

Commonwealth of Pennsylvania
Invitation to Qualify For Fuels, Tank Wagon Delivery

SUPPLY TERMS AND CONDITIONS

THIS CONTRACT, made at Harrisburg, Pennsylvania, in the county of Dauphin, Commonwealth of Pennsylvania, by and between the COMMONWEALTH OF PENNSYLVANIA, acting by and through the Department of General Services, with offices at Harrisburg, Pennsylvania, hereinafter called the Commonwealth and <COMPANY NAME>, hereinafter called the Contractor, acting through its proper officials;

WITNESSETH
THAT:

WHEREAS, the Commonwealth has need for Various Fuels, Tank Wagon Delivery (the "Supplies"); and

WHEREAS, the Commonwealth issued an Invitation to Qualify (ITQ) for the Various Fuels, Tank Wagon Delivery ITQ through an Invitation for Bids (IFB) and the Contractor submitted a bid in response to the ITQ; and

WHEREAS, the Commonwealth has the authority to enter into this Contract for the Supplies on a multiple award basis according to Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. §517; and

WHEREAS, the Commonwealth has evaluated the Contractor's Proposal and determined that the Contractor has met the qualification requirements of the ITQ.

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual promises hereinafter set forth, the parties hereto agree, with the intention of being legally bound, as follows:

1. GENERAL

- a. Upon determination that the Contractor meets the ITQ requirements, the Commonwealth will issue a contract to the Contractor.
- b. Upon receipt of a Purchase Order (PO) issued under this Contract, the Contractor agrees to furnish the requested services to the Commonwealth agency issuing the PO.

2. COST

The total cost for Supplies provided for each PO under this Contract shall be the amount stated in each PO.

3. OVERVIEW

The purpose of this multiple award Contract is to provide agencies of the Commonwealth with the Supplies that are within the scope of this Contract.

4. DEFINITIONS

- a. Contact Person. The individual designated by the Issuing Agency to administer and monitor POs issued by the Issuing Agency under this Contract. The Contact Person is authorized to issue POs and amendments to POs and to terminate POs.

- b. Contracting Officer. The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract (as opposed to individual POs, which shall be administered and monitored by the Issuing Agency) is the DGS Chief Procurement Officer. The Contracting Officer is NOT authorized to sign this Contract or any amendment, but is authorized to terminate this Contract.

- c. Days. Unless specifically indicated otherwise, days mean Commonwealth business days.

- d. Contract Effective Date. The date that the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained.

- e. Issuing Agency. The Commonwealth agency issuing the PO under the terms and conditions of this Contract.

- f. Proposal. Contractor's response to a Request for Quotations (RFQ) issued by the Issuing Agency.

5. CONTRACT SCOPE

- a. This Contract will include various Supply categories. All of the categories are described more fully via the ITQ web site at www.itgrp.state.pa.us/ITQ/ITQ/Default.aspx.
- b. The ITQ web site is the place that shows the specific Supply categories for which the Contractor has been found qualified.
- c. If the Contractor must perform work outside of the daily operational hours set forth by the Issuing Agency, it must make arrangements with the Issuing Agency to assure access to the facility and equipment has been arranged. The Contractor must take such access into consideration when it is putting together its Proposal. No additional payment will be made on the basis of lack of access unless the Issuing Agency fails to provide access as agreed to between the Issuing Agency and the Contractor.

6. ORDER OF PRECEDENCE

- a. If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:
 - i. This Contract;
 - ii. The data resident on the ITQ web site at www.itgrp.state.pa.us/ITQ/ITQ/Default.aspx and incorporated herein by reference at the date of execution of the Contract or issuance of an RFQ off of this Contract, whichever is later, including but not limited to the promises and certifications the Contractor made in qualifying for the Contract;
- b. If any conflicts or discrepancies should arise in the interpretation of a PO, the order of precedence shall be:
 - i. The consulting service category definitions, descriptions, qualification requirements, and contract terms and conditions set forth in the RFQ;
 - ii. This Contract;
 - iii. The PO and any attachment thereto, including: (1) the Contractor's Proposal, as accepted by the Commonwealth; (2) the RFQ.

