

**INSTRUCTIONS
TO
BIDDERS**



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

**2013 EDITION
JUNE 2015**

TABLE OF CONTENTS

<u>SECTIONS</u>	<u>PAGE NO.</u>
1. WORK TO BE PERFORMED	1
2. FAMILIARITY WITH PROPOSED WORK	1
3. INTERPRETATION OF CONTRACT DOCUMENTS	1
4. SUBMISSION OF BIDS	2
5. SIGNING OF THE BID	2
6. STATE OF INCORPORATION	2
7. AWARD TO A FOREIGN CORPORATION	2
8. BID GUARANTY	2
9. TIMELY DELIVERY OF BID PROPOSAL	3
10. DELIVERY OF BID IN CLEARLY MARKED ENVELOPE	3
11. WITHDRAWAL OR MODIFICATION OF A BID PRIOR TO BID OPENING	3
12. BID OPENING PROCEDURE	3
13. REJECTION OF BID PROPOSAL	4
14. WITHDRAWAL OF BIDS AFTER BID OPENING	4
15. EXPERIENCE QUESTIONNAIRE & FINANCIAL STATEMENT PROVIDED ON REQUEST	4
16. REFUSAL TO SUBMIT REQUESTED INFORMATION	4
17. COLLUSIVE BIDS WILL BE REJECTED	4
18. BID PROTEST PROCEDURE	4
19. BIDDER CERTIFIED NOT UNDER DEBARMENT	5
20. SUBCONTRACT WITH DEBARRED OR SUSPENDED FIRM	5
21. REIMBURSEMENT OF COSTS OF INSPECTOR GENERAL INVESTIGATION	5
22. CURRENT LIST OF SUSPENDED AND DEBARRED CONTRACTORS	5
23. ASSIGNMENT OF ANTITRUST CLAIMS	5

<u>SECTIONS</u>	<u>PAGE NO.</u>
24. CONTRACTOR INTEGRITY PROVISIONS	6
25. PRODUCT DISCRIMINATION	10
26. SMALL DIVERSE BUSINESS PARTICIPATION	12
27. PRE-AWARD OF CONTRACT	16
28. AWARD OF CONTRACT	16
29. EXECUTION OF CONTRACT, SMALL DIVERSE BUSINESS PARTICIPATION, BOND AND RETURN OF INSURANCE CERTIFICATES	17
30. FAILURE TO EXECUTE CONTRACT	17
31. PROOF OF SURETY'S RESPONSIBILITY ON CONTRACT BOND	17
32. REINSURANCE	18
33. VETERAN'S PREFERENCE	
34. SMALL BUSINESS SUPPLIER PREFERENCE	18
35. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT	18
36. ENVIRONMENTAL STATEMENT	18
37. APPLICABLE LAWS	18

**FAILURE TO COMPLY WITH THESE INSTRUCTIONS MAY RESULT IN THE
REJECTION OF THE BID AS NOT RESPONSIVE.**

SECTION 1. WORK TO BE PERFORMED. The Work to be performed is described in the Contract Documents. The Contract Documents may be inspected during regular business hours at the Public Works Headquarters facility of the Department of General Services, located at 18th and Herr Streets, Harrisburg, Pennsylvania 17125. Copies of the Contract Documents may be obtained by paying the amount stipulated in the "Notice to Bidders" to DGS or the Professional for each set of plans, specifications and bid forms.

SECTION 2. FAMILIARITY WITH PROPOSED WORK. The Bidder is responsible for examining the nature and location of the Work, the conformation of the ground, the soil and rock conditions, and the character, quality and quantity of the materials that will be required. The geotechnical report prepared for the Department, if one has been performed for the project, is available for review by all bidders. The Bidder shall also examine the proposed Contract Documents, including the plans, specifications, the General Conditions, Special Conditions (if applicable), Administrative Procedures, and all other documents and data pertaining to the Project. After the award of the contract, the Contractor may not submit any claim alleging insufficient data, incorrectly assumed conditions, or misunderstanding with regard to matters for which no such clarification was sought during the bidding phase of the Project, as described further in the General Conditions of the Construction Contract.

SECTION 3. INTERPRETATION OF CONTRACT DOCUMENTS.

- A. Requests for Interpretation during the bid stage **shall be submitted in writing** to the Professional, whose name and address can be found in the Notice to Bidders. A copy of the Request for Interpretation must also be forwarded at the same time to the Director, Bureau of Engineering and Architecture, Department of General Services, 18th and Herr Streets, Harrisburg, Pennsylvania 17125. All Requests for Interpretation related to the proposed Work or proposed contract documents must be received, in writing, by the Professional, with a copy to the Department, **no later than close of business ten (10) days prior to the Bid Opening Date**. Only written Requests for Interpretation received no later than ten (10) days prior to the date fixed for the opening of bids will be considered by the Department. If a request is received within 10 days of the bid opening date, the Department may, in its sole discretion, answer the request. Requests via emails shall not be considered "written" requests.
- B. **NEITHER THE DEPARTMENT, THE PROFESSIONAL NOR ANY REPRESENTATIVE OF THE USING AGENCY SHOULD BE ASKED TO PROVIDE ANY ORAL INTERPRETATION TO ANY BIDDER REGARDING INTERPRETATION OF THE CONTRACT DOCUMENTS. ANY CONVERSATION BETWEEN A BIDDER AND EITHER THE DEPARTMENT, THE PROFESSIONAL, OR THE REPRESENTATIVE OF THE USING AGENCY FOR WHOM THE PROJECT IS BEING CONSTRUCTED, SHOULD NOT BE RELIED UPON BY ANY BIDDER, IS NOT BINDING UPON THE DEPARTMENT, AND SHALL NOT BECOME PART OF THE CONTRACT DOCUMENTS UNLESS THE INFORMATION SUBSEQUENTLY APPEARS IN A WRITTEN BULLETIN.**
- C. The Department's response to any Request for Interpretation will be in the form of a written bulletin signed by the Department. The Department and/or the Professional will forward all bulletins to all Bidders that obtained plans and specifications for the Project. All bulletins become a part of the Contract Documents, and all Bidders on any portion of the contract for the Project are bound by all bulletins issued on the project.

SECTION 4. SUBMISSION OF BIDS. All bids shall be submitted on the form prepared by the Department. Bidder should retain a copy for their own use. All entries on the bid must be in ink or typewritten, preferably in blue ink to indicate an original writing.

- A. **Base Bids.** All base bids will be considered as separate and distinct bids. If a base bid is left blank, the Department will interpret this to mean the Bidder did not submit a bid on that base bid, but this will not invalidate any remaining base bids. In case of discrepancy between the words and numbers, the written words are the bid price.

