

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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ENTERED
Office of Proceedings
November 21, 2018
Part of
Public Record
Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

November 20, 2018

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: **Docket No. FD 36239**
Delmarva Central Railroad Company --
Modified Rail Certificate



Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Notice of Delmarva Central Railroad Company for Modified Certificate of Public Convenience and Necessary Pursuant to 49 C.F.R. § 1150.23**, dated November 20, 2018. A check in the amount of \$1,900, representing the appropriate fee for this filing, is attached.

Note that this filing includes a color map exhibit.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Delmarva Central
Railroad Company

TJL:tl

Enclosures
FEE RECEIVED
November 21, 2018
SURFACE
TRANSPORTATION BOARD

FILED
November 21, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36239

DELMARVA CENTRAL RAILROAD COMPANY --
MODIFIED RAIL CERTIFICATE



**NOTICE OF DELMARVA CENTRAL RAILROAD COMPANY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

Thomas J. Litwiler
Stephen J. Rynn
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR DELMARVA CENTRAL
RAILROAD COMPANY**

Dated: November 20, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36239

DELMARVA CENTRAL RAILROAD COMPANY --
MODIFIED RAIL CERTIFICATE



**NOTICE OF DELMARVA CENTRAL RAILROAD COMPANY FOR
MODIFIED CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO 49 C.F.R. § 1150.23**

Delmarva Central Railroad Company ("DCR") hereby files this notice for a Modified Certificate of Public Convenience and Necessity pursuant to 49 C.F.R. § 1150.23 to operate two rail lines owned by the Delaware Transit Corporation, an operating division of the Delaware Department of Transportation (the "State"), and extending from Georgetown to near Harbeson, Delaware (the "Lewes Running Track") and from Ellendale to near Milton, Delaware (the "Milton Industrial Track"). A map showing the Lewes Running Track and Milton Industrial Track is attached hereto as Exhibit A. The subject trackage is currently operated by Delaware Coast Line Railroad Company ("DCLR") under a prior modified rail certificate. *See Delaware Coast Line Railroad Company -- Modified Rail Certificate*, Docket No. FD 30035 (ICC served Sept. 22, 1982).

In accordance with the requirements of 49 C.F.R. § 1150.23(b), DCR submits the following information:

Information Regarding Operator: 49 C.F.R. § 1150.23(b)(1)

DCR is a Class III rail carrier which leases and operates approximately 177 miles of rail line on the Delmarva Peninsula in Delaware, Maryland and Virginia. *Delmarva Central*

Railroad Company -- Lease and Operation Exemption with Interchange Commitment -- Norfolk Southern Railway Company, Docket No. FD 36071 (STB served Dec. 2, 2016); *Delmarva Central Railroad Company -- Change in Operator Exemption -- Cassatt Management, LLC d/b/a Bay Coast Railroad*, Docket No. FD 36196 (STB served Jun. 7, 2018 and Jun. 8, 2018). DCR is a wholly-owned subsidiary of Carload Express, Inc., which also controls three other Class III rail carriers operating in Pennsylvania and Ohio. *See Carload Express, Inc. -- Continuance in Control Exemption -- Delmarva Central Railroad Company*, Docket No. FD 36072 (STB served Dec. 2, 2016).

The full name and address of DCR is:

Delmarva Central Railroad Company
519 Cedar Way
Building 1, Suite 100
Oakmont, PA 15139
(412) 426-2800

101 Delaware Avenue
Harrington, DE 19952-1213

DCR is part of a well-established and successful family of short-line railroads, and the Board has previously confirmed that DCR's parent is an "experienced shortline operator." *Delmarva Central Railroad Company -- Lease and Operation Exemption with Interchange Commitment -- Norfolk Southern Railway Company*, Docket No. FD 36071 (STB served Mar. 8, 2017), slip op. at 3. DCR has more than sufficient financial responsibility to assume operation of the Lewes Running Track and the Milton Industrial Track.

Information About Prior Abandonment: 49 C.F.R. § 1150.23(b)(2)

The Lewes Running Track was part of a longer rail line owned by a component of the Penn Central Transportation Company ("PCTC") that was not designated for transfer to Consolidated Rail Corporation ("Conrail") by the Final System Plan of the United States

Railway Association and was abandoned pursuant to Section 304 of the Regional Rail Reorganization Act of 1973, 45 U.S.C. § 744. II FSP 51-52 (USRA Line Nos. 160 and 161, Line Code 1237).¹ The line was acquired by the State, which contracted with DCLR in 1982 for its operation. *Delaware Coast Line Railroad Company -- Modified Rail Certificate*, Docket No. FD 30035 (ICC served Sept. 22, 1982) ("*DCLR Modified Certificate*").²

The Milton Industrial Track also was part of a longer PCTC rail line that was offered for sale to the Southern by the Final System Plan. II FSP 305. Unlike the Lewes Running Track, however, the Milton Industrial Track was designated for transfer to Conrail if (as was the case) it was not accepted by the Southern. I FSP 318 (Line Code 1238). Conrail subsequently abandoned the line in 1982. *Conrail Abandonment Between Ellendale and Milton, DE*, Docket No. AB-167 (Sub-No. 188N) (ICC served Apr. 21, 1982 and Aug. 4, 1982). The State then acquired the line and contracted with DCLR for its operation. *DCLR Modified Certificate, supra*.³

On November 13, 2018, DCLR filed a notice in Docket No. FD 30035 of its intent to terminate rail service over the State-owned rail lines that were the subject of *DCLR*

¹ The Final System Plan initially designated that the Lewes Running Track be offered for sale to the Southern Railway Company (the "Southern"), a profitable railroad in the region. II FSP 305. If the offer was not accepted, the line was not designated for inclusion in Conrail. The Southern did not acquire the lines on the Delmarva Peninsula offered to it by the Final System Plan.

² From October 1, 1994 through the end of 1999, rail service on the Lewes Running Track was provided by The Maryland and Delaware Railroad Company ("MDDE") pursuant to its own modified certificate. *The Maryland and Delaware Railroad Company -- Modified Rail Certificate*, Docket No. FD 32595 (ICC served January 20, 1995). DCLR resumed operation of the line in 2000.

³ As with the Lewes Running Track, service on the Milton Industrial Track was provided by MDDE between 1994 and 1999. Outer extensions of the Lewes Running Track and Milton Industrial Track that were previously served by DCLR and MDDE are no longer active and are not included in this modified certificate of public convenience and necessity.

Modified Certificate. In accordance with 49 C.F.R. § 1150.24, DCLR served the notice on the State and on all shippers that have used the Lewes Running Track and the Milton Industrial Track in the past six months.

Dates of Operation: 49 C.F.R. § 1150.23(b)(3)

DCR and the State have entered into an operating agreement under which DCR will provide service on the Lewes Running Track and the Milton Industrial Track from January 1, 2019 to December 31, 2023, with one five-year renewal option. A copy of executed Contract #18-002, License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in Sussex County Delaware, dated as of May 25, 2018, between the State and DCR is attached hereto as Exhibit B.

Description of Service: 49 C.F.R. § 1150.23(b)(4)

The Lewes Running Track extends from milepost 24.42 at Georgetown, Delaware to milepost 31.17 near Fisher Road in Harbeson, Delaware, a distance of approximately 6.75 miles. The Milton Industrial Track extends from milepost 0.00 at Ellendale, Delaware to milepost 4.92 at Gravel Hill Road near Milton, Delaware, a distance of approximately 4.92 miles. The sole interline connection for both lines is with DCR -- at Georgetown on the Lewes Running Track and at Ellendale on the Milton Industrial Track. DCR intends to provide rail service on both lines up to five days per week as required.

DCR maintains railroad liability insurance coverage with limits of \$25 million per occurrence and \$50 million in the aggregate, with a \$200,000 deductible. DCR's insurance coverage is provided by XL Catlin (XL America, Inc.), Policy No. US00074193LI18A.

There are no preconditions which shippers must meet to receive rail service from DCR on the Lewes Running Track and Milton Industrial Track.

Information Regarding Subsidizers: 49 C.F.R. § 1150.23(b)(5)

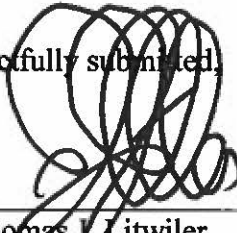
No entity will subsidize DCR's operations on the Lewes Running Track and Milton Industrial Track. The operating agreement between the State and DCR contemplates the continuation of annual State funding of approximately \$250,000 for track maintenance on the Lewes Running Track and Milton Industrial Track, as well as potential capital improvement funding. Such funding is subject to appropriation by the Delaware General Assembly and is not guaranteed.

Financial Responsibility of Subsidizers: 49 C.F.R. § 1150.23(b)(6)

Not applicable. No entity will subsidize DCR's operations on the Lewes Running Track and Milton Industrial Track.

Respectfully submitted,

By: _____

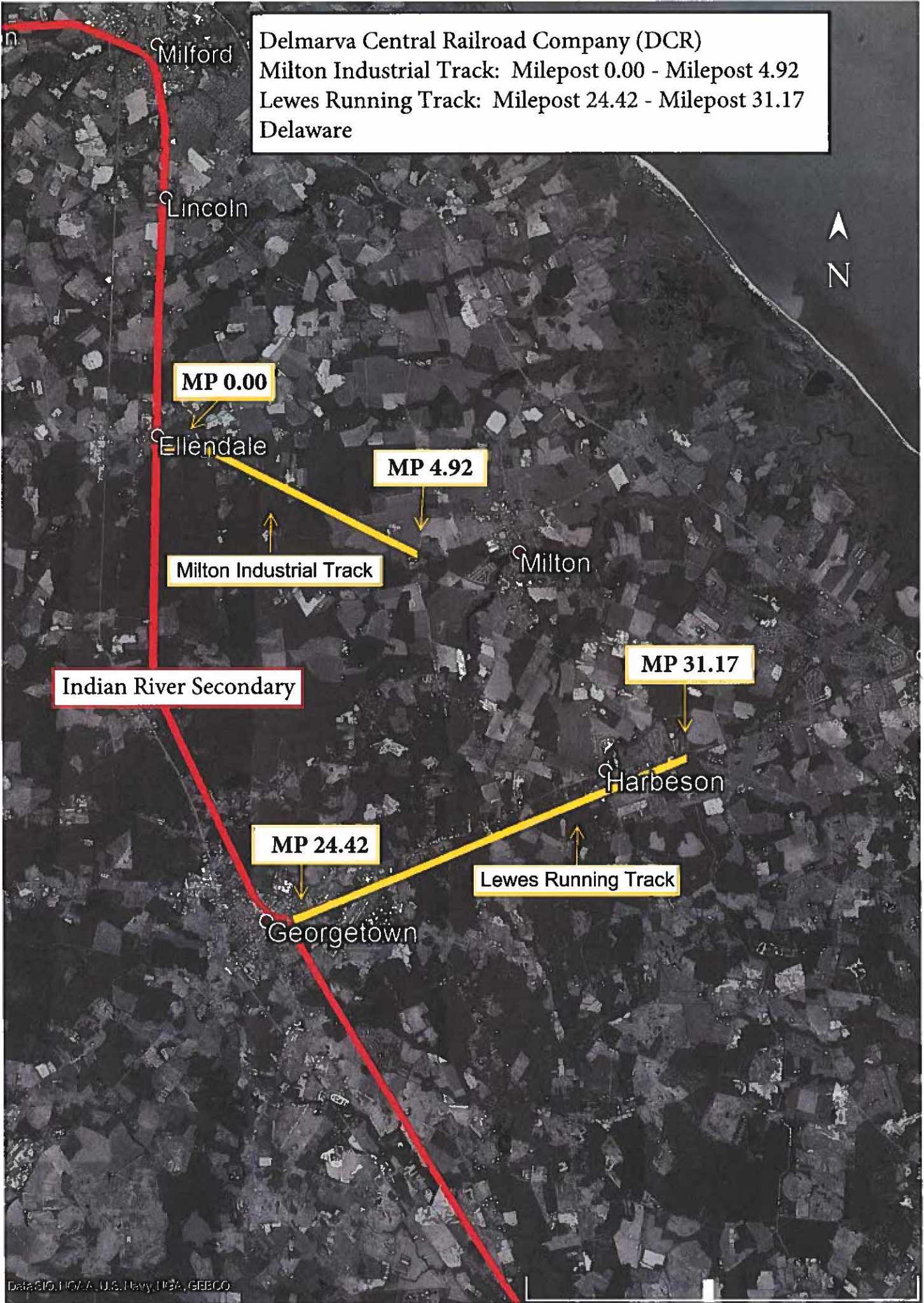

Thomas J. Litwiler
Stephen J. Rynn
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR DELMARVA CENTRAL
RAILROAD COMPANY**

Dated: November 20, 2018

EXHIBIT A

Map



Delmarva Central Railroad Company (DCR)
Milton Industrial Track: Milepost 0.00 - Milepost 4.92
Lewes Running Track: Milepost 24.42 - Milepost 31.17
Delaware



MP 0.00

MP 4.92

MP 31.17

MP 24.42

Indian River Secondary

Milton Industrial Track

Lewes Running Track

EXHIBIT B

Contract #18-002

**License to Operate Rail Freight Service and
Maintain State-Owned Rail Lines
In Sussex County Delaware**

Dated as of May 25, 2018

900 Public Safety Boulevard
Dover, DE 19901-4503
(302) 739-3278



119 Lower Beech Street, Suite 100
Wilmington, DE 19805-4440
(302) 577-3278

May 29, 2018

Sent via e-mail
markrosner@carloadexpress.com
Delmarva Central Railroad
Mark A. Rosner
519 Cedar Way
Bldg 1, Ste 100
Oakmont, PA 15139

Notice to Proceed for Contract #18-002
Effective January 1, 2019

Dear Mr. Rosner:

This letter will serve as your Notice to Proceed (NTP) for Contract #18-002. The effective contract start date under this NTP is January 1, 2019. Please contact the DTC project manager, David Campbell at (302) 577-6032 with any scope of work questions.

Also attached is your executed copy of Contract #18-002. If you have any questions regarding the contract, please do not hesitate to contact me at (302) 576-6113.

Sincerely,

A handwritten signature in black ink that reads "Mary Wahl". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary Wahl
Fiscal Manager

Cc: Richard Walters

Enclosures:

900 Public Safety Boulevard
Dover, DE 19901-4503
(302) 739-3278



119 Lower Beech Street, Suite 100
Wilmington, DE 19805-4440
(302) 577-3278

May 29, 2018

Sent via e-mail
markrosner@carloadexpress.com
Delmarva Central Railroad
Mark A. Rosner
519 Cedar Way
Bldg 1. Ste 100
Oakmont, PA 15139

Notice to Proceed for Contract #18-002
Effective January 1, 2019

Dear Mr. Rosner:

This letter will serve as your Notice to Proceed (NTP) for Contract #18-002. The effective contract start date under this NTP is January 1, 2019. Please contact the DTC project manager, David Campbell at (302) 577-6032 with any scope of work questions.

Also attached is your executed copy of Contract #18-002. If you have any questions regarding the contract, please do not hesitate to contact me at (302) 576-6113.

Sincerely,

A handwritten signature in black ink that reads "Mary Wahl". The signature is fluid and cursive.

Mary Wahl
Fiscal Manager

Cc: Richard Walters

Enclosures:

900 Public Safety Boulevard
Dover, DE 19901-4503
(302) 739-3278



119 Lower Beech Street, Suite 100
Wilmington, DE 19805-4440
(302) 577-3278

May 22, 2018

Sent via e-mail
markrosner@carloadexpress.com
Delmarva Central Railroad
Mark A. Rosner
519 Cedar Way
Bldg 1. Ste 100
Oakmont, PA 15139

AWARD OF CONTRACT #18-002
License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in Sussex
County Delaware

Dear Mr. Rosner:

Congratulations, Delmarva Central Railroad has been awarded Contract #18-002.

Attached is a copy of Contract #18-002. Please print, sign and e-mail the contract to mary.wahl@state.de.us within 10 calendar days along with a copy of your certificate of insurance, and a copy of your Delaware Business License. Once all signatures are obtained, you will receive your Notice to Proceed and your copy of the signed and executed contract. If you require an original signature then please print two copies, sign and mail both copies of the contract to my attention at 119 Lower Beech St., Wilmington, DE 19805.

If you have any questions, please do not hesitate to contact me at (302) 576-6113.

Sincerely,

A handwritten signature in black ink that reads "Mary Wahl". The signature is fluid and cursive.

