

**REQUEST FOR PROPOSALS FOR
LOAN INVESTMENT TRANSACTIONS LEGAL SERVICES**

**ISSUING OFFICE
COMMONWEALTH FINANCING AUTHORITY**

RFP NUMBER

CFA-2022-02

DATE OF ISSUANCE

OCTOBER 25, 2022

**REQUEST FOR PROPOSALS FOR
LOAN INVESTMENT TRANSACTIONS LEGAL SERVICES**

TABLE OF CONTENTS

CALENDAR OF EVENTS	Page iii
Part I GENERAL INFORMATION	Page 1
Part II CRITERIA FOR SELECTION	Page 10
Part III TECHNICAL SUBMITTAL	Page 13
Part IV COST SUBMITTAL	Page 15
Part V SDB & VBE COMMITMENTS	Page 16
Part VI LEGAL CONTRACT TERMS AND CONDITIONS	Page 21
<u>APPENDICES</u>	
APPENDIX A, PROPOSAL COVER SHEET	Page A1
APPENDIX B, DOMESTIC WORKFORCE UTILIZATION CERTIFICATION	Page B1
APPENDIX C, TRADE SECRET CONFIDENTIAL PROPRIETARY INFORMATION NOTICE FORM	Page C1
APPENDIX D, COST SUBMITTAL WORKSHEET	Page D1
APPENDIX E, SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE COMMITMENTS	Page E1
APPENDIX F, MODEL SDB/VBE SUBCONTRACTOR SUBAGREEMENT	Page F1

CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Date	
Deadline to submit Questions via email to equinn@p.gov	Nov. 1, 2022
Answers to Questions posted to the eMarketplace website at https://www.emarketplace.pa.sate.us/Search.aspx no later than this date.	Nov. 4, 2022
Offerors to monitor website for all communications regarding the RFP	Ongoing
Deadline to submit Proposal to Issuing Office via email at equinn@pa.gov	Nov. 22, 2022 by 4:00 PM

PART I

GENERAL INFORMATION

Purpose. This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Commonwealth Financing Authority’s consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for legal services related to Commonwealth Financing Authority loan investment transactions.

I-1. Loan Investment Transactions Legal Services (“Project”). This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

I-2. Issuing Office. The Commonwealth Financing Authority (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Eileen Quinn, Office of Chief Counsel, 400 North Street, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, eiquinn@pa.gov, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.

I-3. Overview of Project. The Commonwealth Financing Authority seeks to procure the services of a qualified law firm to handle loan investment transactions awarded pursuant to the New Pa Venture Capital Investment Program. A copy of the New Pa Venture Capital Investment Program Guidelines can be found at <https://dced.pa.gov/download/venture-capital-investment-guidelines-pdf/>. An example of a Participating Loan Agreement and Note are available at patreasury.gov under the Transparency Tab, Contract e-Library. Search for Contract Number L001924704.

I-4.Objectives.

The Commonwealth Financing Authority seeks to procure the services of a qualified law firm to provide legal representation, including, but not limited to, the following:

- Gathering all pertinent documentation from the General Partner, including the fund prospectus, the most updated version of the Limited Partner agreement, and any amendments pertaining to the partnership being assessed. If available, a blackline version of the limited Partnership document should be obtained.
- Compiling loan-related materials from the Commonwealth Financing Authority staff including the Project Summary and the Commitment Letter.
- If documents are deemed to be in good order, forwarding the Commonwealth Financing Authority’s participating loan agreement to the General Partner. This loan agreement will reflect the terms of the loan and most importantly the nature of the General Partner’s

investment, on behalf of the Commonwealth Financing Authority, into the partnership under review. If the investment in question represents a repeat commitment for the Commonwealth Financing Authority, the law firm should request a copy of the loan agreement in place for the prior fund.

- Responding to the General Partner’s counsel with questions or comments, and when appropriate, negotiating more favorable terms.
- Reviewing any third party banking agreement that the General Partner enters into in order to manage the Commonwealth Financing Authority loan balance as it is utilized to satisfy fund draw-downs.
- Ensuring, upon fund closing, that all documents are properly executed by all involved parties including representatives of the Commonwealth Financing Authority and the General Partner.
- Coordinating work with the Department of Community and Economic Development’s Chief Counsel, which provides legal services to the Commonwealth Financing Authority, consistent the Legal Services Contract terms and conditions, which the successful Law Firm will be required to execute with the Commonwealth Financing Authority.
- Providing a closing binder to the Commonwealth Financing Authority staff.

The Commonwealth Financing Authority reserves the right to make assignments as it may deem necessary or desirable, in the judgment of the Commonwealth Financing Authority, for all aspects of or roles within the scope of this RFP.

I-5. Type of Contract. It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a cost-reimbursement contract containing the Contract for Legal Services Terms and Conditions as shown in **Part VI**. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

I-6. Rejection of Proposals. The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

I-7. Incurring Costs. The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

I-8. Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line “RFP CFA-2022-02 Question”**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they may be submitted as they arise via email, but **no later than** the date indicated on the Calendar of Events. The Issuing Officer shall post the answers to the

questions to eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx> on an ongoing basis until the deadline stated on the Calendar of Events. When an Offeror submits a question after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date, the question and answer will be provided to all Offerors through an addendum.

All questions and responses as posted to eMarketplace are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror shall be responsible to monitor eMarketplace for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described in **Part I, Section I-25**.

I-9. Addenda to the RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to eMarketplace at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror's responsibility to periodically check eMarketplace for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to eMarketplace as addenda to the RFP.

I-10. Response Date. To be considered for selection, electronic proposal submissions as described in **Part I, Section I-11** must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will reject any late proposals.

I-11. Proposal Requirements.

A. Proposal Submission: To be considered, Offerors should submit via email a complete response to this RFP to the Issuing Office, using the format provided in **Section I-11B**, providing a single electronic proposal with separate pdf files **for the Technical Submittal; the Cost Submittal; the Small Diverse Business (SDB) Participation Submittal (Forms SDB-3 and SDB-3.1) and the Veteran Business Enterprise (VBE) Participation Submittal (VBE-3 and VBE-3.1)**. The email should clearly identify the Offeror and include in the subject heading "Proposal Submission for RFP # CFA-2022-02". The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet (Appendix A** to this RFP) and the Proposal Cover Sheet is scanned and provided in a PDF version in the Offeror's electronically submitted proposal, the requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award,

the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by emailing the Issuing Office prior to the deadline for proposal submissions. An Offeror may modify its submitted proposal prior to the deadline for proposal submissions by emailing the Issuing Office prior to the deadline for proposal submission. All emails must clearly identify the Offeror and include in the heading either "Request to Withdraw Proposal for **RFP CFA-2022-02**" or "Revised Proposal for **RFP CFA-2022-02**", as appropriate. Revised proposals must comply with the RFP Requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Small Diverse Business and Veteran Business Enterprise cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each electronic proposal shall consist of the following **three** separate electronic files:

1. Technical Submittal, in response to **Part III**:
 - a. Complete, sign and include **Appendix B – Domestic Workforce Utilization Certification**;
2. Cost Submittal, in response to RFP **Part IV**;
3. SDB and VBE Commitment in response to RFP **Part V**; and

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

- I-12. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP. Proposal may not exceed 25 pages excluding resumes.
- I-13. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-14. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-15. Prime Contractor Responsibilities.** The selected Offeror must perform at least 80% of the total contract value. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.
- I-16. Proposal Contents.**
- A. Confidential Information.** The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed

written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix C** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part III of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-17. Best and Final Offers (BAFO).

