

Automotive Service Facilities Application Terms and Conditions

- 1) SCOPE. Under Section 2407 of the Administrative Code of April 9, 1929 (P.L. 177, No. 175), 71 P.S. 637, the Department of General Services (DGS) is given the responsibility for the maintenance of all automobiles owned by the Commonwealth, except the Department of Transportation and Pennsylvania Turnpike Commission, including contracting all repairs. Through this application process, the Department of General Services will pre-qualify suppliers who will provide automobile repairs and services to Commonwealth-owned vehicles.
 - a) Prequalification does not guarantee the supplier any or all service of Commonwealth vehicles in the vicinity of the supplier's station. As the need for service arises, selection of a supplier to perform the service shall be made impartially on the basis of the vehicle's condition, the vehicle's location, and the service required for the vehicle. When possible, selection shall be made to gain the most cost-effective service available.

- 2) ESTIMATES AND INVOICES.
 - a) All vendors must submit a written estimate for vehicle repairs prior to commencing with performance of work.
 - b) All **estimates** for repairs to Commonwealth automotive equipment must be forwarded to the Bureau of Vehicle Management, Customer Service Division (CSD) by fax (717-265-7781) or email to RA-DGS_BVM_Estimates@pa.gov. The estimate must contain the Work Order number, name of Customer Service Representative, vendor SRM and FID numbers, odometer reading, equipment make and model, equipment number, and license number, as well as the name and department, board, or commission of the Commonwealth employee requesting the work. The supplier should ensure that the person requesting the estimate is an employee of the Commonwealth. All estimates and invoices must clearly indicate the gross cost, the posted discount (when it applies), and the resulting net costs for all parts, the number of labor hour(s) per service, and the labor rate(s) as stated on this application. All **invoices** submitted that do not contain the above information will be returned without payment.
 - c) All **invoices** must be clearly labeled 'FINAL INVOICE' and submitted either by **Fax, Email, or Mail** to:

FAX: 717-265-7781
EMAIL: RA-DGS_BVM_Estimates@pa.gov

DEPARTMENT OF GENERAL SERVICES
BUREAU OF VEHICLE MANAGEMENT
2221 FORSTER STREET
HARRISBURG, PA 17103

- 3) PAYMENT. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is thirty (30) days after the Commonwealth actually receives a proper invoice. A proper invoice is not received until the Commonwealth accepts the services as satisfactorily performed. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) stated in this Application. If any payment is not made within forty-five (45) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the contractor as acceptance of the service performed. The Applicant agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Applicant or its subsidiaries to the Commonwealth against any payments due the Applicant under any contract with the Commonwealth. **The Commonwealth will not pay for repairs (including parts) unless the Department of General Services has given the supplier verbal approval and work order number for the work after receiving from the supplier an estimate of the cost thereof, specifying amounts of labor, material, proper discount and net totals. The provision shall be binding in every instance and no employee of the Commonwealth has authority to waive or modify it. The Commonwealth is exempt from state and local sales taxes.**

- 4) AUDIT PROVISIONS. The Commonwealth shall have the right, at reasonable times, to audit the books, documents, and records of the Applicant to the extent that the books, documents, and records relate to costs or pricing data for any services performed for the Commonwealth. The Applicant will maintain books and records which will support the amounts charged and costs incurred for services performed for a period of three (3) years from date of final payment. The Applicant shall give full and free access to all records to the Commonwealth or their authorized representatives.

- 5) RISK OF LOSS OR DAMAGE. The supplier will bear the risk of loss or damage, including theft or unauthorized use, to any Commonwealth vehicle after possession of the vehicle is given to the supplier for services.

- 6) **WARRANTY.** The supplier must warrant that all services performed on any Commonwealth vehicle shall be free and clear of any defects in workmanship and materials. The supplier shall pass through to the Commonwealth the manufacturer's warranty for any installed parts.
- 7) **USE OF VEHICLE.** The supplier is given permission to drive Commonwealth vehicles solely for the purpose of reasonable testing and inspection.
- 8) **INSURANCE.** The Applicant shall, at its expense, procure and maintain insurance. The following types of insurance, issued by companies authorized to conduct such business under the laws of the Commonwealth of Pennsylvania may be required:
 - a) Worker's Compensation Insurance for all of the Applicant's employees.
 - b) Comprehensive General Liability Insurance to protect the Commonwealth and the Applicant from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from the activities performed at the Applicant's location.
 - c) Vehicle Liability Coverage for vehicles owned and operated by Applicant or its employees.
 - d) Garagekeepers Liability insurance, which covers damage done to or done by Commonwealth vehicles while in the custody of the Applicant.

The Applicant must provide to the Department with the Application a current Certificate(s) of Insurance which shows the types and amounts of the coverages maintained by the Applicant.