Mary Wahl
Fiscal Manager

Attachments:

CONTRACT #18-002
License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in
Sussex County Delaware

THIS CONTRACT made and entered in duplicate, this 25th day of MAY 2018.

BY AND BETWEEN "Delaware Transit Corporation" (hereinafter designated as "DTC") and the Delmarva Central Railroad Company (hereinafter designated as "DCR").

WITNESSETH that DCR in consideration of the covenants and agreements herein contained and made by DTC, agrees with DTC as follows:

ARTICLE ONE: DCR shall and will provide and furnish all the material, machinery, implements, appliances, and tools and perform the work and labor required to complete the contract requirements as set forth in the Request for Proposal #18-002 and any addenda prepared by DTC, as well as DCR's proposal and specifications, which all become hereby a part of this Contract #18-002.

The initial term of the Contract shall confer upon the DCR the right to operate and maintain the State-owned rail lines for five (5) years, beginning at 12:01 A.M. Local Time on January 1, 2019 (the "Commencement Date"), with an option for one five (5) year extension. This Contract shall terminate, except in case of early termination under the terms of the Contract, at 11:59 P.M. Local Time on December 31, 2023, but the Contract may be extended another five (5) years upon written mutual consent of DTC and the DCR, to 11:59 P.M. Local Time on December 31, 2028. DTC shall notify the DCR in writing of its determination to either extend or terminate this Contract.

ARTICLE TWO: DTC shall appoint a Project Representative who shall provide project oversight and shall be the point of contact for DCR for this Contract. The services performed by DCR under this Contract shall be subject to review for compliance with the terms of this Contract by DTC's Project Representative.

All work to be performed under this Contract shall be done under the direction of DTC's Project Representative. The Project Representative has the authority to decide as to the true construction and meaning of DCR's proposal and specification on behalf of DTC and whose decision shall be final.

Should the Project Representative determine that additional specifications are necessary to illustrate any work to be completed under this Contract, the parties agree to conform to and abide by the additional specifications as long as they are consistent with the purpose and intent of the Request for Proposal and DCR's proposal and specifications as outlined in ARTICLE ONE.

Should the additional specifications require additional expense, DCR shall make a written request for additional compensation as outlined in the requirements of DTC's Request for Proposal in Part B, paragraph 5.

ARTICLE THREE: If the work to be done under this Contract shall be abandoned, or if this Contract, or any part thereof, shall be sublet without previous written consent of DTC, or if the Contract shall be assigned by DCR otherwise than as herein specified, or if at any time the Project Representatives shall be of the opinion, and shall so certify in writing, that the work or any part thereof, is unnecessarily or unreasonably delayed, or that DCR has violated any provision of this Contract, DTC shall notify DCR to discontinue such work or such part thereof as DTC shall designate. DTC may thereupon, by a contract or otherwise as it may determine, complete the work or such part thereof. DCR shall be responsible for any additional costs incurred by DTC in carrying out the work or a portion of work. If any of DCR's implements, tools, or materials of any description are used by DTC or any person or entity engaged by DTC to complete the work or a portion of work, DCR shall receive reasonable compensation for the use of said implements, tools, or materials.

All additional costs and charges that may be incurred under this article, or any damages attributed to DCR, shall be withheld or deducted from any monies then due or to become due to the DCR, under this Contract or any part thereof. In obtaining any services needed to complete the work or a portion of the work, DTC shall not be held to obtain the lowest cost for the work of completing the Contract or any part thereof. DCR shall be responsible for any additional cost beyond those in DCR's proposal and specifications.

ARTICLE FOUR: As consideration for the award and execution by DTC of this Contract, DCR hereby grants, conveys, sells, assigns, and transfers to DTC all of its rights, titles and interests in and to all known or unknown causes of action of 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 DTC pursuant to this Contract.

ARTICLE FIVE: It is further mutually agreed between the parties hereto that no payment made under this Contract shall be conclusive evidence of the performance of this Contract either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

ARTICLE SIX: DCR shall defend, indemnify and keep harmless DTC, the Delaware Department of Transportation, and the State of Delaware, their agents, officials and employees from all costs, damages, expenses, settlements, and attorney's fees, arising out of, or resulting from DCR's acts or omissions in accordance with said RFP #18-002 above mentioned, including, but not limited to, DCR indemnifying and keeping harmless the said DTC, the Delaware Department of Transportation, and the State of Delaware, their agents, officials and employees, from all costs, damages, settlements, expenses and attorney's fees relating to any property damage or physical injury including death or any allegations of patent infringement or unlawful use of a patented article growing out of, or by reason of, this Contract, including DCR providing at DCR's expense to said DTC or its agents, legal counsel of its own choosing.

ARTICLE SEVEN: This Contract shall be governed and construed under the laws of the State of Delaware. Contractor consents to jurisdiction and venue in the State of Delaware.

ARTICLE EIGHT: The parties agree that in Part C of RFP #18-002 (LICENCE TO OPERATE RAIL FREIGHT SERVICE AND MAINTAIN STATE-OWNED RAIL LINES SUSSEX COUNTY, DELAWARE), Section 2 (F) shall be changed in its entirety to read as follows:

F. PAYMENTS TO THE CORPORATION

The DCR shall make an annual payment to the Corporation based on annual Adjusted Gross Freight Revenues ("AGFR"):

AGFR In One Year	Payment in Percentage of AGFR
\$0.00 - \$300,000.00	0% (no payment)
\$300,000.01 - \$500,000.00	5% (of the AGFR over \$300,000.00)
Over \$500,000.01	10% (of the AGFR over \$500,000.00)

AGFR shall be determined by taking the total annual Gross Freight Revenues ("GFR") generated by DCR on rail traffic that originates or terminates on the State-Owned lines covered by this Contract and subtracting the number of annual revenue carloads that originate or terminate on the State-Owned lines covered by this Contract multiplied by the Overhead Fee ("OF").

$$\text{AGFR} = \text{GFR} - (\# \text{ OF ANNUAL CARLOADS} \times \text{OF})$$

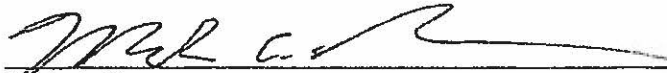
Payment will be due to Delaware Transit Corporation not later than March 31 each year for the previous calendar year. The DCR may request to schedule payment on a fiscal year or other basis, which will be granted at DTC's discretion.

IN WITNESS WHEREOF, the said parties to these presents have duly executed this agreement in duplicate the date and year first above written.

Signature page follows

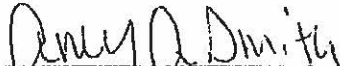
SIGNED, SEALED AND DELIVERED in the presence of

Delmarva Central Railroad Company



Mark A. Rosner

President

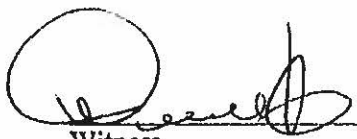


Witness Signature

Employer Identification Number:

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

DELAWARE TRANSIT CORPORATION



Witness



John T. Sisson, Chief Executive Officer

SIGNED, SEALED AND DELIVERED in the presence of

Delmarva Central Railroad Company



Mark A. Rosner

President



Witness Signature

Employer Identification Number:

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

DELAWARE TRANSIT CORPORATION

Witness

John T. Sisson, Chief Executive Officer

900 Public Safety Boulevard
Dover, DE 19901-4503
(302) 739-3278



119 Lower Beech Street, Suite 100
Wilmington, DE 19805-4440
(302) 577-3278

All Proposers:

You are invited to submit proposals on the referenced contract. The enclosed packet contains a Request for Proposals #18-002 - License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in Sussex County Delaware.

The Request for Proposal consists of the following documents:

PART A: General Conditions
PART B: Instructions and Conditions
PART C: Technical Specifications
EXHIBIT A: Required Forms

Please be sure to submit all forms required, any forms not submitted with your proposal will cause your proposal be to found non-responsive.

Should you need additional information, please contact: Mary Wahl at mary.wahl@state.de.us or 302-576-6113.

DELAWARE TRANSIT CORPORATION (DTC)

REQUEST FOR PROPOSAL

RFP #18-002

**License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in
Sussex County Delaware**

PROPOSALS DUE: April 6, 2018

No Later Than 2:00 PM EST

PART A
GENERAL CONDITIONS

**DELAWARE TRANSIT CORPORATION
REQUEST FOR PROPOSALS
RFP #18-002**

1. PURPOSE

- A. The Delaware Transit Corporation (DTC) is soliciting written proposals from parties interested in obtaining a license to operate rail freight service and maintain state-owned rail lines in Sussex County, Delaware, as described in the scope of work.
- B. DTC proposes to provide to the best qualified and most responsible proposer a license to operate rail freight service and maintain state-owned rail lines in Sussex County, Delaware.
- C. Interested parties desiring to submit proposals may obtain additional information, as necessary, concerning the proposed concession from Mary Wahl, Contract Specialist, Delaware Transit Corporation, 119 Lower Beech Street, Suite 100, Wilmington, DE 19805 or by calling (302) 576-6113.
- D. Questions may be asked in writing to Mary Wahl until 4:30pm EST, March 16, 2018. All questions should be sent by email to mary.wahl@state.de.us.
- E. Proposals are to be submitted as follows:
 - The proposals must be in a sealed envelope marked "Proposal submission for RFP #18-002".
 - One (1) original and five (5) copies of each technical and price proposal shall be provided. Proposals will be received no later than 2:00 PM EST on April 6, 2018, at the DTC office located at 119 Lower Beech Street, Suite 100, Wilmington, DE 19805.

2. CONTRACT TERM

- A. The initial term of the Contract shall confer upon the Operating Railroad the right to operate and maintain the State-owned rail lines for five (5) years, beginning at 12:01 A.M. Local Time on January 1, 2019, with an option for one five (5) year extension. This Contract shall terminate, except in case of early termination under the terms of the Contract, at 11:59 P.M. Local Time on December 31, 2023, but the Contract may be extended another five (5) years upon written mutual consent of DTC and the Operating Railroad, to 11:59 P.M. Local Time on December 31, 2028. DTC shall notify the Operating Railroad in writing of its determination to either extend or terminate this Contract.

3. COMMUNICATION AND REQUESTS

- A. All correspondence, communication and/or contact concerning any aspect of this solicitation or offers shall be with the DTC Contract Officer identified as Mary Wahl, Fiscal Manager. Proposers and their representatives shall direct all questions and correspondence to Mary Wahl concerning any aspect of this solicitation or offers.
- B. DTC reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in addenda. DTC shall provide copies of addenda to all prospective Proposers listed on DTC's Proposers list. Proposers, or their agents, shall be responsible to collect the addendum at the email address or fax number listed on DTC's Proposers list. Failure of any prospective Proposer to receive the addendum shall not relieve the Proposer from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted, or

modified. All addenda issued shall become part of the RFP. Prospective Proposers shall acknowledge the receipt of each individual addendum and all prior addenda in their proposals using form "Acknowledgement of Addenda" in Exhibit A. Failure to acknowledge receipt of addenda in their proposals, DTC may at its discretion reject the proposal.

4. PROPOSAL SUBMISSION REQUIREMENTS

A. Proposals not conforming to the following submission requirements will be rejected at the discretion of DTC:

- Proposals must arrive at the specified location no later than 2:00 PM on April 6, 2018. Proposals must be signed by the authorized representative of the contractor, and must be free from alterations and erasures.
- Proposals are required to meet all submission requirements as stated in this RFP; to meet all technical requirements identified in Part C, Scope of Work and Contract Specifications; and to provide costs, if requested, in the format specified. Proposals that fail to do so may be rejected.
- The DTC reserves the right to permit fixes of minor irregularities when it deems it to be in the DTC's best interests.

5. PROPOSAL SUBMISSION FORMAT

A. This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each proposer must provide every component listed in the order shown in this RFP, using the form prescribed for each component. A proposal may be rejected if it is incomplete or conditional. Proposals should be brief, concise, and in a readable font.

B. Proposals shall include the following items, maintaining any numbering provided in this section. To ensure fair and consistent evaluation, proposals shall include the following items:

1. **Letter of Transmittal (Cover Letter)** - A letter of transmittal signed in ink by a duly authorized officer of the Proposer's company, containing, as a minimum, the following information:
 - a. Acknowledgment of receipt of all RFP addenda, if any
 - b. Name, title, address, email address and telephone number of the Proposer's contact person
 - c. A statement indicating that the proposal is valid for 180 days from the date of submittal
 - d. Signature of a representative authorized to bind the Proposer to the terms of the proposal.
2. **Shortline operating experience.** The proposer shall describe its experience operating shortline railroads. This should include information on customer service and relations with other railroad and interline carriers. List and describe any license that the proposer presently holds or has held in the last five (5) years that was issued by the STB, the FRA, or a State railroad regulatory agency. If any of these licenses has ever been terminated or revoked, please explain why.

3. **Maintenance-of-way experience.** The proposer shall discuss its experience in providing track inspection and maintenance. If the proposer does not have employees performing maintenance duties, it shall explain how it proposes to provide maintenance and labor for the execution of this Contract (i.e., through contractors).
4. **Ability to market DTC rail lines.** The proposer shall describe its experience in industrial development and marketing rail freight services. The proposer may discuss any plans, contracts, expertise, etc., that show its ability to attract new industry or to assist in expanding existing industry or rail business.
5. **Real Estate management.** The proposer should set out any experience it has with managing railroad rights-of-way such as easements, side track agreements, contracts, leases, rentals, encroachments, etc.
6. **Equipment (for DTC rail lines).** The proposer shall provide a list of all locomotives, freight cars, maintenance of way equipment, and other equipment with which it shall begin operations, and provide builder's name, date built, rebuilt date, horsepower (for locomotives) and whether it either owns or leases the equipment. Documentation must be included to prove this equipment is in good working condition and is current on required inspections.
7. **Toll Administration and Personnel.** The proposer shall provide brief background information on personnel who will be employed on this Contract, including management, operations, train crews, and inspection and maintenance personnel. The proposer may discuss their experience working with the FRA, STB, OSHA and other regulating agencies.

For train crews the proposer shall describe training on book of rules, physical characteristics, and FRA required training.

If the proposer proposes to use contractors to complete maintenance-of-way or other work under this Contract, it shall provide the contractor's name, address, phone number, federal identification number, and past experience in the work it is proposed to perform.

Each proposer should list the number of residents in the State that shall be employed and the positions they are expected to fill. Contractors need not be included.

6. PROPOSAL EVALUATION

This section describes the evaluation process that will be used to determine which proposal provides the maximum benefit to the DTC.

A. EVALUATION COMMITTEE

The DTC intends to conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. In making this determination, the DTC will be represented by an Evaluation Committee. The Committee will evaluate each proposal that is properly submitted.

B. OBJECTIVES

The objectives of this evaluation process are to:

- Secure a fair, workable contract;
- Obtain the best combination of features, services, solutions, and cost;
- Ensure a high level of quality local support;
- Secure fiscally sound successful bidders with demonstrated capability;
- Ensure that DTC's aims, purposes and requirements will be met.

These objectives are implicit within the evaluation items and are not to be construed as separate criteria.

C. EVALUATION STEPS

The evaluation process will comprise all of the following:

1. Review of proposals to assess compliance with:
 - a. Proposal submission;
 - b. Terms and conditions;
 - c. Mandatory requirements;
2. Detailed evaluation of proposed functions, features, services, and solutions;
3. Scoring of proposals;
4. Review of Proposed Price;
5. Issue of notice of intent to negotiate contract.

D. PROPOSAL SCORING

The weighted scoring system will provide numerical scores that represent the Committee's assessments of the relative merits of the proposals. The scores will be used to develop a preference ranking based on all factors.

Each of the technical factors in this RFP will be graded by the Evaluation Committee based on its best professional judgment, considering all proposal text, and clarifications. A weighted scoring system will be used. The weighted scoring system will provide numerical scores that represent the Committee's assessments of the relative merits of the proposals. The scores will be used to develop a preference ranking. The final score for each proposal will be obtained by summing the results from each section, with a perfect final score being 100 points.

Although the sections will be scored using different weights, the Proposers are cautioned that:

- Every section contains requirements which must be met regardless of the section's weight; and
- A poor response to a lower weighted section still can have a significant negative impact on the Proposer's final technical score.

