REQUEST FOR PROPOSALS FOR

CONSULTATION AND TECHNICAL ASSISTANCE FOR HEALTHCHOICES
BEHAVIORAL HEALTH MANAGED CARE PROGRAM

ISSUING OFFICE

Commonwealth of Pennsylvania
Department of Public Welfare
Bureau of Financial Operations
Division of Contract Execution and Management
Room 402 Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120

On behalf of:
Office of Mental Health and Substance Abuse Services

RFP NUMBER

09-15
Reissued

DATE OF REISSUANCE

March 28, 2017
REQUEST FOR PROPOSALS FOR
Consultation and Technical Assistance for HealthChoices Behavioral Health Managed Care Program

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### CALENDAR OF EVENTS

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
<th>Date</th>
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<tr>
<td>Deadline to submit Questions via email to <a href="mailto:RA-pwrfpquestions@pa.gov">RA-pwrfpquestions@pa.gov</a></td>
<td>Potential Offerors</td>
<td>April 14, 2017 2:00 PM EST</td>
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<td>Pre-proposal Conference</td>
<td>DHS/Potential Offerors</td>
<td>April 10, 2017 9:00 AM</td>
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<td>The Pennsylvania Child Welfare Resource Center</td>
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<td>University of Pittsburgh, School of Social Work</td>
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<td>403 East Winding Hill Road</td>
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<tr>
<td>Mechanicsburg, PA 17055</td>
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<td>Meeting Room – Susquehanna A</td>
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<td>Answers to Potential Offeror questions posted to the DGS website at <a href="http://www.emarketplace.state.pa.us/Search.aspx">http://www.emarketplace.state.pa.us/Search.aspx</a> no later than this date.</td>
<td>DHS</td>
<td>April 24, 2017</td>
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<tr>
<td>Please monitor website for all communications regarding the RFP.</td>
<td>Potential Offerors</td>
<td>Ongoing</td>
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<tr>
<td>Sealed proposal must be received by the Issuing Office at</td>
<td>Offerors</td>
<td>May 24, 2017 2:00 PM EST</td>
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<td>Commonwealth of Pennsylvania</td>
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<td>Department of Human Services</td>
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PART I

GENERAL INFORMATION

I-1. **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 Department of Human Services’ (“DHS” or “Department”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for consultation and technical assistance in regard to the HealthChoices Behavioral Health (“HC-BH”) Program (“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 DHS, Office of Administration, Bureau of Financial Operations (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Ms. Michelle Smith, RA-pwrfpquestions@pa.gov, the Project Officer for this RFP. Please refer all inquiries to the Project Officer.

I-3. **Overview of Project.** The Department is seeking an Offeror to provide technical assistance and consulting services to assist the Office of Mental Health and Substance Abuse Services (“OMHSAS”) with effective planning, research, development, delivery and monitoring of Medical Assistance (“MA”) programs and services. In addition, the selected Offeror will provide professional services to assist OMHSAS in the evaluation design and planning of its infrastructure.

OMHSAS manages 30 separate HC-BH Agreements, 28 of which are Agreements with county governments where counties accepted the “right of first opportunity” to provide the required services. The other two Agreements are with managed care organizations (“MCO”). Both county governments and the MCOs must satisfy the same program standards and requirements and each is monitored for compliance, quality and financial stability on a regular basis.

OMHSAS must also meet CMS waiver requirements, submit annual reports and participate in an independent annual external review in relation to its HC-BH program. DHS has developed various process and management tools for this complex waiver program to ensure compliance with state and federal requirements. Strong oversight functions are in place at the county and state level, both programmatically and fiscally.

There have been significant changes in both state and federal legislation that effects behavioral health services. Among the most wide ranging services is the Patient Protection and Affordable Care Act (“ACA”), which was designed to provide all Americans with access to affordable physical and behavioral healthcare treatment. The ACA is in various stages of implementation. OMHSAS continues to need to consider the impact of these changes. OMHSAS also needs to consider the impact of the CMS rules that will change requirements for the MA managed care programs as well as changes related to the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”).

The HC-BH program has high accountability standards and the Department is interested in continuing to improve the quality of services, control administrative costs as well as improve the effectiveness of oversight mechanisms. The Department places a priority on refinement of administrative oversight tools to focus time and energy on the most valued added activities for this complex program. OMHSAS is
interested in learning from the best practices nationally for procurement and administration of managed care programs that result in increased quality, effectiveness and efficiency.

In this rapidly changing healthcare environment, it has become more important than ever to pay attention to the quality and cost effectiveness of services to achieve improved health outcomes. At the core of health innovation and value-based purchasing initiatives is the goal to improve the overall health of members. An OMHSAS priority is increasing the number of evidence-based practices (“EBP”) available and achieving provider adherence to fidelity standards. EBPs have been identified nationally for programs serving children, transition age youth, adults and older adults. Such program changes affect managed care operations, cross-system relationships, provider development and workforce development.

The HC-BH program needs to continuously improve the health outcomes for people served and help children, families, adults and older adults, be an active part of their family and community. The Department continues to seek the most innovative program and services to support recovery in adults and resiliency in children. As part of its efforts, the Department partners with other human services agencies and systems at the state and local level to achieve improved health outcomes for people with the most critical needs who are served in multiple systems. OMHSAS and the Office of Children, Youth and Families (“OCYF”) also have a shared priority to reduce the number of children in out-of-home placements. Implementation of nationally recognized forensic programs such as the sequential intercept model for adults is strengthening state and local relationship to meet the needs of people involved in the criminal justice system. The Pennsylvania Department of Aging (“PDA”) has been a partner in improving access to mental health services for older adults. The selected Offeror must have technical expertise across all ages and special populations.

The HC-BH program provides behavioral health services for people with intellectual disabilities, for children diagnosed with autism spectrum disorder and people who are deaf and hard of hearing, among other populations. OMHSAS and county partners have aligned with the housing development community to create safe affordable housing for people diagnosed with a serious mental illness. Exploring and implementing new models for coordination of behavioral and physical health with consideration of current and proposed regulatory and financial constraints will be a high priority over the next several years. National expertise in these specialized service and support areas is essential for the program to provide statewide leadership to continue to move Pennsylvania towards a service system that supports recovery and resiliency and reduces reliance on large institutional settings.

The HC-BH program will also provide behavioral health services for people enrolled in Community HealthChoices (“CHC”). Pennsylvania Departments of Human Services (“DHS”) and Aging (“PDA”) are developing a new program for older Pennsylvanians and adults with physical disabilities called CHC. The Department plans to coordinate health and long-term services and supports (“LTSS”) through CHC managed care organizations (“CHC-MCOs”). HC-BH program will need to coordinate services to ensure all behavioral health needs are met.

Pennsylvania has been challenged by the opiate epidemic and is currently ranked seventh nationally for opiate related deaths. OMHSAS and the Pennsylvania Department of Drug and Alcohol Programs through the Single County Authority (“SCA”) are creating Centers of Excellence (“COE”) that treat the whole person. COEs will provide care through the lifespan with team-based treatment that is whole person focused, with the goal of integrating behavioral health, primary care, and substance use treatment.
Enhancing the OMHSAS quality management programs to focus on member outcomes and generate data that helps manage the program is essential. OMHSAS is interested in performance reports and processes that will accelerate improvement. OMHSAS conducts annual clinical reviews of the managed care operations to oversee and formulate recommendations for administration and care management practices that help individuals get to the right services at the right time to prevent the need for more intensive and often more costly services. OMHSAS is interested in developing and monitoring performance metrics to measure effectiveness of new models of care such as Certified Community Behavioral Health Clinics (“CCBHC”) and COE.

All HC-BH managed care organizations (“MCOs”) submit annual quality management plans. OMHSAS seeks to evolve our quality management approach to take advantage of new technology and ways to gather and display data that can confirm and promote improved health outcomes.

