

**INSTRUCTIONS
TO
BIDDERS**
For Electronic Bidding



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

2020 Edition

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

SECTION 1. E-BUILDER CONSTRUCTION MANAGEMENT SOFTWARE. To improve productivity and efficiency, and to streamline the process of construction management in the digital age, the Department of General Services will utilize the e-Builder Enterprise Software Program (e-Builder) for electronic bidding. Bidders are required to create a user profile within e-Builder by clicking on the advertisement located in PA e-marketplace at www.emarketplace.state.pa.us. A video tutorial is available on the e-Builder site for first time users to learn how to navigate e-Builder. Technical support is also available via e-mail at support@e-builder.net or by phone at 1-888-288-5717.

SECTION 2. WORK TO BE PERFORMED. The work to be performed is described in the Contract Documents. The Contract Documents are available via e-Builder in the Bid Documents folder.

SECTION 3. 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 under the Bid Documents folder in e-Builder. 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 4. INTERPRETATION OF CONTRACT DOCUMENTS.

- A.** Questions during the bid stage **shall be submitted via e-Builder** under the Q&A Board tab in the Package's Invitation to Bid. All questions related to the proposed work or proposed Contract Documents must be submitted in e-Builder **no later than close of business ten (10) days prior to the Bid Opening Date**. Only questions 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 question is submitted within 10 days of the Bid Opening Date, the Department may, in its sole discretion, answer the question. Questions submitted outside of e-Builder **will not** be considered for response.
- B. NEITHER THE DEPARTMENT, THE PROFESSIONAL, NOR ANY REPRESENTATIVE OF THE CLIENT AGENCY SHOULD BE ASKED TO PROVIDE ANY ORAL OR WRITTEN INTERPRETATION TO ANY BIDDER REGARDING INTERPRETATION OF THE CONTRACT DOCUMENTS. ANY CONVERSATION OR WRITING BETWEEN A BIDDER AND EITHER THE DEPARTMENT, THE PROFESSIONAL, OR THE REPRESENTATIVE OF THE CLIENT 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 AN ADDENDUM ISSUED IN E-BUILDER.**
- C.** The Department's response to any Question will be in the form of an Addendum issued in e-Builder. If a response to a Question is provided through the Answer process in e-Builder, the response will not be binding on the Department or the project unless it is subsequently issued in an Addendum. All Bidders that have created a user profile in e-Builder will be notified as addenda are issued. **If an addendum is issued prior to the bid opening, but after the Bidder submitted its bid, the Bidder will need to resubmit its bid through e-Builder prior to the bid opening date and time.** All addenda become a part of the Contract Documents and all Bidders on any portion of the contract for the Project are bound by all addenda issued on the Project. The Bidder will be required to acknowledge all addenda prior to submitting a bid.

SECTION 5. SUBMISSION/SIGNING OF BIDS. All bids shall be submitted in e-Builder prior to the date and time scheduled for the bid opening. Only e-Builder submissions will be accepted by the Department. **Mail (regular or express), e-mail, or any other type of delivery of bid submissions will not be accepted by the Department and, if feasible, will be returned to sender.**

- A. **Base Bids.** All base bids will be considered separate and distinct bids. If a base bid is left blank or a zero (0) is present, the Department will interpret this to mean that the Bidder did not submit a bid on that base bid, but this will not invalidate any remaining base bids. When submitting base bids in e-Builder, the “Base Bid Total” amount in the Bid Summary table should be disregarded.
- i. **Do NOT only submit the additive amount for a Base Bid.** The Base Bid price submitted shall include the price to perform all work associated with that Base Bid. If only the additive price is submitted on a Base Bid, that Base Bid will be rejected as non-responsive.
- B. **Small Diverse Business and Veteran Business Enterprise Submittals.** The Small Diverse Business Participation Packet and the Veteran Business Enterprise Participation Packet are included in e-Builder in the Bid Documents folder. When an SDB Participation Goal and a VBE Participation Goal are provided for specific Base Bids, failure to submit with each of those Base Bids an SDB Participation Submittal and a VBE Participation Submittal will result in rejection of that particular Base Bid as non-responsive. Also, failure to submit an SDB Participation Submittal and a VBE Participation Submittal with each Base Bid consistent with the instructions contained within those Packets may result in rejection of your Base Bid(s) as non-responsive.
- C. **Acknowledgments.** Before submitting a bid in e-Builder, the Bidder must acknowledge the statements contained under the Additional Required Info tab by typing an answer as instructed. Bidders will not be permitted to proceed unless this step is completed. Unless an affirmative answer is typed in for the acknowledgments, the Bidder will be rejected as non-responsive.