A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

1. Schedule oral presentations;
2. Request revised proposals;
3. Conduct an online auction; and
4. Enter into pre-selection negotiations.

B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:

1. Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
2. Those Offerors which the Issuing Office has determined in accordance with **Part II, Section II-5** from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
3. Those Offerors whose score for their technical submittal of the proposal is less than 75% of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

C. The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the Best and Final offers.

- I-18. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.
- I-19. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.
- I-20. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-20.**
- I-21. Term of Contract.** The term of the contract will commence on the Effective Date and will end **December 31, 2027.** The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.
- I-22. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:
- A.** All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
 - B.** The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
 - C.** The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal 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 proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, 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 or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror 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 Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L.** The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-23. Notification of Selection.

A. Contract Negotiations. The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.

B. Award. Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-24. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section I-25** of this RFP).

I-25. RFP Protest Procedure. The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-26. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

PART II

CRITERIA FOR SELECTION

- II-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must:
- A. Be timely received from an Offeror (see **Part I, Section I-10**); and
 - B. Be properly signed by the Offeror (see **Part I, Section I-11A**); and
- II-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A & B) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.
- II-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.
- II-4. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:
- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **85%** of the total points. Evaluation will be based upon the following:
Evaluation will be based upon the following in order of importance:
 - i. **Personnel Qualifications**
 - ii. **Soundness of Approach**
 - iii. **Offeror Qualification, and**
 - iv. **Understanding the Problem**

The final Technical scores are determined by giving the maximum number of technical points available to the proposal(s) with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth below.

The final Technical scores are determined by giving the maximum number of Technical points available (A) to the proposal with the highest raw technical score. The remaining proposals are rated by applying the following formula:

$$\frac{\text{Raw Technical Score of Proposal Being Scored}}{\text{Highest Raw Technical Score}} \times A = \text{Final Technical Score}$$

- B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **15 %** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth below.

$$[1 - (B-A)/A] \times C = \text{Final Cost Score}$$

A—the lowest Offeror's cost.

B—the Offeror's cost being scored.

C—the maximum number of cost points available.

Note: If the formula results in a negative number (which will occur when the Offeror's cost is more than twice the lowest cost), zero points shall be assigned.

- C. Small Diverse Business and Veteran Business Enterprise Commitment.** Any points received for the Small Diverse Business and Veteran Business Enterprise criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is **3%** of the total points for this RFP. Points are awarded using the formula below.

$\%$ of SB, SBD and VBE Commitment x Allocated Points.

- D. Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is **3%** of the total points for this RFP.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. Points are awarded using the formula below.

$\%$ of Domestic Workforce Utilization x Allocated Points.

- II-5. Offeror Responsibility.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to 75% of the **available technical points**; and
- B. The Offeror must be determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. Final Ranking and Award.

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, the final cost scores, and the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score.
- D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III

TECHNICAL SUBMITTAL

III-1. Statement of the Project. State in succinct terms your understanding of the project presented or the service required by this RFP.

Offeror Response

III-2. Qualifications.

A. Overview.

Offeror Response

B. Prior Experience. Include the Law Firm's experience in investment loan transactions. Experience shown should be work done by individuals who will be assigned to this Project as well as that of your Law Firm. Please give specific examples of previous investment loan transaction work performed by the Law Firm.

Offeror Response

C. Personnel. Include the number of attorneys and professional staff who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate the responsibilities each individual will have concerning this work and how long each has been with the Law Firm.

Offeror Response

D. Subcontractors: Provide a subcontracting plan for all subcontractors, including Small Diverse Business and Veteran Business Enterprise subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project work without the express written approval from the Commonwealth Financing Authority. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Number of years worked with the subcontractor;
4. Number of employees by job title to work on this project;
5. Description of services to be performed;
6. What percentage of time the staff will be dedicated to this project;
7. Geographical location of staff; and
8. Resumes.

The Offeror's subcontractor information shall include (through a resume or a similar document) the employees' names, education and experience in the services outlined in this RFP. Information provided shall also indicate the responsibilities each individual will have in this Project and how long each has been with subcontractor's company.

Offeror Response

- III-3. Work Plan.** Describe in narrative form your plan for accomplishing the work using the objectives listed in Part I of this Request for Proposal as your reference point. Indicate the number of people (by name and title) whom you anticipate will be working on any given loan investment transaction and the estimated number of hours required to complete a generic loan investment transaction. **NOTE: For the past ten years, CFA loan investment transaction work has been performed by a private law firm utilizing two attorneys and minimal support staff.**

Offeror Response

- III-4. Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in **Part VI**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part VI**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part VI**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part VI or to other provisions of the RFP as specifically identified above.**

Offeror Response

PART IV
COST SUBMITTAL

IV-1. Cost Submittal. The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal shall be submitted electronically in accordance with **Part I, Section I-11A**. The total proposed cost should be broken down into the components set forth in **Appendix D – Cost Submittal Worksheet**. The percentage of commitments to Small Diverse Businesses and Veteran Business Enterprises should not be stated in the Cost Submittal. Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-8** of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office’s written answer so that all proposals are submitted on the same basis.

NOTE: For comparison purposes, cost shall be presented on a cost per loan investment transaction basis from receipt of assignment to loan closing and submission of a binder to the Commonwealth Financing Authority. Offerors should assume for cost purposes that the transaction is a typical, routine loan investment transaction.

The Issuing Office will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.

PART V

SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION INFORMATION

- V-1. Diversity, Inclusion and Small Business Participation:** To maximize Diversity, Inclusion and Small Business Opportunity participation in the Project, the greatest consideration will be given to a Small Diverse Business or Veteran Business Enterprise quoting as a prime contractor. For all other prime contractors subcontracting to a Small Diverse Business or a Veteran Business Enterprise, briefly explain what your Law Firm's approach will be to maximize Small Diverse Business participation in the Project if you are selected for award. This should include detail on which portions of the contract will be performed by the Small Diverse Business or Veteran Business Enterprise. Include specific percentage commitments to be paid to Small Diverse Business or Veteran Business Enterprise based upon the total contract value. The more definitive the commitment and the greater the percentage commitment, the greater consideration that your company will receive for this best value selection factor.

A Small Diverse Business is a Department of General Services (DGS) verified small minority business enterprise, woman business enterprise, LGBT business enterprise, Disability-owned business enterprise, or other small business as approved by DGS, that is owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. Questions regarding Small Diverse Businesses can be directed to: DGS, Bureau of Diversity, Inclusion and Small Business Opportunities at (717) 783-3119.

An SDB is a DGS-verified minority-owned business, woman-owned business, service-disabled veteran-owned, disability-owned, and LGBT-owned business.

A VBE is a DGS-verified veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time-equivalent employees, and earns less than \$38.5 million in gross annual revenues.

A list of Small and Small Diverse Businesses (SBs or SDBs) can be found in the online, searchable database at www.dgs.internet.state.pa.usus/suppliersearch. Use the *Quick Search* to search by supplier name or number. Use the *Advanced Search* to further search by UNSPSC code, county, SB/SDB type, and stocking/non-stocking supplier.