Offerors may obtain more detailed background information on Pennsylvania’s HC-BH program from the DHS website at www.dhs.state.pa.us then select “Information for DHS Businesses Partners”. The website contains information about the physical and behavioral health managed care programs. Additionally information about OMHSAS’s priority initiatives can be found at www.parecovery.org.

I-4. Objectives.

A. General. The Department is issuing this RFP to procure a contract for technical assistance and consultant services regarding the statewide HC-BH program that will assist with the delivery of the highest quality healthcare in the most cost efficient manner in the ever-evolving healthcare field.

B. Specific. The Department is seeking a contractor to provide technical assistance and consulting services which will assist the Department in its efforts to enhance, develop and implement effective strategies for the management of the HC-BH program. The Department is seeking:

- To develop strategies partnering with Federal, State and local partners for cross-system coordination;
- To improve health outcomes through quality of care initiatives; and
- To improve the service system for children, adolescents, adults and older adults.

I-5. Type of Contract. It is proposed that if the Department enters into a contract as a result of this RFP, it will be a firm-fixed price contract containing the Standard Contract Terms and Conditions as shown in Part VI. The Department, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of DHS, show them to be qualified, responsible and capable of performing the Project.

I-6. Rejection of Proposals. The Department may, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

I-7. Incurring Costs. DHS 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. Pre-proposal Conference. DHS will hold a Pre-proposal conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Project Officer in accordance with Part I, Section I-9 to ensure adequate time for analysis before DHS provides an answer. Offerors may also ask questions at the
conference. In view of the limited facilities available for the conference, Offerors should limit their representation to three (3) individuals per Offeror. The Pre-proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by DHS. All questions and written answers will be posted on the Department of General Services’ (“DGS”) website as an addendum to, and shall become part of, this RFP. Attendance at the Pre-proposal Conference is optional, but strongly encouraged.

I-9. Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (with the subject line “RFP 09-15 Reissued Question”) to the Project Officer named in Part I, Section I-2 of the RFP. If the Offeror has questions, they must be submitted via email no later than the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Project Officer by any other means. The Department shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Project Officer may respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that DHS decides to respond to a non-administrative question after the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website 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 the DGS website for new or revised RFP information. DHS 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 DHS.

I-10. Addenda to the RFP. If DHS deems it necessary to revise any part of this RFP before the proposal response date, DHS will post an addendum to the DGS website at http://www.emarketplace.state.pa.us/Search.aspx. It is the Offeror’s responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

I-11. Response Date. To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. DHS will not accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. DHS will reject, unopened, any late proposals.


A. Proposal Submission: To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in Section I-12B, providing six (6) paper copies [one marked “ORIGINAL”] of the Technical Submittal and one (1) paper copy of the Cost Submittal and two (2) paper copies of the Small Diverse Business and Small Business
Participation Submittal and related Letter(s) of Intent. In addition to the paper copies of the proposal, Offerors shall submit one complete and exact copy of the entire proposal (Technical, Cost and SDB/SB submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. Additionally, on the CD-ROM or Flash drive, include separate folders which contain a complete and exact copy of the entire Technical (excluding financial capability) Submittal in PDF (portable document format). To the extent that an Offeror designates information as confidential or proprietary or trade secret protected in accordance with RFP Part I, Section I-18, the Offeror must also include one (1) redacted version of the Technical Submittal, excluding financial capability on a CD-ROM or Flash Drive in Microsoft Office or Microsoft Office-compatible format. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offerors may not lock or protect any cells or tabs. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. 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 attached to the Offeror's 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 DHS 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 written notice received at the Issuing Office’s address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies 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 Small Business 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 Proposal shall consist of the following three separately sealed submittals:

1. Technical Submittal:

   a. In response to Part III; and

      The Technical Submittal must include a Transmittal Letter and include Tabs 1 through 15. Offerors must format their responses as follows:

      o Tab 1: Table of Contents
      o Tab 2: Requirements
b. Complete, sign and include Appendix E – Domestic Workforce Utilization Certification;

c. Complete, sign and include Appendix K – Iran Free Procurement Certification;

2. Cost Submittal, in response to RFP Part IV; and

3. Small Diverse Business and Small Business ("SDB/SB") Participation Submittal, in response to RFP Part V:

   a. Complete and include Appendix G - SDB/SB Participation Submittal Form; and

   b. Complete and include Appendix H - SDB/SB Letter of Intent. Offeror must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form

DHS may request additional information which, in DHS’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.

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

I-13. **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.

I-14. **Alternate Proposals.** DHS has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. DHS will not accept alternate proposals.

I-15. **Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to DHS to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. DHS will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
I-16. **Oral Presentations.** Offerors may be required to make an oral presentation of their proposals to DHS to demonstrate an Offeror’s capabilities and ability to provide the services required in the RFP. DHS will initiate requests for oral presentations; which may include a request that key personnel be present. The oral presentation will be held in Harrisburg, Pennsylvania. Oral presentations may be requested at any stage of the evaluation and selection process prior to contract execution.

I-17. **Prime Contractor Responsibilities.** The selected Offeror must perform at least 50% 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, DHS will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

I-18. **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 in accordance with RFP Part I, Section I-12, 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 and may be returned only at DHS’s option. 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 on 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 F 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-7 of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-19. **Best and Final Offers.**

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

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

B. The following Offerors will not be invited by DHS to submit a Best and Final Offer:

1. Those Offerors, which DHS has determined to be not responsible or whose proposals DHS has determined to be not responsive.
2. Those Offerors, which DHS 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 70% of the total amount of technical points allotted to the technical criterion.

DHS may further limit participation in the best and final offers process to those remaining responsible offerors which DHS 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.

D. Price reductions offered through any reverse online auction shall have no effect upon the Offeror’s Technical Submittal.

E. Any reduction to commitments to Small Diverse Businesses and Small Businesses must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by BDISBO.

I-20. 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 DHS, and then only in coordination with DHS.

I-21. Restriction of Contact. From the issue date of this RFP until DHS selects a proposal for award, the Project Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for DHS to reject the offending Offeror’s proposal. If DHS 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-22. Department 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-22. Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work. The DHS Contract Administrator will be Kellie Wayda, who will monitor contract
implementation, monitor contract performance and will be the liaison between the selected Offeror and OMHSAS staff.

I-23. **Term of Contract.** The term of the contract will commence on the Effective Date and will be for a period of three (3) years. Subject to the performance of the Offeror and other considerations, the Department may renew the contract on the same terms and conditions for up to two (2) additional one-year periods. DHS 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-24. **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 DHS 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 (4)** 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 DHS, any recommendations to DHS 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.


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

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

I-26. 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-27 of this RFP).

I-27. RFP Protest Procedure. Offerors and prospective Offerors who are aggrieved in connection with the solicitation or award of the contracts under this RFP may file a protest with the Department. Any such protest must be in writing and must comply with the requirements set forth in the Commonwealth Procurement Code at 62 Pa.C.S. §1711.1.

Any protest filed in relation to this RFP must be delivered to:

Department of Human Services
Office of Administration, Bureau of Financial Operations
Division of Procurement and Contract Management
Room 402 Health and Welfare Building
625 Forster Street
Offerors and prospective Offerors may file a protest electronically or by facsimile but also must simultaneously send a hard copy and electronic version of the protest to the address listed above.

**I-28. 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.
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-11); and

B. Be properly signed by the Offeror (see Part I, Section I-12A).

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 Department may, in its sole discretion, (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 Department has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Department with a rating for this component of each proposal. The Department 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 Department 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 Department has established the weight for the Technical criterion for this RFP as 50% of the total points. Evaluation will be based upon the following in order of importance:

1. Soundness of Approach: The evaluation committee will evaluate the soundness of the Offeror’s approach to providing technical assistance and consultant services to the Department.

2. Key Personnel Qualification: The evaluation committee will evaluate the Offeror’s key personnel and their professional experience and educational background to address the issues and challenges to support the Department’s behavioral health managed care program as well as the proposed staffing for the Project.

3. Offeror Qualifications: The evaluation committee will evaluate Offeror’s qualifications and will carefully review past and current professional experience in performing the kinds of tasks listed in the RFP.