7. CONTRACT INTEGRATION

- a. This Contract, including the Contract signature pages, together with the data resident on the ITQ web site at www.itgrp.state.pa.us/ITQ/ITQ/Default.aspx, as described in Section 6, constitutes the final, complete, and exclusive Contract between the parties containing all the terms and conditions agreed to by the parties. The Contract itself contemplates the issuance of RFQs and POs, and Technical and Cost proposal responses by the Contractor, the content of which will augment the Contract when issued and executed as anticipated under this Contract.
- b. All representations, understandings, promises, and agreements pertaining to the subject matter of this Contract made prior to or at the time this Contract is executed are superseded by this Contract.
- c. There are no conditions precedent to the performance of this Contract except as expressly set forth herein.

8. PURCHASE ORDERS (POs)

- a. Prior to issuing a PO against this Contract, Issuing Agencies must follow the solicitation requirements and evaluation process established for this Contract and available at <http://www.itgrp.state.pa.us/ITQ/ITQ/Default.aspx>. DGS may modify these procedures by posting revised procedures at the website specified above and which will become effective for subsequent projects not already in the solicitation process.
- b. All documents issued by the Issuing Agency and all responses submitted by the Contractors must be in electronic format and that format must be compatible with Microsoft™ Office. Documents may be read only, but may not be in .PDF format. The Issuing Agency may, at its option, also require that all documents be submitted in paper format.
- c. Issuing agencies may issue POs against this Contract. A PO constitutes the Contractor's authority to perform Services. Each PO will be deemed to incorporate the terms and conditions set forth in this Contract. In no event will the performance time period specified in a Purchase Order extend longer than ninety (90) days after the expiration date of the Contract term. The Contractor will be required to adhere to the requirements and/or specifications of the PO.
- d. Purchase Orders meeting the small no bid procurement threshold in total amount may also be made in person or by telephone using a Commonwealth Procurement VISA Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. The Contractor agrees to

accept payment through the use of the Commonwealth Procurement VISA card.

9. PERIOD OF PERFORMANCE

The Contractor, for the life of this Contract, shall deliver all supplies as specified under the terms of this Contract and any PO resulting from this Contract. In no event shall the Commonwealth be responsible or liable to pay for any supplies provided by the Contractor prior to the Effective Date, and the Contractor hereby waives any claim or cause of action for any such supplies.

10. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date and shall end on October 31, 2018.

11. OPTION TO EXTEND

The Commonwealth reserves the right to extend this Contract or any part of this Contract up to three (3) months, or as necessary to prevent a lapse in Contract coverage.

12. SPECIAL REQUIREMENTS

Within the general scope of this ITQ and with the prior approval of DGS, Issuing Agencies may modify the Supply category definitions, descriptions, qualification requirements, and contract terms and conditions for particular POs if set forth in the RFQ. Such modifications shall take precedence over differing provisions of the ITQ/Contract.

The Commonwealth reserves the right to purchase Supplies within the scope of this Contract through other procurement methods whenever the Commonwealth deems it to be in its best interest.

13. SUBCONTRACTS

The Contractor may subcontract any portion of the Supplies described in this Contract to third parties selected by Contractor and approved in writing by the Issuing Agency, whose approval shall not be unreasonably withheld. Notwithstanding the above, if Contractor has disclosed the identity of subcontractor(s) together with the scope of work to be subcontracted in its Proposal, the Issuing Agency's issuance of

a PO is deemed to be approval of all named subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of Contractor to the Issuing Agency under this Contract. Upon request of the Issuing Agency, the Contractor must provide the Issuing Agency with a copy of the subcontract agreement(s) between the Contractor and the subcontractor(s). Contractor will require all of its subcontractors to adhere to the terms and conditions of this Contract. Contractors may not subcontract more than 49% of the total spend for a project/purchase order unless DGS approves a waiver in advance.

14. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts or PO's for additional or related work, and the Contractor shall fully cooperate with other Contractors and Commonwealth employees, and coordinate its delivery of supplies with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Commonwealth employees. This Section shall be included in the Contracts of all Contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this Section as to all Contractors to prevent the imposition of unreasonable burdens on any Contractor.

15. PRIME CONTRACTOR RESPONSIBILITIES

The Contractor will be responsible for all supplies required under a PO issued under this Contract whether or not it provides them directly. The Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the PO.