Please be aware that not all suppliers are SB or SDB who are SB and SDB will be so marked, or use the *Advanced Search>Supplier Classifications* to limit your search to SBs/SDBs. **QUICK TIP:** All SDBs are also SBs (although not all SBs are SDBS). To pull a list of Small *and* Small Diverse Businesses, select “Small Business” in *Supplier Classifications*.

- V-2. Small Diverse Business (SDB) Participation Submittal, Appendix E.** The SDB Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing SDB Participation Submittal and SDB Utilization Schedule and shall be submitted electronically in accordance with **Part 1, Section I-11A**.
- V-3. Veteran Business Enterprise (VBE) Participation Submittal, Appendix E.** The VBE Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing VBE Participation Submittal and VBE Utilization Schedule and shall be submitted electronically in accordance with **Part 1, Section I-11A**.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of SDB or VBE Status or entitle an Offeror to receive credit towards the SDB or VBE participation goals.

V-4. Contract Requirements—SDB and VBE Participation.

- A. SDB and VBE Participation Documents. All documents completed and submitted by the selected Offeror in connection with its SDB Participation Submittal (including the SDB Utilization Schedule (SDB-3) and its VBE Participation Submittal (including the VBE Utilization Schedule (VBE-3)) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto.
- B. Required contract terms. All contracts containing SDB and/or VBE participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:
1. Each SDB participation commitment and each VBE participation commitment and the total percentage of the SDB participation commitments and VBE participation commitments made at the time of proposal submittal or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
 2. For purposes of monitoring compliance with the selected Offeror’s SDB participation commitments and VBE participation commitments, the contract cost is the total amount paid to the selected Offeror throughout the initial contract term and all renewal option terms.

3. The selected offeror cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Issuing Officer.
4. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the contract is assigned to another prime contractor.

C. Subcontract requirements.

1. The selected offeror and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the selected offeror and the SDB or VBE within 30 calendar days of the final execution date of the Commonwealth contract. A Model Form of Small Diverse Business/Veteran Business Enterprise Subcontractor Agreement which may be used to satisfy this requirement – is available as **Appendix F**.
2. In addition to any requirements in the offeror's contract documents, the subcontract must contain:
 - a. The specific work, supplies or services the SDB or VBE will perform; location for work performed; how the work, supplies or services relate to the contract; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed;
 - b. The fixed percentage commitment and/or associated estimated dollar value that each SDB or VBE will receive based on the final negotiated cost for the initial term of the prime contract and any renewal option terms;
 - c. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within 14 calendar days of the selected offeror's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;
 - d. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected offeror's contract with the Commonwealth and that do not place disproportionate risk on the SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the contract; and
 - e. The requirement that the SDB or VBE submit to the Commonwealth Financing Authority utilization reports.

3. If a subcontract agreement is required by the solicitation document and the subcontract terms omit any of the information required in subparagraph 2 but that information is otherwise reflected within the selected offeror's SDB Utilization Schedule (SDB-3), VBE Utilization Schedule (VBE-3) , and Letters of Commitment (SDB-3.1 and VBE-3.1)), the information listed in the SDB Utilization Schedule (SDB-3), VBE Utilization Schedule (VBE-3) , and Letters of Commitment (SDB-3.1 and VBE-3.1) is incorporated into the subcontract agreement. To the extent that any subcontract terms conflict with the requirements of paragraph (2) or information contained within the selected offeror's SDB Utilization Schedule (SDB-3), VBE Utilization Schedule (VBE-3) , and Letters of Commitment (SDB-3.1 and VBE-3.1), the order of precedence is as follows: 1) the requirements of paragraph 2, 2) the selected offeror's SDB Utilization Schedule (SDB-3), VBE Utilization Schedule (VBE-3) , and Letters of Commitment (SDB-3.1 and VBE-3.1); and 3) the terms of the subcontract agreement.
4. If the selected offeror and a SDB listed on the SDB Utilization Schedule (SDB-3) or VBE listed on the VBE Utilization Schedule (VBE-3) cannot agree upon a definitive subcontract within 30 calendar days of the final execution date of the Commonwealth contract or as specified in the solicitation, the selected offeror must provide written notification to the Commonwealth Financing Authority.
5. The prime contractor must provide a copy of any required subcontract with an SDB or VBE to the Commonwealth Financing Authority within ten (10) business days of receiving such a request.

D. Utilization Reports.

1. The prime contractor must submit a Monthly Utilization Report to the Commonwealth Financing Authority and the contracting officer of the Issuing Office in the format required by Commonwealth Financing Authority and within ten (10) business days at the end of each month of the contract term and any subsequent options or renewals. The Monthly Utilization Report must list payments made to each SDB or VBE subcontractor and any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB or VBE subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the form must be completed by stating "No activity". A late fee of \$100.00 per day may be assessed against the prime contractor if the Utilization Report is not submitted in accordance with the schedule above.
2. The prime contractor must include in its agreements with its SDB and VBE subcontractors a requirement that the SDB and VBE subcontractors submit to Commonwealth Financing Authority, within the time frame set forth within the solicitation document, a report identifying the prime contract, and listing:

- a. Payments received from the prime contractor within the time frame covered by the report, and
- b. Invoices for which the subcontractor has not been paid.

E. Noncompliance with SDB and/or VBE commitments.

1. In the event a prime contractor did not comply with the SDB commitments or VBE commitments, the Commonwealth Financing Authority shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to initiate the corrective actions within 10 business days and complete them within the time specified by the Commonwealth Financing Authority.
2. If the Commonwealth Financing Authority determines that material noncompliance with SDB or VBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the Commonwealth Financing Authority, the Commonwealth Financing Authority may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the prime contractor's SB, SDB, and/or VBE status; a determination that the Offeror's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

CONTRACT FOR LEGAL SERVICES TERMS AND CONDITIONS

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services (“Contract”), entered into as of the **MONTH DAY, YEAR** by and between **LAW FIRM NAME** (“Law Firm”) and the Commonwealth of Pennsylvania (the “Commonwealth”), acting by and through the **COMMONWEALTH FINANCING AUTHORITY** (“the Authority”).

The Authority has a need for professional and specialized legal services to represent the Authority in matters described in Appendix A.

Section 1513(a)(6) of the act of April 1, 2004 (P.L. ____, No. 22), relating to the Commonwealth Financing Authority, (64 P.S. §1501et. seq.) (the “Act”) authorizes the Authority to retain attorneys to render services.

The Authority has engaged the Law Firm via an appointment letter after negotiating fair and reasonable compensation, and the Law Firm has agreed to perform such professional and specialized legal services.

NOW, THEREFORE, the Authority and the Law Firm, with the intention of being legally bound, hereby agree as follows:

1. Definitions. The following definitions shall apply when used in this Contract:

a. “Effective Date” shall mean: a) the date the Contract has been fully executed by the Law Firm and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later or c) in cases where the Authority has determined an emergent need for counsel as provided below, the date on the Notice to Proceed. The Contract shall not be a legally binding contract until after a copy of the fully-executed Contract and a Notice to Proceed have been sent to the Law Firm except as otherwise provided for urgent services noted below.

b. “Notice to Proceed” shall mean a written notice sent to the Law Firm stating that the contract has been fully executed and that the Law Firm may commence performance, or an appointment letter indicating an immediate need to begin work with the permission of the Authority as provided below. The Authority shall send a Notice to Proceed to the Law Firm either via U.S. Mail or via email, and the Authority shall send a fully executed copy of the contract with the notice to proceed.