Bidders must confirm/submit the bid by entering their e-Builder username and password when prompted. **After a Bidder confirms/submits the bid on the Confirm Bid screen, the bid may be modified in e-Builder and re-submitted or completely withdrawn by the Bidder.**

SECTION 6. AWARD TO A DOMESTIC AND FOREIGN BUSINESS.

- A. No contract will be awarded to a domestic business 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. §1101-§4131) and/or the Pennsylvania Uniform Partnership Act of 2016 (15 Pa. C.S. §8411-§8486), and/or the Pennsylvania Uniform Limited Partnership Act of 2016 (15 Pa. C.S. §8611-§8695), and/or the Pennsylvania Uniform Limited Liability Company Act of 2016 (15 Pa. C.S. §8811-§8898), and/or the Fictitious Names Act (54 Pa. C.S. §301-§332).
- B. No contract will be awarded to a Bidder which is a foreign business unless the Bidder has complied with or agreed to comply with Chapter 4 (relating to Foreign Associations) of Title 15 Corporations and Unincorporated Associations (15 Pa. C.S. §402-§419).

SECTION 7. WITHDRAWAL OR MODIFICATION OF A SUBMITTED BID PRIOR TO BID OPENING.

- A. **Complete Withdrawal Before Bid Opening Date and Time.** For a bid to be withdrawn before the date and time of bid opening, the Bidder must re-access its submitted bid and click on Recall Bid under the Response Form, this removes the Bidder’s response from the submitted bids.

- B. Modification of a Bid Before Bid Opening Date and Time.** If, before the date and time of bid opening, a Bidder wishes to modify its bid already submitted through e-Builder, the Bidder must re-access its submitted bid and click on Recall Bid under the Response Form. Once the bid is recalled the response information can be modified , and resubmitted.

SECTION 8. BID OPENING PROCEDURE. Bids will be opened in e-Builder by two (2) representatives of the Department who enter their usernames and password into the program to confirm their presence at the date and time designated in the Notice, or as close after this time as reasonably possible. The Department will not, under any circumstances, open a bid before the Bid Opening Date and time. The Bid Opening is viewable to the public via web conference. Information regarding the web conference can be found on the Notice to Bidders in e-Builder. DGS will also publish the web conference link on its publicly accessible website. The amount of each bid, together with the name of each Bidder will be recorded under the Bid Tabulation tab in e-Builder. The Bid Tabulation shall be considered unofficial and shall be open to public inspection during the web conference. The Bid Tabulation, listing the Bidders and their bid amount, will be available in e-Builder and posted to the Department's publicly accessible website within two (2) calendar days of the Bid Opening.

SECTION 9. 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, scope of work, 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. The reasons for rejection will appear next to the Bidder's name on the Bid Tabulation, which will be made available in e-Builder and published on the Department's publicly accessible website within five (5) days of the Bid Opening.

SECTION 10. 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 Bid Withdrawal Form. The Bid Withdrawal Form must be completed and e-mailed, as indicated on the Bid Withdrawal Form. The Bid Withdrawal Form is available under the Invitation Documents tab in e-Builder. The Form must be downloaded before a bid is confirmed/submitted. Bidders who did not download the Bid Withdrawal Form prior to submitting a bid may obtain a Form by contacting the Bidding Contact listed in the Notice to Bidders. 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. The evidence should be attached to the e-mail with the Form at the time the request is submitted.

SECTION 11. EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT PROVIDED ON REQUEST. At the Department's request, or if specifically required by the Invitation to Bid or bidding documents, Bidders shall attach an experience questionnaire and financial statement with the Department on the Form provided by the Department under Supporting Documentation section of the Response Form tab for the Project. 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 and/or cancellation of the Contract Award. The original document shall be provided to the Department at its request.

SECTION 12. REFUSAL TO SUBMIT REQUESTED INFORMATION. If the Bidder fails, refuses, or neglects to submit any requested information within the time stated in any request, the Bidder will fail to qualify as a responsible Bidder and its bid shall be rejected as not responsible and/or its Contract Award will be rescinded. Such event may result in the Bidder being entered into the Contractor Responsibility Program.