- 9) **INDEPENDENT CONTRACTOR.** The services performed by the supplier are performed as an independent contractor. None of the services performed by the supplier are performed as an employee of the Commonwealth of Pennsylvania. Amounts paid to the supplier do not constitute compensation or wages paid to an employee. Except as otherwise provided, the Commonwealth shall have no control over the manner in which the supplier performs the contractual services.
- 10) **HOLD HARMLESS PROVISION.** The Applicant shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Applicant and its employees and agents upon any order and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.
- 11) **RELEASE.** Applicant authorizes all Commonwealth agencies to release to the Commonwealth information related to Applicant's liabilities to the Commonwealth including, but not limited to taxes, unemployment compensation, and workers' compensation liabilities.
- 12) **NONDISCRIMINATION/SEXUAL HARASSMENT.** The Applicant agrees to the following provisions.
 - a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - b) Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
 - c) Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
 - d) Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
 - e) The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Minority and Women Business Opportunities.
 - f) The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

- g) The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation or the terms and conditions of the Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

13) AMERICANS WITH DISABILITIES ACT. The Applicant agrees as follows.

- a) Pursuant to the federal regulations promulgated under the authority of the *Americans With Disabilities Act*, 28 C.F.R. 35.1010 et. Seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation on this contract or from activities provided 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.

14) CONTRACTOR INTEGRITY. The Applicant agrees to comply as follows.

- a) Definitions.
 - i) Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - ii) 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 execution of this agreement.
 - iii) Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
 - iv) Financial Interest means ownership of more than a 5% interest in any business; or holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - v) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b) The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c) The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
- d) The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit or anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- e) The contractor shall not, in connections with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- f) Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him or her shall accept or agree from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
- g) Except with the consent of the Commonwealth, the contractor shall not have financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h) The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i) The contractor, by execution of this agreement and by submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- j) The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents, or files of any type or form that refer to or concern this agreement. The contractor shall retain such information for a period of three years beyond the termination of the contract unless otherwise provided by law.

k) For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse 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.

15) **CONTRACTOR RESPONSIBILITY.** For the purposes of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the Commonwealth, or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

- a) The contractor may certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
- b) The contractor must also certify, in writing that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
- c) The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state government entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d) The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.
- e) The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of 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, which results in the suspension or debarment of the contractor. Such costs shall include, but shall 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 that do not result in the contractor's suspension or debarment.

The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgsweb.state.pa.us/debarmentlist/NonArchiveByCompany.asp?p=> or contacting the Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125, phone: 717-783-6472, fax: 717-787-9138.

16) **CERTIFICATION.** The Applicant represents, acknowledges, and certifies that:

- a) The Applicant has read and understands the terms and conditions of this Application form and this form is submitted in accordance with the terms and conditions hereof.
- b) The price(s) were arrived at independently and without consultation, communication, or agreement with any other applicant or potential contractor.
- c) No attempt has been made or will be made to induce any firm or person to refrain from submitting an application, or to submit prices higher than the Applicant's prices, or to submit any intentionally high or noncompetitive prices or other form of complementary bid.
- d) The prices have been established in good faith and not pursuant to any agreement or discussion with or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- e) To the best of the knowledge of the person signing the Application, the Applicant, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Applicant in this Application.
- f) The Applicant is not currently under suspension or debarment by the Commonwealth, or any other state or the federal government and if the Applicant cannot certify, then it shall submit along with the Application written explanation of why such certification cannot be made.

- g) To the best of the knowledge of the person signing the Application, and except as otherwise disclosed by the Applicant in the Application the Applicant has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Bidder that is owed to the Commonwealth.
- h) All information provided by, and representations made by the Applicant in this Application are material and important and will be relied upon by the Commonwealth. Any misstatement shall be treated as fraudulent concealment from the Commonwealth of the true facts relating to the submission of this Application. A misrepresentation shall be punishable under Section 4904 of Title 18 P.C.S.A.
- i) Applicant authorizes all Commonwealth agencies to release to the Commonwealth information related to Applicant's liabilities to the Commonwealth including, but not limited to taxes, unemployment compensation, and workers' compensation liabilities.
- j) The terms and conditions of this Application will be part of any and all orders placed by Commonwealth agencies under this Program.

17. RIGHT TO KNOW LAW PROVISIONS.

- a) The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to all transactions.
- b) Unless the Applicant provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Applicant using the information provided by the Applicant in its application if the agency needs the Applicant's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Applicant shall notify the agency in writing of any change in the name or the application information within a reasonable time prior to the change.
- c) Upon notification from the Commonwealth that the Commonwealth requires the Applicant's assistance in responding to a RTKL request for records in the Applicant's possession, the Applicant shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Applicant's possession which arises out of the prequalification process or any transaction with Applicant that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Applicant fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Applicant shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Applicant's failure, including any statutory damages assessed against the Commonwealth.
- d) The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Applicant agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the Applicant considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Applicant will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Applicant explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Applicant's written statement, the Commonwealth still decides to provide the Requested Information, Applicant will not challenge or in any way hold the Commonwealth liable for such a decision.
- e) The Commonwealth will reimburse the Applicant for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- f) Applicant agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The Applicant agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL. Applicant's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Applicant has Requested Information in its possession.