4. Statement of the Problem: The evaluation committee will evaluate the Offeror’s understanding of the problem as specified in the RFP, including the Offeror’s understanding of the Department’s goals and objectives for consulting and technical assistance for its behavioral health managed care program.

The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage: http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx.
B. **Cost:** The Department has established the weight for the Cost criterion for this RFP as **30%** 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 at the following webpage: [http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx](http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx).

C. **Small Diverse Business and Small Business Participation:** BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as **20%** of the total points.

1. The Small Diverse and Small Business point allocation is based entirely on the percentage of the contract cost committed to Small Diverse Businesses and Small Businesses.

2. A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no Small Diverse Business or Small Business points.

3. Two thirds (2/3) of the total points are allocated to Small Diverse Business participation (SDB%).

4. One third (1/3) of the total points is allocated to Small Business participation (SB%).

5. Based on a maximum total of 200 available points for the Small Diverse Business and Small Business Participation Submittal, the scoring mechanism is as follows:

   \[
   \text{Small Diverse Business and Small Business Raw Score} = 200 (\text{SDB%} + (1/3 \times \text{SB%}))
   \]

6. Each Offeror’s raw score will be pro-rated against the Highest Offeror’s raw score by applying the formula set forth on the following webpage: [http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx](http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx).

7. The Offeror’s prior performance in meeting its contractual obligations to Small Diverse Businesses and Small Businesses will be considered by BDISBO during the scoring process. To the extent the Offeror has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Offeror be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business 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. See the following webpage for the Domestic Workforce Utilization Formula:


E. Iran Free Procurement Certification and Disclosure. Prior to entering a contract worth at least $1,000,000 or more with a Commonwealth entity, an offeror must: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All offerors must complete and return the Iran Free Procurement Certification form, (Appendix K, Iran Free Procurement Certification Form), which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted as part of the Technical Submittal.

See the following web page for current Iran Free Procurement list:

http://www.dgs.pa.gov/Documents/Procurement%20Forms/ProposedIranFreeProcurementList.pdf

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 70% of the available technical points; and

B. The Offeror’s financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Commonwealth will review the Offeror’s previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror’s financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Department, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Department. Based on the financial condition of the Offeror, DHS may require a certified or bank (cashier’s) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be
issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror’s cost proposal or the contract cost to the Commonwealth.

Further, the Department will award a contract only to an Offeror 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, BDISBO’s final Small Diverse Business and Small Business Participation Submittal scores, the final cost scores, and (when applicable) 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 Department must select for contract negotiations the offeror with the highest overall score.

D. The Department 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. Requirements.

A. Professional Services

1. The selected Offeror must provide consultation and assistance which demonstrate knowledge and understanding of the MA Behavioral Health managed care system, including its inter-relationships with other program such as MA Physical Health and managed long-term services and supports (“MLTSS”).

2. In a rapidly changing healthcare environment with demands for high quality service at the best cost, the selected Offeror must have a wide and deep range of technical expertise in behavioral health; MA managed care, financial management, federal regulations and emerging national practices.

3. The selected Offeror must have professional staff that includes licensed clinicians including psychiatrists, psychologists, social workers, nurses and pharmacists, as well as certified peer specialists and certified recovery specialists. Staff must have demonstrated experience in helping government-funded health and welfare programs who can understand the services being provided as well as the challenges often encountered in behavioral health service systems.

4. The selected Offeror must have expertise regarding standards and requirements that consider implications for urban and rural settings; cultural competency; different age groups and special populations, including older adults, lesbian, gay, bisexual, transgender, questioning (“LGBTQ”) population and individuals who are deaf and hard of hearing, justice involved and those with co-occurring disorders (medical conditions, developmental disorders and substance use).

5. The selected Offeror must be able to respond to changing priorities and to manage multiple projects across several bureaus at the same time and must provide timely technical guidance on emerging state and federal policy issues. The selected Offeror must be experienced in recommending solutions to these complex healthcare issues.

6. The selected Offeror also must be knowledgeable regarding CMS Medicaid Managed Care Final Rule changes and the possible impact of those provisions on Pennsylvania.

7. The selected Offeror will work with the various Bureaus which comprise OMHSAS, including:
   - Bureau of Children’s Behavioral Health Services, focusing on the behavioral health needs of children;
   - Bureau of Community and Hospital Operations, whose four field offices oversee the HC-BH plans in their respective areas;
   - Bureau of Financial Management and Administration, responsible for the development and oversight of OMHSAS’s administrative, financial, budgetary and personnel policies, procedures, regulations and performance standards;
   - Bureau of Policy and Program Development, responsible for performing a full range of planning and developmental functions; and
• Bureau of Quality Management and Data Review, which supports the Department's goal of public accountability through monitoring and reporting.

8. The selected Offeror must have the capacity to provide services for an estimated 6,250 hours per year. The selected Offeror must be able to provide sufficient staff to accomplish all tasks set forth in this RFP and be able to provide additional staff resources as may be needed for specific projects.

9. The selected Offeror will work directly with the DHS Contract Administrator who will approve and review the selected Offeror’s work plan, the specific tasks included within the plan and all budgets related to the tasks as well as the timeframes to complete. All tasks will have an individualized time limited plan.

10. The Department may change the outlined tasks under each objective from year to year depending on the needs of the program. The Department and the selected Offeror will determine the specifics of the work within the tasks, timeframes and budget estimates.

11. The selected Offeror will recognize that the Commonwealth has both fiscal and quality of care objectives in the development of the deliverables and services that will be provided under the contract.

Offeror Response

B. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

1. Describe how you anticipate such a crisis will impact your operations.
2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of preparedness:
   • Your organization’s training plan, and how frequently your plan will be shared with employees;
   • Identified essential business functions and key employees within your organization necessary to carry them out;
   • Contingency plans for:
     • How your organization will handle staffing issues when a portion of key employees are unavailable:
     • How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
   • How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
   • How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

Offeror Response
C. **Document Security.** The nature of the Project requires the handling of confidential and sensitive information. The selected Offeror must establish a process to protect the confidentiality of all assessment results, records and other related information obtained as a result of its work on the Project. Describe the process you will use to meet the following requirements:

1. Confidential and Sensitive information may need to be transferred from other agencies or shared with the Commonwealth during the term of the contract, and turned over to a successor Offeror or Commonwealth staff at the conclusion of this contract. The selected Offeror must follow Commonwealth procedures for information handling and sharing.

2. Compliance with applicable federal and state laws, regulations, and rules regarding the security and confidentiality of information pertaining to the MA program and other related programs.

3. All individuals with access to confidential or sensitive information must sign a confidentiality agreement. Personnel policies must address disciplinary procedures relevant to violation of the signed confidentiality agreement.

4. The selected Offeror is responsible for implementing and maintaining measures to prevent unauthorized access, copying and distribution of information during work on this Project.

5. The selected Offeror is responsible for proper disposal (i.e. shred, surrender) of both hard and electronic working copies of confidential and sensitive information during work on this Project, as well as any remaining information upon the completion of the project.

**Offeror Response**

D. **Health Insurance Portability and Accountability Act (“HIPAA”) Regulations.** The selected Offeror must comply with all federal or state laws related to the use and disclosure of information, including information that constitutes Protected Health Information (“PHI”) as defined by HIPAA and the Commonwealth’s Business Associate Addendum (Part VI Standard Terms and Conditions).

**Offeror Response**

E. **Conflict of Interest Requirements.** The selected Offeror must be free of any conflict of interest and remain free from any such conflicts during the contract term. DHS will consider an Offeror to be in conflict if the Offeror currently 1) provides services to any managed care organizations or health care providers doing business in Pennsylvania under the MA program; or 2) provides direct services to individuals in DHS-administered programs included within the scope of this RFP.

If DHS determines an Offeror to be in conflict, DHS, in its sole discretion, may reject the Offeror’s proposal. If DHS discovers a conflict during the contract term, DHS may terminate the contract pursuant to the provisions of Part VI to this RFP.