SECTION 13. COLLUSIVE BIDS WILL BE REJECTED. The bids of any Bidder or Bidders, who engage in collusive bidding or bid-rigging, as discussed in the Antibid-Rigging Act, will be rejected. 62 Pa. C.S. §§ 4501 – 4509. Any Bidder who commits a prohibited act under the Antibid-Rigging Act will be prosecuted to the fullest extent of the law.

SECTION 14. BID PROTEST PROCEDURE. The Commonwealth Procurement Code (62 Pa. C.S. §1711.1, as amended) governs the protest procedure, which is summarized below. In the event that 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 defined as an entity that has not submitted a bid in response to the Notice to Bidders.
2. "Bidder" is defined as 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 prior to the Bid Opening Date and time established in the Notice to Bidders by either e-mail or regular mail.
 - i. **E-MAIL.** Prospective Bidders may complete and submit a Protest Form. The Form is available under the Invitation Documents tab in the Package Invitation to Bid for the Project. The Form, along with any supporting documentation, must be e-mailed, as indicated on the Bid Protest Form.
 - ii. **MAIL.** Prospective Bidders may file a protest, in writing, with the Contracting Officer, Department of General Services, 2nd Floor Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103.
 2. If a protest is filed by a Bidder, the protest must be filed 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 Bid Tabulation is available in e-Builder and posted to the DGS website. Bidders must file protests by either:
 - i. **E-MAIL.** Bidders may complete and submit a Protest Form. The Form is available in e-Builder under the Invitation Documents tab in the Package Invitation to Bid for the Project. The Form, along with any supporting documentation, must be e-mailed, as indicated on the Bid Protest Form to e-Builder, or
 - ii. **MAIL.** Protest may be filed, in writing, with the Contracting Officer, Department of General Services, 2nd Floor Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103,
 3. "Filed" is defined as the date upon which the Protest Form is submitted via e-mail to e-Builder or, if a written protest is filed, the date upon which the Department receives the written protest.
 4. If the Bidder fails to file/submit a bid protest or files/submits an untimely protest, then the Bidder 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 that 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 15. BIDDER CERTIFIED NOT UNDER DEBARMENT. The Bidder must certify in e-Builder that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government; if the Bidder cannot so certify, then the Bidder shall submit, along with the bid, a written explanation of why such certification cannot be made. Written explanations, if provided, should be attached to the Supporting Documents section of the Response Form tab for the Project. The Department will review any written explanation from the Bidder to determine if the Bidder is responsive.

SECTION 16. 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 the contract, or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

SECTION 17. REIMBURSEMENT OF COSTS OF STATE INSPECTOR GENERAL INVESTIGATION. The Bidder/Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Bidder's/Contractor's compliance with the terms of the contract, or any other agreement between the Bidder's/Contractor and the Commonwealth, which result in a determination of willful misconduct or the suspension or debarment of the Bidder's/Contractor. Such costs shall include, but are not limited to, the salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Bidder's/Contractor shall not be responsible for investigative costs for investigations which do not result in a determination of willful misconduct or the Bidder's/Contractor's suspension or debarment. The full text of the Office of State Inspector General's statute can be found at 71 P.S. § 211 *et seq.*

SECTION 18. CURRENT LIST OF SUSPENDED AND DEBARRED CONTRACTORS. The Bidder/Contractor may obtain the current list of suspended and debarred Contractors by referring to the Department's website.

SECTION 19. ASSIGNMENT OF ANTITRUST CLAIMS. The successful Bidder/Contractor and the Commonwealth recognize that, in actual economic practice, overcharges by the successful Bidder's/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 the contract, and, intending to be legally bound, the successful Bidder/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 20. NONDISCRIMINATION/SEXUAL HARASSMENT. The successful Bidder/Contractor shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix A.

SECTION 21. CONTRACTOR INTEGRITY PROVISIONS. The successful Bidder/Contractor shall comply with the Integrity Provisions, which are attached hereto as Appendix B.

SECTION 22. CONTRACTOR RESPONSIBILITY PROVISIONS. All Bidders and the successful Bidder/Contractor shall comply with the Responsibility Provisions, which are attached hereto as Appendix C.