SECTION 5. SIGNING THE BID. The Bidder must sign the bid correctly as described in the bid documents. The signature must be an ORIGINAL and HAND-SCRIPTED signature. If the bid is submitted by a corporation, the bid should be signed by the President or Vice President and any one of the following officers of the Corporation: the Secretary, Assistant Secretary, Treasurer, or Assistant Treasurer. If not signed by the specified officers, the signing individual must be authorized to sign by the corporation's board of directors. If a person other than one of these officers executes the bid, a copy of the document authorizing that person to execute the bid must accompany the bid. **If the Certification and Bid Signature page is left blank, the bid will be deemed void and the bid WILL BE REJECTED by the Department. The bidder will NOT be given any opportunity to sign the page after the time and date of the bid opening. A signature appearing any other place in the bid package shall not be sufficient to substitute for the lack of a signature on the Certification and Bid Signature page.**

SECTION 6. STATE OF INCORPORATION. If the Bidder is incorporated or organized in a state other than Pennsylvania, the Bidder must state whether the corporation, LLC, or LP is registered to do business in Pennsylvania. If the Bidder operates under an assumed or fictitious name, the Bidder must state whether such name has been registered in Pennsylvania.

SECTION 7. AWARD TO A FOREIGN BUSINESS. No contract will be awarded to a Bidder which is a foreign corporation, a foreign limited liability company, a foreign limited partnership, or which is operating under a fictitious or assumed name unless the Bidder has complied with, or agreed to comply with, the registration requirements under the Business Corporation Law of 1988 (15 Pa. C.S. §4121-§4131) and/or the Limited Liability Company Law of 1994 (15 Pa. C.S. §8981-§8982), and/or the Partnership Code (15 Pa. C.S. §8581-§8590), and/or the Fictitious Names Act (54 Pa. C.S. §301-§332).

SECTION 8. BID GUARANTY. The bid must be accompanied by a certified check, bank cashier's check, or bid bond in the same written form as the one supplied by the Department of General Services, payable to the Department of General Services, in the amount specified in the bid form.

- A. **If a Bid Bond is Submitted.** If a bid bond is submitted, the bond must meet the following requirements:
1. The bid bond must be from a surety approved by the Commonwealth's Department of Insurance to do business in Pennsylvania. For information on approved sureties, contact the PA Department of Insurance, Division of Companies, at (717) 787-5890 or go to www.ins.state.pa.us.
 2. The bid bond must be properly executed by the surety company and the Bidder.
 3. All signatures on the bid bond must be original and hand-scripted signatures.
 4. The bid bond must be accompanied by a power of attorney from the surety company, indicating that the agent signing the bond has the authority to bind the company. The power of attorney should bear the same date as the bid bond.
 5. Any alterations to the pre-printed portions of the bid bond, e.g., erasures, write-overs, or white outs, are not acceptable and will be rejected as not responsive. Any alterations to the filled in spaces on the bid bond, e.g., erasures, write-overs, or white outs, are not acceptable, unless initialed by an authorized representative of the surety, preferably the agent signing the bond. Such unauthorized alterations, if they are to the date, amount of bond, or name of Bidder, will result in the bid being rejected as not responsive.

- B. Return of Bid Guaranty.** All checks and bid bonds not forfeited under the terms of these Instructions to Bidders will be returned on or before the thirtieth (30) day after the bid opening, except for the checks/bonds submitted by the two apparent lowest responsible Bidders. The security of the two apparent lowest responsible Bidders, except where forfeiture of security is required, will be returned upon the execution of all contract documents by the lowest responsible Bidder. In the event the contract is not awarded by the Department, the bid guaranty of the two apparent lowest responsible Bidders will be returned on or about sixty (60) days after the date of the bid opening, unless the time for awarding the bid has been extended by the Bidders.

SECTION 9. TIMELY DELIVERY OF BID PROPOSAL. The bidder must submit its bid to the Department prior to the time scheduled for bid opening, regardless of the method of delivery used. Any bid received after the time set for the bid opening will be returned to the bidder without being considered by the Department. The bid will not be returned if it is not possible to determine the identity and address of the bidder.

SECTION 10. DELIVERY OF BID IN CLEARLY MARKED ENVELOPE. Each bid should be submitted in the special envelope furnished by the Department. All bids shall be enclosed in a sealed envelope and marked plainly on the outside with the contract number, bid opening date and time. If the bid envelope is to be enclosed in another envelope for the purpose of express-type delivery, the exterior envelope shall be clearly marked as a bid and the contract number, bid opening date and time shall be shown on the exterior envelope.

- A. Submission of Bid by Mail.** If submitted by mail, the Department-provided special envelope shall be sent to the address for receiving bids noted in the "Notice to Bidders" for the particular Project, and should be sent Return Receipt Requested.
- B. Submission of Bid by other than Mail.** If submitted other than by mail, the bid must be delivered to the address noted in the particular "Notice to Bidders" prior to the time stated therein.
- C. Submission of Bid by Hand Delivery.** Photographic identification and proof of authorization will be required from individuals who are hand-delivering bids.

SECTION 11. WITHDRAWAL OR MODIFICATION OF A BID PRIOR TO BID OPENING

- A. Complete Withdrawal Before Bid Date or Time.** A Bid may be withdrawn by written notice or in person by a Bidder or its authorized representative (if their identity is established by photographic identification and proof of authorization, preferably on Bidder letterhead) and a receipt for the bid is signed prior to the exact hour and date set for the opening of bids.
- B. Modification Before Bid Date or Time of a Bid of Bid Already Submitted But Not Opened.** If, before the time of the bid opening, a Bidder wishes to modify a bid already delivered to the Department, the Bidder or its authorized representative (if their identity is made known through photographic identification and proof of authorization) may request that the Department return the bid, but only if the Bidder/representative signs a receipt for the bid **before** the exact hour and date set for the opening of bids. The Bidder or their authorized representative may then modify the bid and resubmit the bid so long as the modified bid complies with the requirements set forth in these Instructions to Bidders. The Department will not, under any circumstances, open a bid before the bid opening date and time.

SECTION 12. BID OPENING PROCEDURE. Bids will be opened and read aloud publicly in the presence of one or more witnesses at the time and place designated in the Notice to Bidders. In case of discrepancy between the Bidder's written words and numbers, the written words constitute the bid price. No inspection or photocopies of any Bid Proposal will be made at the bid opening. The amount of each bid, together with the name of each Bidder will be recorded. Such recorded information shall be considered unofficial and shall be open to public inspection at the bid opening. The bid tab, listing the

Bidders and their bid amount, will formally be made available to interested parties within ten (10) days of the opening.

SECTION 13. REJECTION OF BID. The Department reserves the right to reject any or all bids or parts thereof. A bid may be rejected if it shows any omission, alterations of form, additions or deductions not called for, conditional language or uninvited alternate bids, or irregularities of any kind. The Department reserves the right, however, to waive technical defects or irregularities on bids. The Department may reject the bid of any Bidder failing to meet the requirements of these Instructions to Bidders or any other requirements of Bidders set forth in the Contract Documents.

