaluation criteria.

| Description | Percentage |
|--|-------------------|
| 1. Proposed SEU Program Portfolio <ul style="list-style-type: none"> – Innovative program proposals – Initial SEU Program Targets (stated in yearly and overall contract formats) – Quick Launch programs – Near-Term programs – Package Service offerings – Balanced portfolio – Lost-opportunity markets – Probability of achieving or exceeding stated energy savings and renewable energy development goals – Overall strategic approach and design – Experience in program design, innovative program development, and portfolio development | 35% |
| 2. Proposed SEU Funding Approach <ul style="list-style-type: none"> – Proposed shared-saving and other savings-focused models – Proposed REC/SREC-sharing models – Experience implementing shared-saving and other savings-focused mechanisms – Experience with bond instruments – Experience with charitable and other grant administration – Alternative funding approaches. | 35% |
| 3. Management Proposal and Experience <ul style="list-style-type: none"> – Demonstrated competence and experience – IC management plan – Monitoring and evaluation protocols – Budgeting and financial management – IT budget and proposal – Budget for achieving savings in each SEU program – Budget for customer-sited renewable energy development | 30% |
| Total | 100% |

* Points may be added or subtracted based on each bid’s detail, adequacy, and completeness for the three components described in the above table.

7.0 INSTRUCTIONS FOR BIDDERS AND RFP RULES

7.1 RFP Responses Due Date and Schedule

Responses are due for this RFP on **September 30, 2008 by no later than 4:30 p.m. EDT**. Other important dates for this RFP are listed below.

| | |
|-----------------------|--------------------|
| RFP Released on: | August 1, 2008 |
| Bidder's conference | August 25, 2008 |
| Statement of Intent | September 3, 2008 |
| Questions Submitted | September 8, 2008 |
| Questions Answered | September 15, 2008 |
| RFP Due Date | September 30, 2008 |
| Bidder Presentations | October 16, 2008 |
| Contract Negotiations | October 27, 2008 |
| Contract Execution | November 24, 2008 |

7.2 Bidder's Conference and Questions to the DEO

The DEO will hold a mandatory Bidder's Conference on August 25, 2008 at 10:00 a.m. at the Delaware Energy Office – Conference Room. A call-in number will be provided for those who cannot attend the conference in person. Bidders may ask questions in writing or email until September 8, 2008. Questions should be addressed to the State Energy Coordinator as shown in section 7.5 below. Responses will be provided by September 15, 2008. The DEO response to each question will be compiled into one document listing questions and answers. The DEO will send this completed question and answer document to all persons and organizations who have submitted "Intent to Respond" forms and also post them on the DEO and SEU websites.

7.3 Statement of Intent to Respond

All that intend to respond to the RFP should submit the "Intent to Respond" form below by September 3, 2008. The Intent to Respond form is not mandatory but will be useful for the DEO to gauge the potential number of RFP respondents.

7.4 Bidder Presentations and Negotiations

Up to five proposals may be selected for an interview and the bidder may be requested to provide a presentation on their proposal. Based on the interview and presentation, the Committee may revise their ranking of the proposals. The DEO will conduct negotiations with the winning bidder.

7.5 Proposal Delivery

Bidders should provide an electronic version and deliver one original hard copy and 5 copies of their proposals to:

Charlie T. Smisson, Jr.
State Energy Coordinator
Delaware Energy Office
1203 College Park Drive, Suite 101
Dover, DE 19904
charlie.smisson@state.de.us

7.6 Bidder Contacts

The proposal should provide the name, title, address, telephone number, facsimile number and email of the bidder contact person(s) responsible for clarifying proposal content and for approving any agreement (or agreement amendment) with the DEO.

7.7 Proposal Modifications

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

7.8 Proprietary Information

Bids will be treated as proprietary except for summaries prepared by the DEO. Bid summaries will be based on the following:

- Each bidder's submissions of compliance with the Mandatory Requirements in section 1.5
- Each bidder's submissions regarding the defined Scope of Services of the contract (section 5.0)
- Each bidder's submissions responding to items listed in the table in section 6.2.

The filing of proprietary information is permitted and expected. However, bidders must comply with the following procedures in relation to submitted proprietary information. If a bidder believes it necessary to include proprietary material in a bid, all such materials must be submitted in a separate sealed envelope and marked "CONFIDENTIAL."

It will not be sufficient for bidders to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Particular pages or sections which a bidder believes to be proprietary or of a trade secret nature must be specifically identified as such and must be separated from other sections or pages of their proposal. A convincing explanation and rationale sufficient to justify exemption must accompany the proposal and must conform to the Department's FOIA Regulation found at <http://regulations.delaware.gov/AdminCode/title7/100/102.shtml#TopOfPage>. Bidders shall understand and agree that final discretion to release summary information on bids rests with the Secretary of the Department.

Summaries of bids complying with the RFP will be open for public review. Any interested person or party may review the summaries at the DEO's office between the hours of 9:00 AM and 4:00 PM for a specified period. Summaries will also be posted on the SEU Oversight Board webpage – www.seu-de.org and the DEO web page – www.delaware-energy.com.