SECTION 23. AMERICANS WITH DISABILITIES ACT. The successful Bidder/Contractor shall comply with The Americans with Disabilities Act Provisions, which are attached hereto as Appendix D.

SECTION 24. ENHANCED MINIMUM WAGE PROVISIONS. The successful Bidder/Contractor shall comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix E.

SECTION 25. RIGHT-TO-KNOW LAW. The successful Bidder/Contractor shall comply with the Right-To-Know Law Provisions, which are attached hereto as Appendix F.

SECTION 26. OFFSET PROVISION. The successful Bidder/Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the successful Bidder to the Commonwealth against any payments due the successful Bidder/Contractor under any contract with the Commonwealth.

SECTION 27. PROJECT WAGES. The successful Bidder/Contractor shall comply with the provisions, duties, obligations, remedies, and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. §§ 165-1 et seq., which is incorporated herein by reference. To the extent that the Project has federal funds involved and the Davis-Bacon Act applies, the Bidder/Contractor shall comply with the provisions, duties, obligations, remedies, and penalties of the Davis-Bacon Act.

SECTION 28. STEEL PRODUCTS PROCUREMENT ACT. The successful Bidder/Contractor agrees to comply with the provisions of the Steel Products Procurement Act of March 3, 1978, P.L. 6, as amended (73 P.S. §1881 et seq.). Information regarding the Act's requirements, including a list of exempt products, is available on the Department's web site at <http://www.dgs.pa.gov/Businesses/Design-and-Construction/Steel-Products-Act-Exemptions/Pages/default.aspx>.

SECTION 29. PRODUCT DISCRIMINATION. Successful Bidders agree to comply with the following Acts regarding Product Discrimination:

A. Reciprocal Limitation Act.

1. Background Requirements of the Reciprocal Limitations Act. The Act (62 Pa. C.S. § 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 successful Bidder/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.

SECTION 30. SMALL DIVERSE BUSINESS and VETERAN BUSINESS PARTICIPATION INFORMATION

A. SDB and VBE Participation Goals.

- 1. All Bidders shall refer to the Documents \ 45 Bidding \ 01 Bid Documents \ 01 Project manual folder template in e-Builder for the Instructions for Completing the Small Diverse Business (SDB) Participation Submittal and SDB Utilization Schedule and the Instructions for Completing the Veteran Business Enterprise (VBE) Participation Submittal and VBE Utilization Schedule for all requirements.
- 2. The Department has established both SDB and VBE participation goals for utilization of SDB and VBE subcontractors, manufacturers, and suppliers for this Project.
 - i. The Goals for each Prime Contractor is set forth in the Notice to Bidders in the following Form:

		SDB	VBE
.1	General Construction	____%	____%
.2	HVAC	____%	____%
.3	Plumbing	____%	____%
.4	Electrical	____%	____%

- 3. The Administrative Procedures, which are included in the Contract Documents, have a chapter titled “Small Diverse Business and Veteran Business Enterprise Participation.”

B. Upon Bid Opening.

The Bidder’s SDB and VBE submittals will be reviewed for responsiveness according to these Instructions to Bidders and the SDB Participation Submittal and the VBE Participation Submittal instructions. When an SDB Participation Goal and a VBE Participation Goal are provided for specific Base Bids, failure to submit with each of those Base Bids an SDB Participation Submittal and a VBE Participation Submittal will result in rejection of that particular Base Bid as non-responsive. Also, failure to submit an SDB Participation Submittal and a VBE Participation Submittal with each Base Bid consistent with the instructions contained within those Packets may result in rejection of your Base Bid(s) as non-responsive.