2. Services. The Law Firm shall perform the services described in Appendix A of this Contract.

3. Compensation. The Law Firm shall be compensated by the Authority for the services contracted in accordance with the provisions established in Appendices B and C of this Contract.

4. Term of Contract.

a. The term of this Contract shall commence on the Effective Date and shall end on June 30, 2027, subject to the other provisions of this Contract.

b. Except as otherwise specifically provided for herein, the Commonwealth of Pennsylvania, including the Authority, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred before the Effective Date of the Contract.

c. The Authority and the Law Firm may extend the term of this Contract at any time during the term of the Contract or any renewals or extensions thereof pursuant to Paragraph 9 of this Contract.

d. If the services to be provided by the Law Firm hereunder have been approved by the Authority as an emergency procurement until full execution of this Contract, the Law Firm may provide these services based upon such emergency approval. The approval to begin working immediately due to such urgent need will be set forth in the appointment letter (Notice to Proceed) to the Law Firm. Upon full execution of this Contract, all services provided during the period between the date of emergency approval in the appointment letter and the Effective Date of the Contract shall be merged into and covered by the terms of this Contract.

5. Billing. The Law Firm shall submit monthly invoices to the Authority for services performed during each billing period. Invoices shall be forwarded to the following contact and address:

Mandy Book, Executive Director
Commonwealth Financing Authority
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

a. Each invoice shall be under cover of a letter on law firm letterhead and itemized listing the services performed by attorney and legal assistant by date, by hours worked, and by rate and shall generally follow the format appearing in Appendix D of this Contract. The following information must be included on all invoices. Failure to include this information will result in return of the invoice and a request for a new invoice:

- (1) Funds Commitment Number;
- (2) Invoice Date;
- (3) Service Dates (i.e., start and end dates for services covered by invoice);
- (4) Invoice Number;
- (5) Gross/Total Amount.

b. The amount shown on each invoice for labor costs shall be in accordance with the rates set forth in Appendix B of this Contract.

c. The invoices shall also list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this Contract.

d. The Authority agrees to pay the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred in connection with performance of services under the Contract, as described in Appendix C of this Contract.

e. The Authority will use its best effort to make payments on invoices within 45 days of their receipt, in final form.

f. All invoices shall contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

g. All invoices or accompanying letters of transmittal shall be signed by the Law Firm and shall set out the Law Firm's federal employer identification number.

6. Consultation. The Law Firm shall consult with and keep the Authority fully informed as to the progress of all matters covered by this Contract. The Law Firm shall consult and cooperate with, and shall be responsible directly to, the Authority, and other officials as designated by the Authority on all matters of strategy and tactics. The duty of the Law Firm shall be to advise, counsel, and recommend actions to the Authority or the other officials designated by him, and to carry out to the best of its ability their directions. The Law Firm will not make any offer, settlement, or compromise without the written consent of the Authority. The Law Firm shall offer the Authority the opportunity to review court documents and briefs prior to filing. The Law Firm shall promptly furnish the Authority with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract and such additional documents as may be requested.

7. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract or in the work covered by this Contract is prohibited without the prior written approval of the Authority. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged. The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Authority. The Authority's consent to the proposed assignment is required and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may, with the prior written approval of the Authority, engage experts in various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The hourly rates, fees, or other compensation to be paid to such experts shall also be subject to the

approval of the Authority. Approved compensation of such experts, as incurred, shall be included in the Law Firm's invoices presented pursuant to the provisions of Paragraph 5 of this Contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts. The terms and conditions of this Contract including, but not limited to, the provisions of Appendices C and D, shall apply to and bind the subcontractors or experts engaged as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

8. Ownership Rights. All documents, data, and records produced by the Law Firm and any experts in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the Commonwealth.

a. The Commonwealth shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and any experts and the Law Firm and any experts shall have no right or interest therein.

b. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, and records shall, if requested by the Authority, be appropriately arranged, indexed, and delivered to the Authority by the Law Firm.

c. Any documents, data, and records given to or prepared by the Law Firm and any subcontractors or experts under this Contract shall not be made available to any individual or organization by the Law Firm or any subcontractors or experts without the prior approval of the Authority. Any information secured by the Law Firm and any subcontractors or experts from the Commonwealth in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by the Authority or is directed by a court or other tribunal of competent jurisdiction.

d. Notwithstanding the provisions of Paragraph 8 of this Contract, the Law Firm may retain copies of documents delivered to the Authority.

9. Modification or Changes. The Authority and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. Changes regarding funding of a Contract that refers to the total estimated amount of the Contract as set forth in paragraph 3 may be accomplished via a funding adjustment pursuant to Commonwealth procedures. Changes regarding funding of a Contract that states an amount not to exceed as set forth in paragraph 3, or a change in Contract length, may be accomplished by a letter of mutual consent signed by the Authority and the Law Firm. All other changes to contract terms, including changes in the scope of work, must be incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

10. Conflict of Interest. The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the Authority and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Authority. Any conflicting representation shall be promptly disclosed to the

Authority. The Authority shall determine whether such conflict is cause for termination of this Contract.

11. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals and, in particular, the principals assigned to this project, to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm shall, with respect to any replacement principal proposed to be assigned to this matter, consult with the Authority. The Authority's consent to the proposed replacement is required and may not be withheld unreasonably.

12. License to Appear. The Law Firm represents and warrants that attorneys involved in this representation are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of the Commonwealth. The Law Firm, subject to approval by the Authority, may obtain a subcontractor to act as co-counsel where appearance by the Authority is required in a forum or jurisdiction where its attorneys are not licensed to practice, provided, however, that the firm's use of the subcontractor in that circumstance is subject to Paragraph 7 of this Contract.

13. Independent Contractor . In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of the Commonwealth.

14. Termination Provisions. The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. Termination for Convenience. The Commonwealth shall have the right to terminate this Contract for its convenience if the Commonwealth determines termination to be in its best interest. The Law Firm shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Law Firm be entitled to recover loss of profits.

b. Non-Appropriation. The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/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 this Contract. The Law Firm shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. Termination for Cause. The Commonwealth shall have the right to terminate this Contract for Law Firm default upon written notice to the Law Firm. The Commonwealth shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth

erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14.a.

15. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices hereto shall have the same meanings as are ascribed thereto in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either the Commonwealth or the Law Firm has authority to make, or has made, any statement, agreement, or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to, detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished pursuant to Paragraph 9 of this Contract.

16. Nondiscrimination/Sexual Harassment. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix E and incorporated by reference.

17. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Appendix F and incorporated by reference.

18. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix G and incorporated by reference.

19. The Americans With Disabilities Act. The Law Firm agrees to comply with The Americans With Disabilities Act Provisions, which are attached hereto as Appendix H and incorporated by reference.

20. Enhanced Minimum Wage Provisions. The Law Firm agrees to comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix I and incorporated by reference.

21. Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of three years from the date of final payment hereunder. The Law Firm shall give full and free access to all records to the Commonwealth and/or its authorized representatives.