**Offeror Response**

F. **Lobbying Certification and Disclosure of Lobbying Activities.** This Project will be funded, in whole or in part, with federal monies. Public Law 101-121, Section 319, prohibits federal funds from being expended by the recipient or by any lower tier sub-recipients of a federal contract, grant, loan, or a cooperative agreement to pay any person for influencing, or attempting to influence a federal agency or
Congress in connection with the awarding of any federal contract, the making of any federal grant or loan, or entering into any cooperative agreement. All parties who submit proposals in response to this RFP must sign the “Lobbying Certification Form,” (attached as Appendix B) and, if applicable, complete the “Disclosure of Lobbying Activities” form (attached as Appendix B). The signed form(s) must be included as Tab 13 in the Technical Submittal.

**Offeror Response**

**III-2. Statement of the Project.** State in succinct terms your understanding of the project presented or the service required by this RFP. The statement of the problem should discuss specific issues and risks associated with the Project and should include proposed solutions for each. The Offeror’s response should demonstrate that the Offeror fully understands the scope of work, the Offeror’s responsibilities, and how the Offeror will determine the effective management of the project.

**Offeror Response**

**III-3. Management Summary.** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided. The summary will condense and highlight the contents of the Technical proposal in a manner that allows a broad understanding of the entire Technical submittal. If the Offeror is proposing to subcontract any work included within the Project, the Offeror should identify the subcontractor and describe the scope of work to be subcontracted.

**Offeror Response**

**III-4. Prior Experience.** Include experience in providing technical, professional and programmatic assistance in the area of MA behavioral health managed care programs as well as experience in research and statistical analysis related to MA or other similar health care delivery systems or similar experience. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

Offeror should include any experience in addressing changes in behavioral health plans and program requirements in response to CMS rules or changes required as a result of state changes to MA requirements for behavioral health programs. Offeror should describe experience in assisting states in monitoring Medicaid behavioral health performance, including audits of plan policies and documentation as well as clinical audits of plan documentation related to care plans for members. Offeror must document experience in assisting states with performance evaluation monitoring of plans which are required for submission to CMS, including experience working with Medicaid behavioral health datasets to develop measures of plan performance. In describing its experience, the Offeror must include the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted. If the experience of any proposed subcontractor is being used to meet the qualifications and requirements of this RFP, the Offeror must provide the same information as for these subcontractors. This information must be presented separately within this section, clearly identifying the subcontractor experience and name of the subcontractor.

In addition, provide the following information:
a. **Corporate Background.** The Offeror must describe the corporate history and relevant experience of the Offeror and any subcontractors. This section must detail information on the ownership of the company (names and percent of ownership), the date the company was established, the date the company began operations, the physical location of the company, and the current size of the company. The Offeror must provide a corporate organizational chart as part of this section.

Offeror must identify any current contracting or subcontracting relationships(s) that may result in a conflict of interest with the requirements of this RFP.

The Offeror must describe the corporate identity, legal status and form, including the name, address, telephone number, and email address for the legal entity that is submitting the proposal. In addition, the Offeror must provide the name and address of the principal officers, a description of its major services, its legal status as a for-profit or not-for-profit company, and any specific licenses and accreditations held by the Offeror.

Offerors must provide similar organizational background information on any significant subcontractor. A significant subcontractor is defined as an organization undertaking more than ten percent (10%), on a total cost basis, of the work associated with this RFP.

b. **References.** The Offeror must provide a list of at least three (3) relevant contracts (non-DHS) within the past three (3) years to serve as corporate references. This list shall include the following for each reference:

i) Name of contractor
ii) Type of contract
iii) Contract description, including type of service provided
iv) Total contract value
v) Contracting Officer’s name and telephone number
vi) Role of subcontractor(s) if any
vii) Time period in which service was provided

The Offeror must submit **Appendix C, Corporate Reference Questionnaire**, directly to the contacts listed. The references should return completed questionnaires in sealed envelopes to the Offeror. The Offeror must include these sealed references with its technical submittal under **Tab 14**.

The Offeror must disclose any contract cancellations, suspensions or debarments within five (5) years preceding the issuance of this RFP. If a contract was canceled for lack of performance, the Offeror must provide details on the customer’s allegations, the Offeror’s position relevant to the allegations, and the final resolution of the contract cancellation. For any such cancellations, the Offeror shall include the contact information of the customer, including company name, address, contact person, phone number, and email address.

Failure to disclose such a cancelled or suspended contract may result in disqualification. If the Department learns about such a failure to disclose after the contract is awarded, the contract may be terminated.

**Offeror Response**

**III-5. Personnel.**
A. Offeror Personnel: Include the number of executive and professional personnel, analysts, auditors, researchers, consultants, behavioral health clinicians and others who will be engaged in the Project. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel defined as the Project Manager, Lead Clinical Manager, Data Management Staff and other persons that may be assigned as lead staff to meet the requirements of this RFP, include the employee’s name and, through a resume or similar document, the Project personnel’s education and experience in providing technical, professional and programmatic assistance with MA behavioral health managed care delivery systems or similar experience in the areas identified within the RFP. For all other personnel, identify positions and include position descriptions and responsibilities; and minimum qualifications, including the type of experience required and how long each has been with your company.

Resumes are not to include personal information that will, or will be likely to, require redaction prior to release of the proposal under the Right to Know Law, including home addresses and phone numbers, Social Security Numbers, Drivers’ License numbers or numbers from state identification cards issued in lieu of a Drivers’ License, and financial account numbers. If the Commonwealth requires this information for security verification or other purposes, the information will be requested separately and as necessary.

The Offeror must include organizational charts outlining the staffing, reporting relationships and staff members in its description. Show the total number of staff proposed and indicate the Full Time Equivalency (“FTE”) to account for any staff that are not assigned on a full-time basis. Provide similar information for any subcontractors that are proposed. The organizational chart must illustrate the lines of authority, designate the individuals responsible and accountable for the completion of each component in the RFP, indicate the names of the personnel or job title that will be assigned to each role, and the number of hours per week each person is projected to work on the project. The organizational chart must clearly indicate any functions that are subcontracted along with the name of the subcontracting entities and the services they will perform.

A minimum of three (3) client references for the Key Personnel must be identified and must be from outside clients (non-DHS) who can give information on the individual’s experience and competence to perform Project tasks such as those requested in this RFP. Key Personnel may be a member of the Offeror’s organization, or any subcontractor included in the Offeror’s proposal.

The Offeror/Key Staff must submit Appendix D, Key Personnel Reference Questionnaire, directly to the contacts listed. The references should return completed questionnaires in sealed envelopes to the Offeror. The Offeror must include these sealed references with its technical submittal under Tab 15.

B. Subcontractors: Provide a subcontracting plan for all subcontractors, including small diverse business and small business subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. 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 category 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 (if appropriate and available).

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-6. Training. If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.

**Offeror Response**

III-7. Financial Capability. Describe your company’s financial stability and economic capability to perform the contract requirements. Provide your company’s financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company’s Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth may request additional information it deems necessary to evaluate an Offeror’s financial capability.

**Offeror Response**

III-8. Work Plan. Describe in narrative form your technical plan for accomplishing the work using the task descriptions as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique ("PERT") or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

Describe your management approach and how the proposed work plan will be executed. Include detailed information to demonstrate that your work plan meets all requirements included in this RFP. Where possible, provide specific examples of methodologies or approaches that will be used to fulfill the various requirements, and how these methodologies will be adapted and implemented for the contract. Describe the processes to be followed and the management controls that will be used to ensure the quality of the work as well as the ability to meet all contract requirements. Also address your approach
to internally monitor and evaluate your effectiveness in meeting the contract requirements throughout the course of the contract.

For estimating purposes and based on historical information, the following tasks represent an estimated 6,250 hours annually. Due to changing program needs and priorities as well as changes in federal and state law and policy, the Department will include in the contract an estimated number of hours, which the Department may increase or decrease based on its actual needs and available funding.