1. TECHNICAL PROPOSAL SCORING

Proposers must demonstrate to DTC's satisfaction the following that will account for one hundred percent (100%) of the overall evaluation:

Technical Component	Available Points
Shortline operating experience	30
Maintenance-of-way experience	30
Real Estate management	10
Ability to market DTC rail lines	10

Equipment (for DTC rail lines)	10
Administration and personnel	10

7. AWARD PROCESS

A. Based upon the criteria established in the selection process and points assigned to each of the Proposers, a final rating preference list shall be established, beginning with the highest ranked qualified firm by points designated first on the final rating (preference) list, the Delaware Transit Corporation and/or the Evaluation Committee shall review, and negotiate the prices for services covered by this RFP which the Corporation and Evaluation Committee determines as fair and reasonable:

1. DTC reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to DTC and the State of Delaware.
2. Should the Delaware Transit Corporation and the Evaluation Committee be unable to negotiate a satisfactory contract with the firm designated as first on the final preference list at a price the Evaluation Committee determines to be fair and reasonable, negotiations with that proposer shall be formally terminated. The Evaluation Committee shall then undergo negotiations with the second qualified proposer on the final preference list. Failing to reach an accord as to a fair and reasonable price with the second qualified proposer, negotiations shall be formally terminated. The Delaware Transit Corporation and/or the Evaluation Committee shall then negotiate with the remaining proposers on the final preference list in order of ranking.
3. The Committee reserves the right to:
 - Select for contract or for negotiations a proposal.
 - Reject any and all proposals received in response to this RFP or to make no award or issue a new RFP.
 - Waive or modify any informality, irregularity, or inconsistency in proposals received.
 - Request modifications to proposals from any or all contractors during the review and negotiation.
 - Negotiate any aspect of the proposal with any firm and negotiate with more than one firm at the same time.

All proposals shall be evaluated using the same criteria and scoring process as specified herein.

8. REJECTION OF PROPOSALS

A. DTC reserves the right to waive any minor proposal informalities or irregularities received that do not prejudice other Proposers, or to reject any and all proposals submitted. Conditional proposals or those that take exception to the specifications may be considered non-responsive and rejected.

9. SINGLE PROPOSAL RESPONSE

- A. If only one proposal is received in response to this request for proposals, a detailed price proposal may be requested of the single proposer. A cost/price analysis and evaluation may be performed of the proposal in order to determine if the price is fair and reasonable.

10. PROPOSAL WITHDRAWAL

- A. Proposals may not be withdrawn after the evaluation, and must remain in effect for sixty (60) days from proposal evaluation. Prior to the date and time set for the proposal evaluation, proposals may be modified or withdrawn only by the resubmission of a complete revised proposal.

11. PROJECT REPRESENTATIVES

The DTC Project Manager will be:
David Campbell, Program Support Manager
Delaware Transit Corporation
119 Lower Beech Street, Suite 100
Wilmington, DE 19805
(302) 576-6032

The DTC Contract Officer will be:
Mary Wahl
Delaware Transit Corporation
119 Lower Beech Street, Suite 100
Wilmington, DE 19805
(302) 576-6113

12. PROPOSAL DOCUMENTS

- A. Any contract resulting from this request for proposals shall include the following, which are incorporated herein as part of the contract:
 - 1. Request for Proposals
 - 2. Part C: Scope of Work Contract Specifications (Statement of Work Required)
 - 3. Exhibit A: Forms and Documents

13. FUNDING ACT

- A. In the event that the General Assembly fails to appropriate the specific funds necessary to continue this contract, the contract shall be terminated, as to any obligation of the State requiring the expenditure of money for which no such appropriation is available, at the end of the last fiscal year for which such appropriation is available. If such termination occurs, the State shall advise the Contractor of such fact as soon as reasonably practicable. Notwithstanding the foregoing, the State agrees to use its best efforts to obtain authorization of such funds in its budget and a request for adequate funds to meet its obligations hereunder in full in its next fiscal year budget.

14. PROPOSAL BOND: Waived

15. PERFORMANCE BOND REQUIREMENTS: Waived

16. CONFIDENTIALITY OF DOCUMENTS

- A. All documents submitted as part of the vendor's proposal will be deemed confidential during

the evaluation process. Vendor proposals will not be available for review by anyone other than the Delaware Transit Corporation/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

- B. Delaware Transit Corporation is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, Delaware Transit Corporation's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the Delaware Transit Corporation and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.
- C. Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.
- D. Upon receipt of a proposal accompanied by such a separate, sealed envelope, the Delaware Transit Corporation will open the envelope to determine whether the procedure described above has been followed.

17. PAYMENT TERMS and INVOICING:

- A. Payment for items purchased by DTC shall be net thirty (30) days from receipt and acceptance of delivered items. DTC reserves the right to reject upon delivery items not conforming to specifications and/or as bid by the successful bidder. Invoices must be submitted.
- B. Invoices should be mailed or emailed directly to: Accounts Payable:
DOT.DTCAccountPayable@state.de.us
Delaware Transit Corporation
900 Public Safety Boulevard
Dover, DE 19901
- C. **Invoices must contain the contract #18-002:** Invoices shall also contain documentary support for billings and shall include certification that all subcontractors have been paid and waive any and all claims against DTC, the Delaware Transportation Authority, the Delaware Department of Transportation and the State of Delaware.

PART B
INSTRUCTIONS AND CONDITIONS

1. BREACHES AND DISPUTE RESOLUTION

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Delaware Transit Corporation's Chief Executive Officer. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by Delaware Transit Corporation, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of the other parties' employees, agents or others for whose acts that party is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. Contractor acknowledges that Delaware Transit Corporation's liability is limited by law in 2 Del. C. ch. 13.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Delaware Transit Corporation and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Delaware Transit Corporation is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Delaware Transit Corporation or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2. CONTRACT TERMINATION

A. Termination for Convenience

DTC may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including contract close-out costs, and profit on product delivered up to the time of termination. The Contractor shall promptly submit its termination claim for payment. If the Contractor has any property in its possession belonging to DTC, the Contractor will account for the same and dispose of it in the manner DTC directs.

B. Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, DTC may terminate this contract for default. Termination shall be

affected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined that the Contractor had an excusable reason for not performing, such as a strike, flood, events which are not the fault of or are beyond the control of the Contractor, DTC, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

In the event DTC exercises its right of termination for default, and if an amount for liquidated damages is set forth, the Contractor shall be liable to DTC for excess costs and, in addition, for liquidated damages in the amount set forth, as fixed, agreed, and liquidated damages for each day of delay, until such time as DTC may reasonably obtain delivery or performance of similar supplies or services.

If the contract is so terminated, the Contractor shall continue performance and be liable to DTC for such liquidated damages for each day of delay until the supplies are delivered or services performed.

The Contractor shall not be liable for liquidated damages resulting from delays such as acts of God, strikes, fire or flood, and events which are not the fault of, or are beyond the control of the Contractor.

3. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, age, sex or disability. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are tested during their employment without regard to their race, creed, religion, color, national origin, age, sex or disability. Such actions shall include, but not be limited to the following, employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay, or other forms of compensation. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

4. INDEMNIFICATION

The proposer shall indemnify, keep, and save harmless DTC, the Delaware Department of Transportation, and the State of Delaware, their agents, officials, and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs, settlements and expenses, which may accrue against DTC, the Delaware Department of Transportation, and the State of Delaware arising out of, or resulting from, the Proposer's acts or omissions of its agents, officials and employees.

The proposer shall maintain in effect the necessary Workmen's Compensation and Comprehensive Public Liability Insurance, insurance against death, personal injury, property damage and legal contractual liability, arising from or in conjunction with acts of omission pursuant to the contract.

5. MODIFICATION TO CONTRACT

Oral change orders are not permitted. No change in this contract shall be made unless DTC gives its prior written approval. Therefore, the Contractor shall be liable for all costs resulting from, and/or satisfactorily correcting any deviation from this specification not properly ordered by written modification to the contract and signed by DTC.

Within twenty-five (25) after receipt of the written change order or requested modification of the contract, the Contractor shall submit to DTC a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and DTC. Communications in connection with this contract shall be in writing and shall be delivered personally, by email or by regular, registered or certified mail addressed to DTC at 119 Lower Beech Street, Wilmington, DE 19805 and of the Contractor designated to receive such communications but shall not be official communication unless confirmed in writing.

6. PROHIBITED INTEREST

No member, officer, or employee of DTC or of a local public body during his/her tenure or two years thereafter shall have any interest, direct or indirect, in this contract or the proceeds.

7. PROTEST PROCEDURES

DTC maintains written procedures that must be followed for all protests. Protests based upon restrictive specifications or alleged improprieties in the bid procedure shall be filed in writing with the Contract Supervisor at least five (5) days prior to the bid due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon the award of the contract shall be made in writing to the Contract Supervisor no later than ten (10) days following the award of the contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Copies of the complete protest procedures are available at the office of the Contract Supervisor.

Failure to comply with any of the requirements set forth in DTC's written protest procedures may result in rejection of the protest.

8. RECORD RETENTION

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until DTC or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

9. RESPONSIBILITY

The Contractor shall assume responsibility for all material and accessories used in each proposal item offered, whether the same are made by the Contractor or purchased ready-made from an outside source.

All bidders must conform to the specifications. The product furnished must be of the first quality.

Notwithstanding the provision of technical specifications, or other data by DTC, the Contractor shall have the responsibility of supplying all parts and details required to make the bid item complete and ready for use even though such details may not be specifically mentioned in the specification.

In the event of any deviation between the description of the bid item(s) in Part C, Technical Specifications, and other parts of this document, the Technical Specifications shall govern.

10. STATE OF DELAWARE BUSINESS LICENSE AND COMPLIANCE WITH THE LAWS

Prior to receiving an award, the successful vendor shall either furnish DTC with proof of State of Delaware business License or initiate the process of application. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 87850, 820 North French Street, Wilmington, Delaware 19899 or by telephone to the following numbers: (302) 577-8200 - Public Service, or (302) 577-8778 - Licensing Department.

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

In the performance of this contract, the Contractor is required to comply with all applicable Federal, State and Local laws, ordinances, codes and regulations. The cost of permits, insurance, taxes and other relevant costs required in the performance of the contract shall be borne by Contractor.

For non-construction activities exceeding \$2,500 performed in connection with the Project, the Contractor agrees to comply with the following employee protection requirements:

- (1) In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. sections 327 through 332, the Contractor agrees and assures that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Recipient agrees that determinations pertaining to these requirements will be made in accordance with applicable U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.
- (2) The requirements of this Subsection do not apply to a third party contract for the purchase of supplies, materials, or articles ordinarily available on the open market.

PART C
Scope of Work and Contract Specifications

**LICENSE TO
OPERATE RAIL FREIGHT SERVICE AND MAINTAIN
STATE-OWNED RAIL LINES
SUSSEX COUNTY, DELAWARE**

TECHNICAL SPECIFICATIONS AND SPECIAL REQUIREMENTS

DEFINITIONS

AREMA shall be construed to be the American Railway Engineering and Maintenance-of-Way Association, an industry related body that adopts industry standards in engineering, design, and construction of the fixed plant of railways and railroads, and allied services and facilities.

AUTHORITY shall be construed to be the Delaware Transportation Authority, a subsidiary of the Delaware Department of Transportation.

CORPORATION or DTC shall be construed to be the Delaware Transit Corporation, a subsidiary of the Delaware Transportation Authority, a subsidiary of the Delaware Department of Transportation. The CORPORATION was created pursuant to 2 Delaware Code Chapter 13, with the power and authority to undertake the functions and activities of the Authority.

DAYS shall be in calendar days, unless mentioned otherwise.

DEPARTMENT or DelDOT shall be construed to be the Delaware Department of Transportation.

DOLLARS shall be in United States currency.

FRA shall be construed to be the Federal Railroad Administration, an agency of the United States Department of Transportation with jurisdiction over matters of railroad safety and research.

HAZARDOUS MATERIAL shall be construed as a substance or material determined by the Secretary of Transportation to pose an unreasonable risk to health, safety, and property when transported in commerce.

HAZARDOUS SUBSTANCE shall be construed as a material and its mixtures or solutions, when offered for transportation in one package, or in one transport vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ), as indicated by the United States Department of Transportation.

HAZARDOUS WASTE shall be construed as any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 Code of Federal Regulations (CFR) 262 or would be subject to these requirements absent an interim authorization to a State under 40 CFR 123, Subpart F.

STB shall be construed to be the Surface Transportation Board, an agency of the United States Commerce Department with jurisdiction over matters of regulating railroads and common carriers, motor carriers, water carriers, and freight forwarders.

OPERATING RAILROAD shall be construed to be the licensed operator of freight train service and maintenance-of-way services on the State-owned rail lines resulting from this Request for Proposal.

PASSENGER EXCURSION TRAINS shall be construed to mean regularly scheduled and/or chartered passenger railroad train services predominantly oriented toward tourist and/or recreational markets. At this time, common-carrier and/or commuter passenger train operations are specifically excluded from this definition.

SHIPPERS shall be construed to be any customer or potential customer for freight railroad service located on or off the State-owned rail lines.

STATE shall be construed to be the State of Delaware.

STATE-OWNED RAIL LINES shall be construed to be the Lewes Running Track and the Milton Industrial Track in Sussex County, Delaware (a description of the physical characteristics of these lines is contained in **Part C** and **Exhibit IV**).

EVALUATION OF PROPOSALS

Of prime importance to DTC is the continuance of the existing freight service. DTC also seeks information from proposers on the following topics by order of importance:

1. Past experience operating shortline railroads.
2. Past experience inspecting, maintaining, and upgrading railroad track structure.
3. Experience managing real estate, easements, encroachments, leases, contracts with customers, rights-of-way, side track agreements, etc.
4. Ability to market and develop business on DTC rail lines.
5. Equipment for DTC rail lines' operation.
6. Administration and personnel.

A proposer may discuss these specifications and addendum with Mary Wahl. Such discussions do not, however, relieve proposers from the responsibility of submitting written, documented requests by these procedures.

(a) Termination Requirements

Upon termination of this Contract or upon the removal or abandonment of the State-owned rail lines covered hereby, all the rights, title and interest of the Operating Railroad hereunder shall cease and terminate, and this instrument shall thereupon become null and void, without any liability on the part of either party to the other party except only as to any liability accrued prior thereto, and the Operating Railroad shall remove its said personal property or any structures erected and appurtenances from the State-owned railroad right-of-way and all property of the State, the Department, or DTC shall be restored in good condition and to the satisfaction of DTC. If the Operating Railroad fails or refuses to remove its personal property or any structures erected and appurtenances under the foregoing conditions, DTC shall be privileged to do so at the cost and expense of the Operating Railroad; and the State, the Department, or DTC shall not be liable in any manner to the Operating Railroad for said removal. The Operating Railroad shall relinquish all responsibility and title to any contracts, agreements and easements managed and collected by the Operating Railroad with any third party. All easement documents shall be returned to DTC and the Operating Railroad cannot collect additional annual fees upon the date of termination.

1. BACKGROUND

(a) The Milton Industrial Track

The rail line between Ellendale and Milton, Delaware was built by the Queen Anne's Railroad (QARR) in 1898 as part of their railroad between Queenstown, Maryland and Lewes, Delaware (this Queen Anne's Railroad should not be confused with the excursion railroad (QARX) which operated under the same name for several years on the Lewes Running Track). From 1905 through 1968, the line was owned and operated by various subsidiaries of the Pennsylvania Railroad (PRR). In 1933, the rails were soon removed between Denton, Maryland and Ellendale, and from Milton to Lewes.

In 1968, the PRR and the New York Central Railroad merged to form the Penn Central Corporation (PC). PC in turn filed for protection from its creditors under the Chapter Thirteen Bankruptcy laws in May 1970. In 1973, Congress passed the Rail Reorganization Act that put several bankrupt railroads in the Northeastern United States under the direct control of the United States Railroad Administration (USRA). The USRA decided to merge all freight operations of the bankrupt railroads into the Consolidated Railroad Corporation (Conrail).

The Milton Line remained under Conrail with very few operational changes until October 1, 1982, when the Authority purchased the rail line. Since that time, the Authority has had agreements for train operations and right-of-way maintenance with the Delaware Coast Line Railroad Company (DCLR) to operate freight trains and maintain the right-of-way except from October 1, 1994 through December 31, 1999, when the Maryland & Delaware Railroad Company (MDDE) held the Contract.

The Milton Industrial Track currently has one active customer, the Wilson Baker, Inc. propane distribution facility near the end of the line at State Route 30. The Wilson Baker property is zoned for industrial use and can accommodate additional businesses. One potential additional customer is expected to open a rail-served facility in the near future. The line has also been used for storage of railcars contracted for by the Operating Railroad with railcar owners.

The track east of State Route 30 (Mile Post 4.92) has been taken out of service and is no longer administered under this Contract.

(b) Lewes Running Track

The Junction & Breakwater Railroad (J&B) built the rail line between Georgetown and Lewes, Delaware in 1868-69, including the "Lewes Beach Track" which today serves the SPI Pharma plant at the end of the line. The main line was extended to Rehoboth Beach in 1878.