16. INVOICES

- a. Unless otherwise specified in a PO, subject to Issuing Agency review and acceptance, the Contractor shall invoice the Issuing Agency for Supplies delivered only after acceptance of the Supplies in accordance with the PO and Section 18 (ACCEPTANCE). Invoices will be submitted as specified in the PO.
- b. At a minimum, the following information shall be furnished on all invoices, as applicable:
 - (1) A unique invoice number;
 - (2) The Contract number;
 - (3) PO number;
 - (4) The Contractor's SAP/SRM Vendor Number;

- (5) The period covered;
 - (6) Location, including address to which payment is to be made; and
- c. The Issuing Agency shall use its best efforts to pay all properly prepared and submitted invoices within forty five (45) calendar days from the date of receipt of such invoice by the Issuing Agency. Interest on late payments may only be paid if the contractor qualifies for such payment pursuant to the provisions of 4 Pa. Code § 2.31, *et seq.*
- d. The Commonwealth or Issuing Agency may deduct from amounts due under an invoice any amounts owed to the Commonwealth under Section 28, Offset Provision for Commonwealth Contracts.
- e. Electronic Payments
 - (1) The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the Contract or PO, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
 - (2) The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
 - (3) It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

17. ASSIGNABILITY

- a. Subject to the terms and conditions of this Section, the Contract is binding upon the parties and their respective successors and assigns.
- b. The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Commonwealth, which consent may be withheld at the sole and absolute discretion of the Commonwealth.

- c. Notwithstanding the foregoing, the Contractor may, without the consent of the Commonwealth, assign its rights to payment to be received under the Contract or a PO, provided that the Contractor provides written notice of such assignment to the Issuing Agency together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.
- d. For the purposes of the Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- e. Any assignment consented to by the Commonwealth shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned. The assignment form is provided via the ITQ web site at <http://www.itqrp.state.pa.us/ITQ/ITQ/Default.aspx>.
- f. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, is not considered to be an assignment. The Contractor shall give the Issuing Agency and the Contracting Officer written notice of any such change of name.

18. ACCEPTANCE

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale with represents that Commonwealth’s costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter

become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

19. NOTICE OF DELAYS

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay the timely performance of this Contract or any PO issued under this Contract (including actual or potential labor disputes), the Contractor shall promptly give notice thereof in writing to the Contact Person stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the Commonwealth or the Issuing Agency of any rights or remedies to which it is entitled by law or pursuant to provisions of this Contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

20. DELIVERY

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this Contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after issuance of the PO.

21. CHANGES

- a. At any time during the performance of a PO, the Issuing Agency or the Contractor may request a change to the PO, including the Specifications, within the scope of the PO. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the PO. If the Issuing Agency is the requestor of the change, the Contractor will inform the Issuing Agency if there will be any charges for the Contractor's services in investigating the change request prior to incurring such charges. If the Issuing Agency and the Contractor agree on the results of the investigation and any necessary amendments to the PO, the parties must complete and execute the Change Notice Form, which is attached hereto as Appendix A, to modify the PO and implement the change. The Issuing Agency and Contractor will only request changes to the PO by way of the Change Notice Form. If the parties cannot agree upon the results of the investigation or the necessary

amendments to the PO, the change request will not be implemented and, if the Contractor initiated the change request it may elect to handle the matter in accordance with Section 24 (DISPUTES) of this Contract.

- b. Changes outside the scope of a PO shall be accomplished through the Commonwealth's normal procurement procedures, and may result in an amended PO or a new PO (if the additional supplies are awarded to the Contractor).

22. DEFAULT

- a. The Commonwealth may, subject to the provisions of Section 49, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Section 23, Termination Provisions) the whole or any part of this Contract or any PO for any of the following reasons:
 - (1) Failure to begin Services within the time specified in the Contract or Purchase Order or as otherwise specified;
 - (2) Failure to perform the Services with sufficient labor, equipment, or material to cause the completion of the specified Services in material accordance with the Contract or Purchase Order terms;
 - (3) Unsatisfactory performance of the Services;
 - (4) Failure to deliver the awarded item(s) within the time specified in the Contract or PO or as otherwise specified;
 - (5) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or PO;
 - (6) Failure or refusal to remove material, or remove, replace or perform any Services rejected as defective or noncompliant;
 - (7) Discontinuance of Services without approval or as otherwise allowed pursuant to the Contract or PO;
 - (8) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so (unless the failure to resume is pursuant to the Contract or PO);

- (9) Insolvency;
- (10) Assignment made for the benefit of creditors;
- (11) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
- (12) Failure to protect, to repair, or to make good any damage or injury to property;
- (13) Material breach of any provision of the Contract;
- (14) Failure to comply with representations made in the Contractor's bid/Proposal; or
- (15) Failure to comply with applicable industry standards, customs, and practice.