7.9 Proposal Costs and Expenses

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

7.10 Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through December 31, 2008. DEO reserves the right to ask for an extension of time if needed.

7.11 Late Proposals

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

7.12 Proposal Opening

DEO will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of DEO personnel. Any unopened proposals will be returned to the submitting Vendors.

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

7.13 Non-Conforming Proposals

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

7.14 Concise Proposals

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

7.15 Realistic Proposals

It is the expectation of the DEO that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable. DEO shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

7.16 Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the “**prime contractor**”. The “**prime contractor**” must be the joint venture’s contact point for DEO and be responsible for the joint venture’s performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor’s systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

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

7.16.1 Primary Vendor

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

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

7.16.2. Sub-Contracting

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

Use of subcontractors must be clearly explained in the proposal. The **prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.**

7.16.3. Multiple Proposals

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

7.17 Discrepancies or Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor.

7.18 Right to Reject Proposals

DEO reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in DEO’s specifications

or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed.

7.19 Amendment or Cancellation of RFP

The DEO reserves the right to void an application if the information requested is not received within the prescribed timeframe or is inadequate or incomplete. The DEO reserves the right to amend or cancel this RFP at any time.

7.20 Right to Cancel the Solicitation

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

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

7.21 Right to Award Multiple Source Contracting

The DEO may award a contract for a particular professional service to two or more vendors if the DEO makes a determination that such an award is in the best interest of the SEU.

7.22 Notification of Withdrawal of Proposal

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

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

7.23 Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the DEO's website at www.delaware-energy.com. DEO is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

7.24 Exceptions to the RFP

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

7.25 Award of Contract

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

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

8.0 Contract Terms and Conditions

8.1 General Information

- 8.1.1** The selected vendor will be required to enter into a written agreement with the DEO. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- 8.1.2** The selected vendor or vendors will be expected to enter negotiations with the DEO, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- 8.1.3** The contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations. A copy of the standard contract is located in Appendix C, which is provided for illustrative purposes and may be modified during contract negotiations.
- 8.1.4** If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

8.2 Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void. By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

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

8.3 Lobbying and Gratuities

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

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

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

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

8.4 Solicitation of State Employees

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

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

8.5 General Contract Terms

8.5.1 Independent Contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

8.5.2 Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations concerning licenses and permits. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C. § 2502*.

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

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

8.5.3 Penalties

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

8.5.4 Termination for Cause

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

8.5.5 Termination for Convenience

The DEO may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that

event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the DEO, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the DEO. If the contract is terminated by the DEO as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

8.5.6 Non-Discrimination

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

8.5.7 Covenant against Contingent Fees

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

8.5.8 Contract Documents

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

8.5.9 Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

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

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

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

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

8.5.10 Scope of Agreement

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

8.5.11 RFP Miscellaneous Information

8.5.11.1 No Press Releases or Public Disclosure

Vendors may not release any information about this RFP. The DEO reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any

reference to the DEO with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the DEO.

8.5.11.2 Definitions of Requirements

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



Appendix A: Contract Administrator Bidder's Conference Form

The individual/organization named below intends to attend a pre-submission conference at 10:00 a.m. on August 25, 2008 at the Delaware Energy Office conference room located at 1203 College Park Drive, Suite 101, Dover, Delaware 19904 or at another designated location.

Individual/Organization Name: _____

Attendees: _____

Contact Name: _____

Title: _____

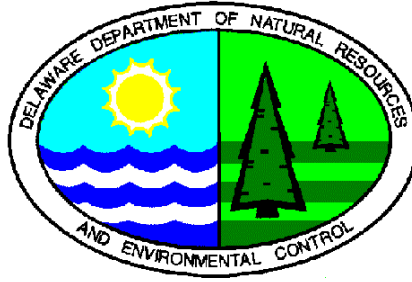
Contact Signature: _____

Date: _____

Submit Via E-mail, Fax, or Mail to:

Attn: Charlie T. Smisson, Jr.
State Energy Coordinator
Delaware Energy Office
1203 College Park Drive, Suite 101
Dover, Delaware 19904
Facsimile number: 302-739-1840

Please RSVP by submitting this form before 4:30 p.m. August 22, 2008.



Appendix B: Contract Administrator Intent to Respond Form

The individual/organization named below intends to submit a proposal in response to the Delaware Energy Office's Request for Proposals for a Contract Administrator for the Delaware Sustainable Energy Utility.