The J&B was a "paper" railroad. The Philadelphia, Wilmington & Baltimore (PW&B) operated all trains on the J&B's rail lines. By 1930 PW&B's lines south of Armstrong, Delaware became part of the Pennsylvania Railroad Delmarva Division. As previously noted, PRR was consolidated into Penn Central in 1968.

The Lewes Line followed the same fate as that of the Milton Line. PC considered the section of track between Georgetown, Lewes, and Rehoboth Beach as the "Rehoboth Branch," and the section of track between the Lewes-Rehoboth Canal and the end of the line as the "Lewes Beach Track." PC abandoned the branch between Lewes and Rehoboth Beach in 1972 due to a dramatic decline in rail car traffic. The remaining portion of line had several industries that shipped and received such commodities as chemicals, pulpwood, farm machinery, foods, fertilizer, and wooden crates.

The Rail Reorganization Act of 1973 designated the Rehoboth Branch and the Lewes Beach Track as "potential excess" rail miles and suggested that the lines be abandoned. Additional rail traffic seemed possible when Sussex County developed an extensive industrial park two miles west of Georgetown on the Sussex County Airport property in 1974. The United States Department of Transportation considered the entire Rehoboth Branch and Lewes Beach Track to have a "low probability for financial viability" when reviewing which lines should become part of Conrail's rail system.

In order to include these lines in Conrail's rail system, the State began subsidizing track maintenance in 1975. The track was in poor condition; sometime in 1975, the Lewes Beach Track was embargoed and did not see a train for over a year. The Authority purchased the Lewes Beach Track in 1987 and contracted with DCLR to operate freight trains and maintain the right-of-way. The DCLR has held a series of operating agreements since then except for 1994-99 when MDDE operated the line as previously noted.

Until 2016, the SPI Pharma pharmaceutical plant at the end of the line received chemicals by rail, using the swing bridge over the Lewes-Rehoboth Canal. In September 2016, the bridge was discovered to need extensive repairs. Subsequently DelDOT determined not to make the substantial investment required, and the line has been deactivated east of Minos Conway Road/State Road 265 (Mile Post 34.31).

There are currently three active customers on the Lewes Running Track:

A pit-and-auger grain transloading facility adjacent to the DelDOT highway maintenance yard at Gravel Hill is used to transfer grain from railcars to trucks for delivery to local customers, primarily in the poultry industry. It is State property and could be used by any customer, but the current consignee is Mountaire Farms. A variety of grain products can be accommodated; most of the recent traffic has been Distillers Dry Grain.

Schagrin Gas and Willeys operate propane distribution facilities on the grounds of Sussex County Industrial Air Park.

Total revenue railcars for both lines 2011-2017:

Year	<u>Chemicals</u> SPI Pharma	<u>Grain</u> Townsend's Mountaire	<u>Propane</u> Schagrin	<u>Propane</u> Willeys	<u>Propane</u> Wilson Baker	<u>Special</u>	Total Revenue
2011							491
2012							564
2013							500
2014							519
2015							397
2016							408
2017							
							3332

(c) Passenger Excursion Train or Recreational Service

There is currently no passenger service on either of the State-owned lines. In the past there have been passenger excursions and operations of privately owned rail vehicles on the lines. Any operations other than freight and track maintenance must be approved on a case-by-case basis by DTC. DTC makes no warranty to approve or permit such operations.

(d) Programmed Maintenance

Since its acquisition of the rail lines, the State has invested heavily in track maintenance work on the State-owned rail lines. Maintenance funds are provided through DelDOT's Capital Transportation Plan for each State fiscal year and are subject to appropriation by the General Assembly. No warranty is made or implied for appropriation of any funds for track maintenance; but for information purposes, the budget in recent years has been approximately two hundred thousand fifty dollars (\$250,000.00) per year. The Operating Railroad will enter a separate agreement each fiscal year of the Department and Corporation which will list costs and projects to be handled by the Operating Railroad and/or its contractors. The Operating Railroad earns a management fee of five (5) percent of the total project work.

(e) Description of the State-owned Rail Lines

The active portion of the Lewes Running Track is approximately 9.96 miles long. The general width of the right-of-way is sixty-six (66) feet, centered on the track (i.e., thirty-three (33) feet on both sides), but the Operating Railroad should consult the valuation maps that DTC shall provide after the execution of this Contract to confirm the right-of-way at any particular point.

The Lewes Running Track currently has fifteen (15) public highway-rail grade crossings with active warning devices. Several of these will be deactivated when the track east of Road 265 is removed. The signal activation system is set for a maximum train operational speed of fifteen (15) mile-per-hour. The remaining highway-rail grade crossings have passive warning devices.

The active portion of the Milton Industrial Track is approximately 4.92 miles long, ending at State Route 30. The general width of the Milton Industrial Track's right-of-way is sixty-five (65) feet, centered on the track (i.e., thirty-two and one-half (32½) feet on both sides), but the Operating Railroad should consult the valuation maps that DTC shall provide after the execution of this Contract to confirm the right-of-way at any particular point..

The Milton Industrial Track has nine (9) public highway-rail grade crossings with passive warning devices.

2. OPERATING RAILROAD SPECIFICATIONS AND REQUIREMENTS

The Contract granted as a result of this Request for Proposals shall confer upon the Operating Railroad the right to operate freight train service and maintain the right-of-way of the State-owned rail lines, subject to the following provisions:

A. TERM AND REQUIREMENTS OF CONTRACT

The initial term of the Contract shall confer upon the Operating Railroad the right to operate and maintain the State-owned rail lines for five (5) years, beginning at 12:01 A.M. Local Time on January 1, 2019, with an option for one five (5) year extension. This Contract shall terminate, except in case of early termination under the terms of the Contract, at 11:59 P.M. Local Time on December 31, 2023, but the Contract may be extended another five (5) years upon mutual consent of DTC and the Operating Railroad, to 11:59 P.M. Local Time on December 31, 2028. DTC shall notify the Operating Railroad in writing of its determination to either extend or terminate this Contract.

If the Operating Railroad desires to extend this Contract, the Operating Railroad will contact DTC, in writing, no later than 2:00 P.M. Local Time on January 31 of the year in which the Contract is then scheduled to terminate, to request DTC extend this Contract.

Save any of the above listed dates, upon termination of this Contract, save early termination due to the scope of this Contract, DTC is required by State law to solicit a Request for Proposals to operate freight rail service and maintain the State-owned rail lines in Sussex County, Delaware. This solicitation shall be conducted as a public bid process. The Operating Railroad is hereby forewarned and is aware of this process.

B. CONDITION OF THE STATE-OWNED RAIL LINES

The Lewes Running Track currently conforms with the specification and requirements of FRA Track Class 1 under 49CFR Part 213. DTC requires the Operating Railroad and its contractors to inspect and maintain the Lewes Running Track to FRA Track Class 2 specifications and requirements (49CFR213). The Operating Railroad cannot operate trains at FRA Track Class 2 speeds, rather the Operating Railroad must maintain freight train speeds of ten (10) miles-per-hour.

The Lewes Running Track currently has fifteen (15) highway-rail grade crossings with active warning devices. The signal activation system is set to a maximum speed of fifteen (15) mile-per-hour for train operations. The Operating Railroad and its contractors will be responsible to inspect and maintain all active warning devices while the terms of this Contract are in effect in accordance with AREMA standards and 49CFR234 and 49CFR236 specifications.

The Milton Industrial Track currently conforms with the specification and requirements of FRA Track Class 1 under 49CFR Part 213, and is maintained to a minimum of FRA Track Class 1 under 49CFR Part 213.

The Operating Railroad shall keep the State-owned rail lines' right-of-way in good condition and free of excessive trash. The Operating Railroad shall be responsible for the removal of scrap metal (i.e., rail, plates, spikes, bolts, joint bars, switch stands, switch throw and operating rods, anchors, bond wire, lag bolts, derails, and switch point protectors, etc.) that have been removed from the State-owned rail lines' right-of-way prior to signing and during the term of this Contract.

The Operating Railroad cannot keep equipment, rolling stock or anything not directly connected with the daily operation of freight trains or maintenance-of-way services on the State-owned rail lines' right-of-way. Equipment, rolling stock or anything not directly connected with the daily operation of freight trains or maintenance-of-way services shall include any item used for "parts" for equipment, rolling stock or anything directly connected with the daily operation of freight trains or maintenance-of-way services on the State-owned rail lines' right-of-way.

If the Operating Railroad stores any barrels, drums, tanks, containers, etc., that hold any of the following, or combinations thereof, in liquid, gas or residue form on the State-owned rail lines' right-of-way:

- (1) Oil (motor, waste, or otherwise); or
- (2) Pesticides (powder, solid, liquid or otherwise); or
- (3) Fuel (diesel, unleaded or otherwise); or
- (4) Any chemicals that pose a threat to the environment, animals or humans; or
- (5) Water that contains any of the above or combinations of the above; or
- (6) Soil/sand that contains any of the above or combinations of the above;

they shall be stored in an environmentally-safe manner and shall conform with all applicable federal, State, and other regulations.

The Operating Railroad shall assume all liability for any and all spills, leaks, and/or contamination of the environment from any of the items listed above. The State, the Department, the Corporation, and DTC shall not be held liable for any and all spills, leaks, and/or contamination of the environment by the Operating Railroad.

The Operating Railroad shall be responsible for any and all corrective action required or as directed by the State, the Department, the Corporation, DTC and/or any government agency having jurisdiction over the Operating Railroad for any and all spills, leaks, and/or contamination of the environment. The Operating Railroad shall be responsible for any and all costs associated when performing any and all corrective action required or as directed by the State, the Department, the Corporation, DTC and/or any government agency. The Operating Railroad cannot pass the costs on to the State, the Department, the Corporation, DTC and/or any government agency having jurisdiction over the Operating Railroad.

Failure to comply with any provision of this section shall allow DTC to levy fines up to one thousand dollars (\$1,000.00) for each day of violation in addition to fines levied by other government agencies.

The Authority, through the Corporation, retains title and deed to the State-owned rail lines' right-of-way throughout the entire term of this Contract. At no time can the Operating Railroad attempt to sell, portion or file a quick claim deed to any part of the State-owned rail lines' right-of-way. At no time can the Operating Railroad attempt to sell, portion or file a quick claim deed to any part of the State-owned rail lines' right-of-way on behalf of a third party.

Failure to comply with any provision of this section shall allow DTC to terminate this Contract for default.

C. DERAILMENTS

The Operating Railroad shall be solely responsible for liability, materials and labor, and/or the release of hazardous materials in the event of a derailment, and the State, the Department, the Corporation, and DTC shall not assume any liability of any kind for derailments. The proposer should consider the purchase of insurance to cover this possibility. Wrecks or derailments shall be removed within fifteen (15) days of occurrence, and restoration of the derailment site to its original condition or better within thirty (30) days following the occurrence. Torch cutting track material shall be permitted to open the rail line for the period of one (1) day. After opening the line, the Operating Railroad or its subcontractors shall be responsible to remove any torch cut track material and replace the material with material that conforms with **Part C, Section T (h)** of this Contract.

The Operating Railroad and its contractors and their subcontractors shall be responsible to remove all material from the derailment site after the track has been restored to operating service.

D. OPERATING PRACTICE OF RAIL-BOUND VEHICLES AND CREWS

The Operating Railroad shall retain sole responsibility for the safety and control of all movements of rail-bound vehicles, which includes trains and maintenance-of-way vehicles.

The Operating Railroad shall be required to qualify its employees for physical characteristics and book of rules. DTC requires the Operating Railroad to comply with the entire sections of 49CFR200-399 as it applies to employee safety, training and qualifications. Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA.

E. RELATIONSHIP WITH DTC

DTC shall monitor the safety and reliability of freight train services operated by the Operating Railroad. DTC shall also monitor the safety and reliability of maintenance-of-way services by the Operating Railroad and its contractors. DTC shall have the right to enter upon and inspect any and all railroad equipment and facilities located on or adjacent to any track (State-owned or otherwise) east of the connection with Norfolk Southern in Georgetown, Delaware on the Lewes Running Track, and east of the connection with Norfolk Southern in Ellendale, Delaware on the Milton Industrial Track. DTC shall have the right to enter upon any part of any train or maintenance-of-way work site to conduct inspections. DTC may conduct these inspections at any time without prior notice to the Operating Railroad. These inspections can be conducted with or in addition to FRA inspections.

F. PAYMENTS TO THE CORPORATION

The Operating Railroad shall make an annual payment to the Corporation based on annual gross freight revenues:

<u>Gross Freight Revenue in One Year</u>	<u>Payment in Percentage of Revenue Generated</u>
\$0.00 - \$300,000.00	0% (no payment)
\$300,00.01 - \$500,000.00	5%
Over \$500,000.01	10%

Payment will be due to Delaware Transit Corporation not later than March 31 each year for the previous calendar year. The Operating Railroad may request to schedule payment on a fiscal year or other basis, which will be granted at DTC's discretion.

G. DESCRIPTION OF SERVICE

(1) Frequency of Service:

The Operating Railroad agrees to provide rail freight service on the State-owned rail lines as described throughout this Contract. However, nothing herein shall require the Operating Railroad to operate a scheduled train when no cars are picked up from shippers or Norfolk Southern and delivered to shippers or Norfolk Southern on the State-owned rail lines. The Operating Railroad should be aware that failure to provide reliable frequency of service will not allow the Operating Railroad to avoid car demurrage costs.

If DTC deems that either State-owned rail line has not been used for considerable time, DTC has the right to terminate this Contract.

(2) Train and Engine Crews:

The train and engine crew to be assigned to freight train and/or passenger train service on the State-owned rail lines shall consist of not less than two (2) persons who must physically be on the train while on duty. Both members shall be employed and insured by the Operating Railroad and funding the United States Railroad Retirement Board. Both members shall be qualified and experienced on train and locomotive operations and safety. Absolutely no volunteers, subcontractors, or others are permitted to be assigned to freight train and/or passenger train service on the State-owned rail lines. Both members shall have physically in their possession the current timetable, special instructions, applicable bulletin orders, and general orders of the Operating Railroad while on the State-owned rail lines when reporting for and while on duty.

The train crew must have in their possession all applicable waybills and/or train consist especially hazardous materials waybills, while on duty. The train crew must have the proper identification on their person while on duty, showing that they currently comply with all applicable federal laws.

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA.

(3) Track Inspector/Track Foreman

The track inspector/track foreman shall be in compliance with the most current revision of 49CFR213.7 qualifications and specifications. The track inspector/track foreman must have proper identification on their person while on duty showing that they currently comply with all applicable federal laws under the most current revision of 49CFR213. The track inspector/track foreman shall be employed and insured by the Operating Railroad and paying into the United States Railroad Retirement Board. The track inspector/track foreman shall be qualified and experienced on track inspection/rehabilitation and safety. Absolutely no volunteers, subcontractors, or others are permitted to be assigned as track inspector/track foreman on the State-owned rail lines.

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA.

(4) Carman/Chief Mechanical Officer

The carman/chief mechanical officer shall be in compliance with the most current revision of 49CFR215.11 and 49CFR229 in its entirety. The carman/chief mechanical officer must understand and be able to complete inspections of and repairs to rolling stock according to the most current revision of the Association of American Railroads Interchange Rules and 49CFR215. The carman/chief mechanical officer shall keep all necessary paperwork as required by the most current revision of 49CFR215 and shall be held accountable for the records and work completed. The Operating Railroad can contract this position to an outside source, but the Operating Railroad shall be responsible for the inspection and approval of work performed by the contractor and their subcontractor(s). The Operating Railroad shall also answer to the FRA for work and inspection reports completed by its contractor and their subcontractor(s).

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA.

(5) Quality of Service

The Operating Railroad expressly agrees that it shall provide adequate rail freight service including, but not limited to:

- (i) The transportation and placement of rail cars.
- (ii) The inspection of and light repairs and maintenance to track, roadbed, structures, and equipment; or items deemed required by the most current 49CFR and amendments by the Federal Register.
- (iii) Snow removal.
- (iv) Clearing of train derailments on the State-owned lines within a reasonable length of time.
- (v) Other items not required by the most current revision of the 49CFR and amendments by the Federal Register. Items included under this section are as follows: right-of-way signage, highway-rail grade crossing signage, keeping debris in the waterways clear of bridges, keeping highway-rail grade crossing lines-of-sight clear of obstruction and vegetation, etc.

