

**PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION
SUPPLEMENTAL TERMS AND CONDITIONS OF CONSTRUCTION CONTRACT**

1. WORKER AND COMMUNITY RIGHT TO KNOW

- A.** The Pennsylvania Law 1984-159 provides for information to be made available to employees and community residents regarding hazardous substances introduced into the workplace and the general environment.
- B.** Comply with this law and inform workmen of its provisions. Supply the site administrator with a list of all hazardous substances to be used in the course of the contract. Erect and maintain physical barriers, signs, or other devices as directed by the Project Manager.

2. INSURANCE

- A.** Comprehensive general liability insurance is required and shall be in an amount not less than \$1,000,000 for injuries, including accidental death, to any one person and subject to the same limit for each person, and in an amount not less than \$2,000,000 each occurrence. The property damage liability insurance shall be in an amount not less than \$2,000,000 each occurrence. The insurance shall also name the Commonwealth of Pennsylvania as an additional insured as its interests may appear.
- B.** Insurance certificates as outlined above must be submitted to the Project Manager within ten (10) days of the Contractor's receipt of the fully executed PO, unless otherwise agreed upon by Project Manager. The Project Manager will not schedule the initial project conference until the Insurance Certificates are submitted.

3. STEEL PRODUCTS PROCUREMENT ACT

- A.** In the performance of any contract awarded pursuant to this invitation to bid, the contractor, subcontractors, material men, or suppliers shall use only steel products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United states by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel-making process. Steel products include not only cast iron products, but also machinery and equipment listed in United States Department of Commerce Standard Industrial Classifications 25 (furniture and fixtures), 35 (machinery, except electrical), and 37 (transportation equipment), and made of, fabricated from, or containing steel components. If a product contains both foreign and United States steel it shall be determined to be a United States steel product only if at least 75% of the cost of the articles, materials, and supplies have been mined, produced, or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).
- B.** When unidentified steel products are supplied under a contract, before any payment will be made, the contractor must provide documentation including, but not limited to invoices, bills of lading, and mill certification that the steel was melted and manufactured in the United States. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the using agency that the contractor has fully complied with this provision. The Commonwealth shall not provide for or make any payments to any person who has not complied with the Act. Any such payments mad to any person by the Commonwealth which should not have been made as a result of the Act shall be recoverable directly from the contractor, subcontractor, manufacturer, or supplier who did not comply

with the Act.

C. In addition to the withholding of payments, any person who willfully violates any of the provisions of the Act shall be prohibited from submitting any bids to any public agency for a period of five (5) years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the Act is a subcontractor, manufacturer, or supplier, such person shall be prohibited from performing any work or supplying any materials to a public agency for a period of five (5) years from the date of the determination that a violation has occurred.

D. The contractor shall include the provisions of the Steel Products Procurement Act in every subcontract and supply contract so that the provisions of the Act shall be binding upon each subcontractor and supplier.

4. TRADE PRACTICES ACT

A. In accordance with the Trade Practices Act of July 23, 1968, P.L. 686 (71 P.S. Section 773.101 et seq.), the contractor cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, Mexico and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

1. Brazil: welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; prestressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled wire strand; hot rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.
2. Spain: certain stainless steel products including stainless steel wire rod, hot-rolled stainless steel bars, and cold-formed stainless steel bars; prestressed concrete steel wire strand; and certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars.
3. South Korea: welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.
4. Mexico: certain iron-metal construction castings including manhole covers, rings and frames, catch basin frames and grates, cleanout covers, grates, meter boxes, and valve boxes; galvanized carbon steel sheet; cold-rolled carbon steel sheet; carbon steel sheet; carbon steel plate in coil; carbon steel plate cut to length; and small diameter carbon steel plate welded pipe.
5. Argentina: carbon steel wire rod and cold-rolled carbon steel sheet.

B. Penalties for violation of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

C. Note: This provision in no way relieves the contractor of responsibility to comply with those provisions of this invitation to bid which prohibit the use of foreign-made steel and cast iron products.

5. VENDOR REGISTRATION NUMBER

- A.** The successful vendor must have, or obtain, a Commonwealth vendor registration number. Information will be given upon award.

6. RECIPROCAL LIMITATIONS ACT

1. Background Requirements of the Act (62 Pa.C.S. (2008 Sup.) § 107) requires the Department:

- i. In the award of contracts exceeding \$10,000, for the erection, construction, alteration, improvement or repair of any building or other public work or the purchase or lease of any goods, supplies, equipment, printing or materials, to give Resident Bidders a preference against a nonresident Bidder from any state that gives or requires a preference to Bidders from that state. The amount of preference shall be equal to the amount of the preference applied by the state of the nonresident Bidder. A resident Bidder is a person, partnership or corporation or other business entity authorized to transact business in Pennsylvania and having bona fide establishment for transacting business on the date when bids for the public contract were first solicited.
- ii. In the erection, construction, alteration, improvement or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing or materials, not to specify, use or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

2. List of Discriminating States

- i. States which apply preference favoring in-state Bidders and the amount of such preference, (which may affect this contract), as found by the Department of General Services.

<u>STATE</u>	<u>PREFERENCE</u>
Arizona	5% (construction materials from Arizona Resident dealers only)
Montana	3%
West Virginia	2.5% (construction, repair or improvements of any buildings)
Wyoming	5%

- ii. States which prohibit the use of out-of-state goods, supplies, equipment, materials, or printing and the prohibition (which may affect this contract), as found by the Department of General Services.