23. TERMINATION

a. For Convenience

- (1) The Commonwealth may terminate this Contract and any or all POs issued under it without cause by giving Contractor thirty (30) days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). The Notice of Termination shall specify which, if any, POs will terminate with termination of the Contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective. Any PO not so specified in the Notice of Termination shall continue in effect for the term stated in the PO.

Any Issuing Agency may terminate any PO issued by that agency, without cause, by giving Contractor Notice of Termination prior to the effective date of termination.

In the event of termination hereunder, Contractor shall receive payment for:

- (i) All Services performed consistent with the terms of the PO prior to the effective date of termination;
- (ii) All actual and reasonable costs incurred by Contractor in terminating the PO; and

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs.

Failure to agree on any termination costs shall be a dispute handled in accordance with Section 24 (DISPUTES) of this Contract.

- (2) The Contractor shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such services performed during the thirty (30) day notice period, if such services are requested by the Issuing Agency under any POs being terminated, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under the terminating POs.
- (3) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable statutory law or regulations.

b. Non-Appropriation

Any payment obligation or portion thereof of the Commonwealth created by this Contract or any PO issued pursuant to this Contract is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the PO. The Contractor shall be reimbursed in the same manner as that described in this section related to Termination for Convenience to the extent that appropriated funds are available.

c. Default

The Commonwealth may, in addition to its other rights under this Contract, terminate this Contract or any PO in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform its obligations under a PO and does not cure such failure within the time specified in the PO or, if no time is specified in the PO, within thirty (30) days or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Commonwealth may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. For POs, the Contract Person shall provide any notice of default or written cure notice for the Issuing Agency. The Issuing Agency is authorized to terminate only a PO issued by the agency pursuant to this Contract. Termination of a PO for default shall not affect work on other POs under which the Contractor is not in default. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) Subject to the Limitation of Liability in Section 31 of this Contract, in the event the Commonwealth terminates this Contract in whole or in part as provided in this Subsection (c), the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth for the difference between the Contract price for the terminated portion of the services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Section.
- (2) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism, and unusually severe weather. The Contractor shall notify the Contracting Officer and the Issuing Agency promptly in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (3) Nothing in this Subsection (c) shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.

- (4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subsection (a).

- d. If this Contract or a PO is terminated as provided by this Subsection (c), the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to Section 33 (OWNERSHIP RIGHTS) of this Contract, require the Contractor to deliver to each Issuing Agency in the manner and to the extent directed by the Contact Person, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or PO as has been terminated. Payment for such reports and documentation will be made consistent with the Contract or PO.

- e. The rights and remedies of the Commonwealth provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- f. The Commonwealth's failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

- g. Following exhaustion of the Contractor's administrative remedies as set forth in Section 24, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

24. DISPUTES

a. Contract Disputes

- (1) In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Contracting Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

- (2) The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The Contracting Officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the Commonwealth.
- (3) Within fifteen (15) days of the mailing date of the determination denying a claim, or within 135 days of filing a claim if no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with performance under the Contract in a manner consistent with the determination of the Contracting Officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

b. PO Disputes

- (1) In the event of a controversy or claim arising from a PO, the Contractor must, within six months after the cause of action accrues, file a written claim with the Issuing Agency for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- (2) The Issuing Agency shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Issuing Agency and the Contractor. The Issuing Agency shall send his/her written determination to the Contractor. If the Issuing Agency fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Issuing Agency's determination shall be the final order of the Issuing Agency.

(3) Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the Issuing Agency and the Issuing Agency shall compensate the Contractor pursuant to the terms of the PO.

c. The Issuing Agency will provide the Contracting Officer with a copy of all determinations made by the Issuing Agency. The Contractor will provide the Contracting Officer with a copy of any appeal of an Issuing Agency decision that is filed by the Contractor.

25. CONFIDENTIALITY

The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to Section 23.c (DEFAULT), in addition to other remedies available to the non-breaching party.

Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

a. Already known to the recipient at the time of disclosure;

- b. Independently generated by the recipient and not derived from the information supplied by the disclosing party;
- c. Known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- d. Disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- e. Required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

26. CONTRACTOR RESPONSIBILITY PROGRAM AND PROVISIONS

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

27. OFFSET PROVISION FOR COMMONWEALTH CONTRACTS

The Contractor authorizes the Commonwealth to offset any past due state and local tax liabilities of the Contractor relating to amounts other than payable in the ordinary course and other than in good faith dispute or under contest or appeal by Contractor, as well as, any other amount due to the Commonwealth from the Contractor, against any payment due to the Contractor under this or any other contract with the Commonwealth.