The selected Offeror will be required to have the capacity to accomplish all contract tasks. In addition to actuaries with Medicaid expertise and experience, the scope of work covered in any of these tasks may require the services of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, and others. When requested for one of the specific Tasks listed below, the Offeror should identify the Key Staff, personnel, and proposed positions, as referenced in Part III-5, necessary to demonstrate its capacity to complete each specific Task.

Tasks:
A. Transition. The Transition consists of activities that must take place between the Effective Date and the date the selected Offeror is fully responsible for all contract activities. The selected Offeror will work closely with the Department to complete the transition of responsibilities and knowledge from the incumbent contractor. The Department has designated a maximum of three (3) months for the completion of all transition activities.

The primary tasks of the Transition Phase are:
- The successful orientation, knowledge acquisition, and operational independence from incumbent contractor
- The smooth transition of responsibilities;
- A complete knowledge transfer and operational understanding;
- The establishment of accurate assessments and strong accountability controls; and
- A mitigation of risk to the Commonwealth, DHS, clients and taxpayers.

Key Staff, personnel, and proposed positions as referenced in Part III-5 should be listed in order to demonstrate the Offeror’s capacity to complete this Task.

1. Offeror Transition Responsibilities:

   a. The selected Offeror will prepare and submit a comprehensive Transition Plan, which incorporates the activities necessary to assume responsibility for operations from the incumbent contractor in an orderly manner. The selected Offeror must address the resources required for the transition, including those from the Department, incumbent contractor, and new contractor. The selected Offeror will identify the Transition tasks and work plan activities and document activity time frames and responsibilities. The selected Offeror will submit the Transition Plan to DHS within two (2) weeks of the Effective Date, for final review and approval.

   b. The selected Offeror must conduct the transition so that its staff is able to confidently assume ownership, independently manage the in-scope operational activities without disrupting operations or timely delivery of services.

   c. The selected Offeror must receive the turnover of the operation and management of all in-scope operational functions no later than the end of the transition period. The selected Offeror must
plan and execute turnover in an orderly fashion so that no disruption of service to DHS, users, clients, or beneficiaries takes place.

d. Upon approval of the Transition Plan, the selected Offeror will begin transitioning the operating functions and provide the transition progress assessments and status updates. The selected Offeror will coordinate with DHS regarding transition tasks prioritization issues or conflicting activities interfering with maintaining and operating daily operations.

2. **Commonwealth’s Responsibilities for the Transition:**

   a. Review, approve, disapprove or request modification and resubmission of the Transition Plan;
   
   b. Identify Commonwealth key contacts;
   
   c. Provide the selected Offeror with the necessary access to Commonwealth facilities, personnel, documentation and other items under its control;
   
   d. Provide coordination with and access to third parties, as required;
   
   e. Participate in Project Initiation and Setup related discussions;
   
   f. Provide agreed-upon levels of active participation of the staff, technical staff, and management, as applicable;
   
   g. Coordinate with the incumbent;
   
   h. Facilitate the transition process with Department program offices; and
   
   i. Execute transition activities in a partnership spirit and cooperative manner.

   NOTE: The selected Offeror will cooperate with the current contractor and will not commit any act that interferes with the performance of work by any other contractor.

B. **To enhance program oversight and compliance with Commonwealth and Federal requirements.** Estimated Hours – 2700

1. **Program-Management Services:** The HC-BH program oversight occurs locally across the Commonwealth. The Department assigns regional teams assigned to each managed care agreement. For the areas of fiscal, quality management and information technology, DHS conducts oversight functions centrally in Harrisburg in coordination with the regional staff. The Department has identified a need for more efficient and effective methods of program development and oversight, including the development of staff competencies to understand and effectively implement healthcare reform. The selected Offeror will assist with the ongoing development of a proficient and effective statewide oversight model for the behavioral health program. The selected Offeror will participate in ongoing HC-BH monitoring activities with OMHSAS staff to provide direction in the management of the statewide behavioral health program for consistency in unified statewide monitoring practices in both rural and urban areas. The selected Offeror will be required to coordinate with county personnel as well as the OMHSAS staff in the completion of the Program Evaluation Performance Summary (“PEPS”). The selected Offeror will provide training to expand the depth of knowledge of OMHSAS staff
in analytic review of data and interpretation, outcome measures and action planning to continue
the efficient oversight of the evolving statewide program.

2. **Monitoring Efficiencies:** The selected Offeror will make available resources to provide
technical assistance and consultation regarding adherence to the Federal Healthcare Reform
changes that will directly or indirectly impact the HC-BH Program. The selected Offeror will
assist with the development of strategies to address the implications of the CMS Medicaid
Managed Care Final Rule.

3. **HealthChoices Requirements:** Currently, the HC-BH agreements are five (5) year agreements
with one (1) three-year renewal for a total of eight (8) years. During this time, the Department
will be conducting ongoing re-procurement activities. The selected Offeror will provide
consultation and guidance with re-procurement activities, including but not limited to assistance
and advice with the preparation and implementation of readiness review tools, on-site clinical
reviews, value based purchasing and other related activities.

4. **Regulatory Requirements:** The selected Offeror will provide technical assistance and
consultation on federal and state regulatory requirements that guide the behavioral health system,
including consultation and guidance on implementation of ACA requirements. The selected
Offeror will provide consultation for review and possible changes to the current MA State Plan
that will lead to a recovery-oriented system of care model while complying with both state and
federal requirements. The selected Offeror will provide consultation in the review of existing
regulations and possible development of new regulations for children’s services including
Intensive Behavioral Health Services and Applied Behavioral Analysis. The selected Offeror
will provide consultation and participate as requested during communications with CMS. The
selected Offeror will provide consultation and guidance on the statewide provider licensure
process to efficiently and effectively meet regulatory requirements while developing recovery-
oriented services in a managed care environment. The selected Offeror must conduct a review
and comparison with other states followed by suggested action steps.

5. **Compliance with CMS Rules and Policies:** The selected Offeror must maintain awareness of
CMS proposed and final changes, including but not limited to 42 CFR Parts 431, 433, 438, 440,
457, and 495 rules for Medicaid plan administration and for managed care programs. The
selected Offeror will provide guidance and assist in program design or modification as needed,
as well as strengthening the fiscal and programmatic integrity of MA managed care programs
and rate setting. In addition, the selected Offeror must provide assistance and guidance
regarding CMS’s proposed intent and final requirements concerning the application of
MHPAEA, and the CMS Final Rules for Medicaid Managed Care, to MAMCOs and how those
provisions might impact program design or program cost/rate setting. The selected Offeror will
provide consultation and recommendations to meet the requirements of the federal and state
legislative and regulatory changes related to Institutions of Mental Disease and the CMS final
mental health and substance use disorder parity rule for Medicaid and CHIP.

C. **To advance the behavioral health Data Management.** Estimated Hours – 500

1. **Data Management Expertise:** The selected Offeror will provide technical assistance and
consultation on managing statewide data related to behavioral health services. The selected
Offeror will have the expertise to review and understand federal and state data collection
requirements, to review the current systems both at the Commonwealth and at the BH-MCOs
and provide written recommendations to provide for accurate and consistent programmatic and
fiscal reporting from all entities. The selected Offeror must review and make recommendations concerning the best models for state Medicaid programs to make data readily available to entities such as DHS staff, counties, consumer groups, oversight entities, or the public at large which demonstrate the quality and effectiveness of the program. The selected Offeror will provide guidance and assistance to promote data sharing mechanisms for data of broad interest and that are regularly accessed.