SECTION 14. WITHDRAWAL OF BIDS AFTER BID OPENING. Within three (3) days after the opening of the bids, but before award, a Bidder may request permission to withdraw its entire bid or a particular Base Bid if it submits a request, in writing, to the Department. The request must be addressed to the Director of the Bureau of Professional Selections and Administrative Services, 18th & Herr Street, Harrisburg, PA 17125. It may be faxed to the same individual at (717) 772-3399. The request will not be considered received unless it is directed as set out in this section. With the request for withdrawal, the Bidder must submit evidence that the reason for withdrawal is a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of its bid.

SECTION 15. EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT PROVIDED ON REQUEST. At the Department's request, or if specifically required by the bid, Bidders shall file an experience questionnaire and financial statement with the Department on the form provided by the Department. The questionnaire and statement shall be certified to be true and correct by an affidavit sworn to or affirmed before a Notary Public, or other officer empowered to administer oaths or affirmations. Falsification of any requested information shall result in a rejection of the bid as not responsible, forfeiture of the bid bond and/or cancellation of the Contract Award.

SECTION 16. REFUSAL TO SUBMIT REQUESTED INFORMATION. In the event the Bidder fails, refuses or neglects to submit any requested information within the time stated in any request, or fails to qualify as a responsible Bidder; its bid guaranty may be forfeited to the use of the Department, not as a penalty, but as Liquidated Damages.

SECTION 17. COLLUSIVE BIDS WILL BE REJECTED. The bids of any Bidder or Bidders who engage in collusive bidding will be rejected. Any Bidder who submits more than one bid in such manner as to make it appear that the bids submitted are on a competitive basis from different parties will be considered a collusive Bidder. Submission of collusive bids will result in a Bidder being rejected as not responsible for subsequent projects. Nothing in this Section prevents a Bidder from superseding a bid by submitting a subsequent bid, delivered prior to bid opening, which expressly revokes the previous bid.

SECTION 18. BID PROTEST PROCEDURE. The Commonwealth Procurement Code (62 P.C. §1711.1, as amended) governs the protest procedure, which is summarized below. In the event this general description conflicts with the statute, the statutory language controls.

A. Who may File. Any Bidder or prospective Bidder who is aggrieved in connection with the bid or the award of a contract resulting from the bid may file a protest.

1. Prospective Bidder is an entity that has not submitted a bid in response to the Notice to Bidders.
2. Bidder is an entity that has submitted a bid in response to the Notice to Bidders.

B. Time Limits.

1. If a protest is filed by a prospective Bidder, a protest must be filed, in writing, with the head of the Issuing Office **prior** to the bid opening date and time described in the Notice to Bidders.
2. If a protest is filed by a Bidder, the protest must be filed, in writing, with the Issuing Office within seven (7) days after the protesting Bidder knew or should have known of

the facts giving rise to the protest **except** in no event may a protest be filed later than 7 days after the Notice of Award is posted on the DGS website.

3. Filed – shall be defined as the date upon which the Issuing Office receives the written protest.
 4. If the Bidder fails to file a bid protest or files an untimely protest, then they shall be deemed to have waived the right to protest the solicitation or award of the contract in any forum. Untimely protests will be disregarded by the Department.
- C. The Department may cancel an invitation for bids or may reject all bids at any time prior to the time a contract is executed by all parties when it is in the best interests of the Commonwealth. The Bidder may not submit a protest relating to cancellation of the bid or rejection of all bids.
- D. A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.
- E. The full text of the Bid Protest Procedure can be found at 62 Pa.C.S §1711.1 *et seq.*

SECTION 19. BIDDER CERTIFIED NOT UNDER DEBARMENT. The Bidder must certify that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Bidder cannot so certify, then the Bidder agrees to submit along with the bid a written explanation of why such certification cannot be made.

SECTION 20. SUBCONTRACT WITH DEBARRED OR SUSPENDED FIRM. If the successful Bidder enters into subcontracts or employs any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

SECTION 21. REIMBURSEMENT OF COSTS OF INSPECTOR GENERAL INVESTIGATION. The Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth which result in the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

SECTION 22. CURRENT LIST OF SUSPENDED AND DEBARRED CONTRACTORS. The Contractor may obtain the current list of suspended and debarred Contractors by referring to the Department's Construction and Public Works website or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Telephone No. (717) 783-6472
FAX No. (717) 787-9138

SECTION 23. ASSIGNMENT OF ANTITRUST CLAIMS. The Contractor and the Commonwealth recognize that, in actual economic practice, overcharges by the Contractor's suppliers, resulting from the violations of State or Federal antitrust laws, are, in fact, borne by the Commonwealth. As part of the consideration for the award of this contract, and, intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in, and to, any claims contractor now has, or may hereafter acquire, under State or Federal antitrust laws relating to the goods or services, which are the subject of this contract.

SECTION 24. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

A. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.

g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

B. In furtherance of this policy, Contractor agrees to the following:

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest

is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

(3) had any business license or professional license suspended or revoked;

(4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

(5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any

alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

SECTION 25. PRODUCT DISCRIMINATION

A. Reciprocal Limitation Act.

1. Background Requirements of the Act. The Act (62 Pa.C.S. (2008 Sup.) § 107) requires the Department:

- i. In the award of contracts, exceeding \$10,000, for the erection, construction, alteration, improvement or repair of any building or other public work, or the purchase or lease of any goods, supplies, equipment, printing or materials, to give resident Bidders a preference against a nonresident Bidder from any state that gives or requires a preference to Bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident Bidder. A resident Bidder is a person, partnership or corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at which it was transacting business on the date when bids for the public contract were first solicited.
- ii. In the erection, construction, alteration, improvement or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing or materials, not to specify, use or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

2. List of Discriminating States.

- i. States which apply preference favoring in-state Bidders and the amount of such preference, (that may affect this contract), as found by the Department.

<u>STATE</u>	<u>PREFERENCE</u>
Arizona	5% (construction materials from Arizona resident dealers only)

Montana	3%
West Virginia	2.5% for construction, repair or improvements of any buildings
Wyoming	5%

ii. **States which prohibit the use of out-of-state goods, supplies, equipment, materials or printing and the prohibition (that may effect this contract), as found by the Department.**

<u>STATE</u>	<u>PREFERENCE</u>
Georgia	Forest products only
Indiana	Coal
New Jersey	For Bidders for the following items: major household appliances, chain link fence, portable sanitation units, glass, glazier supplies, storage batteries, carpet and cushion, shades, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio-visual/video equipment, fire extinguishers, fire hose, motor oils, fuel oil, photographic supplies, Venetian blinds, drapes, paper towel dispensers, water hose
New Mexico	Construction

3. Calculations of Preference.

- i. In calculating the preference, the amount of a bid submitted by a Pennsylvania Bidder shall be reduced by the percentage preference which would be given to a nonresident Bidder by its state of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials and printing shall be reduced by the percentage preference which would be given to another Bidder by the state where the goods, supplies, equipment, materials or printing are produced, manufactured, mined, grown or performed.