22. Offset Provision. The Law Firm agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Commonwealth against any payments due the Law Firm under any contract with the Commonwealth.

23. Indemnity. The Law Firm shall indemnify and defend the Commonwealth from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties (“Claims”), which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of its officers, agents, employees and/or representatives in relation to professional services provided to the Commonwealth by the Law Firm under this Contract. This indemnity provision shall not apply to Claims for which payment is available under the Law Firm’s professional liability insurance policies.

24. Insurance. The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of the Commonwealth.

25. Notice. Any written notice to the Authority under this Contract shall be deemed sufficient if delivered to the Authority personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, 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:

Mandy Book
Executive Director
Commonwealth Financing Authority
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

With a copy to:

Lori Irwin
Acting Chief Counsel
Office of Chief Counsel
Department of Community and Economic Development
400 North Street, Commonwealth Keystone Building, 4th Floor
Harrisburg, PA 17120

Any written notice to the Law Firm under this Contract shall be deemed sufficient if delivered to the Law Firm personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, 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:

CONTACT NAME
LAW FIRM NAME
STREET ADDRESS
CITY, STATE, ZIPCODE

26. Contract Controversies. In the event of a controversy or claim arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the Authority for a determination. The Authority shall send a written determination to the Law Firm. The decision of the Authority shall be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Authority, and the Commonwealth shall compensate the Law Firm pursuant to the terms of this Contract.

27. Applicable Law. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Law Firm consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Law Firm agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Commonwealth of Pennsylvania, acting by and through the **COMMONWEALTH FINANCING AUTHORITY**, and **[LAW FIRM NAME]**, have caused this Contract to be executed on the date of the last signature below.

[LAW FIRM NAME]

COMMONWEALTH OF PENNSYLVANIA,
acting by and through the
COMMONWEALTH FINANCING
AUTHORITY

By: _____

By: _____

Title: _____

Title: Mandy Book, Executive Director

Date: _____

Date: _____

Vendor # _____

APPROVED AS TO FORM AND LEGALITY

Legal Counsel for the Authority Date

Deputy Attorney General Date

APPENDIX A
DESCRIPTION OF SERVICES

1. The Law Firm shall represent the Commonwealth of Pennsylvania, specifically, in legal matters relating to structuring and documenting investment transactions for the Authority and other Authority related matters.

2. The Law Firm shall consult with the Authority on legal issues involved in the matters referred to in Paragraph 1 of this Appendix.

APPENDIX B
BILLING RATE INFORMATION

The Law Firm shall bill monthly at the following rates:

- Partner: \$_____ per hour
- Associates: \$_____ per hour

The Contract for Legal Services will be capped at \$_____.00 as set forth in Appendix C. In addition to the notice provisions set forth at Appendix C, section 5, *infra*, the Law Firm will provide notice to the Authority when the amount of costs reaches \$_____.00.

APPENDIX C COMPENSATION

The Authority shall pay the Law Firm for the services under this Contract and reimbursement of the Law Firm's eligible costs. The Contract provides for compensation of the Law Firm's fees and costs up to the amount of _____ Dollars (\$0.00). Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to Paragraph 9 of this Contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established in Paragraphs 3 and 5 and Appendices B, C, and J of this Contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, subject to specific limitations such as those set forth in the Paragraph 5 of this Contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's obligations under this Contract. The Law Firm shall retain all receipts thereof and shall provide copies to the Authority if requested. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Commonwealth for the use of personally owned motor vehicles. Expenses for lodging and meals shall be reimbursed at rates limited to the single-occupancy rate at the nearest Holiday Inn or other major moderately priced hotel or motel chain and the amount of reimbursement for meals shall be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement shall be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

(1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;

(2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$.15 per page;

(3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and

(4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts thereto and shall, upon request of the Authority, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials required for and used solely in the fulfillment of this Contract. The Law Firm shall retain all

receipts thereto and shall, upon request of the Receiver, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs which the Law Firm expects to incur under this Contract outside of the Commonwealth of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of the Authority, which approval shall not be unreasonably withheld. Prior approval by the Authority of travel to be undertaken by the Law Firm outside of the Commonwealth of Pennsylvania as an incident of the Law Firm's performance of services under this Contract shall constitute approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Authority, provide any necessary documentation.

4. The Law Firm shall require approval by the Authority before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise the Authority when direct labor and other costs reach 50% of the amount initially encumbered for performance of this Contract and also 50% of any amount encumbered by any amendment.

APPENDIX D
INVOICE FORMAT (SUMMARY)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA (CLIENT #): (MATTER #)
(FUNDS COMMITMENT #)
(CFA) DATE:(DATE)
(CFA ADDRESS) INVOICE NO.: (INVOICE #)

ATTN: (CFA)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED
FROM (DATE) THROUGH (DATE)
\$(TOTAL FEES)

TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT
FROM (DATE) THROUGH (DATE)
\$(TOTAL EXPENSE ADVANCES)

BALANCE DUE: \$(GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

(RESPONSIBLE ATTORNEY AT LAW FIRM) on behalf of (LAW FIRM) hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

(SIGNATURE)

APPENDIX D
INVOICE FORMAT (TIME DETAIL)

LAW FIRM: (LAW FIRM)

ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(CFA)
(CFA ADDRESS)

(CLIENT #): (MATTER #)

DATE:(DATE)

INVOICE NO.: (INVOICE #)

ATTN: (CFA)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH
(DATE)

DATE	HOURS	DESCRIPTION OF SERVICES	ATTORNEY

**APPENDIX D
INVOICE FORMAT (TIME SUMMARY)**

LAW FIRM: (LAW FIRM)
 ADDRESS: (ADDRESS)
 PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
 (FUNDS COMMITMENT #)
 (CFA)
 (CFA ADDRESS)

(CLIENT #): (MATTER #)
 DATE:(DATE)
 INVOICE NO.: (INVOICE #)

ATTN: (CFA)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH (DATE)

ATTORNEY	RATE	HOURS	TOTAL
		TOTAL:	

APPENDIX D
INVOICE FORMAT (COSTS)

LAW FIRM: (LAW FIRM)
ADDRESS: (ADDRESS)

PHONE: (PHONE)

COMMONWEALTH OF PENNSYLVANIA
(FUNDS COMMITMENT #)
(CFA)
(CFA ADDRESS)

(CLIENT #): (MATTER #)

DATE:(DATE)
INVOICE NO.: (INVOICE #)

ATTN: (CFA)

REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED FROM (DATE) THROUGH (DATE)

DATE	DESCRIPTION OF EXPENSE ADVANCES	AMOUNT
	TOTAL:	

APPENDIX E
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE
(dated August 2018)

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 discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and

policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. 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.

9. 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.

10. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

APPENDIX F
INTEGRITY PROVISIONS
(dated 1/14/15)

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Law Firm” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to the Law Firm from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by the Law Firm 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 prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

d. “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.

e. “Law Firm” means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

2. The Law Firm 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 the Law Firm or that govern contracting with the Commonwealth.

3. The Law Firm shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. The Law Firm shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Law

Firm's employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all employees of the Law Firm.

5. The Law Firm, its affiliates, agents and employees and anyone in privity with the Law Firm 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.