D. **To develop strategies with Federal, State and local partners for cross-system coordination.** Estimated Hours – 900

1. **Physical Health/Behavioral Health Coordination:** DHS is particularly interested in efforts to improve and incent greater coordination between behavioral health and physical health plans and providers as well as coordination with MLTSS, once it has been implemented. OMHSAS envisions improved health outcomes through coordination of care at all possible levels, from those individuals who may only be receiving routine outpatient services to those who have long term chronic conditions or are receiving long term services and supports. The selected Offeror will provide consultation and recommendations for coordination between physical health and behavioral health partners within the state system and the managed care arena. The national healthcare reform movement provides an opportunity to coordinate and the selected Offeror will need to work from this perspective for technical assistance on best practices for coordination from a clinical perspective as well as financial strategies for cost sharing between behavioral health and physical health systems. The selected Offeror will provide assistance related to potential financing mechanisms that will facilitate delivery of integrated services without creating an undue burden on providers to establish separate physical health/behavioral health enrollments. The selected Offeror will provide assistance in the development of coordinated activities either within the construct of a Health Home, as defined in the ACA, or with coordination through other models for persons whose conditions do not require a Health Home. Implementing innovative practices including Health Homes, CCBHC, COEs, Integrated Care Plans (“ICP”) and Telemedicine within the regulatory and payment restraints.

2. **Unified System Models of Care:** The selected Offeror will provide consultation on unifying systems of care that serve children and adults in multiple systems (such as drug and alcohol, early intervention, intellectual disabilities, children and youth, older adults, criminal justice) while in a managed care environment. The selected Offeror will provide recommendations based on national research and promising practices that will lead to better coordination of care, less disruption of services and financial strategies for cross-system funding, including APA, value based or performance based models.

3. **Community Programming:** OMHSAS believes that all individuals should live in a community of their choice with the appropriate supports. The selected Offeror will provide recommendations to increase recovery oriented community based services while decreasing reliance on the use of the state hospital system. As part of this task, the selected Offeror will review the Pennsylvania statewide behavioral health service delivery system and provide information on nationally recognized promising practices to enhance the recovery oriented service system, including financial strategies in managed care systems to support individuals to live within their communities, including those needing long term care services and supports.

E. **To improve health outcomes through quality of care.** Estimated Hours – 1650
1. **Quality Management Tools:** The selected Offeror will provide technical assistance and recommendations for implementation and ongoing use of outcome measurement tools for the statewide HC-BH Program, ensuring quality of care and compliance with federal and state requirements. The selected Offeror will train OMHSAS staff on the use of the tools, including analysis of the information, and comparison of statewide and reporting formats. As requested by OMHSAS, the selected Offeror will provide feedback to the BH-MCOs and provide technical assistance as requested and approved by OMHSAS.

2. **Financial Models:** The selected Offeror will provide consultation and technical assistance on selected financial models that move away from FFS structure to a performance based structure, including but not limited to APA, value based purchasing, Performance Based Contracting (“PBC”), including development of the performance measures, analysis of results, reporting outcomes and review of performance improvement plans. As requested by OMHSAS, the selected Offeror will provide technical assistance to the counties and BH-MCOs as needed. The selected Offeror will prepare reports as directed by OMHSAS, including but not limited to an annual or biennial report. The selected Offeror will coordinate with the OMHSAS actuaries for financial management of incentives or sanctions.

3. **Clinical Expertise:** The selected Offeror will have clinical expertise and provide consultation to OMHSAS staff and the BH-MCOs on the review of BH-MCO clinical services for children, adults and older adults, including on-site reviews at the BH-MCOs at the direction of OMHSAS to review clinical practices and provide written feedback including recommendations for improvement. The Offeror must demonstrate a clinical expertise in treatment strategies of special populations including co-occurring, Forensics, autism and dual diagnoses. The selected Offeror will evaluate the BH-MCOs will review of appropriate application of ABA services. The selected Offeror will also consult on clinical pathways in a recovery-oriented system, provide feedback on industry standards as well as assist in developing clinical strategies that will move the HC-BH statewide program from the implementation stages to a well-established statewide program. The selected Offeror will provide national resources to review practices in other states that have a Medicaid behavioral health program and provide recommendations.

4. **Evidence Based Practice (“EBP”) Implementation:** The selected Offeror will provide technical assistance, consultation, and training on proven EBP for children, adults and older adults that will result in the enhancement of the behavioral health system in Pennsylvania. The selected Offeror will provide resources for review of other states on the development (including regulatory constraints), fidelity and outcomes of the proven EBP models as well as financial strategies to support a statewide implementation. The selected Offeror will identify barriers to implementing EBPs in rural versus urban areas of the Commonwealth.

5. **Quality Management Products:** The selected Offeror will provide technical assistance and consultation to the OMHSAS – Quality Management staff to assist with meeting all required regulatory oversight requirements, including coordination with the federally required external quality review organization. The selected Offeror will assist the OMHSAS – Quality Management staff with the HC-BH Agreement requirements for annual work plans and annual reports that include but are not limited to the analysis of the data and qualitative feedback to the BH-MCOs. The selected Offeror will also assist OMHSAS – Quality Management staff with developing and meeting Performance metrics required in the CCBHC.

6. **Targeted Policy Reviews:** The selected Offeror will provide technical assistance and consultation for specified policy reviews that will enhance the managed care behavioral health
system. The selected Offeror will provide a final report for each review, outlining the findings. The selected Offeror will include in the report the policy statement, the research that was completed, the recommendations and a barrier analysis based on the Pennsylvania behavioral health system.

F. **Annual and ongoing Planning Process.** Estimated hours - 500

The selected Offeror will assist and coordinate with the Department in the annual planning process. This process will review priorities and set initial projects for the fiscal year. The selected Offeror will participate in monthly meetings to review progress of the projects and to add additional projects within the scope of the contract.

G. **Turnover.**

The Contract Turnover consists of activities that must take place prior to contract expiration or termination so contract activities continue uninterrupted. The selected Offeror will work with the Department so that the turnover of responsibilities and the necessary knowledge transfer is complete by the end of the contract. The primary tasks of the Turnover Phase are:

- Participate cooperatively in the orientation and knowledge acquisition activities necessary to turnover contract activities to a new contractor or DHS;
- Turnover responsibilities to a new contractor or DHS;
- Participate in turnover in a manner that mitigates risk to the Commonwealth, DHS, clients and taxpayers;
- Complete any previously approved project and process at the request of the Department.

Key Staff, personnel, and proposed positions as referenced in **Part III-5** should be listed in order to demonstrate the Offeror’s capacity to complete this Task.

1. The selected Offeror will prepare and submit a comprehensive Turnover Plan, which incorporates the activities necessary to turn over contract activities in an orderly manner. The selected Offeror must address the resources required for the turnover, including those from the Department, selected Offeror, and new contractor. Additionally, the selected Offeror must identify the Turnover tasks and work plan activities on a Gantt chart and document activity time frames and responsibilities. The selected Offeror will submit the Turnover Plan to DHS four (4) months prior to the end of the contract or upon request, for final review and approval.

2. The selected Offeror must provide a well planned and executed Turnover of the on-going operational and strategic business and policy activities associated with the operations and functions included in the scope of this RFP.

3. The selected Offeror must develop a Turnover process that results no disruption in daily operations of the Commonwealth, including but not limited to the transfer of information such as documentation relating to software and interfaces; functional requirements and business process flows; and operational information concerning subcontractors.

4. The selected Offeror must turn over the operation and management of all in-scope contract activities no later than the end of the Turnover period and must plan and manage the turnover in
an orderly fashion so that no disruption of service to DHS, users, clients, and beneficiaries takes place.

5. Upon approval of the Turnover Plan, the selected Offeror will begin transitioning the operating functions and provide progress assessments and status updates. The Offeror will coordinate with DHS regarding tasks prioritization issues or conflicting activities interfering with maintaining and operating daily business.

6. At the end of the Turnover phase, the selected Offeror will prepare the Turnover Results Report which documents the completion of turnover activities, and provides status of each high-level task and activity that took place during the Turnover period. The selected Offeror will highlight how each of the tasks stated in the Turnover Plan has been achieved and the resolution of issues identified and prioritized during the turnover process.

**Offeror Response**


A. Task Plan. When the Department determines that it is in its best interest to utilize the selected Offeror’s services for a specific project under the Tasks, the Department will send the selected Offeror either a Task Form for completion or an email confirmation of the specific project. This alternative is solely at the discretion of the Department.