B. Trade Practices Act.

In accordance with the Trade Practices Act (71 P.S. §773.101 *et seq.*) the Contractor shall not use, or permit to be used, in the Work any aluminum or steel products made in a foreign country that discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted for a project. Penalties for violation of this paragraph may be found in the Trade Practices Act. Penalties include becoming ineligible for award of any Public Works contracts for a period of three years.

- 1. **Brazil:** Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.
- 2. **Spain:** Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel

products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet; hot-rolled carbon steel bars and cold-formed carbon steel bars.

3. South Korea: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate and hot-rolled carbon steel sheet and galvanized steel sheet.

4. Argentina: Carbon steel wire rod and cold-rolled carbon steel sheet.

C. Steel Products Procurement Act.

In accordance with the Steel Products Procurement Act of March 3, 1978, P.L. 6 as amended (73 P.S. §1881 *et seq.*), only steel products as defined in the Act shall be used or supplied in the performance of the contract or any subcontracts thereunder.

In the performance of the Contract the Contractor, subcontractors, materialmen or suppliers shall use only: 1) steel products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, bessemer or other steel making process; and 2) cast iron products made in the United States.

The Contractor shall certify that all steel and cast iron products to be used or supplied in the performance of the Contract comply with this Act. No payment will be made to the Contractor for steel and cast iron products until such certification has been received.

This section shall not apply in any case where the Deputy Secretary for Public Works of the Department, in writing, determines that steel and/or cast iron products as herein described are not produced in the United States in sufficient quantities to meet the Contract needs.

The Department shall not provide for, or make any payments to any person who has not complied with the Act. Any such payments made by the Department to anyone that should not have been made as a result of the Act, shall be recoverable directly from the contractor, subcontractor, manufacturer or supplier that did not comply with the Act.

In addition to the withholding of payments, any person who willfully violates any of the provisions of the Act shall be prohibited from submitting any bids to any public agency for a period of five (5) years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the Act is a subcontractor, manufacturer or supplier, such person shall be prohibited from performing any work or supplying any materials to a public agency for a period of five (5) years from the date of the determination that a violation has occurred.

The Contractor shall include the provisions of the Steel Products Procurement Act in every subcontract and supply contract, so that the provisions of the Act shall be binding upon each subcontractor and supplier.

Where trade names, catalog numbers and manufacturers of material or equipment are specified, they are mentioned therein for the purpose of establishing a standard of quality, performance and appearance, and for establishing a standard of competitive bidding. The use of this descriptive information will not relieve the contractor from compliance with all aspects of the Act.

SECTION 26. SMALL DIVERSE BUSINESS PARTICIPATION

A. Overview - Minimum Participation Level.

1. The Department has established one minimum participation level (MPL) for utilization of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBEs), and Service-Disabled Veteran Business Enterprises (SDVBEs) (together referred to hereinafter as Small Diverse Businesses) subcontractors, manufacturers, and suppliers for this project. This Small Diverse Business Participation (MPLs) applies when the amount bid exceeds \$50,000.

- i. The MPL is set forth in the Notice to Bidders. in the following form:

- ii.

Project No. DGS: _____

		MPL
.1	General Construction	_____%
.2	HVAC	_____%
.3	Plumbing	_____%
.4	Electrical	_____%

2. If the Bidder is a Small Diverse Business firm, DGS will not credit the value of the Bidder's contract toward meeting the MPLs. All Bidders (including Bidders which are SDB) are required to comply with these Instructions to Bidders regarding Small Diverse Business Participation.
3. Bidders are not required to submit a form regarding the MPL or solicitation efforts with the Bid Package.
4. The Administrative Procedures, which are included in the Contract Documents, have a chapter titled "Small Diverse Business Participation." Should there be any conflict between these Instructions to Bidders and the Administrative Procedures, the Administrative Procedures govern.
5. Upon Notice of Award, the successful bidder shall have the option of choosing to "Opt-in" or creating and maintaining documentation on its "Good Faith Effort" to meet the Project's MPL. (See: subsection B(1) below). The Contractor will have the full duration of their contract to meet the MPL.
6. The Contractor's commitments toward the MPL will be calculated and credited as follows:
 - i. **ONLY DGS-CERTIFIED SMALL DIVERSE BUSINESSES SHALL BE USED TO CALCULATE THE CONTRACTOR'S COMMITMENTS TO THE MPL.**
 - ii. A Contractor's Small Diverse Business participation level is calculated by adding all dollar commitments to DGS-certified Small Diverse Business subcontractors of all tiers, DGS-certified Small Diverse Business manufacturers, and DGS-certified Small Diverse Business suppliers and dividing that total amount by the total contract award price. Small Diverse Business dollar commitments will not be double counted (see Section 5(vii) below).
 - iii. Small Diverse Business subcontractors performing at least sixty percent (60%) of the subcontract with their own employees will be credited toward the MPL at 100 percent of the total dollar value of the subcontract/supply contract. Any Small Diverse Business subcontract, where the subcontractor performs less than 60% of the subcontract, will not be credited toward the MPL.
 - iv. Small Diverse Business stocking suppliers are credited at 60 percent of the total cost of the materials or supplies purchased. A stocking supplier is a regular dealer that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- v. Small Diverse Business nonstocking suppliers are credited at only the amount of the fee or commission charged by the Small Diverse Business nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees or commissions are reasonable and not excessive as compared with fees customarily allowed for similar services and with the understanding that under no circumstances shall the credit, for a Small Diverse Business nonstocking supplier, exceed 10% of the purchase order cost. A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a nonstocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; AND determining quality and quantity; AND ordering materials; AND paying for the materials) and the fee or commission must be provided with the purchase order and the Small Diverse Business Utilization Report. Industry practices and other relevant factors will be considered.
- vi. Small Diverse Business manufacturers are credited at 100 percent of the total cost of the materials or supplies purchased.
- vii. All Small Diverse Business participation shall include all tiers of design and/or construction.
 - 1. The Contractor is allowed to use contract amounts at any tier of supply or subcontracting provided that the Small Diverse Business is the initial Small Diverse Business firm in the organizational hierarchy. Therefore, if the Contractor or any of its non-Small Diverse Business Subcontractors or Suppliers makes a commitment to a Small Diverse Business, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated as indicated in Section 5 and credited toward the Contractor's Minimum Participation Level.
 - 2. The dollar value of any commitment to a Small Diverse Business cannot be double counted. In the event that the Small Diverse Business whose entire subcontract value is counted towards the Contractor's Participation Level then subcontracts a portion of the work or supplies associated with this subcontract to another Small Diverse Business, the dollar value of the subcontract with/to this lower tier Small Diverse Business is NOT counted in the Contractor's Participation Level in order to prevent the duplicate counting of Small Diverse Business commitment dollars. In this case, the dollar value of this subsequent Small Diverse Business subcontract has already been included within the scope of work and dollar value of the Small Diverse Business commitment already counted as a part of the Contractor's Participation Level.