6. The Law Firm 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 the Law Firm's financial interest prior to Commonwealth execution of the contract. The Law Firm shall disclose the financial interest to the Commonwealth at the time of any proposal submission, or if no proposals are solicited, no later than the Law Firm's submission of the contract signed by the Law Firm.

7. The Law Firm, certifies to the best of its knowledge and belief that within the last five (5) years that it, its officers, and its affiliates 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 the Law Firm cannot so certify to the above, then it must submit along with its 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 Law Firm. The Law Firm's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Law Firm 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 Law Firm's certification or explanation to change. The Law Firm 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.

8. The Law Firm shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of the Law Firm are not exempt and must be reported. The Law Firm also must comply with the requirements of Section 1641 of the *Pennsylvania Election Code (25 P.S. §3260a)*.

9. When the Law Firm 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, the Law Firm shall immediately notify the Commonwealth in writing.

10. The Law Firm, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

11. The Law Firm shall cooperate with the Office of the Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Law Firm non-compliance with these provisions. The Law Firm agrees to make identified employees of the Law Firm available for interviews at reasonable times and places. The Law Firm, 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 the Law Firm's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Law Firm's business or financial records, documents or files of any type or form that refer to or concern this contract. The Law Firm 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.

12. For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Law Firm, 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 Law Firm to complete performance hereunder, and debar and suspend the Law Firm from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

APPENDIX G
RESPONSIBILITY PROVISIONS
(dated 12/1/2021)

1. The Law Firm 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 Contract, that neither the Law Firm, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Law Firm cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.

2. The Law Firm also certifies, in writing, that as of the date of its execution of this 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 Law Firm's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to inform the Commonwealth if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Law Firm, 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 Law Firm 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 this Contract with the Commonwealth.

5. The Law Firm agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Law Firm's compliance with the terms of this or any other agreement between the Law Firm and the Commonwealth that results in the suspension or debarment of the Law Firm. 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 Law Firm shall not be responsible for investigative costs for investigations that do not result in the Law Firm's suspension or debarment.

6. The Law Firm may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

APPENDIX H
THE AMERICANS WITH DISABILITIES ACT PROVISIONS
(dated 10/14/2011)

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

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

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, the contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting 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 all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. 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 1 of this Appendix.

APPENDIX I
ENHANCED MINIMUM WAGE PROVISIONS
(dated 1/25/2022)

1. **Enhanced Minimum Wage.** Law Firm agrees to pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning 2023 and thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Law Firm shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Law Firm must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Law Firm shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

CONTRACTOR RESPONSIBILITY VERIFICATION

Document No: _____

[LAW FIRM NAME]

This Contract has been reviewed and the Law Firm has been determined to be responsible in accordance with the procedures outlined in Management Directive 215.9 Amended, dated October 25, 2010.

Designated Senior Manager _____ Date
Department of Community and Economic Development

**APPENDIX A
 PROPOSAL COVER SHEET
 COMMONWEALTH OF PENNSYLVANIA
 COMMONWEALTH FINANCING AUTHORITY
 RFP# CFA-2022-02**

The proposal of the Offeror identified below for the above-referenced RFP is submitted electronically comprised of separate files for Technical, Cost and SDB/SB:

Offeror Information:	
Offeror Name	
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone Number	
Contact Person's E-Mail Address	
Offeror Federal ID Number	

Electronic Submittals Enclosed:	
<input type="checkbox"/>	Technical Submittal <input type="checkbox"/> Domestic Workforce Utilization Certification
<input type="checkbox"/>	Small Diverse Business Participation Submittal
<input type="checkbox"/>	Veteran Business Enterprise Participation Submittal
<input type="checkbox"/>	Cost Submittal

<i>Signature</i>
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:
Printed Name
Title

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL

**APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ [title] of _____ [name of Contractor] a _____ [place of incorporation] corporation or other legal entity, (“Contractor”) located at _____ [address] do hereby certify and represent to the Commonwealth of Pennsylvania (“Commonwealth”) (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

[Use additional sheets if necessary]

The Commonwealth Financing Authority shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

_____ Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

APPENDIX C
TRADE SECRET/CONFIDENTIAL PROPRIETARY INFORMATION NOTICE

Trade Secret/Confidential Proprietary Information Notice

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid proposal, grant application, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC)

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. (You may attach additional pages if needed)

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor's cost proposal
- Information submitted as part of a vendor's technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor's technical or disadvantaged business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

<u>Page Number</u>	<u>Description</u>	<u>Explanation</u>
--------------------	--------------------	--------------------

Acknowledgment

The undersigned party hereby agrees that it has read and completed this form, and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date

**APPENDIX D
COST SUBMITTAL WORKSHEET**

For comparison purposes, cost shall be presented on a cost per loan investment transaction basis from receipt of assignment to loan closing and submission of a binder to the Commonwealth Financing Authority. Offerors should assume for cost purposes that the transaction is a typical, routine loan investment transaction. Please list below the individual or individuals assigned to complete the loan investment transaction by name, title, transactional role, hourly rate, and estimated hours.

Name	Title	Transactional Role	Hourly Rate	Estimated Hours	Total
					\$
					\$
					\$
					\$
					\$
					\$
					SUB TOTAL
Expenses					\$
					SUB TOTAL
TOTAL COST					TOTAL

APPENDIX E
SMALL DIVERSE BUSINESS &
VETERAN BUSINESS ENTERPRISE COMMITMENTS

Small Diverse Business (SDB) Participation Summary Sheet

Solicitation/Project #: **CFA-2022-02**

Issuing Agency: **Commonwealth Financing Authority**

Name of Procurement/Project: **Loan Investment Transactions Legal Services**

No Mandatory SDB Participation Goal has been set.

Attachments:

SDB-1 Instructions for completing SDB Utilization Schedule

SDB-3 SDB Utilization Schedule

SDB-3.1 SDB Letter of Commitment

SDB-1
INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)
UTILIZATION SCHEDULE.

PLEASE READ BEFORE COMPLETING THESE DOCUMENTS
Offerors do not need to return SDB-1 with their SDB Submittal

The following instructions include details for completing the SDB Utilization Schedule (SDB-3), which Offerors must submit for any portion of the SDB participation the Offeror commits to meeting.

I. **No SDB Mandatory Participation Goal Set**

II. **SDB Eligibility:**

1. **Finding SDB firms:** Offerors can access the directory of **DGS-verified** SDB firms from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
2. **Only SDBs verified by DGS** and as defined herein may be counted towards the SDB participation bonus points. In order to be counted towards the SDB participation bonus points, the SDB firm, including an SDB prime, **must be DGS-verified for the services, materials or supplies that it has committed to perform on the SDB Utilization Schedule (SDB-3).** A firm whose SDB verification is pending or incomplete as of proposal due date and time shall not be counted towards the SDB participation bonus points. Offerors cannot use self-certified SBs that do not have their SDB verification as of the proposal due date and time towards the SDB participation bonus points.
3. **SDB Requirements:** To be considered an SDB, a firm must be a **DGS-verified** small minority business enterprise (MBE); woman business enterprise (WBE); LGBT business enterprise (LGBTBE); Disability-owned business enterprise (DOBE); Service-Disabled Veteran-Owned Small Business Enterprise (SDVBE); or otherwise deemed disadvantaged by the Uniform Certification Program.
Additional information on the DGS verification process can be found at:
<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>
4. **Participation by SDB firms as prime offerors or subcontractors.** An Offeror that qualifies as an SDB and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors. An SDB may be included as a subcontractor with as many prime contractors as it chooses in separate proposals and a prime contractor may not prohibit an SDB from committing to any other prime contractor.