If the Task Form process is utilized, the following apply:

1. The Department will provide the following information on the Task Form:
   a. A brief description of the work, project or services to be performed;
   b. The RFP Task or Tasks under which the selected Offeror will perform the requested work; project or services; and
   c. The completion date for the requested work, project or services.

   Once received, the selected Offeror is responsible for adding the following information to the Task Form:
   a. A Work plan, which details the work to be performed, a list of recommended staff for completion of the work, and the estimated hours needed for completion and total estimated cost based on the blended hourly rate; and
   b. Other information as required by the Department.

2. When completing a Task Form, the selected Offeror will include no more than two (2) staff persons for each meeting conducted by the Department. Further, the selected Offeror’s staff shall be used for consultative services only and may not be used for note taking, compiling meeting minutes, or other basic administrative tasks.

3. Once completed, the selected Offeror shall send the Task Form to the Department Contract Administrator or designee for review. The Department Contract Administrator or designee will either approve or disapprove the Task Form or may also enter into discussions with the selected Offeror and request modifications to the Task Form. If approved, the approval will constitute the selected Offeror’s authority to commence work on the services included in the Task Form.
The selected Offeror will not be compensated for work performed on a project until a Task Form is approved or the project has been confirmed via email. The Department may approve amendments to approved Task Forms or by an email confirmation between the Department and the selected Offeror. The Department may terminate any project upon written notice to the selected Offeror. If a project is terminated, the Department will compensate the selected Offeror for work performed under the terminated project prior to the date of termination. Each approved Task Form/project will be deemed to incorporate the terms and conditions set forth in this Contract and will become part of the Contract.

B. Status Report. The selected Offeror will hold monthly status meetings with the Department. The selected Offeror must provide an Executive Summary on all major projects and a status on budget constraints, issues and recommendations. The selected Offeror will also attend bi-weekly status meetings with the Department Contract Administrator or designee to discuss the status of all tasks, the contract as a whole and the contract budget.

The selected Offeror will develop, maintain and provide to the Department, on a monthly basis, a Budget status sheet containing all of the tasks. This sheet will include the hours and dollars allocated.

Offeror Response

C. Problem Identification Report. An “as required” report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Offeror recommendations with supporting rationale.

Offeror Response

D. Final Report. The selected Offeror is required to provide a final report when a task is complete or terminated before completion. This is required to close out a task form and consists of a summary and results of the project or task. If relevant, the selected Offeror must describe the techniques used; any problems identified during the process, and must also provide all supporting documentation/work products.

Offeror Response

III-10. Performance Standards. The Department has identified several key performance indicators. However, the Offeror should use the following table format as a guide to recommend additional performance standards, which should include timeliness and accuracy.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>CRITERIA</th>
<th>AGREEMENT STANDARD</th>
<th>IF NON-COMPLIANT, AMOUNT OWED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Budget Status</td>
<td>The selected Offeror must be prepared to provide an Executive Summary on all major projects and a status on budget constraints, issues and recommendations.</td>
<td>Advance summary to be provided to DHS Contract Administrator or designee 48 hours prior to monthly budget meeting unless otherwise arranged with the Department.</td>
<td>Any instance of failure will result in an assessment of up to $1,000 per day until report is received.</td>
</tr>
<tr>
<td><strong>Corrective Action Plans</strong></td>
<td>The selected Offeror will take necessary steps to resolve any deficiencies identified by DHS.</td>
<td>The selected Offeror will submit a corrective action plan within 10 Business days of notification of a deficiency or such other time as may be approved by DHS.</td>
<td>Assessment of up to $2,500 per incident.</td>
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<tr>
<td></td>
<td>The selected Offeror will implement the corrective action plan within twenty (20) business days or such other time as may be approved by DHS.</td>
<td>Assessment of up to $2,500 per day until the corrective action plan is implemented.</td>
<td></td>
</tr>
<tr>
<td><strong>Task Assignment</strong></td>
<td>The selected Offeror must adhere to approved project timelines and costs.</td>
<td>Once Task Form has been approved by DHS, the selected Offeror must not exceed approved timeline or cost without prior approval.</td>
<td>If timeliness is not met and the selected Offeror does not advise DHS of delay prior to due date and receive permission, the Department may assign a penalty not to exceed 5% of the approved cost of the project.</td>
</tr>
<tr>
<td><strong>Administrative</strong></td>
<td>Required Reports Submitted Timely</td>
<td>Mandatory</td>
<td>Any instance of failure will result in an assessment of up to $1,000 per incident.</td>
</tr>
</tbody>
</table>

**III-11. 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 Department may consider late objections and requests for additions if to do so, in the Department’s sole discretion, would be in the best interest of the Commonwealth. The Department 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 Department 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 Department 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.**
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 placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal. The total proposed cost should be broken down into the components set forth in Appendix J – Cost Submittal Worksheet. The percentage of commitment to Small Diverse Businesses and Small Businesses 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 Department may reject the proposal. Offerors should direct in writing to the Project Officer pursuant to Part I, Section I-9 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 Department’s written answer so that all proposals are submitted on the same basis.

The Department 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 SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Department encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business must meet each of the following requirements:

- The business must be a for-profit, United States business;
- The business must be independently owned;
- The business may not be dominant in its field of operation;
- The business may not employ more than 100 full-time or full-time equivalent employees;
- The business, by type, may not exceed the following three-year average gross sales:
  - Procurement Goods and Services: $20 million
  - Construction: $20 million
  - Building Design Services: $7 million
  - Information Technology Goods and Services: $25 million

For credit in the RFP scoring process, a Small Business must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at: http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx.

A Small Diverse Business is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, Disability-owned small business, or other small businesses as approved by DGS, that are 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.

For credit in the RFP scoring process, a Small Diverse Business must complete the DGS verification process. Additional information on this process can be found at: http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Pages/default.aspx.

An Offeror that qualifies as a Small Diverse Business or a Small Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

A Small Diverse Business or Small Business may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

Questions regarding the Small Diverse Business and Small Business Programs, 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 601, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: RA-BDISBOVerification@pa.gov  
Website: www.dgs.pa.gov

V-2. **Small Diverse Business and Small Business (“SDB/SB”) Participation Submittal.** All Offerors are required to submit two (2) copies of the Small Diverse Business and Small Business Participation Submittal Form contained in (Appendix G) and related Letter(s) of Intent (Appendix H). The submittal must be sealed in its own envelope, separate from the remainder of the proposal, and must be provided on the Small Diverse Business and Small Business Participation Submittal form, with information as follows:

A. Offerors must indicate their status as a Small Diverse Business and as a Small Business through selection of the appropriate checkboxes.

B. Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses and Small Businesses as subcontractors.

C. Offerors must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.

D. Offerors must include a Letter of Intent (attached as Appendix H is a Letter of Intent template which may be used to satisfy these requirements) signed by both the Offeror and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business Participation Submittal form. At minimum, the Letter of Intent must include the following:

1. The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the Small Diverse Business or Small Business; and

2. A description of the services or supplies the Small Diverse Business or Small Business will provide; and

3. The timeframe during the initial contract term and any extensions, options and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and

4. The name and telephone number of the Offeror’s point of contact for Small Diverse Business and Small Business participation; and
5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.

E. Each Small Diverse Business and Small Business commitment which is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business commitments will become contractual obligations of the selected Offeror.

NOTE: Offerors will not receive credit for any commitments for which information as above is not included in the Small Diverse Business and Small Business Participation Submittal. Offerors will not receive credit for stating that after the contract is awarded they will find a Small Diverse or Small Business.

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 Small Diverse Business and/or Small Business Status or entitle an Offeror to receive credit for Small Diverse Business or Small Business participation.


All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

A. Each Small Diverse Business and Small Business commitment which was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business commitments made at the time of proposal submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.

B. All Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.

C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.

D. Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.