Individual/Organization Name: _____

Address: _____

Authorized Representative

Name: _____

Title: _____

Date: _____

Contact Information

Name: _____

Title: _____

Telephone Number: _____

E-mail: _____

Submit this form on or before 4:30 p.m. (EDT) on September 3, 2008 by Via Email, Fax or Mail to:

Attn: Charlie T. Smisson, Jr.
State Energy Coordinator
1203 College Park Drive, Suite 101
Dover, Delaware 19904
Facsimile number: 302-739-1840



Appendix C: Standard Department Contract Terms and Conditions

The Department is aware that this contract may require modification based on the unique requirements of the Sustainable Energy Utility. The SEU is not intended to be a “State” entity; however, the Department must ensure adequate oversight of the SEU through the DEO is in place. Exceptions or modifications to the standard contract may be discussed during contract negotiations once a contract is awarded or upon specific request of any of the bidders prior to contract award. All questions posed and answers given will be supplied to all bidding parties. Standard State procurement procedures may not apply for the purpose of this contract. Since the SEU is not a State entity, the CA will not be required to adhere to State contracting procedures when engaging Implementation Contractors. Nevertheless, contract agreements with ICs must be consistent with prudent business practices, employ fair employment practices and include adequate insurance coverage for all subcontractors.

1.1 Department of Natural Resources and Environmental Control CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT, is made by **[CORPORATE OR OTHER LEGAL NAME(S)]** “CONTRACTOR” and the Department of Natural Resources and Environmental Control (“DEPARTMENT”), as follows:

1. Service Contract.

DEPARTMENT agrees to pay CONTRACTOR and CONTRACTOR agrees to perform certain technical or professional services.

2. Scope of Services.

[DESCRIBE IN DETAIL.]

3. Data Furnished to CONTRACTOR.

DEPARTMENT shall furnish all information, data, reports, records, and maps as existing, available, easily retrievable and necessary for the execution of the work to CONTRACTOR, without charge by DEPARTMENT, and DEPARTMENT shall reasonably cooperate with CONTRACTOR in carrying out the work.

4. Personnel.

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.
- B. CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.
- C. CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

5. Time of Performance.

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed no later than **[DATE]**. Time is of the essence in this Contract.

6. Total Cost and Compensation.

- A. It is agreed that the total cost for the services provided under this Contract shall not exceed **[Amount due under Contract.]**.
- B. CONTRACTOR is responsible for costs incurred in excess of the total cost of this Contract and DEPARTMENT is not liable for such costs.
- C. Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

Obligations and Payment.

- D. The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated by the General Assembly and the obligations of the DEPARTMENT are limited to the amount of such appropriation.
- E. A first payment, in the amount of **[\$]**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **[DESCRIBE IN DETAIL]** and upon submission of an invoice by CONTRACTOR. A second payment, in the amount of **[\$]**, shall be made upon satisfactory completion, in DEPARTMENT'S sole discretion, of **[DESCRIBE IN DETAIL]** and upon submission of an invoice by CONTRACTOR. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.
- F. The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order has been approved by the Secretary of finance, and all the procedures of the Department of Finance have been complied with.
- G. CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

7. Contractor and Subcontractor Agreements

CONTRACTOR shall indemnify, save and hold harmless and defend the DEPARTMENT, its directors employees, representatives or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or damages sustained in connection with performance of services provided under this agreement.

8. Termination of Contract for Cause.

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, DEPARTMENT shall then have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by CONTRACTOR under this Contract shall, at the option of DEPARTMENT, become its property, and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable is determined by DEPARTMENT in its sole discretion.

9. Publication, Reproduction and Use of Material.

No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. DEPARTMENT shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. CONTRACTOR shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for DEPARTMENT'S support will be given in the publication.

10. Assignment of Antitrust Claims.

As consideration for the award and execution by DEPARTMENT of this Contract, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by DEPARTMENT or CONTRACTOR pursuant to this Contract.

11. Audit; Access to Records:

CONTRACTOR shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this Contract in accordance with generally accepted accounting principles and practices. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of the cost submission, and a copy of the cost summary submitted to DEPARTMENT. The United State's Department of Labor, DEPARTMENT (and the State of Delaware) or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. CONTRACTOR will provide proper facilities for such access and inspection.

12. Subcontracts:

Any subcontractors and outside associates or consultants required by CONTRACTOR in connection with the services covered by this Contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations, or as are specifically authorized in writing by DEPARTMENT during the performance of this Contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of DEPARTMENT.

13. Equal Employment Opportunity:

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business:

CONTRACTOR agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. DEPARTMENT'S Responsibilities. DEPARTMENT shall:

- A. Examine and review in detail all letters, reports, drawings and other documents presented by CONTRACTOR to DEPARTMENT and render to CONTRACTOR in writing findings and decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.
- B. Give prompt written notice to CONTRACTOR whenever DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

16. The Parties Agree:

- A. The laws of the State of Delaware shall apply to the construction and operation of this Contract.
- B. This contract is the entire agreement between the CONTRACTOR and the DEPARTMENT and supersedes any prior agreement, whether oral or written, between the CONTRACTOR or any predecessor of the CONTRACTOR and the DEPARTMENT. It may be altered only by a written agreement signed by the CONTRACTOR and the DEPARTMENT. The CONTRACTOR's rights and obligations under this agreement will be binding on the CONTRACTOR's successors and assigns.
- C. The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in it, without the prior written consent of the DEPARTMENT.

STATE OF DELAWARE

**1.1.1.1 DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

John A. Hughes, Secretary

[COMPANY NAME]

By: [Name of Person Signing]
Title: [Title of Person Signing]