28. TAXES-FEDERAL, STATE, AND LOCAL

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to

make tax-free purchases under registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas- guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this Section is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

29. COMMONWEALTH HELD HARMLESS

The Contractor 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 Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* 71 P.S. § 732-101, *et. seq.*, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

Notwithstanding the above, the Contractor shall not enter into any settlement without the Commonwealth's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

30. PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET PROTECTION

- a. The Contractor shall hold the Commonwealth harmless for any suit or proceeding which may be brought against the Commonwealth for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* 71 P.S. § 732-101, *et. seq.*, the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the

Commonwealth. The OAG may, however, in its sole discretion and under the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. If OAG does not delegate its right of defense, OA will request that OAG seek to join the Contractor as a third party. If OAG does not agree to seek to join the Contractor as a third party, the Contractor shall seek to intervene in the matter. If the Contractor is not joined as a third party either through the OAG's joinder or through the Contractor's intervention, there will be no contractual obligation on the part of the Contractor to indemnify. No settlement which prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support.

- b. The Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- c. If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States or foreign patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- d. If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.

- e. If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
 - (1) Any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
 - (2) Any license fee less an amount for the period of usage of any software; and
 - (3) The prorated portion of any service fees representing the time remaining in any period of service for which payment was made.

- f. The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.

- g. Notwithstanding the above, the Contractor shall have no obligation for:
 - (1) Modification of the product, service, or deliverable provided by the Commonwealth;
 - (2) Any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
 - (3) Use of the product, service, or deliverable in other than its specified operating environment;
 - (4) The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
 - (5) Infringement of a non-Contractor product alone;
 - (6) The Commonwealth's distribution, marketing or use beyond the scope contemplated by the SOW or PO; or
 - (7) The Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.

- h. The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

31. CONTRACT CONSTRUCTION

The provisions of this Contract shall be construed in accordance with the provisions of all applicable laws and regulations of the Commonwealth of Pennsylvania.

32. OWNERSHIP RIGHTS

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the Contract.

33. PUBLICATION RIGHTS AND/OR COPYRIGHTS

- a. Except as otherwise provided in Section 33 (OWNERSHIP RIGHTS), the Contractor shall not publish any of the results of the work without the written permission of the Issuing Agency. The publication shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of the Commonwealth of Pennsylvania." The Contractor shall not include in the documentation any copyrighted matter, unless the Contractor provides the Commonwealth with written permission of the copyright owner.
- b. Subject to Section 33 (OWNERSHIP RIGHTS) and the confidentiality provisions of Section 25 (CONFIDENTIALITY), the Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report or data designed or developed and delivered to the Commonwealth as part of the performance of a PO.
- c. Rights and obligations of the parties under this Section 34 survive the termination of this Contract or any PO issued under it.

34. CHANGE OF OWNERSHIP

In the event that the Contractor should change ownership for any reason whatsoever, the Commonwealth shall have the exclusive option of continuing under the terms

and conditions of this Contract with the Contractor or its successors or assigns for the full remaining term of this Contract, or continuing under the terms and conditions of this Contract with the Contractor or its successors or assigns for such period of time as is necessary to replace the products, materials, reports, studies, or computer programs, or immediately terminating this Contract.

35. OFFICIALS NOT TO BENEFIT

No official or employee of the Commonwealth and no member of its General Assembly who exercises any functions or responsibilities under this Contract shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership, or association in which they are, directly or indirectly, interested; nor shall any such official or employee of the Commonwealth or member of its General Assembly have any interest, direct or indirect, in this Contract or the proceeds thereof.

36. INDEPENDENT CAPACITY OF CONTRACTOR

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further the Contract is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

37. COMPLIANCE WITH LAWS

The Contractor shall comply with all federal, state, and local laws applicable to its Services, including, but not limited to, all statutes, regulations and rules that are in effect as of the date of the issuance of the PO and shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligation.