(6) Embargoes:

The Operating Railroad shall immediately notify DTC in writing of any embargo imposed on traffic to, from or via any station or stations on the State-owned rail lines listed in **Exhibit IV** hereto. Such notification shall specify the effective date of the embargo and the reason for the embargo.

Failure to comply with any provision of this section shall allow DTC to levy fines up to one thousand dollars (\$1,000.00) for each day of violation.

(7) Adverse Weather Conditions:

The Operating Railroad shall immediately notify DTC by telephone twenty-four (24) hours in advance if the Operating Railroad deems it shall require the assistance of State, the Department, the Corporation, and DTC, and/or the federal government to operate trains on the State-owned rail lines due to storm damage. The Operating Railroad shall make initial contact with DTC once it has been determined that assistance shall be necessary. DTC shall then determine how assistance shall be obtained.

The Operating Railroad shall be responsible to visually inspect the State-owned rail lines by hi-rail vehicle(s) prior to operating any trains or calling DTC. If necessary, the Operating Railroad will take the storm damaged track out-of-service until assistance is provided.

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA. Refer to **Part C, Section T (d)** of this Contract and 49CFR213.239.

H. TIMETABLE, BOOK OF RULES

The Operating Railroad shall submit an employee timetable and book of rules for review by DTC before the first day of January each year this Contract is in effect. The employee timetable and book of rules shall be reissued when there are significant operational or physical characteristics changes. If there are no changes from the previous year, the Operating Railroad may so inform DTC. Failure to submit an updated employee timetable and/or book of rules shall allow DTC to bar the Operating Railroad from operating any rail-bound vehicle or train on the State-owned rail lines until said employee timetable and book of rules are received. The Operating Railroad shall be responsible to file their employee timetable and book of rules with the FRA and for the content and enforcement thereof.

I. COMPLIANCE WITH REGULATIONS

The Operating Railroad shall be required to certify that it shall comply with all applicable laws, statutes and regulations promulgated by federal, State and local agencies that govern railroad operations and services, the operating rules of the Operating Railroad, the Operating Railroad's current Operating Program, the terms and conditions of this Request for Proposal, environmental protection, and proper business practices.

J. SUSPENSION OF FREIGHT TRAIN SERVICE

DTC shall have the right to immediately suspend freight train services at any time that, in the opinion of DTC, the performance of the Operating Railroad does not comply with the regulations identified in this part, or the performance of the Operating Railroad is considered unsafe to its employees or the public.

K. REPORTING

The Operating Railroad shall be responsible for maintaining accurate reports of operations and freight cars carried. Copies of these reports shall be routinely provided to DTC within thirty (30) days after the reporting month. Financial reports shall be provided by the Operating Railroad to DTC quarterly each financial year if DTC requests. The Operating Railroad shall submit all forms and paperwork as required by the current 49CFR manual.

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA.

L. PASSENGER TRAIN OPERATIONS

Nothing herein shall restrict the Corporation's right to operate or cause the operation of common-carrier and/or commuter train services on the State-owned rail lines.

M. CONSTRUCTION, INSPECTION AND MAINTENANCE OF SIDINGS

Whenever an industry located along the State-owned rail lines requests the establishment of an industrial side track, or siding, to connect their plant with the State-owned rail line to allow freight service, the Operating Railroad shall notify DTC in writing.

The Operating Railroad will provide a cost estimate for construction. DTC shall determine if reallocation of current funding or a supplemental funding request is required. DTC shall determine the feasibility of constructing the siding and shall grant written approval prior to construction.

If funding is not available, the siding cannot be built unless the Operating Railroad takes it upon itself to build the siding at its own cost and expense. Refer to **Part C, Section O** below.

If DTC directs the Operating Railroad to construct the siding, or if construction is directed by order of the STB, DTC shall enter into an agreement for the portion of the siding in State property with the industry to be served. The agreement shall designate responsibilities for construction, inspection and maintenance of the siding. The Operating Railroad shall assume the responsibility for the quality and safety of the track construction between the State-owned rail line right-of-way and the industry's track.

The Corporation shall assume all costs associated with the construction and installation of the switch or turnout on the State-owned rail line and only the portion of the siding's track structure that is within the boundaries of the State-owned right-of-way. The industry shall assume all costs associated with the construction and installation of the track structure outside of the State-owned rail lines' right-of-way.

Ownership of the switch or turnout on the State-owned rail line and the portion of the siding's track structure within the boundaries of the State-owned right-of-way shall be retained by the Authority, through the Corporation. The Corporation shall be responsible for maintenance and improvements to the switch or turnout on the State-owned rail line and the portion of the siding's track structure within the boundaries of the State-owned right-of-way. The Operating Railroad shall perform maintenance and improvements to the switch or turnout on the State-owned rail line and the portion of the siding's track structure within the boundaries of the State-owned right-of-way through the annual Programmed Maintenance agreement.

Ownership of the siding's track structure outside of the State-owned rail lines' right-of-way shall be retained by the industry. The industry shall be responsible for maintenance and improvements to the siding's track structure outside of the State-owned rail lines' right-of-way. The Operating Railroad shall bear the responsibility of entering an annual agreement with the industry to designate responsibilities for construction, inspection and maintenance to the siding outside the State-owned rail lines' right-of-way. At no time can the Operating Railroad enter an agreement with the industry that extends beyond the term of this Contract.

The Sussex County Industrial Park Track at milepost 25.691 (approximately) on the Lewes Running Track is owned by Sussex County, not the State, the Department, the Corporation, and/or DTC. At no time can the Operating Railroad spend moneys from the annual Programmed Maintenance agreement provided through the Corporation for maintenance on the Sussex County Industrial Park Track. The Operating Railroad shall bear the responsibility of entering an annual agreement with Sussex County to designate responsibilities for construction, inspection and maintenance to the Sussex County Industrial Park Track. At no time can the Operating Railroad enter an agreement with Sussex County that extends beyond the term of this Contract.

Any agreements between the Operating Railroad and the industry for a siding shall be subject to the termination provisions as set forth in **Part B, Section 7** above.

N. CAPITAL EXPENDITURES

During the term of this Contract, it may become necessary for capital expenditures to be made by DTC in addition to maintenance rehabilitation and program maintenance expenditures. Such capital expenditure may include, but not limited to, equipment, vehicles, buildings and real property, and are to be purchased at the direction of and only with the prior written approval of DTC. DTC may purchase such capital items itself or may designate the Operating Railroad to act on DTC' agent in such purchase. All such capital purchases made under this section by DTC shall become property of DTC and shall remain with DTC upon the termination of this Contract.

This section does not preclude the Operating Railroad from making its own capital expenditures, as it deems necessary. All such capital purchases made by the Operating Railroad, except for improvements along the right-of-way, shall become property of the Operating Railroad and shall remain with the Operating Railroad upon termination of this Contract.

The Operating Railroad shall provide DTC an inventory report of all capital assets owned by the Operating Railroad at the time of termination of this Contract. The Operating Railroad shall provide DTC an updated inventory report of all capital assets owned by the Operating Railroad whenever additional capital assets are purchased or present the capital assets deleted.

Whenever the Operating Railroad deems it necessary to make improvements to the State-owned rail lines, the Operating Railroad shall notify DTC in writing stating the reason(s) for the improvement(s) and provide a cost estimate for the improvement(s). DTC shall give written approval prior to construction and determine if funding is available. If funding is not available, DTC may in its discretion grant the Operating Railroad permission to make said improvements at the Operating Railroad's own expense and cost. The Operating Railroad shall assume the responsibility for the quality and safety of the improvements on the State-owned rail lines.

All design work for said improvements shall be approved by DTC.

The Authority, through the Corporation shall retain ownership of the improvements and capital expenditures no matter what party made of the improvements and capital expenditures. The Corporation shall have the option to retain said improvements and capital expenditures or require the Operating Railroad to return the State-owned rail lines to its condition prior to the Operating Railroad's improvements at the Operating Railroad's sole expense and cost.

DTC reserves the right to withdraw from the Operating Railroad any or all Corporation-owned assets on a permanent or temporary basis. While in the possession of the Operating Railroad, all Corporation-owned assets shall be maintained in good repair at no cost to the Corporation.

O. HAZARDOUS MATERIAL ACCIDENT AND INCIDENT NOTIFICATION

The Operating Railroad shall be responsible for obtaining advice and assistance according to the nature of a hazardous material accident or incident. In the event of a release of hazardous materials, or damage to tank/container (including empty tanks/containers), the Operating Railroad shall notify local emergency management forces about conditions, and the amount and type of hazardous material released. If necessary, assistance according to the nature of a hazardous material accident or incident, the proper State and federal agencies shall be notified in addition to the local emergency management forces. DTC shall be notified only after all of the proper local, State, and federal forces have been contacted first.

The Operating Railroad must train its employees regarding hazardous material accident or incident procedures to ensure the safety of the employees, the public, and the environment.

The Operating Railroad must also file all necessary paperwork with the proper State and federal regulatory agencies that enforce hazardous material transportation and accident or incident procedures. The Operating Railroad must also file this same paperwork with DTC.

Failure to comply with any provision of this section shall allow DTC to terminate this Contract.

P. DETAILED HAZARDOUS MATERIAL INCIDENT REPORTS

The Operating Railroad shall be responsible to comply with the current 49CFR171.16, or as amended by the Federal Register, regarding the filing of hazardous material reports with the federal government.

Q. ENVIRONMENTAL COMPLIANCE

The Operating Railroad agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 USC 1857 (h)], Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency Regulations (40 CFR, Part 15) that prohibit the use under non-exempt Federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. The Operating Railroad shall immediately report violations to DTC and to the USEPA Assistant Administrator for Enforcement (EN0329).

The Operating Railroad shall also be held responsible for amendments in the present applicable laws governing environmental violations and for new laws passed by governing environmental violations since the signing of this Contract.

R. ASSISTANCE IN INVESTIGATIONS AND SPECIAL DUTIES

The Operating Railroad shall be responsible to comply with the current 49CFR171.21, or as amended by the Federal Register, regarding assistance in investigations and special studies by federal, State, and local agencies.

S. OTHER ACCIDENT AND INCIDENT NOTIFICATIONS

The Operating Railroad shall notify DTC immediately by telephone at:

(302) 576-6032

in the event of an accident or incident that is the direct result from train operations, maintenance-of-way operations, the transportation of train or track maintenance crews, or to persons not employed by the Operating Railroad on State-owned property in which the direct result is:

- (a) A person is killed.
- (b) A person receives injuries requiring his or her hospitalization.

- (c) Estimated Operating Railroad, State-owned property or other property damage exceeds fifteen thousand dollars (\$15,000.00).
- (d) An evacuation of the general public occurs lasting one or more hours.
- (e) One or more transportation arteries or facilities are closed for one hour or more.
- (f) The operational flight pattern or routine of aircraft is altered.
- (g) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the accident or incident) that, in the judgment of the Operating Railroad, it should be reported to DTC even though it does not meet the specific reporting criteria or paragraph S.

T. PROGRAMMED MAINTENANCE

(a) Definitions:

- (1) Programmed Maintenance is defined as the rehabilitation, upgrade, and FRA deficiency correction work required to keep the State-owned rail lines in the conditions necessary to continuously provide the level of rail freight service required under this Contract.
- (2) The annual Programmed Maintenance agreements are contingent on the Delaware General Assembly appropriating one-hundred percent (100%) of the necessary funds for the completion of said work. If the General Assembly shall fail to approve the funds necessary to complete the work under the annual Programmed Maintenance agreements, the Corporation shall have the right to cancel without recourse or modify the annual Programmed Maintenance agreements to reflect the amount of work that can be accomplished within the parameters of the annual Programmed Maintenance agreements.

The Operating Railroad shall receive payment for work completed and material ordered up until the date that the funds expire. Any work in progress or materials order shall terminate. The Operating Railroad shall bear all costs associated for work and materials ordered after the date the funds fail.

(b) Responsibility:

Unless notified in writing by DTC, the Operating Railroad shall be responsible for and shall have control over the inspection and maintenance of the State-owned rail lines. The Operating Railroad shall keep the State-owned rail lines at a satisfactory level to permit operation of rail freight and passenger train excursion services in compliance with the requirements of FRA Track Safety Standards (49CFR213) and AREMA standards.

The Operating Railroad shall assume responsibility for all materials and equipment used and work performed in completion of all work, including materials and equipment purchased ready-made and work performed by another source.

The Lewes Running Track shall be inspected and maintained to a minimum of FRA Class 2 track safety standards. Train operational speed shall be kept to the requirements under FRA Class 1 track safety standards. The Corporation has the discretion to reduce the level of inspection and maintenance of the Lewes Running Track by the Operating Railroad to FRA Class 1 track safety standards if freight traffic warrants. The Milton Industrial Track shall be inspected and maintained to a maximum of FRA Class 1 track safety standards. The Operating Railroad can place the Milton Industrial Track under FRA Excepted Track safety standards depending on rail freight traffic once receiving written permission by DTC. However, the Operating Railroad shall be expected to upgrade the Milton Industrial Track to a minimum of FRA Class 1 track safety standards if rail freight traffic warrants.

The Operating Railroad shall be responsible for a minimum of one (1) annual inspection of the Lewes Swing Bridge on the Lewes Running Track and Trestle Number 36 (Ingram Branch) on the Milton Industrial Track. These inspections shall include visual and structural integrity using qualified bridge inspectors either employed by the railroad or through a contractor. Records shall be maintained by the Operating Railroad for a minimum of three (3) calendar years after the date of inspection. Records shall be made available upon request by DTC.

The Operating Railroad shall be responsible for a minimum of one (1) annual inspection of all culverts, pipes, and other drainage devices on both the Lewes Running Track and the Milton Industrial Track. These inspections shall include visual and structural integrity using qualified inspectors either employed by the railroad or through a contractor. Records shall be maintained by the Operating Railroad for a minimum of three (3) calendar years after the date of inspection. Records shall be made available upon request by DTC.

The Operating Railroad shall be responsible for a minimum of one (1) monthly inspection and testing of all active highway-rail crossing signal devices and systems on the Lewes Running Track following the requirements by the FRA under 49CFR234. Records shall be maintained by the Operating Railroad for a minimum of one (1) calendar year after the date of inspection. Records shall be made available upon request by DTC.

DTC shall be responsible to contact the FRA under 49CFR213.5, Part C to designate the Operating Railroad as the party responsible for track maintenance of the State-owned rail lines once this Contract is executed.

Failure to comply with any provision of this section shall allow DTC to levy fines up to one thousand dollars (\$1,000.00) for each day of violation in addition to fines levied by the FRA.

(c) DTC Inspection of Programmed Maintenance Work:

Work performed by the Operating Railroad shall be inspected by DTC after notice of completion by the Operating Railroad. DTC's inspection will either accept as complete or reject with specification(s) of the reason(s) for rejection in writing and serve to the Operating Railroad within fifteen (15) days after said inspection. The Operating Railroad has thirty (30) days to take corrective action if DTC rejects any part or whole of the Operating Railroad's completed work. The Operating Railroad will then notify DTC of the completion of the corrective action. DTC, in turn will inspect and either accept or reject the corrective action completed and serve the Operating Railroad with written notice of its decision.

Failure to complete corrective action of any and all deficiencies shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA. If the Operating Railroad fails to take corrective action within thirty (30) days after receiving the first written notification by DTC of the deficiencies, DTC shall have the right to terminate this Contract for default.

The Operating Railroad shall receive compensation for only two (2) annual inspections with DTC's project manager during and at completion of the work identified under the Programmed Maintenance agreement. DTC may conduct other inspections during the work under the Programmed Maintenance agreement, including inspection of corrective action, but the Operating Railroad will not receive compensation for said additional inspections.

(d) Operating Railroad Safety Inspections

The Operating Railroad shall conduct inspections of the State-owned rail lines and their facilities as required by the FRA Track Safety Standards, 49CFR213. All inspection records shall be filed and completed in accordance with 49CFR213.241, Subpart F. Records shall be maintained, as required, by the Operating Railroad. Records shall be made available upon request by DTC.

(e) Approval of Programmed Maintenance Budget/Projects:

The Operating Railroad shall provide unit costs associated with the up-coming fiscal year's work projects to DTC' project manager in writing no later than the first day of September each year.

The written program shall list all planned projects including, but not limited to, tie replacement, correcting line and surface defects, joint bar replacement, bolt tightening, correcting gauge, vegetation control, brush removal, bridge and culvert work, highway-rail grade crossing work, and ditch clearing. The written program shall also detail the quantities and the estimated costs associated with the planned work. Also, the location of each work project will be listed by milepost. The entire program must be approved by DTC prior to entering a formal Programmed Maintenance agreement.