SDB-1
INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)
UTILIZATION SCHEDULE.

5. Questions about SDB verification. Questions regarding the SDB program, including questions about the self-certification and verification processes can be directed to:

Department of General Services

Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)

Room 611, North Office Building

Harrisburg, PA 17125

Phone: (717) 783-3119

Fax: (717) 787-7052

Email: RA-BDISBOVerification@pa.gov

Website: www.dgs.pa.gov

III. Guidelines Regarding SDB Prime Self-Performance.

1. An SDB firm participating as a prime offeror on a procurement may receive credit towards the SDB Participation bonus points established for the procurement through their own self-performance.
2. For an SDB prime offeror to receive credit for self-performance, the SDB, the SDB prime offeror must list itself in the **SDB Utilization Schedule (SDB-3)**.
3. The SDB prime offeror must also include the classification category (MBE, WBE, LGBTBE, DOBE, and/or SDVBE) under which it is self-performing and include information regarding the work it will self-perform.

IV. Calculating SDB participation

1. The selected Offeror may only count dollar amounts actually paid to an SDB for performance of a Commercially Useful Function (the performance of a distinct element of work required for the Contract, with the requisite skill and expertise) towards satisfying its SDB participation commitments. In addition, the SDB subcontractor, through its own employees, must perform at least 50% of the amount of the subcontract.

SDB-1
INSTRUCTIONS FOR COMPLETING THE SMALL DIVERSE BUSINESS (SDB)
UTILIZATION SCHEDULE.

IV. Additional Required Documentation.

1. The Offeror must submit a letter of commitment (LOC) (SDB-3-1) for each subcontractor included in its SDB Utilization Schedule (SDB-3). At a minimum, each LOC must contain the following unless otherwise specified by the solicitation documents:
 - a. The fixed numerical percentage commitment and associated estimated gross dollar value of the commitment made to the SDB; and
 - b. A description of the services or supplies the SDB will provide; and
 - c. The timeframe during the initial contract term and any extensions, options and renewals when the SDB will perform or provide the services and/or supplies; and
 - d. The name and telephone number of the Offeror's point of contact for SDB participation; and
 - e. The name, address, and telephone number of the primary contact person for the SDB; and
 - f. Signatures of representatives of both the Offeror and the SDB subcontractor who are authorized to contractually bind their firm.

SDB-3
SDB UTILIZATION SCHEDULE

List in the chart below SDBs (including where applicable a prime offeror is self-performing a portion of the work) that will be used towards the SDB participation bonus points (add additional pages if necessary). Submit a **Letter of Commitment (SDB-3-1)** for each SDB subcontractor (add additional Letters of Commitment as necessary).

SDB Name SAP Vendor Number (6-digit number provided by SDB) SDB Verification Number (located on DGS SDB verification)	Type of SDB (check all that apply)	Description of Work to be Performed (Statement of Work/Specification reference)	% Commitment (or % of work to be self-performed by SDB bidder/offeror)	Associated Dollar Value of Commitment
Name: <u>ABC IT Solutions</u> SAP Vendor Number: <u>123456</u> SDB Verification Number: <u>123456-2016-09-SB-M</u>	MBE	IT staffing resources	%	\$
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Name: SAP Vendor Number: SDB Verification Number:	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> LGBTBE <input type="checkbox"/> DOBE <input type="checkbox"/> SDVBE		%	
Attach additional sheets if necessary			Total % SDB commitment: _____	Total \$ amount: _____

SDB-3.1
LETTER OF COMMITMENT

This Letter of Commitment serves as confirmation of the commitment by the prime Offeror to utilize the Small Diverse Business (SDB) on the below-referenced Solicitation/Project.

Solicitation Number: _____

Solicitation Name: _____

	Offeror Information	SDB Information
Name		
Address		
Point of Contact		
Telephone number		
Email address		

Services/Supplies and Time Frame. If Offeror is the successful vendor, the SDB shall perform or provide the following services or supplies during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below:

Services or supplies the SDB will provide:

Specific Time Frame the SDB will provide the services or supplies:

Percentage Commitment. These services or supplies represent _____% of the total cost of the Offeror's cost submittal for the initial term of the contract. Depending on actual contract usage or volume, it is expected the SDB will receive \$_____ during the initial contract term.

SDB verified. By signing below, the SDB represents that it meets the SDB requirements set forth in the Solicitation and all required documentation has been provided to the Offeror for its SDB submission.

Sincerely,

Acknowledged

Printed name

Printed name

Signature
Offeror Point of Contact Name

Signature
SDB Point of Contact Name

Veteran Business Enterprise (VBE) Participation Summary Sheet

Solicitation/Project #: **CFA-2022-02**

Issuing Agency: **Commonwealth Financing Authority**

Name of Procurement/Project: **Loan Investment Transactions Legal Services**

No Mandatory VBE Participation Goal has been set.

Attachments:

- VBE-1 Instructions for completing VBE Utilization Schedule
- VBE-3 VBE Utilization Schedule
- VBE-3.1 VBE Letter of Commitment

VBE-1
INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS
ENTERPRISE (VBE) UTILIZATION SCHEDULE.

PLEASE READ BEFORE COMPLETING THESE DOCUMENTS
Offerors do not need to return VBE-1 with their VBE Submittal

The following instructions include details for completing the VBE Utilization Schedule (VBE-3), which Offerors must submit for any portion of the VBE participation the Offeror commits to meeting.

I. No VBE Mandatory Participation Goal Set

II. SDB Eligibility:

1. Finding VBE firms: Offerors can access the directory of **DGS-verified** SDB firms from the DGS Supplier Search directory at: <http://www.dgs.internet.state.pa.us/suppliersearch>.
2. **Only VBEs verified by DGS** and as defined herein may be counted towards the VBE participation bonus points. In order to be counted towards the VBE participation bonus points, the VBE firm, including an VBE prime, must be DGS-verified for the services, materials or supplies that it has committed to perform on the **VBE Utilization Schedule (SDB-3)**. A firm whose VBE verification is pending or incomplete as of the proposal due date and time shall not be counted towards the VBE participation bonus points. Offerors cannot use self-certified SBs that do not have their VBE verification as of the proposal due date and time towards the VBE participation bonus points.
3. VBE Requirements: To be considered an VBE, a firm must be a **DGS-verified** Veteran-Owned Small Business Enterprise or Service-Disabled Veteran-Owned Small Business Enterprise.

Additional information on the DGS verification process can be found at:
<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx>
4. Participation by VBE firms as prime offerors or subcontractors. An Offeror that qualifies as an VBE and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors. An VBE may be included as a subcontractor with as many prime contractors as it chooses in separate proposals and a prime contractor may not prohibit an VBE from committing to any other prime contractor.

VBE-1
INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS
ENTERPRISE (VBE) UTILIZATION SCHEDULE.