38. LOBBYING CERTIFICATION AND DISCLOSURE

With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying filing the required documentation. If federal funding is involved, the requirements shall be set forth in the RFP and any required forms must be submitted with the RFQ response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

39. THE AMERICANS WITH DISABILITIES ACT

During the term of this Contract, the Contractor agrees as follows:

- a. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *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 Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the *General Prohibitions Against Discrimination*, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Contracts with outside Contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from 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 Subsection a. above.

40. EXAMINATION OF RECORDS

- a. Unless otherwise specified in a PO, the Contractor agrees to maintain, using its standard procedures, and in accordance with Generally Accepted Accounting Principles, books, records, documents, and other evidence pertaining to the charges under any PO to the extent and in such detail as will properly reflect all charges for which reimbursement is claimed under the provisions of this Contract.
- b. The Contractor agrees to make available at the office of the Contractor at all reasonable times, and upon reasonable written notice, during the term of this Contract and the period set forth in Subsection c. below, any of the records for inspection, audit, or reproduction by any authorized Commonwealth representative. To the extent allowed by law, the Commonwealth agrees to maintain any documents so provided in accordance with the confidentiality provisions in Section 25 (CONFIDENTIALITY).
- c. Except as otherwise provided below or specified in a PO, the Contractor shall preserve and make available its records for a period of three (3) years from the date of final payment under this Contract:

- (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
 - (2) Non-privileged records which relate to litigation or the settlement of claims arising out of the performance of this Contract, or charges under this Contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been finally resolved.
- d. Except for documentary evidence retained pursuant to Subsection c.(2) above, the Contractor may in fulfillment of its obligation to retain its records as required by this Section substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two (2) years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth with the concurrence of its auditors.
- e. The provisions of this Section shall be applicable to and included in each subcontract hereunder. The term “subcontract” as used in this contract only, excludes POs not exceeding \$1,000 and subcontracts or POs for public utility services at rates established for uniform applicability to the general public.

41. SINGLE AUDIT ACT OF 1984

In compliance with the *Single Audit Act of 1984*, the Contractor agrees to the following:

- a. This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in *Government Auditing Standards*, 1994 Revisions (Yellow Book).
- b. The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of the *Single Audit Act of 1984*, 31 U.S.C. § 7501, *et seq.*, and all rules and regulations promulgated pursuant to the Act.
- c. The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.

- d. The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the *Single Audit Act of 1984*.

42. ENVIRONMENTAL PROTECTION

In carrying out this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including the *Clean Streams Law*, Act of June 22, 1937, as amended; the *Pennsylvania Solid Waste Management Act*, Act of July 7, 1980 (P.L. 380, No. 97), as amended; and the *Dam Safety and Encroachment Act*, Act of November 26, 1978 (P.L. 1375, No. 325), as amended.

43. NONDISCRIMINATION CLAUSE/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

1. 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, 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.
2. 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.
3. The Contractor and each subcontractor 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.
4. The Contractor and each subcontractor 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 contracts relates.

5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the “Initial Contract Compliance Data” form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the “Monthly Contract Compliance Report for Construction Contractors”, each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD21 submission requirement from the contracting agency.
6. 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.
7. 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.

44. 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 procurement process.

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

1. 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 with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they

relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, 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.

- 9.** Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
- a.** Approved in writing by the Commonwealth prior to its disclosure; or
 - b.** Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
 - c.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - d.** Necessary for purposes of Contractor's internal assessment and review; or
 - e.** Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
 - f.** Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - g.** Otherwise required by law.
- 10.** Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a.** Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
 - b.** Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by

Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

- (1) obtaining;
- (2) attempting to obtain; or
- (3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 *et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list

of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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 Commonwealth Inspector General in writing.
14. 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.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of 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 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 refers to or concern this contract.

- 16.** 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.
- 17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

 - a.** “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
 - 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
 - c.** “Contractor” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
 - d.** “Financial interest” means:

 - (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.

- e. “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.

- f. “Immediate family” means a spouse and any unemancipated child.

- 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.

- h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

45. ASSIGNMENT OF RIGHTS UNDER THE ANTITRUST LAWS

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by Contractor’s suppliers resulting from violations of state and federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all rights, title, and interest in and to any claims Contractor now has or may hereafter acquire under state and federal antitrust laws relating to the goods and services which are subject to this Contract.

46. DB OR DBE COMPLIANCE

The Contractor must comply with the current Disadvantaged Business Program (DB) or Disadvantaged Business Enterprise (DBE) requirements as stated at <http://www.itqrp.state.pa.us/ITQ/ITQ/Default.aspx> or included in the SOW by the Issuing Agency. DGS may modify these procedures by posting revised procedures at the website specified above and which will become effective for subsequent projects not already in the solicitation process.