(f) Subcontracting Programmed Maintenance Work

Contractors and their subcontractors of any work performed pursuant to the Programmed Maintenance agreement shall be managed by the Operating Railroad; however, work performed by contractors and their subcontractors is conditioned upon the approval by DTC of the contractors and subcontractors involved.

The Corporation's payment for any portion of the cost of work performed by the Operating Railroad's contractors and subcontractors will be paid directly to the Operating Railroad and not to the contractors and their subcontractors. It shall be the Operating Railroad's responsibility to manage the payment of the cost of work performed by the contractors and subcontractors. All disputes regarding payments between the Operating Railroad and its contractors and their subcontractors shall be handled between Operating Railroad and its contractors and their subcontractors. The State, the Department, the Corporation, and DTC shall not be involved with payment disputes between both parties.

The Operating Railroad shall be responsible for the inspection and approval of all work performed by contractors and their subcontractors and shall make written records of such inspections. The inspection records shall be made available to DTC upon request. The Operating Railroad's inspection will either accept as complete or reject with specification(s) of the reason(s) for rejection in writing and serve to the contractor and subcontractor after said inspection. The contractor and subcontractor must take corrective action if Operating Railroad's rejects any part or whole of the contractor and subcontractor completed work. The Operating Railroad must have this work completed prior to DTC's inspection of Programmed Maintenance work completed under **Part B, Section T (b)** above.

(g) Price Complete

The price of the Programmed Maintenance agreement shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete all work pursuant of the Programmed Maintenance agreement. Any items or tasks omitted from the Programmed Maintenance agreement that are clearly necessary for the completion of all work shall be considered a portion of this project, although not directly specified or called for in the Programmed Maintenance agreement.

(h) Track Standards and Specifications

All work and materials shall comply with the most current revision of the FRA's Track Safety Standards, 49CFR213 in its entirety.

All work and materials shall also comply with the most current revision of the AREMA publications: the Manual for Railway Engineering and the Portfolio of Trackwork Plans.

All maintenance-of-way personnel, be they railroad employees, contractors or subcontractors, shall comply with the most current FRA Railroad Workplace Safety Standards, as described in 49CFR214 in its entirety.

DTC reserves the exclusive right to determine which standards and regulations contained in the AREMA, 49CFR213 and/or other sources shall be applied to the specific activities conducted under the Programmed Maintenance agreement; to the inspection of completed products; or to the procurement of materials. DTC shall provide specific instructions during the project as needed regarding the application of the above standards and regulations.

The following material specifications, at a minimum, are required for track rehabilitation and vegetation control:

ITEM	CONDITION	SPECIFICATION
Crossties	New	AREMA Grade 6
Switch Timber	New	AREMA Grade 7
Spikes	New	AREMA 6" Size
Tie Plates	Used	AREMA
Anchors	New	AREMA
Rail	Used	Secondhand Relay
Joint Bars	New or Used	AREMA
Compromise Bars	New or Used	AREMA
Bolts and Washers	New	AREMA
Ballast, rail yard	New	AREMA #5
Ballast, mainline	New	AREMA #4 or 4 Trap Rock
Vegetation Control	non-applicable	EPA registered & approved

Brush Cutting	non-applicable	FRA & State requirements
Highway-Rail Crossing Work	non-applicable	AREMA
Signal Maintenance	non-applicable	FRA
Inspections	non-applicable	FRA
Sign, Safety and Miscellaneous	non-applicable	AREMA, FRA & State

The Operating Railroad is obligated to confer with DTC to resolve any questions regarding the application of the above standards and regulations. All equipment used shall be in compliance with all federal, State, and local regulations. All equipment shall meet or exceed the requirements of the Occupational Safety and Health Act (OSHA) standards and regulations.

Descriptions:

I. CROSSTIES

All crossties shall be placed with the heartwood face down, square with the line of the rail and centered with the track. Replaced ties shall be brought up tight against the base of the rail and tamped with an appropriate device. Ties shall be handled with tie tongs or an appropriate mechanical device. The use of a pick and/or a hammer is prohibited.

All replacement ties shall be spiked to the standard gage of fifty-six and one-half (56½) inch, from negative zero (-0) inches to positive one-half (+½) an inch. In areas where ties are spotted in, blending of the existing ties shall be required.

Crossties shall be installed square to the rail in tangent track and radially in curves with an allowable skew of not more than one-half (½) an inch. Ties shall be installed with the line side of the north rail on tangent track. In curves, the high (outside) rail shall be the line side. The ends of the tie shall be placed with eighteen and one-half (18½) inches from the end of the crosstie to the rail base.

Crossties shall be installed at approximately twenty-four (24) inch center-to-center spacing. When installing interspersed with existing crossties, tie spacing shall be averaged.

II. SWITCH TIMBER

Switch timber shall be installed in accordance with the above requirements, except for center-to-center spacing. Switch timber shall be spaced according to the work description in the annual Programmed Maintenance agreements.

All switch timber shall be placed with the heartwood face down, square with the line of the rail and centered with the track. Replaced ties shall be brought up tight against the base of the rail and tamped with an appropriate device. Switch timber shall be handled with tie tongs or an appropriate mechanical device. The use of a pick and/or a hammer is prohibited.

All replacement switch timber shall be spiked to the standard gage of fifty-six and one-half (56½) inch, from negative zero (-0) inches to positive one-half (+½) an inch. In areas where switch timber are spotting in, blending of the existing switch timber shall be required.

III. SPIKES

Where spikes are withdrawn, the holes in the tie must be plugged with a creosoted tie plug. Spikes shall be driven vertically against the rail and care should be taken not to overdrive against the rail base.

IV. TIE PLATES

Tie plates shall be centered on the tie under the rail with the base of the rail bearing firmly against the plate. Under no circumstances shall the shoulder of the plate be under the base of the rail.

V. ANCHORS

Rail anchors distributed as a result of the work shall be reinstalled as per existing anchor patterns. New rail anchors shall be installed to AREMA standards and specifications.

VI. RAIL

Relay rail shall be used, when possible. The Operating Railroad must install rail of the proper design and dimensions as other existing rail in a section of track. If this is not possible, new or relay compromise joint bars shall be installed to join two (2) rails of different design and dimensions [refer to **Part C, Section T, Subsection 2, Subpart b (VIII)** below]. New and relay rail shall be inspected by the Operating Railroad to determine that each rail is free of defects.

No rail shall have its ends or bolt holes torch cut except in the case of a derailment. All torch cut rail shall be removed.

All rail installed by the Operating Railroad and its contractors shall have the same wear pattern as the rail in which it is installed and replaces. The Operating Railroad and its contractors shall be required to correct rail wear mismatch in any and all rail joints if the wear patterns cannot match.

Standard sections of rail generally date to the PRR-era rail sections. Generally, both State-owned rail lines may use 85 PRR, 85 PS, 100 PRR, 100 PS, 115 RE, and 130 PS. There are sidings with different sized rail and some sections of track have different sized rail. The Operating Railroad should inspect and measure the rail they are to replace to ensure that either the correction section is installed or that the proper compromise joint bars are purchased.

VII. JOINT BARS

During joint bar replacement, new or relay joint bars shall be installed if existing joint bars do not meet the required standards or proper dimensions. The Operating Railroad must install new and relay joint bars of the proper design and dimensions for the rails in which they are to be installed upon. The new and relay joint bars shall be inspected by the Operating Railroad to determine that each bar is free of defects.

Joint bars that are bent or cracked or broken through or in between the centermost bolt holes shall be replaced.

No joint bars shall have its ends or bolt holes torch cut except in the case of a derailment. All torch cut joint bars shall be removed.

VIII. COMPROMISE JOINT BARS

During rail replacement, new or relay compromise joint bars shall be installed if existing compromise joint bars do not meet the required standards or proper dimensions or compromise joint bars are required where a compromise joint does not currently exist to join two (2) rails of different design and dimensions.

The Operating Railroad must install new and relay compromise joint bars of the proper design and dimensions for the rails in which they are to be installed upon. The Operating Railroad will be required to install the "left" and "right" compromise joint bar sets at the proper locations. The new and relay compromise joint bars shall be inspected by the Operating Railroad to determine that each bar is free of defects.

Additional compromise joint bars beyond the estimated quantity shall not be replaced, unless the existing compromise bars meet FRA defect specifications, until written approval by DTC is given because of the cost involved acquiring and install said joint bars.

Joint bars that are bent or cracked or broken through or in between the centermost bolt holes shall be replaced.

No compromise joint bars shall have its ends or bolt holes torch cut except in the case of a derailment. All torch cut compromise joint bars shall be removed.

IX. BOLTS & WASHERS

The Operating Railroad shall tighten all bolts in the joint bars and replace all damaged, missing or defective bolts, nuts and washers as required. There shall be a minimum of two (2) bolts in each rail end. Therefore a four (4) hole joint bar shall have all four (4) bolts, nuts, and washers in place. A five (5) hole joint bar shall have (4) bolts, nuts, and washers in place. A six (6) hole joint bar shall have a minimum of four (4) bolts, nuts, and washers in place. One (1) bolt in each rail end shall have the nut facing the field side and the other bolt in each rail end shall have the nut facing the gage side.

Bolts shall be tightened to approximately five hundred (500) pounds of pressure.

All bolts, nuts and washers shall be free of defects and conform with current and revised AREMA standards and specifications.

X. BALLAST

Ballast approved for rail yards and industrial track shall be of the three quarter ($\frac{3}{4}$) size, to provide improved walkway and safety conditions along the track. The approved mainline ballast shall be a minimum of one (1) inch in size.

Ballast Distribution shall consist of the addition of new trap rock ballast stone to the track structure prior to surfacing and regulation. Approximately seven hundred and fifty (750) tons of ballast shall be added for each mile of track.

All cribs are to be filled with ballast and ties tamped to the base of the rail. Down ties and switch timber are to be plugged, re-spiked, and tamped up tightly to the base of the rail; no tie plate shoulder shall be under the base of the rail; and all loose anchors must be reattached; [refer to Part C, Section T, Subsection 2, Subpart b (I through V) above].

The work area must be properly dressed after completion of surfacing. Out-of-face surfacing and regulating work shall be accomplished by a production machine capable of simultaneously lifting both rails, leveling and lining, and mechanically tamping the ballast. A minimum of one and one-half (1½) inches general rise shall be accomplished with all tamping activities.

Appropriate surfacing runoffs (ramps) shall be performed at the end of each length of newly raised track. All tamped and surfaced track shall be regulated with a production machine capable of establishing a cross-section profile of a six (6) inch ballast shoulder with a two-to-one (2:1) side slope. All track shall be fully "broomed" after completion of tamping and regulating leaving no stone on the top of the crossties or on the base of the rail.

Surfacing work shall include correction of the alignment deviations. During all surface work, production machines shall be set-up to work off the line of the rail. The line rail shall be the north rail on tangent track and the high (outside) rail on curves. Crosslevel and superelevation shall not deviate from designated zero (0) level by more than plus one-quarter (+¼) inch to negative one-quarter (-¼) inch from a sixty-two (62) foot cord.

XI. VEGETATION CONTROL

The entire length of the Lewes Running Track and the Milton Industrial Track shall be treated with pre-emergent (Spring) and post-emergent (Fall) herbicide control chemicals. Vegetation at all highway-rail grade crossings shall be treated to improve visibility. In addition, all brush and trees shall be treated to stop growth along the rights-of-way. The herbicide chemicals shall be applied by a fully licensed and certified company specializing in herbicide control chemicals. The herbicide control chemicals shall conform to the specifications found in the AREMA Manual for Railway Engineering, Volume I, Chapter 1, Part 9, most current revision.

XII. BRUSH CUTTING

The Operating Railroad shall keep brush from becoming a fire hazard to bridges; obstructing the visibility of switchstand flags, milepost markers, whistle posts, etc.; interfering with railroad employee duties; and preventing the proper function of highway-rail grade crossing signal systems.

Also, the Operating Railroad shall be responsible to remove all hedges, shrubs, and/or trees, within the State-owned rail lines' right-of-way within seventy-five (75) feet of a private or public highway-rail grade crossing.

XIII. HIGHWAY-RAIL GRADE CROSSING WORK

Primary, secondary, and private highway-rail grade crossings shall have the entire track structure rebuilt with new crossties, replacement rail (if necessary), and paved with asphalt. At a minimum, the Operating Railroad shall install eight (8) foot long guardtimbers in the gage of the track, keeping flangeways clear of obstructions. DTC does permit the use of EPFLEX®-type railseal interfaces in place of guardtimbers.

XIV. SIGNAL MAINTENANCE

All active warning devices at public highway-rail grade crossings shall be inspected and maintained according to the most current revision 49CFR234. The Corporation shall reimburse the Operating Railroad for the additional annual costs associated with the maintenance of the signal systems. These costs shall include monthly electrical usage and monthly inspection costs.

XV. INSPECTIONS

The Operating Railroad shall be responsible to visually inspect the State-owned rail lines by hi-rail vehicle(s) prior to operating any trains in accordance with the most current revision of 49CFR213.233 and train frequency.

The Corporation shall reimburse the Operating Railroad for a maximum of one (1) inspection per week based on train frequency. The Operating Railroad shall not falsify records of track inspections.

Failure to comply with any provision of this section shall allow DTC to levy fines up to five hundred dollars (\$500.00) for each day of violation in addition to fines levied by the FRA. Refer to **Part C, Section T (d)** of this Contract and 49CFR213.239.

XVI. SIGNAGE, SAFETY AND MISCELLANEOUS

This money shall be assigned by the Operating Railroad to other Program Maintenance items on the State-owned rail lines not specifically mentioned in the Program Maintenance Agreement at locations determined by the Operating Railroad. The Operating Railroad must provide documentation for spending this money on items not specifically mentioned in the Program Maintenance Agreement to support spending money out of this account. DTC written approval may be required for certain work projects.

(i) Invoicing and Payment

The Operating Railroad shall submit a monthly invoice Statement for work completed in accordance with the approved Programmed Maintenance agreement projects. Invoices shall contain documentary support for billings. The price of each line item of the Statement shall be the approved unit cost multiplied by the production unit (e.g., mile, number of ties, tons, etc.). Summary of monthly year-to-date costs incurred by the Corporation shall be provided by the Operating Railroad not later than thirty (30) days after the end of the previous month. Invoices shall be mailed to the Rail Service Project Representative in **Part A, Section 9** of this Contract.

Payment for work and materials shall be based on net thirty (30) day terms from the date of invoice and shall be promptly paid upon verification and approval by DTC.

Any moneys remaining after each project listed in the approved Programmed Maintenance agreement is completed by the Operating Railroad shall not be spent until receiving written approval by DTC. The Operating Railroad shall contact DTC in writing explaining the amount of remaining money and suggested maintenance-of-way projects. These projects may or may not apply to the scope of work in listed in the approved Programmed Maintenance agreement. DTC may or may not agree to all of the extra projects listed by the Operating Railroad. The Operating Railroad can proceed on the extra projects after receiving written permission by DTC.

U. TRACK MATERIAL

(a) Track Retirement:

The Operating Railroad shall not retire or remove any track, including industry track, side track or yard track, without first obtaining the written approval of DTC.

(b) Relocation of Track Material:

The Operating Railroad shall not move any track material stored for Programmed Maintenance to any location other than the State-owned rail lines' rights-of-way without first obtaining the written approval of DTC.

(c) Track Opening:

The Operating Railroad shall not open or reactivate any track, including industry track, side track or yard track, without first obtaining the written approval of DTC.

V. RATES AND ROUTES

The Operating Railroad shall publish and/or adopt rates and routes, establish divisions of revenue with connecting carriers, modify existing rates, routes and/or divisions of revenue, and/or enter into agreements with consignors or consignees pursuant to Section 208 of the Staggers Rail Act of 1980 which shall provide the maximum gross revenue to the railroad lines consistent with the existing rail and non-rail competition. It is the responsibility of the Operating Railroad to obtain the necessary approvals for all rates, routes, and/or divisions of revenue, and/or enter into agreements from the appropriate government agencies having jurisdiction over these matters.

W. ACCOUNTING REPORTS

(a) Record Keeping:

The Operating Railroad has the option to keep accounting records in accordance with the standards contained in 49CFR1200.1, Subchapter C, Part 1201, or in any other manner acceptable to DTC.

(b) Report Schedule:

A monthly report of the revenues from and the costs of providing rail freight service shall be issued to DTC within thirty (30) days following the end of each month. An annual report of the revenues from and the costs of providing rail freight service shall be issued to DTC within ninety (90) days following the end of each operating year. Both reports shall include a summary of cars shipped on the State-owned rail lines.