C. Upon Contract Execution.

1. SDB and VBE Participation Documents. All documents completed and submitted by the selected Bidder in connection with its SDB Participation Submittal (including the SDB Participation Submittal, SDB Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal, VBE Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto.
2. Bidder/Contractor SDB and VBE Participation Obligations.
 - i. For purposes of monitoring compliance with the Bidder's/Contractor's SDB participation commitments and VBE participation commitments, the contract cost is the Contract Sum. The Bidder's/Contractor's SDB and VBE participation percentages will also apply to Change Orders if the work that is the subject of the Change Order is the type of work being performed by an SDB or VBE on the Contract. DGS reserves the right to require SDB or VBE participation on change orders for additional work not already subject to an SDB or VBE commitment as further described in the solicitation documents.
 - ii. The Bidder/Contractor cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Bureau of Construction and BDISBO.
 - iii. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the contract is assigned to another prime contractor.
3. Subcontract requirements.
 - i. The Bidder/Contractor and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the selected offeror and the SDB or VBE prior to the commencement of any work by the subcontractor.
 - ii. All subcontracts must contain:
 - a. The requirements in Article 7.5 of the General Conditions to the Construction Contract, as applicable;
 - b. The specific work, supplies or services the SDB or VBE will perform and the location for work performed;
 - c. The fixed dollar value that each SDB or VBE is to be paid;
 - d. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within 14 calendar days of the Bidder's/Contractor's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;
 - e. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the Bidder's/Contractor's contract with the Commonwealth and that do not place disproportionate risk on the SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the contract; and
 - iii. If the subcontract terms omit any of the information required in subparagraph C.3.ii but that information is otherwise reflected within the Bidder's/Contractor's SDB Participation Submittal, VBE Participation Submittal, or associated documents

(SDB Utilization Schedule, VBE Utilization Schedule, and Letters of Commitment), the information listed in the SDB Participation Submittal, VBE Participation Submittal, or associated documents is incorporated into the subcontract agreement.

- iv. If the Bidder/Contractor and a SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule cannot agree upon a definitive subcontract prior to the commencement of any work by the subcontractor, the Contractor must provide written notification to the Bureau of Construction and BDISBO.

4. Utilization Reports.

- i. The contractor shall submit a Utilization Report with each Application for Payment. Each Utilization Report must have current data (totals to date) identifying at least each element as follows:

- a. Detailed information, including but not limited to, any subcontracts and purchase orders documenting the dollar value commitments, commission, or fees to SDB and VBE firms to be used toward the satisfaction of the Project's goals. All SDBs and VBEs identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.

- b. Detailed information regarding any work that is claimed to be self-performed by the contractor and therefore, allegedly not eligible for subcontracting to a SDB and VBE.

- c. Regarding Construction Subcontracts and Purchase Orders:

- 1. All Subcontract/Purchase Orders awarded to date are \$ _____

- 2. Commitments to Small Diverse Businesses and Veteran Business Enterprises totals to date:

- i. \$ _____ (dollars) for SDBs
- ii. % _____ (percentage) for SDBs
- iii. \$ _____ (dollars) for VBEs
- iv. % _____ (percentage) for VBEs

- 3. For each SDB and VBE subcontract and purchase order awarded since the previous Application for Payment, the:

- i. Identification and status of the SDB as a minority business enterprise (MBE), woman business enterprise (WBE), LGBT business enterprise (LGBTBE), Disability-owned business enterprise (DOBE), Service-Disabled Veteran-Owned Small Business Enterprise (SDVBE) or the status of the VBE as a Veteran-Owned Small Business Enterprise (VBE) or a Service-Disabled Veteran-Owned Small Business Enterprise (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 SDB and VBE subcontract/purchase order this month; and

- iv. The designation of SDB and VBE stocking suppliers as either an MEP (i.e., mechanical, electrical, and plumbing) stocking supplier or a General Construction stocking supplier; and

- v. The fee or commission paid to the nonstocking supplier. No 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 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.
- 5. Noncompliance with SDB and/or VBE commitments.
 - i. Upon BDISBO notifying the Department that a Bidder/Contractor did not comply with the SDB commitments or VBE commitments, the Department shall adhere to the Contract Documents, specifically the Administrative Procedures, for remedies and corrective actions required. The Bidder/Contractor would be required to initiate the corrective actions within 10 business days and complete them within the time specified by the Department.
 - ii. If the Department determines that material noncompliance with SDB and VBE contract provisions exists and that the Bidder/Contractor refuses or fails to take the corrective action required by the Department, the Department, in consultation with BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, termination of the contract along with consequential damages; revocation of the Bidder's/Contractor's SB, SDB, and/or VBE status; a determination that the Bidder's SDB participation submittal or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

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 SDB or VBE means only that the applicant for certification has submitted information that qualifies it as a SDB or VBE 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 Diversity, Inclusion and Small Business Opportunities at (717) 783-3119.