<u>STATE</u>	<u>PREFERENCE</u>
Georgia	Forest products only
Indiana	Coal
New Mexico	Construction

3. Calculations of Preference

- i. In calculating the preference, the amount of a bid submitted by a Pennsylvania Bidder shall be reduced by the percentage preference which would be given to a nonresident Bidder by its state

of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials and printing shall be reduced by the percentage preference which would be given to another Bidder by the state where the goods, supplies, equipment, materials and printing are produced, manufactured, mined, grown, or performed.

7. SEPARATIONS ACT

A. For construction contracts where the total construction costs are less than \$25,000, the department shall not be required to comply with the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings," and the department may award such contracts in accordance with section 511. All projects equal to or exceeding \$25,000 shall be subject to the act of May 1, 1913 (P.L.155, No.104), entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings." Whenever the department enters into a single contract for a project, in the absence of good and sufficient reasons the contractor shall pay each subcontractor, within 15 days of receipt of payment from the department, an amount equal to the percentage of completion allowed to the contractor on the account of the subcontractor's work. The contractor shall also require the subcontractor to make similar payments to his subcontractors.

8. CHANGES TO PROJECT SCOPE

- A.** Project change orders shall follow the prescribed process as provided for herein.
- B.** Contractor may propose changes to contracted work of project to PHMC Project Manager.
- C.** PHMC Project Manager may also propose changes to contracted work of project.
- D.** The Contractor shall prepare a cost proposal for any proposed change to the contracted work.
- E.** PHMC Project Manager shall review and approve or deny proposed changes and contractor's cost proposal or credit. If the change involves work for which unit prices were provided with the bid, these shall form the basis for the cost proposal or credit. If approved, PHMC Project Manager submits the change request and cost or credit proposal to Chief of the Division of Architecture and Preservation and Chief of the Division of Fiscal Office and Support Services for review and approval. If both approve, the contractor is notified and the change order work may proceed while a change to the PO is in process.
- F.** If the PHMC approves a scope change but does not approve the contractor's cost proposal, the contractor shall be required to perform the change order work and maintain records of time and material costs for the change order work as evidence of actual costs incurred, and subject to PHMC verification, and PHMC will pay an amount to reimburse the contractor for actual time and materials cost plus a reasonable overhead and profit, not to exceed the contractor's original proposed cost. If the PHMC does not approve a contractor's credit proposal, the PHMC will reduce the contractor's compensation to the amount it determines the contractor is entitled to receive and the contractor may file a claim to recover the additional compensation if they so choose.
- G.** Minor adjustments to project work that deviate in some way from the contract documents but that the Project Manager approves and the Contractor agrees would not require additional cost, shall

constitute a Field Order. Field Orders may be acted upon as verbal agreements but must be documented on the as-built drawings and/or in some other written form.

- H. All excavation, if required for the project, is considered unclassified, and will include all types of earth and soil, pebbles, rocks, boulders, bedrock, municipal trash, rubbish, garbage and construction debris. It does not include unforeseen below grade concrete foundations, walls or slabs. If the excavation uncovers unforeseen concrete foundations, walls or slabs, the contractor is permitted to request a change order. All other conditions are considered included in the contract price.
- I. No claims for additional cost shall be approved for the work described in the contract documents, for reasons including, but not limited to, strikes, walkouts, work stoppages and materials production and shipping delays and increases in material cost from the time of bid.

NOTE: THE FOLLOWING THREE SECTIONS (9, 10 AND 11) ARE ONLY APPLICABLE TO PROJECTS OF \$25,000 OR MORE.

9. PERFORMANCE & PAYMENT BONDS

- A. **Bids less than \$25,000** – no bond required
- B. **Bids over \$25,000 but less than \$100,000** – a performance bond is required for 50% of the total project cost
- C. **Bids Over \$100,000-** performance and payment bonds are required for 100% of the total project cost
- D. All required bonds must be submitted to the Project Manager within ten (10) days of the notification of the award. The purchase order cannot be created until the required bonds are submitted.

10. PREVAILING WAGE ACT

- A. This project is subject to the provisions of the PA Prevailing Wage Act if : 1) Prevailing Wage Rate Determinations are included with the bid solicitation and 2) bid exceeds \$25,000. If bid exceeds \$25,000, the vendor is subject to the provisions, duties, obligations, remedies and penalties of the PA Prevailing Wage Act, 43 P.S. Section 165-1 ET SEQ., which is incorporated herein by reference as if fully set forth herein. The contractor shall pay no less than the wage rates as determined by the Secretary of Labor and Industry (hereinafter referred to in the paragraph as “Secretary”) for each craft or classification of all workmen needed to perform this work during the term hereof for the locality in which the work is to be performed. In compliance with said PA Prevailing Wage Act, the prevailing Minimum Wage Predetermination, as approved by the Secretary, if applicable to the project, it will be attached to the bid solicitation and made a part of the Contract purchase order.

11. PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

- A. The Commonwealth of Pennsylvania enacted Act 127 of 2012, known as the Public Works Employment Verification Act ('the Act') which requires all public work contractors and subcontractors to utilize the Federal Government's E-Verify system to ensure that all employees performing work on public work projects are authorized to work in the United States. **This requirement only applies to contracts in excess of \$25,000.**
- B. To comply with the Act the contractor and subcontractor must complete the "Public Works Employment Verification Form" and submit it to the project manager upon award of contract. The form and further information on the Act are available at the following address:
(http://www.dgs.state.pa.us/portal/server.pt/community/construction_and_public_works/1235/act_127-2012_public_works_employment_verification/1357211)