(c) Audit and Inspection:

Upon reasonable notice, the Operating Railroad shall allow the auditors of the State, the Department, the Corporation, DTC and/or any government agency having jurisdiction over the Operating Railroad, to audit all records of the Operating Railroad.

In the event that the Operating Railroad incurs a net operating loss in any one of the years during the term of this Contract, DTC shall have the right to audit records of all companies owned or substantially controlled by the principals of the Operating Railroad, including its successors and assigns. Such rights of DTC shall extend through the remainder of the term of this Contract after such annual loss was incurred. All such records shall be kept for a period of four (4) years after the issuance of the annual report for the related year or for any longer period necessary to resolve audit findings.

X. NOTIFICATION OF LEASES AND LOANS

The Operating Railroad shall provide DTC copies of all existing agreements for the purchase or lease of locomotives, revenue and non-revenue rolling stock, highway vehicles, track maintenance equipment, real property and/or improvements to real property for use on the State-owned rail lines in effect at the time of this Contract. The Operating Railroad shall provide DTC copies of any such agreements concluded during the term of this Contract within sixty (60) days of the signing of such agreements.

Y. THIRD PARTY AGREEMENTS PROHIBITED UNLESS APPROVED BY DTC

The Operating Railroad, and any connected companies, shall not enter into agreements with other parties without the written approval by DTC. Absolutely no two-party agreements shall be made between the Operating Railroad and another party regarding freight train operations, trackage rights, maintenance-of-way, State-owned rail lines' right-of-way, or anything connected with this Contract. Any future agreements must be made with DTC's written approval or such agreements shall be considered null and void.

Z. LEWES SWING BRIDGE

The Operating Railroad shall be responsible for keeping the navigation lights in good working order. DTC requires the navigation lights be illuminated twenty-four (24) hours per day, three hundred and sixty-five (365) days per year. The Operating Railroad shall immediately replace or repair any navigation light that burns out or stops functioning immediately. The Operating Railroad shall contact the United States Coast Guard if any light is found not functioning.

Failure to comply with any provision of this section shall allow DTC to levy fines up to one thousand dollars (\$1,000.00) for each day of violation in addition to fines levied by other government agencies.

AA. STATE LEVIED FINES

Any violations of this Contract that any DTC official, employee or agent discovers while physically inspecting the Operating Railroad, reviewing records, discussing operations with other railroads or individuals, or by discovery through litigation, shall allow DTC to levy fines against the Operating Railroad.

The Operating Railroad shall be fined by DTC for violations of the most current 49CFR200-399 that any DTC official, employee or agent discovers while inspecting any aspect of the Operating Railroad. DTC shall levy fines in the same scope and monetary value as those found in the most current revision of the 49CFR200-399.

BB. FACILITIES WITHIN STATE RIGHT-OF-WAY

Facilities such as utility lines will need to be maintained or constructed within the State right-of-way. Permission for these will be given and design approved by DelDOT's Railroad Engineer, who will coordinate with the Operating Railroad.

CC. WORK WITHIN STATE-OWN RIGHT-OF-WAY

All work to be performed within the right-of-way, including but not limited to surveying, engineering, and construction must be approved by DTC prior to performing said work. The Operating Railroad shall be required to enforce this section against any and all individuals, communities, municipalities, and companies and their contractors or subcontractors performing work along or in the State-owned rights-of-way.

All individuals, communities, municipalities, and companies and their contractors or subcontractors shall be required to obtain Railroad Protective Liability Insurance naming the Operating Railroad as "insured." The State, the Department, the Corporation, and DTC shall not be named as "insured" on the Railroad Protective Liability Insurance policy.

The Operating Railroad will schedule the work with all individuals, communities, municipalities, and companies and their contractors or subcontractors along or in the State-owned rights-of-way. The Operating Railroad can be held liable for failure to enforce this policy.

The Operating Railroad shall be responsible for any and all safety training for all individuals, communities, municipalities, and companies and their contractors or subcontractors along or in the State-owned rights-of-way. The Operating Railroad can be held liable for failure to enforce this policy.

The Operating Railroad shall be responsible to oversee the work performed by all individuals, communities, municipalities, and companies and their contractors or subcontractors along or in the State-owned rights-of-way. The Operating Railroad should concern itself with protecting the operation and physical condition of the State-owned rail lines' rights-of-way and its connected facilities as a priority. The Operating Railroad can be held liable for failure to enforce this policy.

All underground utilities will be installed by all individuals, communities, municipalities, and companies and their contractors or subcontractors by a jack-and-bore method. The track structure will not be removed to install any utility except under very limited circumstances and after receiving written approval by DTC.

All aerial utilities will be installed by all individuals, communities, municipalities, and companies and their contractors or subcontractors at a minimum height of twenty-two (22) feet above the top of the rail head.

All individuals, communities, municipalities, and companies and their contractors or subcontractors shall be considered fouling and unsafe for train operations on the State-owned rail lines if they are within twelve (12) feet from the edge of any crosstie.

DD. ENCROACHMENTS

The Operating Railroad shall be required to police all encroachments by individuals, communities, municipalities, and companies and their contractors or subcontractors on to and in the State-owned rail lines' rights-of-way. All encroachments shall be considered unsanctioned by DTC. The Operating Railroad shall contact DTC immediately upon discovery of an encroachment by the Operating Railroad. The Operating Railroad, with the assistance of DTC, shall contact the individual, community, municipality, and/or company and their contractors or subcontractors to either move or remove the encroachment. If the encroachment remains in the State-owned rail lines' right-of-way under permission by DTC, the individual, community, municipality, and/or company and their contractors or subcontractors shall be required to enter an easement for the encroachment. If the encroachment remains in the State-owned rail lines' right-of-way without the permission by DTC, DTC, through the Operating Railroad, shall physically remove the individual's, community's, municipality's, and/or company's and their contractors' or subcontractors' encroachment and DTC and the Operating Railroad shall be compensated for any and all costs for removal by the individual, community, municipality, and/or company and their contractors or subcontractors. The Operating Railroad shall be required to enforce this section against any and all individuals, communities, municipalities, and companies and their contractors or subcontractors encroaching on to and in the State-owned rail lines' rights-of-way.

Also, the Operating Railroad shall be responsible for all hedges, shrubs, trees, and/or solid fences planted or maintained by individuals, communities, municipalities, and companies and their contractors or subcontractors within the State-owned rail lines' right-of-way within seventy-five (75) feet of a private or public highway-rail grade crossing. All hedges, shrubs, trees, and/or solid fences planted or maintained by individuals, communities, municipalities, and companies and their contractors or subcontractors within the State-owned rail lines' right-of-way shall be removed by the individual, community, municipality, and company and their contractors or subcontractors as ordered by the Operating Railroad.

Failure to comply with any provision of this section shall allow DTC to levy fines up to one thousand dollars (\$1,000.00) for each day of violation.

EE. APPLICABLE STATE LAWS TO RAILROADS

The Operating Railroad shall obtain copies, understand and comply with all applicable States laws that apply to railroad companies in the Delaware Code. The Operating Railroad shall be held responsible for amendments in the present applicable Delaware Code and for laws passed by the State since signing this Contract.

FF. INTERCHANGE AGREEMENTS

The Operating Railroad shall be required to enter interchange agreements with the Norfolk Southern Railway (or any successor railroad) for use of the interchange sites in Ellendale, Delaware and Georgetown, Delaware. Included in these agreements will be permission for trackage rights over Norfolk Southern Railway's Indian River Secondary between in Ellendale, Delaware and Georgetown, Delaware for light engine movements only.

The Operating Railroad shall be required to have said interchange agreements in place prior to the first day of operations.

EXHIBIT A
Index of Forms and Contract Documents

Forms Required at Proposal Submission

Note: Please be sure to submit all forms required. Any forms from Exhibit A not submitted and signed and/or notarized with proposal will prove proposal non-responsive.

1. Certification of Eligibility
2. Certification of Non-Collusion
3. Certification of Bidders Qualifications
4. Acknowledgment of Addenda (if applicable)
5. No Bid Form (if applicable)

Forms for Contract Submission - (Submitted by winning proposer only)

1. Proposal for Contract
2. Proof of Insurance
3. Delaware Business License

CERTIFICATION OF ELIGIBILITY

_____ hereby certifies that it is not included on the United States Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standard Provisions.

Signed: _____

Title: _____

Date: _____

Sworn and subscribed before me this _____ day of _____, 2018.
My commission expires _____.

Notary Public

CERTIFICATE OF NON-COLLUSION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting to such prices, with any other bidder or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Company Name

Authorized Signature

Date

Sworn and subscribed before me this _____ day of _____, 2018.
My commission expires _____.

Notary Public

CERTIFICATION OF BIDDER'S QUALIFICATIONS

All questions must be answered. The data given must be clear and comprehensive. This statement

must be notarized. A copy of the bidder's Delaware Business Certificate issued by the Secretary of State (if a corporation) and a copy of the bidder's Business License from the Delaware Division of Revenue must be furnished with this certification form.

- 1) Name of Bidder: _____
- 2) Bidder's Federal Employer ID NO: _____
- 3) Business Address: _____
- 4) Date Organized: _____
- 5) State of Incorporation: _____
- 6) Number of years engaged in this business under your present firm name: _____
- 7) Have you ever refused to sign a contract at your original bid amount? _____
- 8) Have you ever defaulted on a contract? _____
- 9) Remarks related to questions 7 and/or 8: _____
- 10) Will you, upon request, furnish any other pertinent information that DTC may require: _____

The undersigned hereby authorizes and requests any person to furnish any information requested by DTC in verification of the recitals comprising this Statement of Bidder's Qualifications.

Signed: _____

Title: _____

Date: _____

Sworn and subscribed before me this _____ day of _____, 2018.
My commission expires _____.

Notary Public

ACKNOWLEDGMENT OF ADDENDA

The following form shall be completed and included in the bid (if applicable).

Failure to acknowledge receipt of all addenda will cause your bid/proposal to be considered non-responsive and it will be rejected.

The undersigned acknowledges receipt of the following addenda to the documents:

Addendum Number _____, Dated _____

Addendum Number _____, Dated _____

Addendum Number _____, Dated _____

Addendum Number _____, Dated _____

Signature of Authorized Signer

Print Name of Authorized Signer

Title

Phone

**Delaware Transit Corporation
NO PROPOSAL/BID FORM**

Dear Prospective Proposer/Bidder:

If you determine not to submit a proposal in response to this solicitation, we would very much appreciate you completing and returning this form for our files.

Proposal/Bid: RFP #18-002

Proposal/Bid Title: License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in Sussex County Delaware

Proposer/Bidder Company Name: _____

Address: _____

Telephone Number: _____

Contact Person: _____

Reason for not submitting a proposal/bid in response to this solicitation:

Thank you for your assistance.

Delaware Transit Corporation
119 Lower Beech Street
Wilmington, DE 19805
ATTN: Mary Wahl
Mary.wahl@state.de.us

FORMS FOR CONTRACT SUBMISSION

(Successful Proposer Only)

CONTRACT #18-002
License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in
Sussex County Delaware

THIS CONTRACT made and entered in duplicate, this _____ day of _____ 2018.

BY AND BETWEEN "Delaware Transit Corporation" (hereinafter designated as "DTC") and _____ (hereinafter designated as "(insert vendor's name)").

WITNESSETH that (insert vendor's name) in consideration of the covenants and agreements herein contained and made by DTC, agrees with DTC as follows:

ARTICLE ONE: (insert vendor's name) shall and will provide and furnish all the material, machinery, implements, appliances, and tools and perform the work and labor required to complete the contract requirements as set forth in the Request for Proposal #18-002 and any addenda prepared by DTC, as well as (insert vendor's name)'s proposal and specifications, which all become hereby a part of this Contract #18-002.

The initial term of the Contract shall confer upon the Operating Railroad the right to operate and maintain the State-owned rail lines for five (5) years, beginning at 12:01 A.M. Local Time on January 1, 2019, with an option for one five (5) year extension,. This Contract shall terminate, except in case of early termination under the terms of the Contract, at 11:59 P.M. Local Time on December 31, 2023, but the Contract may be extended another five (5) years upon written mutual consent of DTC and the Operating Railroad, to 11:59 P.M. Local Time on December 31, 2028. DTC shall notify the Operating Railroad in writing of its determination to either extend or terminate this Contract.

The services provided by this Contract will be paid on a reimbursement basis; DTC will not provide Advanced payment for any services. DTC's accounts payables address is 900 Public Safety Blvd, Dover, DE 19901.

ARTICLE TWO: DTC shall appoint a Project Representative who shall provide project oversight and shall be the point of contact for (insert vendor's name) for this Contract. The services performed by (insert vendor name) under this Contract shall be subject to review for compliance with the terms of this Contract by DTC's Project Representative.

All work to be performed under this Contract shall be done under the direction of DTC's Project Representative. The Project Representative has the authority to decide as to the true construction and meaning of (insert vendor's name)'s proposal and specification on behalf of DTC and whose decision shall be final.

Should the Project Representative determine that additional specifications are necessary to illustrate any work to be completed under this Contract, the parties agree to conform to and abide by the additional specifications as long as they are consistent with the purpose and intent of the Request for Proposal and (insert vendor's name)'s proposal and specifications as outlined in ARTICLE ONE.

Should the additional specifications require additional expense, (insert vendor's name) shall make a written request for additional compensation as outlined in the requirements of DTC's Request for Proposal in Part B, paragraph 5.

ARTICLE THREE: If the work to be done under this Contract shall be abandoned, or if this Contract, or any part thereof, shall be sublet without previous written consent of DTC, or if the Contract shall be assigned by (insert vendor's name) otherwise than as herein specified, or if at any time the Project Representatives shall be of the opinion, and shall so certify in writing, that the work or any part thereof, is unnecessarily or unreasonably delayed, or that (insert vendor's name) has violated any provision of this Contract, DTC shall notify (insert vendor's name) to discontinue such work or such part thereof as DTC shall designate. DTC may thereupon, by a contract or otherwise as it may determine, complete the work or such part thereof. (Insert vendor's name) shall be responsible for any additional costs incurred by DTC in carrying out the work or a portion of work. If any of (insert Vendor's name)'s implements, tools, or materials of any description are used by DTC or any person or entity engaged by DTC to complete the work or a portion of work, (insert vendor's name) shall receive reasonable compensation for the use of said implements, tools, or materials.

All additional costs and charges that may be incurred under this article, or any damages attributed to (insert vendor's name), shall be withheld or deducted from any monies then due or to become due to the (insert vendor's name), under this Contract or any part thereof. In obtaining any services needed to complete the work or a portion of the work, DTC shall not be held to obtain the lowest cost for the work of completing the Contract or any part thereof. (Insert vendor's name) shall be responsible for any additional cost beyond those in (insert vendor's name)'s proposal and specifications.

ARTICLE FOUR: As consideration for the award and execution by DTC of this Contract, (insert vendor's name) hereby grants, conveys, sells, assigns, and transfers to DTC all of its rights, titles and interests in and to all known or unknown causes of action of 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 DTC pursuant to this Contract.

ARTICLE FIVE: It is further mutually agreed between the parties hereto that no payment made under this Contract shall be conclusive evidence of the performance of this Contract either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

ARTICLE SIX: (insert vendor's name) shall defend, indemnify and keep harmless DTC, the Delaware Department of Transportation, and the State of Delaware, their agents, officials and employees from all costs, damages, expenses, settlements, and attorney's fees, arising out of, or resulting from (insert vendor's name)'s acts or omissions in accordance with said RFP #18-002 above mentioned, including, but not limited to, (insert vendor's name) indemnifying and keeping harmless the said DTC, the Delaware Department of Transportation, and the State of Delaware, their agents, officials and employees, from all costs, damages, settlements, expenses and attorney's fees relating to any property damage or physical injury including death or any allegations of patent infringement or unlawful use of a patented article growing out of, or by reason of, this Contract, including (insert vendor's name) providing at (insert vendor's name)'s expense to said DTC or its agents, legal counsel of its own choosing.

ARTICLE SEVEN: This Contract shall be governed and construed under the laws of the State of Delaware. Contractor consents to jurisdiction and venue in the State of Delaware.

IN WITNESS WHEREOF, the said parties to these presents have duly executed this agreement in duplicate the date and year first above written.

Signature page follows

SIGNED, SEALED AND DELIVERED in the presence of

Agency/Vendor Name

Authorized Signature

Print Authorized Name

Title

Witness Signature

Employer Identification Number

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

DELAWARE TRANSIT CORPORATION

Witness

John T. Sisson, Chief Executive Officer

Delaware Transit Corporation
RFP #18-002
License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in
Sussex County Delaware

ADDENDUM #1
Date issued: 3/28/2018

This addendum is being issued as a result of questions asked by potential bidders.