B. Upon Notice of Award.

- 1. The successful bidder shall, upon Notice of Award and receipt of the Construction Contract, determine whether to choose "opt-in" or to provide "Good Faith Effort" documentation of its efforts to meet the MPL by initialing the appropriate selection in Article 9 of the Construction Contract. (See Administrative Procedures for further information.)
 - i. Opt-in – A successful bidder selecting "Opt-in" agrees to meet or exceed the Project's MPL by the time of the Close-out Inspection of the project.
 - ii. Good Faith Effort – A successful bidder selecting "Good Faith Effort" agrees to document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors,

manufacturers, and suppliers greater than \$10,000 throughout the duration of the Project.

2. Article 9 of the Construction Contract lists both “Opt-in” and the “Good Faith Effort” options. The successful bidder shall select and initial the option of their choice. Failure to select an option will be deemed an incomplete Contract and DGS may consider this a failure to execute the Contract (See Sections 28 and 29).

C. Upon Contract Execution.

1. If Opt-in was selected, the Contractor has until the time of Close-Out Inspection to meet or exceed the MPL for the Project. This will be tracked through the Small Diverse Business Utilization Report submitted with each Application for Payment.
2. If the Good Faith Effort was selected, the Contractor must create and maintain documentation of its reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors and suppliers greater than \$10,000 throughout the duration of the Project. At a minimum, such documentation shall include the following (“Good Faith Effort documentation”):
 - i. A certification that the contractor accessed the DGS web site database of DGS-certified Small Diverse Businesses to identify DGS-certified Small Diverse Businesses for the subcontract or purchase order.
 - ii. A record of all companies solicited for the subcontract or purchase order that can perform the scope of work to be subcontracted or supply to be delivered, identifying any DGS-certified Small Diverse Businesses. If a subcontractor is not properly licensed or otherwise capable of performing the scope of work, they are not eligible to receive the subcontract. (A painting subcontractor, for example, may not be eligible to receive a subcontract to perform electrical work.)
 - iii. A record of all quotes received showing company name and address, contact person, telephone number, Small Diverse Business status, subcontractor, manufacturer, or supplier, scope of work to be performed or supply to be delivered, and the amount of the quote and identification of the selected subcontractor/manufacturer/supplier.
 - iv. A certification that the contractor negotiated fairly with responsive DGS-certified Small Diverse Businesses and, if commitments were not made, that such non-commitment related to the Small Diverse Business’ capability or price.

Upon notice from DGS, the Contractor will be required to submit, within ten (10) calendar days from the date such notice is received, the above Good Faith Effort documentation for review and compliance. Failure to submit such documents within the timeframe provided will result in a noncompliance entry into the Commonwealth’s Contractor Responsibility Program and may be considered a substantial breach of the Contract, as determined by the Department.

3. Small Diverse Business Utilization Report
 - i. The Contractor, regardless of the option it selects, shall submit a Small Diverse Business Utilization Report with each Application for Payment. Each Small Diverse Business Utilization Report must have current data (totals to date) identifying at least each element as follows:
 1. Detailed information including but not limited to any subcontracts and purchase orders documenting the dollar value commitments, commission, or fees to Small Diverse Business firms to be used toward the satisfaction of the Project’s MPL. All Small Diverse Businesses

identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.

2. Detailed information regarding any work that is claimed to be self-performed by the Contractor and therefore allegedly not eligible for subcontracting to a Small Diverse Business.

3. Construction Subcontracts and Purchase Orders:

- a. All Subcontract/Purchase Orders awarded to date are \$_____
- b. Commitments to Small Diverse Businesses totals to date:
 - i. \$ _____(dollars)
 - ii. % _____(percentage)
- c. For each Small Diverse Business subcontract and purchase order awarded since the previous Application for Payment the:
 - i. Identity and status of the Small Diverse Business as a MBE/WBE/VBE/SDVBE that will be performing the work; and
 - ii. The type of work, service, or material to be performed/supplied; and
 - iii. The amount paid to date on each Small Diverse Business subcontract/purchase order this month; and
 - iv. The designation of Small Diverse Business stocking suppliers as either a MEP (i.e., mechanical, electrical, and plumbing) stocking suppliers or a General Construction stocking supplier; and
 - v. The fee or commission paid to the nonstocking supplier. No MPL credit will be given if the fee or commission is not listed and, the maximum credit shall not exceed 10 percent of the purchase order cost.
- ii. Failure to submit a Small Diverse Business Utilization Report with each Application for Payment will result in an incomplete Application for Payment and it being returned to the Contractor. An incomplete Application for Payment will not be processed.

D. Resources.

1. The Department is available for technical assistance to all Bidders submitting bids for this contract. Department certification of an entity as a Small Diverse Business means only that the applicant for certification has submitted information that qualifies it as an Small Diverse Business in terms of its ownership and control. It does not imply, and no Bidder shall infer, that the Department has in any way investigated or approved the entity's competence to perform work.
2. Contact the Bureau of Small Business Opportunities at (717) 783-3119.

Bureau of Small Business Opportunities
611 North Office Building
Harrisburg, Pennsylvania 17125

SECTION 27. PRE-AWARD OF CONTRACT. Once DGS determines the apparent lowest responsible bidder, the Bidder must comply with the Public Works Employment Verification Act by submitting to the Department a Commonwealth Public Works Verification Form ("Form") prior to the award of the Contract. The Bidder shall either provide the Form to the Department with its Bid Proposal or within five (5) days after receipt of notice to provide the Form. Failure or refusal to provide the Form will be considered a refusal to comply with the bidding requirements and result in rejection of the bid. **The bidder shall be required to pay the Department the lesser of the following amounts:**

- A. The amount of the bid guaranty, or
- B. The difference between the amounts specified in the bid of the lowest responsible Bidder and such larger amount for which the Department may enter into a contract with another party to perform the Work covered by said bid.

The Form and relevant information are located on the Department's web page at www.dgs.state.pa.us.

SECTION 28. AWARD OF CONTRACT. If DGS awards a Contract, it will be made to the lowest responsible Bidder within sixty (60) days from the Bid Opening Date. This 60-day period may be extended by written consent of the lowest responsible Bidder(s). Notice of Award of Contract will be made by letter mailed to the Contractor and will be effective upon the date DGS mailed the Notice of Award. If the lowest Bidder withdraws its bid, declines to extend the bid or refuses the Award of Contract, the Department may award the Contract to the next lowest responsible Bidder or reject all bids and re-bid the Contract. **There will be no Contract with the Department until all parties have fully executed the Contract**

- A. **Letter of Intent To Contract** – The Department may, in its sole discretion on particular projects, elect to issue a binding Letter of Intent To Contract. An apparent low bidder who receives a Letter of Intent may rely upon the letter to start the scope of off-site activities described in the Letter and to incur costs in preparation of the performance of the Contract.