5. Questions about VBE verification. Questions regarding the VBE program, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 611, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: RA-BDISBOVerification@pa.gov
Website: www.dgs.pa.gov

III. Guidelines Regarding VBE Prime Self-Performance.

1. An VBE firm participating as a prime offeror on a procurement may receive credit towards the VBE Participation bonus points established for the procurement through their own self-performance.
2. For an VBE prime offeror to receive credit for self-performance, the VBE prime offeror must list itself in the **VBE Utilization Schedule (SDB-3)**.
3. The VBE prime offeror must also include the classification category (Veteran-Owned Small Business Enterprise or Service-Disabled Veteran -Owned Small Business Enterprise) under which it is self-performing and include information regarding the work it will self-perform.

IV. Calculating VBE participation

1. The selected Offeror may only count dollar amounts actually paid to an VBE for performance of a Commercially Useful Function (the performance of a distinct element of work required for the Contract, with the requisite skill and expertise) towards satisfying its VBE participation commitments. In addition, the VBE subcontractor, through its own employees, must perform at least 50% of the amount of the subcontract.

VBE-1
INSTRUCTIONS FOR COMPLETING THE VETERAN BUSINESS
ENTERPRISE (VBE) UTILIZATION SCHEDULE.

IV. Additional Required Documentation.

1. The Offeror must submit a letter of commitment (LOC) (SDB-3-1) for each subcontractor included in its VBE Utilization Schedule (VBE-3). At a minimum, each LOC must contain the following unless otherwise specified by the solicitation documents:
 - a. The fixed numerical percentage commitment and associated estimated gross dollar value of the commitment made to the VBE; and
 - b. A description of the services or supplies the VBE will provide; and
 - c. The timeframe during the initial contract term and any extensions, options and renewals when the VBE will perform or provide the services and/or supplies; and
 - d. The name and telephone number of the Offeror's point of contact for VBE participation; and
 - e. The name, address, and telephone number of the primary contact person for the VBE; and
 - f. Signatures of representatives of both the Offeror and the VBE subcontractor who are authorized to contractually bind their firm.

VBE-3
VBE UTILIZATION SCHEDULE

List in the chart below VBEs (including where applicable a prime offeror is self-performing a portion of the work) that will be used towards the VBE participation bonus points (add additional pages if necessary). Submit a **Letter of Commitment (VBE-3-1)** for each VBE subcontractor (add additional Letters of Commitment as necessary).

VBE Name SAP Vendor Number (6-digit number provided by VBE) VBE Verification Number (located on DGS VBE verification)	Type of VBE (check all that apply)	Description of Work to be Performed (Statement of Work/Specification reference)	% Commitment (or % of work to be self-performed by VBE bidder/offeror)	Associated Dollar Value of Commitment
Name: <u>ABC IT Solutions</u> SAP Vendor Number: <u>123456</u> VBE Verification Number: <u>123456-2016-09-SB-M</u>	MBE	IT staffing resources	%	\$
Name: SAP Vendor Number: VBE Verification Number:	___ VBE ___ SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	___ VBE ___ SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	___ VBE ___ SDVBE		%	
Name: SAP Vendor Number: VBE Verification Number:	___ VBE ___ SDVBE		%	
Attach additional sheets if necessary			Total % VBE commitment: _____	Total \$ amount: _____

**VBE-3-1
LETTER OF COMMITMENT**

This Letter of Commitment serves as confirmation of the commitment by the prime Offeror to utilize the Veteran Business Enterprise (VBE) on the below-referenced Solicitation/Project.

Solicitation Number: _____

Solicitation Name: _____

	Offeror Information	SDB Information
Name		
Address		
Point of Contact		
Telephone number		
Email address		

Services/Supplies and Time Frame. If Offeror is the successful vendor, the VBE shall perform or provide the following services or supplies during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below:

Services or supplies the VBE will provide:

Specific Time Frame the VBE will provide the services or supplies:

Percentage Commitment. These services or supplies represent _____% of the total cost of the Offeror's cost submittal for the initial term of the contract. Depending on actual contract usage or volume, it is expected the VBE will receive \$_____ during the initial contract term.

VBE verified. By signing below, the VBE represents that it meets the VBE requirements set forth in the Solicitation and all required documentation has been provided to the Offeror for its VBEB submission.

Sincerely,

Acknowledged

Printed name

Printed name

Signature
Offeror Point of Contact Name

Signature
SDB Point of Contact Name

APPENDIX F
MODEL SDB/VBE SUBCONTRACTOR SUBAGREEMENT

APPENDIX FI

MODEL FORM OF SMALL DIVERSE BUSINESS/VETERAN BUSINESS ENTERPRISE SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement ("Subcontract") is made effective as of _____, 20__, by and between _____, ("Contractor") and _____, a Small Diverse Business or Veteran Business Enterprise ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the [insert name of Commonwealth agency _____] the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Commitment") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Veteran Business Enterprise Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Commitment and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Veteran Business Enterprise Commitment expressed in the Letter of Commitment.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department's Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$38.5 million in gross annual revenues.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, LGBT-owned small business, disability-owned small business, or service-disabled veteran-owned small business.

Veteran Business Enterprise – A Department-verified veteran-owned small business or service-disabled veteran-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is verified as a Small Diverse Business or Veteran Business Enterprise by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime Contract, which are incorporated herein by reference:

- (1) The Americans with Disabilities Act Provisions.
- (2) Nondiscrimination/Sexual Harassment Clause.

- (3) Contractor Integrity Provisions.
- (4) Contractor Responsibility Provisions.

(c) Termination. Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d) Audit Provisions. The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Veteran Business Enterprise Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Commitment, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) This Subcontract;
- (b) The Letter of Commitment;
- (c) The Prime Contract; and
- (d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM WITH THE CORRESPONDING UNITED NATIONS STANDARD PRODUCTS AND SERVICES CODES (UNSPSC)]

8. Small Diverse Business or Veteran Business Enterprise Commitment. The above-referenced Services represent ___ % of the final negotiated total cost for the initial term of the

Prime Contract. Any proposed change to the Small Diverse Business or Veteran Business Enterprise Commitment must be submitted in writing to the Contracting Officer.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Contracting Officer. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):

_____.

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]

_____.

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ___ to this Subcontract.

[ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor receives such payment from the Commonwealth, unless the parties expressly agree upon a different payment schedule or structure as set forth below:

_____.

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Monthly Utilization Reports (or similar type documents containing the same information) and submit them to the Contracting Officer. This information will be used to determine the actual dollar amount

paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Veteran Business Enterprise Commitments. If there was no activity during the month, then the form must be completed by stating "No activity in this month." A late fee of \$100.00 per day may be assessed against the Contractor if the Contractor's Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Veteran Business Enterprise Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract 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 are not 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, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract 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, and sent to the following:

If to Contractor:

If to Subcontractor:

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.

20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Veteran Business Enterprise Commitments set forth in the Prime Contract as implemented through this Subcontract.

22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.

23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.

24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties.

25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL DIVERSE BUSINESS OR VETERAN BUSINESS ENTERPRISE RELATIVE TO THE

NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR VETERAN BUSINESS ENTERPRISE'S PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

- Background Checks
- Confidentiality/Disclosure of Information
- Data Security
- Insurance
- Invoicing Requirements
- Environmental Protection
- Intellectual Property Rights
- Record Retention/Audits
- Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
- Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor

Subcontractor

Insert Company Name

Insert Company Name

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date