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

SECTION 31. PRE-AWARD OF CONTRACT. Once DGS determines the apparent lowest responsible bidder, the Bidder must comply with the Public Works Employment Verification Act, 43 P.S. §§ 167.1-167.11, by submitting to the Department a Commonwealth Public Works Verification Form ("Form") prior to the award of the contract. The Bidder shall either attach the Form to the bid in e-Builder under the Supporting Documentation tab of the Invitation to Bid for the Project 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, result in rejection of the bid, and the Bidder may be entered into the Contractor Responsibility Program.

The Form and relevant information are located on the Department's web page at www.dgs.state.pa.us. The Form is also available in e-Builder under the Invitation Documents tab in the Package Invitation for the Project.

SECTION 32. 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 via e-Builder. If the lowest Bidder is allowed to withdraw 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 via e-Builder. 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 33. EXECUTION OF CONTRACT, BOND, AND RETURN OF INSURANCE CERTIFICATES. Within ten (10) days after receipt of the contract in e-Builder, the successful Bidder, must:

- A.** Download, sign* and upload the contract to e-Builder as instructed; and
1. * The contract must be signed by a senior corporate officer Chairperson, President, Vice President, Senior Vice President, Executive Vice President, Assistant Vice President, Chief Executive Officer, and Chief Operating Officer. If another person signs the contract, then evidence of that person's authority to sign the contract on the corporation's behalf must accompany the contract. This evidence can be in the form of a corporate resolution, an internal corporate delegation document, or a letter from one of the senior officers or the Secretary, authorizing the signatory to sign on behalf of the corporation. The letter must be on a corporate letterhead. This evidence of signature authority can be uploaded in the Attached Documents Tab in e-Builder.
- B.** Download, sign (as discussed in 32.A.1) and upload the Contract Bond, or Bonds, to e-Builder 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 licensed to do business in Pennsylvania; and,
- C.** Sign and attach all insurance certificates required by the General Conditions and/or Special Conditions to the contract in e-Builder.
- D.** Mail the original signed contract, Contract Bond(s), insurance certificates, and any evidence of signature authority to the Department of General Services, Bureau of Capital Projects Planning & Procurement, Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103 for verification by the Department.
- E.** After all Commonwealth signatures (handwritten or electronic) are obtained, and the contract is fully executed, the Department will forward a notification via e-Builder.
- 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 34. FAILURE TO EXECUTE CONTRACT. Failure or refusal of the successful Bidder to accept the Award of Contract or properly execute the Contract Documents, and furnish the required Contract Bond, 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 attached in e-Builder, or if the original documents are not provided as required by Section 32 of these Instructions, the successful bidder shall be entered into the Contractor Responsibility Program.

If the successful Bidder fails to execute the Contract Documents and provide the original documents as required, the Department may award the contract to the next lowest responsible Bidder or reject all bids and re-bid the contract.

SECTION 35. PROOF OF SURETY'S RESPONSIBILITY ON CONTRACT BOND. The surety company, which is designated by the successful Bidder/Contractor 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 36. 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 37. 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 38. 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 39. 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 40. 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).

APPENDIX A

NONDISCRIMINATION / SEXUAL HARASSMENT CLAUSE

For the purposes of this provision, the term "Contractor" shall refer to the successful Bidder.

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, 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 by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII* of the *Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. 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 of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

APPENDIX B

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.

1. 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 successful Bidder that enters into a 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.

2. 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 or 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.

APPENDIX C

CONTRACTOR RESPONSIBILITY PROGRAM

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, 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 its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. 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 Commonwealth 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, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth 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.
5. 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 that 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.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

APPENDIX D

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 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 agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, 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 through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

APPENDIX E

ENHANCED MINIMUM WAGE PROVISIONS

1. **Enhanced Minimum Wage.** Contractor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

APPENDIX F

RIGHT-TO-KNOW LAW

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. [For the purpose of](#) these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. [The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.](#)

c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to [a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL \(“Requested Information”\), the](#) Contractor shall:

1. Provide [the Commonwealth](#), within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession [arising](#) out of [this](#) Contract that [the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL](#); and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth [will](#) rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless [the Commonwealth](#) determines that the [Requested Information](#) is clearly not protected [from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five \(5\) business days of receipt of written notification of the Commonwealth's determination.](#)
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions 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.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor 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.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