SECTION 29. EXECUTION OF CONTRACT, SMALL DIVERSE BUSINESS PARTICIPATION, BOND AND RETURN OF INSURANCE CERTIFICATES. Within ten (10) days after receipt of the Contract, the successful Bidder, must:

- A. Select the Small Diverse Business MPL option in Article 9 of the Contract; and
- B. Sign and return the Contract to the Department of General Services, 18th and Herr Streets, Harrisburg, Pennsylvania 17125; and
- C. Sign and return a Contract Bond, or Bonds, on the form provided by the Department, in the penal sum equal to the amount of the awarded Contract, for the faithful performance of the Contract, and to cover the prompt payment in full for all materials furnished and labor supplied or performed and equipment actually rented (but not sold.) The Bond, or Bonds, must be executed by a surety company or companies qualified to do business in Pennsylvania; and,
- D. Sign and return all insurance certificates required by the General and/or Special Conditions to the Contract.
- E. After all Commonwealth signatures (handwritten or electronic) are obtained and the Contract is fully executed, the Department will forward a written notification to you.
- F. Understand and agree that a stamped "APPROVED ELECTRONICALLY" or similar wording by the Commonwealth on the Contract signature page constitutes a valid, binding contract with the Commonwealth and represents that all approvals required by Commonwealth contracting procedures have been obtained. The fully executed Contract may not contain "ink" signatures by the Commonwealth.

SECTION 30. FAILURE TO EXECUTE CONTRACT. Failure or refusal of the Contractor to properly execute the Contract Documents including selecting an MPL option in Article 9 and/or to furnish the required Bonds and/or to furnish the required insurance certificates within the 10-day time will be viewed as a refusal to accept the Award. In the event any of these documents are not returned or properly submitted, the successful bidder shall be required to pay the Department the lesser of the following amounts:

- C. The amount of the bid guaranty, or
- D. The difference between the amounts specified in the bid of the lowest responsible Bidder and such larger amount for which the Department may enter into a contract with another party to perform the Work covered by said bid.

If the successful Bidder fails or refuses to properly execute the Contract Documents including selecting an MPL option in Article 9 and/or to furnish the required Bonds and/or to furnish the required insurance certificates within the 10-day time, the Department may award the Contract to the next lowest responsible Bidder, or reject all bids and re-bid the Contract.

SECTION 31. PROOF OF SURETY'S RESPONSIBILITY ON CONTRACT BOND. The surety company, which is designated by the lowest responsible Bidder for the faithful performance of the contract and prompt payment of materials, equipment and labor, shall, with its Contract Bond, furnish to the Department a certificate showing that the amount of the Bond is within the limit of net retention, or evidence that appropriate reinsurance or other security has been obtained in conformance with Section 661 of the Pennsylvania Insurance Company Law of 1921 (40 P.S. § 832).

SECTION 32. REINSURANCE. If the surety has entered into an agreement for reinsurance under the foregoing paragraph, the bond shall be supported by a duplicate original of the reinsurance agreement. The reinsurance agreement must contain a "direct liability to insured" clause, enabling the Department to maintain an action against the company reinsured jointly with the reinsurer, and, upon recovering judgment against such reinsured, to have recovery against such reinsurer, for payment to the extent to which it is liable under such reinsurance and in discharge thereof.

SECTION 33. VETERAN'S PREFERENCE. The Department strongly encourages that, all things being equal, contractors give preference in employment on projects of the Department to veterans of the Armed Services of the United States of America.

SECTION 34. SMALL BUSINESS SUPPLIER PREFERENCE. The Department strongly encourages that, all things being equal, contractors give preference in material/equipment purchases on projects of the Department to Small Business Suppliers.

SECTION 35. PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT. During the term of this contract, the Contractor agrees as follows:

- A. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. 35.202 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from such activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph A above.

SECTION 36. ENVIRONMENTAL STATEMENT. According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S. §§ 101-4509, all invitations for bids

and requests for bids for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the projects.

SECTION 37. APPLICABLE LAWS. The Bidder is hereby notified that this Project is subject to those statutes, rules and regulations shown on the following list and the Work must be carried out in compliance with these statutes, rules and regulations.

STATE LAW

I. Purdon's Statutes - Title 3 (Agriculture)

Fertilizer Act, Act of Dec. 13, 2001, 3 Pa.C.S.A. § 6701, et seq.

Soil and Plant Amendment Act, Act of Dec. 13, 2001, 3 Pa.C.S.A. § 6901, et seq.

PA Pesticide Control Act of 1973, Act of March 1, 1974 as amended, 3 P.S. § 111.21, et seq.

Agricultural Liming Materials Act, Act of March 17, 1978, as amended, 3 P.S. § 132-1, et seq.

The PA Plant Pest Act of 1992, Act of December 16, 1992 as amended, 3 P.S. § 258.1, et seq.

Noxious Weed Control Law, Act of April 7, as amended, 3 P.S. § 255.1, et seq.

Conservation District Law, Act of May 15, 1945 as amended, 3 P.S. § 849, et seq.

(Relating to weather modification), Act of January 19, 1968, as amended, 3 P.S. § 1101, et seq.

II. Purdon's Statutes - Title 16 (Counties)

(Relating to land use), Act of January 13, 1966 as amended, 16 P.S. § 11941, et seq.

III. Purdon's Statutes - Title 18 (Crimes and Offenses)

The Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S.A. § 101, et seq.

IV. Purdon's Statutes - Title 24 (Education)

Public School Code of 1949, Act of March 10, 1949, as amended, 24 P.S. § 7-731, et seq.

V. Purdon's Statutes - Title 30 (Fish)

The Fish and Boat Code, Act of October 16, 1980, as amended, 30 Pa. C.S.A. § 101, et seq.

VI. Purdon's Statutes - Title 32 (Forests, Waters and State Parks)

(Relating to water power and water supply permits), Act of June 14, 1923, as amended, 32 P.S. § 591, et seq.

Water Well Drillers License Act, Act of May 29, 1956, as amended, 32 P.S. § 645.1, et sec.

(Relating to Flood Control), Act of August 7, 1936, as amended, 32 P.S. § 653, et seq.

Flood Plain Management Act, Act of October 4, 1978, as amended, 32 P.S. § 679.101, et seq.

Storm Water Management Act, Act of October 4, 1978, as amended, 32 P.S. § 680.1, et seq.

Dam Safety and Encroachments Act, Act of November 26, 1978, as amended, 32 P.S. § 693.1, et seq.

(Relating to Stream Clearance), Act of June 5, 1947, as amended, 32 P.S. § 701, et seq.