1. I noticed in the RFP part C (license agreement) Section 2 (B) has the inclusion of the Lewes swing bridge as well as the entire Lewes running track. Is this correct? Our understanding is that the Lewes swing bridge along with a number of miles of track from Lewes heading westward have been removed from service. Can you please clarify the requirements to operate this bridge and associated tracks?

DTC Response: This appears to refer to the first version of the RFP which was issued 3/2/2018 12.19 p.m. A revision was issued 2.14 p.m. same date which notes the removal from service of the swing bridge. All proposals and inquiries should be based on the 3/2/2018 2.14 p.m. revised RFP.

2. Can DTC provide any information on carload volumes generated from these lines? Carload data is available in Section 2 but it only covers the period from 2000 to 2010. Is there any updated information available for more recent years?

DTC Response: The revised RFP included carload information 2011 – 2017.

3. Can DTC provide any information regarding revenue received per carload or annual lease / license payments that the operator would be collecting?

DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.

4. Please confirm the milepost ranges that the Operating Railroad is expected to maintain / provide common carrier services on the Lewes Running Track and Milton Industrial Running Track.

DTC Response: Lewes: MP 25.12 to 34.31
Milton: MP 0.00 to 4.92

5. Can we get a copy of the Val Maps to see how much property the railroad controls?

DTC Response: DTC can provide paper copies of surveys made prior to the acquisition of the lines. We are inquiring whether more recent mapping is available. Deactivation of portions of both lines is described in the RFP.

6. Can the wye at Georgetown be connected to allow for a progressive southbound move onto the Lewes Track?

DTC Response: DTC cannot make any commitment on this in the RFP process.

7. Can a waiver be given for the track inspector/foreman to be assigned from a contractor?

DTC Response: Yes, but use of contractors does not relieve the operating railroad of its responsibility for safe operation of the lines.

8. The document says no subcontractors are allowed as part of Train and Engine Crews, are there exceptions?

DTC Response: No.

9. Would the railroad be allowed to use a contractor for signal inspection and crossing maintenance?
DTC Response: Yes, but use of contractors does not relieve the operating railroad of its responsibility for safe operation of the lines.
10. Is there a list of previously approved contractors to perform work on the lines?
DTC Response: No.
11. Is Trestle Number 36 currently a Cooper E rating of E20?
DTC Response: Trestle 36 is on the portion of the Milton line beyond MP 4.92 which is no longer in service.
12. The RFP states that Trestle 36 was last rehabbed in 1987 / 1988. Is that still accurate?
DTC Response: Trestle 36 is on the portion of the Milton line beyond MP 4.92 which is no longer in service.
13. Does the 5% fee for work managed include crossing projects and other items that use state money? What about approved customer siding construction?
DTC Response: The 5% fee only applies to work funded by DTC. The operating railroad will make its own arrangements for work for other customers.
14. Under programmed maintenance, the requirements are for AREMA grade 6 Crossties and AREMA grade 7 Switch Timbers. Will DTC consider changing this language to AREMA grade 4 or 5?
DTC Response: No change will be made at this time.
15. Will we be required to upgrade the Lewes track to Class II or will the agreement allow the property to remain Class I until such a time funding becomes available to upgrade the line to Class II?
DTC Response: The operating railroad is not required to make capital improvements to state property beyond those funded by DTC or DelDOT.
16. Will the operating railroad be given an opportunity to review and comment on any new Utility/Easement Agreements?
DTC Response: Yes, review and comment. New utility or easement agreements are now managed by DelDOT's Railroad Engineer.
17. How will fees for new easement/lease/license agreements be determined?
DTC Response: New utility or easement agreements are now managed by DelDOT's Railroad Engineer.
18. Do transportation related agreements that do not extend beyond the term require written approval by DTC?
DTC Response: No.

19. Does DTC foresee imposing any restrictions to storage of railcars beyond the applicable federal and State regulations.
DTC Response: No.
20. Would the state be opposed to utilization of the Milton Line for storage or other uses during the summer months when no propane is being delivered to Schagrin Gas?
DTC Response: This is assumed to refer to Wilson Baker, the propane facility on the Milton line at State Route 30 (Schagrin is in the Sussex County Industrial Park on the Lewes line). The state is not opposed to use of the line for storage, but proposers should be aware that another customer, a building supply company, is expected to locate adjacent to Wilson Baker, and its shipping needs will have to be accommodated.
21. Under Termination for Convenience, would the operator be reimbursed for any costs associated with any investments it directly contributed to the line?
DTC Response: DTC has not asked or expected its operating railroads to make investments in the lines beyond what is funded by DTC or DelDOT, so there is no policy concerning such investments or reimbursement therefore.
22. Will the successful Operating Railroad have the exclusive right to provide common carrier freight rail service during the term of the agreement?
DTC Response: Yes.
23. We have no desire to introduce passenger excursions on the proposed lines. Are there any plans to have passenger trains operated by a third party on the lines?
DTC Response: DTC is not aware of any planned passenger operations. The truncating of the Lewes line is likely to make such operations less attractive.
24. Future introduction of passenger service or other third parties to the line requires approval by DTC. Does it also require approval by the Operating Railroad?
DTC Response: DTC and the state of Delaware reserve the right to operate passenger service on the state-owned lines. There are no current plans for such service, and the truncating of the Lewes line makes passenger service less feasible. Third party operations would require approval by the operating railroad.
25. Will proceeds from the federal Railroad Tax Maintenance Credit under Section 45G go to the Operating Railroad?
DTC Response: Maintenance funded by DTC or DelDOT will not generate tax credits or benefits for any other entity.
26. Will DTC adjust the annual maintenance budget as a result of the truncation of the Lewes Running Track
DTC Response: As stated in the RFP, budgets are set annually in the state's Capital Transportation Program. As of this date, DTC is not aware of planned adjustment of the maintenance budget.

27. Can guidance be provided with respect to anticipated annual revenues (i.e. per carload, per commodity, etc???)
DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.
28. How much is charged per car to unload Mountaineer DDGs at Gravel Hill?
DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.
29. Can you please provide information on the new customer referenced in the RFP that is expected to begin rail service on the state owned lines?
DTC Response: The industrially zoned property on which Wilson Baker is located is large enough to accommodate several rail-served businesses. A building supply company is currently expected to locate there, extend the existing siding, and receive products by rail. It is expected that there will still be space for at least one additional business on the site.
30. How much revenue is generated from the 100+- leases and easements each year?
DTC Response: This appears to refer to the 3/2/2018 12.19 p.m version of the RFP. Proposals should be based on the 3/2/2018 2.14 p.m. revised RFP.
31. Can you please provide us with contact information for Sussex County so we can discuss the details of the business park with them?
DTC Response: Sussex County Economic Development
2 The Circle, Georgetown, DE
302-855-7770
econdev@sussexcountyde.gov
32. Can you please confirm that all inspections/audits/reports/etc... required under this RFP shall only be for the State Owned Lines that this RFP relates to?
DTC Response: That is correct.
33. Under section F (Payments to the Corporation), how will annual gross freight revenues be determined for the State Owned Lines if the operator of the connecting line formerly operated by Norfolk Southern was also the party awarded the contract under this RFP and the freight rate (fees received from Norfolk Southern) is combined? In other words, if Delmarva Central Railroad (DCR) is awarded the RFP, and operates the State Owned Lines as part of DCR, it is expected that Norfolk Southern would pay a single fee for each rail car shipment which would traverse DCR and the State Owned Lines (65.7 miles on DCR to Ellendale and 74.0 miles to Georgetown). Would DTC accept a mileage prorate, a percentage of total revenue or some other form of revenue allocation to reflect that traffic is moved on both the DCR lines and the State Owned Lines?
DTC Response: This is not a situation DTC has encountered before or developed a policy for. A pure mileage prorate would not be acceptable. In the example offered, DTC's payments would be based on only 2.7-7.0% of the revenue the operating railroad received for serving customers on the state-owned lines.

34. You must acknowledge receipt of all addenda on the Acknowledgement of Addendum Form included in Exhibit A of the RFP. Failure to acknowledge receipt of all addenda will cause your proposal to be considered non-responsive and it will be rejected.
35. Proposals are due no later than 2:00 pm EST on April 6, 2018.

Delaware Transit Corporation
RFP #18-002
License to Operate Rail Freight Service and Maintain State-Owned Rail Lines in
Sussex County Delaware

ADDENDUM #2
Date issued: 4/3/18

This addendum is being issued as a result of the DTC revising some responses in Addendum #1. The revisions are listed in blue.

1. I noticed in the RFP part C (license agreement) Section 2 (B) has the inclusion of the Lewes swing bridge as well as the entire Lewes running track. Is this correct? Our understanding is that the Lewes swing bridge along with a number of miles of track from Lewes heading westward have been removed from service. Can you please clarify the requirements to operate this bridge and associated tracks?

DTC Response: This appears to refer to the first version of the RFP which was issued 3/2/2018 12.19 p.m. A revision was issued 2.14 p.m. same date which notes the removal from service of the swing bridge. All proposals and inquiries should be based on the 3/2/2018 2.14 p.m. revised RFP.

2. Can DTC provide any information on carload volumes generated from these lines? Carload data is available in Section 2 but it only covers the period from 2000 to 2010. Is there any updated information available for more recent years?

DTC Response: The revised RFP included carload information 2011 – 2017.

3. Can DTC provide any information regarding revenue received per carload or annual lease / license payments that the operator would be collecting?

DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.

4. Please confirm the milepost ranges that the Operating Railroad is expected to maintain / provide common carrier services on the Lewes Running Track and Milton Industrial Running Track.

DTC Response: Lewes: MP 24.42 to 31.17
Milton: MP 0.00 to 4.92

5. Can we get a copy of the Val Maps to see how much property the railroad controls?

DTC Response: DTC can provide paper copies of surveys made prior to the acquisition of the lines. We are inquiring whether more recent mapping is available. Deactivation of portions of both lines is described in the RFP.

6. Can the wye at Georgetown be connected to allow for a progressive southbound move onto the Lewes Track?

DTC Response: DTC cannot make any commitment on this in the RFP process.

7. Can a waiver be given for the track inspector/foreman to be assigned from a contractor?

DTC Response: Yes, but use of contractors does not relieve the operating railroad of its responsibility for safe operation of the lines.

8. The document says no subcontractors are allowed as part of Train and Engine Crews, are there exceptions?

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DTC Response: The 5% fee only applies to work funded by DTC. The operating railroad will make its own arrangements for work for other customers.
14. Under programmed maintenance, the requirements are for AREMA grade 6 Crossties and AREMA grade 7 Switch Timbers. Will DTC consider changing this language to AREMA grade 4 or 5?
DTC Response: Yes, language should reflect AREMA grade 4 Crossties and grade 5 Switch timbers.
15. Will we be required to upgrade the Lewes track to Class II or will the agreement allow the property to remain Class I until such a time funding becomes available to upgrade the line to Class II?
DTC Response: The operating railroad is not required to make capital improvements to state property beyond those funded by DTC or DelDOT.
16. Will the operating railroad be given an opportunity to review and comment on any new Utility/Easement Agreements?
DTC Response: Yes, review and comment. New utility or easement agreements are now managed by DelDOT's Railroad Engineer and coordinated with the operating railroad.
17. How will fees for new easement/lease/license agreements be determined?
DTC Response: New utility or easement agreements are now managed by DelDOT's Railroad Engineer and application fees are determined by DelDOT.
18. Do transportation related agreements that do not extend beyond the term require written approval by DTC?
DTC Response: No.
19. Does DTC foresee imposing any restrictions to storage of railcars beyond the applicable federal and State regulations.

DTC Response: No.

20. Would the state be opposed to utilization of the Milton Line for storage or other uses during the summer months when no propane is being delivered to Schagrin Gas?

DTC Response: This is assumed to refer to Wilson Baker, the propane facility on the Milton line at State Route 30 (Schagrin is in the Sussex County Industrial Park on the Lewes line). The state is not opposed to use of the line for storage, but proposers should be aware that another customer, a building supply company, is expected to locate adjacent to Wilson Baker, and its shipping needs will have to be accommodated.

21. Under Termination for Convenience, would the operator be reimbursed for any costs associated with any investments it directly contributed to the line?

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22. Will the successful Operating Railroad have the exclusive right to provide common carrier freight rail service during the term of the agreement?

DTC Response: Yes.

23. We have no desire to introduce passenger excursions on the proposed lines. Are there any plans to have passenger trains operated by a third party on the lines?

DTC Response: DTC is not aware of any planned passenger operations. The truncating of the Lewes line is likely to make such operations less attractive.

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DTC Response: Maintenance funded by DTC or DelDOT will not generate tax credits or benefits for any other entity.

26. Will DTC adjust the annual maintenance budget as a result of the truncation of the Lewes Running Track

DTC Response: As stated in the RFP, budgets are set annually in the state's Capital Transportation Program. No planned adjustment of the maintenance budget is expected.

27. Can guidance be provided with respect to anticipated annual revenues (i.e. per carload, per commodity, etc???)

DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.

28. How much is charged per car to unload Mountaineer DDGs at Gravel Hill?

Addendum #2 – RFP #18-002, issued – 4/3/18

DTC Response: DTC does not disclose, and will not disclose in future, proprietary information of the operating railroad.

29. Can you please provide information on the new customer referenced in the RFP that is expected to begin rail service on the state owned lines?

DTC Response: The industrially zoned property on which Wilson Baker is located is large enough to accommodate several rail-served businesses. A building supply company is currently expected to locate there, extend the existing siding, and receive products by rail. It is expected that there will still be space for at least one additional business on the site.

30. How much revenue is generated from the 100+- leases and easements each year?

DTC Response: This appears to refer to the 3/2/2018 12.19 p.m version of the RFP. Proposals should be based on the 3/2/2018 2.14 p.m. revised RFP.

31. Can you please provide us with contact information for Sussex County so we can discuss the details of the business park with them?

DTC Response: Sussex County Economic Development
2 The Circle, Georgetown, DE
302-855-7770
econdev@sussexcountyde.gov

32. Can you please confirm that all inspections/audits/reports/etc... required under this RFP shall only be for the State Owned Lines that this RFP relates to?

DTC Response: That is correct.

33. Under section F (Payments to the Corporation), how will annual gross freight revenues be determined for the State Owned Lines if the operator of the connecting line formerly operated by Norfolk Southern was also the party awarded the contract under this RFP and the freight rate (fees received from Norfolk Southern) is combined? In other words, if Delmarva Central Railroad (DCR) is awarded the RFP, and operates the State Owned Lines as part of DCR, it is expected that Norfolk Southern would pay a single fee for each rail car shipment which would traverse DCR and the State Owned Lines (65.7 miles on DCR to Ellendale and 74.0 miles to Georgetown). Would DTC accept a mileage prorate, a percentage of total revenue or some other form of revenue allocation to reflect that traffic is moved on both the DCR lines and the State Owned Lines?

DTC Response: This is not a situation DTC has encountered before or developed a policy for. A pure mileage prorate would not be acceptable. In the example offered, DTC's payments would be based on only 2.7-7.0% of the revenue the operating railroad received for serving customers on the state-owned lines.

34. You **must** acknowledge receipt of all addenda on the Acknowledgement of Addendum Form included in Exhibit A of the RFP. Failure to acknowledge receipt of **all** addenda will cause your proposal to **be considered non-responsive and it will be rejected.**

35. Proposals are due no later than 2:00 pm EST on April 6, 2018.

Exhibit A-1: CERTIFICATION OF ELIGIBILITY

CERTIFICATION OF ELIGIBILITY

Carload Express, Inc. / Delmarva Central Rte hereby certifies that it is not included on the United States Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating Labor Standard Provisions.

Signed: [Signature]

Title: President

Date: April 4, 2018

Sworn and subscribed before me this 4th day of April, 2018.

My commission expires April 15, 2019.

[Signature] Notary Public

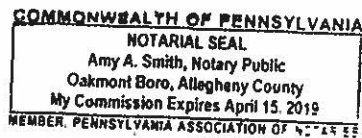


Exhibit A-2: CERTIFICATE OF NON-COLLUSION

CERTIFICATE OF NON-COLLUSION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting to such prices, with any other bidder or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Delmarva Central Railroad

Company Name

[Signature]

Authorized Signature

April 4, 2018

Date

Sworn and subscribed before me this 4th day of April, 2018.

My commission expires 04/15/2019.

[Signature] Notary Public

