

Automotive Service Facilities Application Terms and Conditions

1) SCOPE. Under Section 2407 of the Administrative Code of April 9, 1929 (P.L. 177, No. 175), 7.S. 637, the Department of General Services (DGS) is given the responsibility for the maintenance of all automobiles owned by the Commonwealth, except the Department of Transportation and Pennsylvania Turnpike Commission, including contracting all repairs. Through this application process, the Department of General Services will pre-qualify suppliers who will provide automobile repairs and services to Commonwealth-owned vehicles.

a) Prequalification does not guarantee the supplier any or all service of Commonwealth vehicles in the vicinity of the supplier's station. As the need for service arises, selection of a supplier to perform the service shall be made impartially on the basis of the vehicle's condition, the vehicle's location, and the service required for the vehicle. When possible, selection shall be made to gain the most cost-effective service available.

Vendor Criteria:

- a) Have a facility, equipment, parts-and-supply inventory, technical personnel and service management of a caliber suitable for fleet maintenance of commercial size clients. (Minimum of one ASE certified technician preferred)
- b) Have a record of being in business for the past three consecutive years or longer. Vendors qualified by DGS prior to May 30, 2015, are grandfathered from this requirement until June 30, 2018.
- c) Have certification as an official Pa. State inspection station if you select inspection and emissions.
- d) Have the resources and expertise to perform the following services relative to Commonwealth vehicles.
 - 1. Routine and preventative maintenance.
 - 2. Common and major repairs
 - 3. Diagnostic work
- e) Use new parts for all maintenance and repair unless approved by a DGS Customer Service Representative.
 - 1. Guarantee new parts for a minimum of 90 days against defects in materials and workmanship or as covered by any manufacturer or distributor warranty.

Collision Center Criteria:

- a) Vendor agrees to pursue training and certification necessary to maintain its technicians' proficiency on current auto repair procedures and techniques. Training opportunities may include: (I-CAR Gold Class or ASE certification, or other recognized industry training).
- b) Vendor represents that their facility has the necessary equipment required to perform acceptable repairs to the Commonwealth Fleet.
- c) Vendor agrees to maintain business practices that are environmentally responsible based on Federal, State and local regulatory requirements.
- d) Vendor agrees to maintain a quality control process for in-progress and completed repairs to ensure acceptable repairs to the Commonwealth Fleet. Evidence of this process will be made available to the Commonwealth upon request.
- e) Vendor agrees not to charge the Commonwealth for storage fees until the vendor submits estimates for body repair and the Commonwealth has confirmed receipt of the estimates.

2) ESTIMATES AND INVOICES.

- a) All Vendors must submit a written estimate for vehicle repairs prior to commencing with performance of work. All estimates will be completed in a thorough manner by a qualified individual using estimating guides such as: Chilton, Mitchell, Motor, Alldata, or other guides recognized and accepted in the industry.
- b) All **estimates** for repairs to Commonwealth automotive equipment must be forwarded to the Bureau of Vehicle Management, Customer Service Division (CSD) (Fax number: 717 265-7781) or email to RA-DGS_BVM_Estimates@pa.gov. The estimate must contain the Work Order number, name of Vendor's customer service representative, vendor SRM and FID numbers, odometer reading, equipment make and model, equipment number, and license number, as well as the name and department, board, or commission of the Commonwealth employee requesting the work. The Vendor should ensure that the person requesting the estimate is an employee of the Commonwealth. All estimates and invoices must clearly indicate the gross cost, the posted discount (when it applies), and the resulting net costs for all parts, the number of labor hour(s) per service, and the labor rate(s) as stated on this application. All **invoices** submitted that do not contain the above information will be returned without payment.

- c) All invoices must be clearly labeled 'FINAL INVOICE' and submitted either by Fax (717-265-7781), Email OR Mail to:

DEPARTMENT OF GENERAL SERVICES
RA-DGS_BVM_Estimates@pa.gov

BUREAU OF VEHICLE MANAGEMENT
2221 FORSTER STREET
HARRISBURG, PA 17103

- 3) **PAYMENT.** The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is thirty (30) days after the Commonwealth actually receives a proper invoice. A proper invoice is not received until the Commonwealth accepts the services as satisfactorily performed. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) stated in this Application. If any payment is not made within forty-five (45) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the contractor as acceptance of the service performed. The Vendor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Vendor or its subsidiaries to the Commonwealth against any payments due the Applicant under any contract with the Commonwealth. **The Commonwealth will not pay for repairs (including parts) unless the Department of General Services has given the supplier verbal approval and a work order number for the work after receiving from the Vendor an estimate of the cost thereof, specifying amounts of labor, material, proper discount and net totals. The provision shall be binding in every instance and no employee of the Commonwealth has authority to waive or modify it. The Commonwealth is exempt from state and local sales taxes.**
- 4) **AUDIT PROVISIONS.** The Commonwealth shall have the right, at reasonable times, to audit the books, documents, and records of the Vendor to the extent that the books, documents, and records relate to costs or pricing data for any services performed for the Commonwealth. The Vendor will maintain books and records which will support the amounts charged and costs incurred for services performed for a period of three (3) years from date of final payment. The Vendor shall give full and free access to all records to the Commonwealth or their authorized representatives.
- 5) **RISK OF LOSS OR DAMAGE.** The Vendor will bear the risk of loss or damage, including theft or unauthorized use, to any Commonwealth vehicle after possession of the vehicle is given to the Vendor for services.
- 6) **WARRANTY.** The Vendor must warrant that all services performed on any Commonwealth vehicle shall be free and clear of any defects in workmanship and materials. The Vendor shall pass through to the Commonwealth the manufacturer's warranty for any installed parts.
- 7) **USE OF VEHICLE.** The Vendor is given permission to drive Commonwealth vehicles solely for the purpose of reasonable testing and inspection.
- 8) **INSURANCE.** The Vendor shall, at its expense, procure and maintain insurance. The following types of insurance, issued by companies authorized to conduct such business under the laws of the Commonwealth of Pennsylvania may be required:
- Worker's Compensation Insurance for all of the Applicant's employees.
 - Comprehensive General Liability Insurance to protect the Commonwealth and the Applicant from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from the activities performed at the Applicant's location.
 - Vehicle Liability Coverage for vehicles owned and operated by Applicant or its employees.
 - Garagekeepers Liability insurance, which covers damage done to or done by Commonwealth vehicles while in the custody of the Applicant.

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

- 9) INDEPENDENT CONTRACTOR. The services performed by the Vendor are performed as an independent contractor. None of the services performed by the Vendor are performed as an employee of the Commonwealth of Pennsylvania. Amounts paid to the Vendor do not constitute compensation or wages paid to an employee. Except as otherwise provided, the Commonwealth shall have no control over the manner in which the Vendor performs the contractual services.
- 10) HOLD HARMLESS PROVISION. The Vendor 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 Vendor and its employees and agents upon any order and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.
- 11) RELEASE. Vendor authorizes all Commonwealth agencies to release to the Commonwealth information related to Applicant's liabilities to the Commonwealth including, but not limited to taxes, unemployment compensation, and workers' compensation liabilities.
- 12) NONDISCRIMINATION/SEXUAL HARRASSMENT. The Applicant agrees:
- a) In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
 - b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
 - c) The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 - d) The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
 - e) The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
 - f) 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.
 - g) The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
 - h) 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.

- 13) AMERICANS WITH DISABILITIES ACT. The Applicant agrees as follows.
- a) Pursuant to the federal regulations promulgated under the authority of the *Americans With Disabilities Act*, 28 C.F.R. 35.1010 et. Seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation on this contract or from activities provided under this contract. As a condition of accepting and executing this contract, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of the *Americans With Disabilities Act*, which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
 - b) The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the contractor's failure to comply with the provisions of paragraph a) above.
- 14) CONTRACTOR INTEGRITY. It is essential that those who seek to contract with the Commonwealth observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.
- a) DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - 1) "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - 2) "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - 3) "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.
 - 4) "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - 5) "Financial Interest" means either:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - 6) "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.
 - 7) "**Non-bid Basis**" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
 - b) In furtherance of this policy, Contractor agrees to the following:
 - 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 or procurement 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 the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
 - 3) Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

- 4) Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - b) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - c) had any business license or professional license suspended or revoked;
 - d) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

- 6) Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- 7) When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- 8) Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 9) Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in

the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- 10) 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.

- 15) **CONTRACTOR RESPONSIBILITY.** For the purposes of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the Commonwealth, or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.
 - a) The contractor may certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
 - b) The contractor must also certify, in writing that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
 - c) The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state government entity. Such notification shall be made within 15 days of the date of suspension or debarment.
 - d) The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.
 - e) The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at https://www.dgs.internet.state.pa.us/debarment_list/ or contacting the Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125, phone: 717- 783-6472, fax: 717-787-9138.

- 16) **CERTIFICATION.** The Vendor represents, acknowledges, and certifies that:
 - a) The Vendor has read and understands the terms and conditions of this Application form and this form is submitted in accordance with the terms and conditions hereof.
 - b) The price(s) were arrived at independently and without consultation, communication, or agreement with any other applicant or potential vendor.
 - c) No attempt has been made or will be made to induce any firm or person to refrain from submitting an application, or to submit prices higher than the Vendor's prices, or to submit any intentionally high or noncompetitive prices or other form of complementary bid.
 - d) The prices have been established in good faith and not pursuant to any agreement or discussion with or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
 - e) To the best of the knowledge of the person signing the Application, the Vendor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have

not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Vendor in this Application.

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

17. RIGHT TO KNOW LAW PROVISIONS.

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