(Relating to Potomac River Pollution), Act of May 29, 1945 (P.L. 1134, § 1), as amended, 32 P.S. 741 et seq. *Repealed in Part.* Section 4 of Act 1981, May 1, P.L. 22 No. 9, repeals this section to “the extent it required one of the members of the Interstate Commission on the Potomac River Basin to be a member of the Pennsylvania Commission on Interstate Cooperation.”

(Relating to Schuylkill River pollution), Act of June 4, 1945, as amend., 32 P.S. § 751.1, et seq.

(Relating to Delaware River pollution) Act of April 19, 1945 as amend. 32 P.S. § 815.31, et seq.

Delaware River Basin Compact, Act of July 7, 1961, as amended, 32 P.S. § 815.101, et seq.

Ohio River Valley Water Sanitation Compact, Act of April 2, 1945, as amended, 32 P.S. § 816.1, et seq.

Great Lakes Basin Compact, Act of March 22, 1956, as amended, 32 P.S. § 817.1, et seq.

Brandywine River Valley Compact, Act of September 9, 1959, as amend. 32 P.S. § 818, et seq.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of August 2, 1967, as amended, 32 P.S. § 819.1, et seq.

Susquehanna River Basin Compact, Act of July 17, 1968, as amended, 32 P.S. § 820.1, et seq.

Chesapeake Bay Comm. Agreement, Act of June 25, 1985, as amended, 32 P.S. § 820.11, et seq.

(Relating to Preservation and Acquisition of Land for Open Space Uses), Act of January 19, 1968, as amended, 32 P.S. § 5001, et seq.

Land and Water Conservation and Reclamation Act, Act of January 19, 1968, § 2), as amended, 32 P.S. § 5101, et seq.

Bluff Recession and Setback Act, Act of May 13, 1980, as amended, 32 P.S. § 5201, et seq.

Wild Resource Conservation Act, Act of June 23, 1982, as amended, 32 P.S. § 5301, et seq.

VII. Purdon's Statutes - Title 34 (Game)

The Game and Wildlife Code, Act of July 8, 1986, as amended, 34 Pa. C.S.A. § 101, et seq.

VIII. Purdon's Statutes - Title 35 (Health and Safety)

(Related to public eating and drinking places), Act of May 23, 1945, as amended, 35 P.S. 655.1 et seq. *Repealed in Part.* Section 6(b) of Act 1994, repealed this section in so far as it is inconsistent with said act (3 Pa.C.S.A. § 6501, et seq.).

The Public Bathing Law, Act of June 23, 1931, as amended, 35 P.S. § 672, et seq.

(Related to the protection of public water supply), Act of June 22, 1937, as amended, 35 P.S. § 691.1, et seq.

PA Safe Drinking Water Act, Act of May 1, 1984, as amended, 35 P.S. § 721.1, et seq.

PA Sewage Facilities Act, Act of January 24, 1966 as amended, 35 P.S. § 750.1, et seq. Repealed in Part. Section 15 of Act 1990, July 1, repealed this section insofar as it relates to fee payments.

PA Solid Waste-Resource Recovery Development Act, Act of July 20, 1974, as amended, 35 P.S. § 755.1, et seq.

(Related to pollution from abandoned mines), Act of December 15, 1965 as amended, 35 P.S. § 760.1, et seq.

Low-Level Radioactive Waste Disposal Act, Act of February 9, 1988, as amended, 35 P.S. § 7130.101, et seq.

(Related to Camp Regulation), Act of November 10, 1959 as amended 35 P.S. § 3001, et seq.

Air Pollution Control Act, Act of January 8, 1960, as amended 35 P.S. § 4001, et seq.

Solid Waste Management Act, Act of July 7, 1980 as amended, 35 P.S. § 6018.101, et seq. *Repealed in Part.* Section 905(b) of Act 1988, Feb. 9, the Low-Level Radioactive Waste Disposal Act (35 P.S. § 7130.101, et seq.), repealed this section insofar as it is inconsistent with said act.

Radiation Protection Act, Act of July 10, 1984, as amended, 35 P.S. 7110.101, et seq. *Repealed in Part.* Section 17(b) of Act 1992, Dec. 18, provides that this section is repealed insofar as it is inconsistent with said act.

Worker and Community Right-to-Know Act, Act of October 5, 1984 as amended, 35 P.S. § 7301, et seq.

IX. Purdon's Statutes - Title 36 (Highways and Bridges)

State Highway Law, Act of June 1, 1945, as amended, 36 P.S. § 670-101, et seq. *Repealed in Part.* Section 4 of Act 1985, July 3, repealed this act insofar as it's inconsistent with said act.

Junkyards along Highways), Act of July 28, 1966, as amended, 36 P.S. § 2719.1, et seq.

Highway Vegetation Control Act of December 20, 1983 as amended, 36 P.S. § 2720.1, et seq.

X. Purdon's Statutes – Title 37 APPENDIX (Historical & Museums)

History Code, Act of May 26, 1988, as amd, 37 Pa.C.S.A. § 101, et seq.

XI. Purdon's Statutes - Title 43 (Labor)

(Related to General Safety), Act of May 18, 1937, as amended, 43 P.S. § 25-1, et seq.

Seasonal Farm Labor Act, Act of June 23, 1978, as amended, 43 P.S. § 1301.101, et seq.

XII. Purdon's Statutes - Title 52 (Mines and Mining)

The Coal Mine Sealing Act of 1947, Act of June 30, 1947, as amended, 52 P.S. § 28.1, et seq.

Coal Refuse Disposal Control Act of September 24, 1968, as amended, 52 P.S. § 30.51, et seq.

(Related to Coal Land Improvement), Act of July 19, 1965, as amended, 52 P.S. § 30.101, et seq.

(Related to Mine Fires & Subsidence), Act of April 3, 1968, as amd. 52 P.S. § 30.201, et seq.

PA Anthracite Coal Mine Act, Act of November 10, 1965 as amended, 52 P.S. § 70-101, et seq.

(Related to discharge of coal into streams), Act of June 27, 1913 as amended, 52 P.S. § 631, et seq.

(Caving-in, Collapse, Subsidence), Act of May 27, 1921, as amended, 52 P.S. §661, et seq.

(Related to Subsidence), Act of September 20, 1961 as amended, 52 P.S. § 672.1, et seq.

Anthracite Strip Mining and Conservation Act, Act of June 27, 1947 as amended, 52 P.S. § 681.1, et seq. Repealed in Part. Section 16 of Act 1971, Nov. 30, provided that this section repealed insofar as it is inconsistent with Act No. 147.

(Related to control and drainage of water from coal formations), Act of July 7, 1955 as amended, 52 P.S. § 682, et seq.

PA Bituminous Coal Mine Act, Act of July 17, 1961 as amended, 52 P.S. § 701-101, et seq.

(Related to Abandoned Mines), Act of May 7, 1935, as amended, 52 P.S. § 809, et seq.

(Related to maps and plans of mines), Act of June 15, 1911, as amended, 52 P.S. § 823.

Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 as amended, 52 P.S. § 1396.1 et seq. Repealed in Part. Section 27 of Act 1984, Dec. 19, provides that, except as provided in § 3304 of this title, this section “is repealed to the extent that it applies to the surface mining of minerals other than bituminous and anthracite coal.”

The Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, as amended, 52 P.S. § 1406.1, et seq.

(Related to cave-in or subsidence of surface above mines), Act of July 2, 1937, as amended, 52 P.S. § 1407, et seq.

(Related to Coal Stripping), Act of June 18, 1941 as amended, 52 P.S. § 1471, et seq.

(Related to Coal under State Lands), Act of June 1, 1933 as amended, 52 P.S. § 1501, et seq.

(Related to Mining Safety Zones), Act of Dec. 22, 1959 as amended, 52 P.S. § 3101, et seq.

(Related to Coal Mine Subsidence Insurance Fund), Act of August 23, 1961 as amended, 52 P.S. § 3201, et seq.

Interstate Mining Compact, Act of May 5, 1966 as amended, 52 P.S. § 3251, et seq.

Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984, as amended, 52 P.S. § 3301, et seq.

XIII. Purdon's Statutes - Title 58 (Oil and Gas)

Oil and Gas Conservation Law, Act of July 25, 1961 as amended, 58 P.S. § 401, et seq.

PA Used Oil Recycling Act, Act of April 9, 1982, as amended, 58 P.S. § 471, et seq.

Coal & Gas Resource Coord. Act, Act of Dec. 18, 1984, as amended, 58 P.S. § 501, et seq.

Oil and Gas Act, Act of December 19, 1984, as amended, 58 P.S. § 601.101, et seq. Repealed in part. Section 4 of Act 1985, July 11, repealed this act insofar as inconsistent with said act.

XIV. Purdon's Statutes Title 63 (Professions and Occupations)

Sewage Treatment Plant and Waterworks Operators' Certification Act, Act of November 18, 1968 as amended, 63 P.S. § 1001, et seq.

XV. Purdon's Statutes - Title 64 (Public Lands)

PA Appalachian Trail Act, Act of April 28, 1978, as amended, 64 P.S. § 801, et seq.

XVI. Purdon's Statutes - Title 71 (State Government)

The Administrative Code of 1929, Act of April 9, 1929 as amended, 71 P.S. § 51, et seq.

XVII. Purdon's Statutes - Title 72 (Taxation and Fiscal Affairs)

Project 70 Land Acquisition and Borrowing Act, Act of June 22, 1964 as amended, 72 P.S. § 3946.1, et seq.

(Related to pollution control services), Act of March 4, 1971 as amended, 72 P.S. § 7602.1, et seq.

XVIII. Purdon's Statutes - Title 73 (Trade and Commerce)

Infrastructure Development Act, Act of July 11, 1996, as amended, 73 P.S. § 393.21, et seq.

(Related to Explosives), Act of July 1, 1937 as amended, 73 P.S. § 151, et seq.; *Suspended in Part.* This section is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. See 71 P.S. § 751-35.

(Related to Explosives), Act of July 10, 1957 as amended, 73 P.S. § 164, et seq. *Suspended in Part.* Section 164 is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. See 71 P.S. § 751-35.

(Related to Black Powder), Act of May 31, 1974, 73 P.S. § 169 et seq.

(Related to excavation and demolition), Act of Dec.10, 1974 as amended, 73 P.S. § 176, et seq.

XIX. Purdon's Statutes - Title 75 (Vehicles)

Vehicle Code, Act of June 17, 1976, as amended., 75 Pa. C.S.A. § 101, et seq.

Snowmobile Law, Act of June 17, 1976, as amended, 75 Pa. C.S.A. § 7701, et seq.

(Related to hazardous materials transport), Act of June 30, 1984, 75 Pa. C.S.A. § 8301, et seq.

XX. Purdon's Statutes - Title 77 (Workmen's Compensation)

Workers' Compensation Act, Act of June 2, 1915 as amended, 77 P.S. § 1, et seq.

PA Occupational Disease Act, Act of June 21, 1939, as amended, 77 P.S. § 1201, et seq.

XXI. Other Statutes

(Relating to Medical Waste-Manifesting and Transporter Licensing), Act of July 13, 1988, 35 P.S. § 6019.1, et seq.

Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, 53 P.S. § 4000.1501.

Hazardous Sites Cleanup Act, Act of October 18, 1988, 35 P.S. § 6020.101.

XXII. Pennsylvania Constitution - Article I, Section 27

(Adopted May 18, 1971)

FEDERAL LAW

Acid Precipitation Act of 1980 (42 U.S.C. § 8901-8912).

Act to Prevent Pollution from Ships (33 U.S.C. § 1901-1915).

Americans with Disabilities Act, (42 U.S.C. § 12101-12213 and 47 U.S.C. § 225 and 611).

Asbestos Haz. Emerg. Response Act of 1986 [see Toxic Substances Control Act secs. 201-214 (15 U.S.C. § 2641-2656)].

Atomic Energy Act of 1954 (42 U.S.C. § 2014, 2021, 2021a, 2022, 2111, 2113, 2114).

Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. § 47501-47510).

Clean Air Act (42 U.S.C. § 7401-7642).

Clean Water Act [see Federal Water Pollution Control Act].

Coastal Zone Management Act of 1972 (16 U.S.C. § 1451-1466).

Comp.Env. Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601-9675).

Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001-11050).

Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. § 791-798).

Environmental Quality Improvement Act of 1970 (42 U.S.C. § 4371-4375).

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136-136y).

Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701-1784).

Federal Water Pollution Control Act (33 U.S.C. § 1251-1387)

Geothermal Energy R& Development, Demonstration Act of 1974 (30 U.S.C. § 1101-1164).

Global Climate Protection Act of 1987 (15 U.S.C. § 2901 note).

Hazardous Substance Response Revenue Act 1980 (see 26 U.S.C. § 4611, 4612, 4661, 4662).

Low-Level Radioactive Waste Policy Act (42 U.S.C. § 2021b-2021d).

Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1401-1445)

National Climate Program Act (15 U.S.C. § 2901-2908).

National Environmental Policy Act of 1969 (42 U.S.C. § 4321-4370f).

Noise Control Act of 1972 (42 U.S.C. § 4901-4918).

Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101-10270).

Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. § 1801-1866).

Public Health Service Act (42 U.S.C. § 300f-300j-11).

Safe Drinking Water Act [Public Health Service Act 1401-1451 (42 U.S.C. § 300f-300j-26)].

Soil and Water Resources Conservation Act of 1977 (16 U.S.C. § 2001-2009).

Solid Waste Disposal Act (42 U.S.C. § 6901-6991i).

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201-1328)

Toxic Substances Control Act (15 U.S.C. § 2601-2692).

Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 7901-7942).

Water Resources Research Act of 1984 (42 U.S.C. § 10301-10309).