The Contractor must meet and maintain any DB or DBE commitment it makes in its Proposal throughout the term of the contract unless a change is approved by the Issuing Agency upon recommendation by BWMBO. If the Contract is assigned to another contractor, the new contractor must maintain the DB or DBE participation of the original contract.

47. WARRANTY

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

48. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the PO, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or PO.

49. NOTICE

Any written notice to any party under this Agreement shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Commonwealth: Chief Procurement Officer
Bureau of Procurement, Department of General Services
555 Walnut Street Forum Place 6Th Floor Harrisburg,
PA 17125

Contractor:

50. ELECTRONIC SIGNATURES

The Commonwealth may issue this Contract and any subsequent change, and Commonwealth agencies may issue Purchase Orders against this Contract, electronically in accordance with the following terms:

- a. The Contract may not include “ink” signatures by the Commonwealth. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of DGS to legally bind the Commonwealth to this Contract.
- b. Purchase Orders against this contact may not include “ink” signatures by the Issuing Agency. The electronically printed name of the purchaser represents the signature of the individual who has the authority on behalf of the Issuing Agency to authorize the Contractor to perform the Services specified in the Purchase Order.
- c. Purchase Orders may be issued electronically or through facsimile equipment. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. The electronic transmission or facsimile of a Purchase Order shall require acknowledgement of receipt of the transmission by the Contractor.

- d. The Commonwealth and the Contractor specifically agree as follows:
- (1) No handwritten signature shall be required in order for the Contract and Purchase Order to be legally enforceable.
 - (2) Upon receipt of a Purchase Order, the Contractor shall promptly and properly acknowledge its receipt. Any order which is issued electronically or via facsimile shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the Commonwealth, unless and until the Issuing Agency has properly received an acknowledgment.
 - (3) The parties agree that no writing shall be required in order to make the Contract or Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a Contract or Purchase Order or acknowledgment issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements must be in writing and signed by the party bound thereby. The Contract and any Purchase Order or acknowledgment issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of the Contract or Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or Purchase Order or acknowledgment were not in writing or signed by the parties.

51. RIGHT-TO-KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
- b. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the

Contractor using the Contractor information provided by the Contractor in SRM if the agency needs the Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.

- c. Upon notification from the Commonwealth that the Commonwealth requires the Contractor's assistance in responding to a RTKL request for records in the Contractor's possession, the Contractor 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 Contractor's possession which arises out of the Contract 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 Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor'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. Contractor agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. 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, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor 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 Contractor's written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold the Commonwealth liable for such a decision.
- e. The Commonwealth will reimburse the Contractor 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. Contractor 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 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. 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.

52. COSTARS PROGRAM (If elected by Contractor)

Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, or any Commonwealth executive or independent agencies, boards, or commissions not listed above. Statewide "row" offices, including the Auditor

General, Attorney General, and State Treasurer are not State-affiliated entities under the Procurement Code.

However, elements of the court system, the General Assembly, and independent agencies, boards, or commissions have been deemed eligible for COSTARS membership as entities that spend public funds for the procurement of supplies, services, and construction.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.dgsweb.state.pa.us/COSTARSReg/Member.aspx>

- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
Department of General Services Self-Certified Small Business Bidder	\$500

All Other Bidders	\$1,500
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1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business, a copy of its active Small Business Procurement Initiative (SBPI) certificate must be included with the bid submittal.
 2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business, a copy of its active SBPI certificate must be included with the Administrative Fee for each contract year and upon each renewal.
- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.
1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
 2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
 - b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the

Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

- d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
 - f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
1. The Contractor shall submit the reports via the web-based COSTARS Suppliers' Gateway at www.dgs.state.pa.us/costars. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.
 2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
 3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.
- H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.dgs.state.pa.us/costars

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.dgs.state.pa.us/costars, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@state.pa.us

53. RECIPROCAL LIMITATIONS ACT

This procurement is subject to the Reciprocal Limitations Act. Contracts must complete and submit with their responses to RFQs the State of Manufacturer Chart which is contained in GSPUR-89 (“Reciprocal Limitations Act Requirements”) which can be found at <http://www.dgsweb.state.pa.us/comod/CurrentForms/GSPUR89.doc> and which is made part of the Contract and any RFQ issued under the Contract.