E. The selected Offeror and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Offeror and the Small Diverse Business and/or Small Business to BDISBO within 30 business days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided in Appendix I – Model Form of Small Diverse and Small Business Subcontract Agreement. The subcontract must contain:

1. The specific work, supplies or services the Small Diverse Business and/or Small Business will perform; location for work performed; how the work, supplies or services relate to the project; 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.
2. The fixed percentage commitment and associated estimated dollar value that each Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.

3. Payment terms indicating that the Small Diverse Business and/or Small Business will be paid for work satisfactorily completed within 14 business days of the selected Offeror’s receipt of payment from the Commonwealth for such work.

4. 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 Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business’ and/or Small Business’ participation in the project.

F. If the selected Offeror and a Small Diverse Business or Small Business credited by BDISBO cannot agree upon a definitive subcontract within 30 business days of the final execution date of the Commonwealth contract, the selected Offeror must notify BDISBO.

G. The Selected Offeror shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the contracting officer of DHS and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to Small Diverse Business and Small Business subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter, the form must be completed by stating “No activity in this quarter.” A late fee of $100.00 per business day may be assessed against the Selected Offeror if the Utilization Report is not submitted in accordance with the schedule above.

H. The Selected Offeror shall notify the Contracting Officer of DHS and BDISBO when circumstances arise that may negatively impact the selected Offeror’s ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by DHS and DGS.

I. If the Selected Offeror fails to satisfy its Small Diverse Business and/or Small Business commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Offeror is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Offeror’s Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.
1. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be: a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

2. EXTENSION OF CONTRACT TERM

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions.

3. SIGNATURES

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract will not include an "ink" signature by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have “Fully Executed” at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

a. No handwritten signature shall be required in order for the Contract to be legally enforceable.

b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were
not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

4. DEFINITIONS

As used in this Contract, these words shall have the following meanings:

a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".

b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.

c. Days: Unless specifically indicated otherwise, days mean calendar days.

d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.

e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

f. Services: All Contractor activity necessary to satisfy the Contract.

5. PURCHASE ORDERS

The Agency may issue Purchase Orders against the Contract. These orders constitute the Contractor’s authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders will not include an "ink" signature by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.
Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

   a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

   b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

   c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars ($10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

6. INDEPENDENT PRIME CONTRACTOR

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

7. DELIVERY

   a. Supplies Delivery: All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.
b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

### 8. ESTIMATED QUANTITIES

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

### 9. WARRANTY

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

### 10. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor’s written request, it shall be at the Contractor’s expense, but the responsibility for such expense shall be only that within the Contractor’s written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney’s fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any
software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

11. OWNERSHIP RIGHTS

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

12. ACCEPTANCE

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

13. PRODUCT CONFORMANCE

The Commonwealth reserves the right to require any and all Contractors to:

a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.

b. Supply published manufacturer product documentation.

c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.

d. Complete a survey/questionnaire relating to the bid requirements and specifications.

e. Provide customer references.

f. Provide a product demonstration at a location near Harrisburg or the using agency location.

14. REJECTED MATERIAL NOT CONSIDERED ABANDONED

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The
Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

15. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

16. ENVIRONMENTAL PROVISIONS


17. POST-CONSUMER RECYCLED CONTENT

a. Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified on the Department of General Services website at www.dgs.state.pa.us on the date of submission of the bid, proposal or contract offer.

b. **Recycled Content Enforcement:** The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

18. COMPENSATION

a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

b. **Compensation for Services:** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

19. BILLING REQUIREMENTS

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:
a. Vendor name and "Remit to" address, including SAP Vendor number;
b. Bank routing information, if ACH;
c. SAP Purchase Order number;
d. Delivery Address, including name of Commonwealth agency;
e. Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
f. Quantity provided;
g. Unit price;
h. Price extension;
i. Total price; and
j. Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

20. PAYMENT

a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the “Bill To” address if a date on which payment is due is not specified in the Contract (a “proper” invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth’s purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

c. The Commonwealth will make contract payments through Automated Clearing House (ACH).

  1) Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth’s procurement system (SRM).

  2) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania’s ACH remittance advice to enable the contractor to properly apply the state agency’s payment to the invoice submitted.

  3) It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

21. TAXES

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

22. ASSIGNMENT OF ANTITRUST CLAIMS

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

23. COMMONWEALH HELD HARMLESS
a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

24. 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 Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

25. DEFAULT

a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;

2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;

3) Unsatisfactory performance of the work;

4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;

5) Improper delivery;

6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
7) Delivery of a defective item;
8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
9) Discontinuance of work without approval;
10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
11) Insolvency or bankruptcy;
12) Assignment made for the benefit of creditors;
13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
14) Failure to protect, to repair, or to make good any damage or injury to property;
15) Breach of any provision of the Contract;
16) Failure to comply with representations made in the Contractor's bid/proposal; or
17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

26. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party’s control may include, but aren’t limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes. The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor’s delay.

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

27. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

a. **TERMINATION FOR CONVENIENCE**: The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor 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 the Contract or a Purchase Order. The Contractor 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 the 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 the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth’s discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

28. CONTRACT CONTROVERSIES

a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

29. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

30. OTHER CONTRACTORS

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

31. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
c. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

d. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontract or supplier who is qualified to perform the work to which the contract relates.

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

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

g. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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

32. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
a. “Affiliate” means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.

d. “Contractor Related Parties” means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. “Financial Interest” means either:

   (1) Ownership of more than a five percent interest in any business; or

   (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. “Gratuity” means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

g. “Non-bid Basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

   a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

   b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

(3) had any business license or professional license suspended or revoked;

(4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

(5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor’s obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor’s certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.
e. Contractor shall comply with the requirements of the *Lobbying Disclosure Act* (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code* (25 P.S. §3260a).

f. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor’s Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

g. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor’s suspension or debarment.

h. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

i. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in
obtaining another contractor to complete performance under this contract, and 
debar and suspend Contractor from doing business with the Commonwealth. 
These rights and remedies are cumulative, and the use or non-use of any one shall 
not preclude the use of all or any other. These rights and remedies are in addition 
to those the Commonwealth may have under law, statute, regulation, or otherwise.

33. CONTRACTOR RESPONSIBILITY PROVISIONS

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

a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or 
approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that 
neither the Contractor, nor any such subcontractors, are under suspension or debarment by the 
Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor 
cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of 
why such certification cannot be made.

b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it 
has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or 
judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred 
payment plan if such liabilities exist.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective 
date of the Contract through the termination date thereof. Accordingly, the Contractor shall have 
an obligation to inform the Commonwealth if, at any time during the term of the Contract, it 
becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to 
the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the 
Commonwealth, the federal government, or any other state or governmental entity. Such 
notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the 
Commonwealth, any other state, or the federal government shall constitute an event of default of 
the Contract with the Commonwealth.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation 
incurred by the Office of State Inspector General for investigations of the Contractor's 
compliance with the terms of this or any other agreement between the Contractor and the 
Commonwealth that results in the suspension or debarment of the contractor. Such costs shall 
include, but shall not be limited to, salaries of investigators, including overtime; travel and 
lodging expenses; and expert witness and documentary fees. The Contractor shall not be 
responsible for investigative costs for investigations that do not result in the Contractor's 
suspension or debarment.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors 
by either searching the Internet at http://www.dgs.state.pa.us/ or contacting the:
34. AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that 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.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subparagraph a above.

35. HAZARDOUS SUBSTANCES

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

a. Labeling. The Contractor shall insure that each Individual product (as well as the carton, container, package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):

1) Hazardous substances:

   a) The chemical name or common name,

   b) A hazard warning, and

   c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

   a) The common name, but if none exists, then the trade name,
b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
d) A hazard warning, and
e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:
   a) The chemical name or the common name,
   b) A hazard warning, if appropriate, and
c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:
   a) The common name, but if none exists, then the trade name,
   b) A hazard warning, if appropriate,
c) The name, address, and telephone number of the manufacturer, and
d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture
A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:


Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

36. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

37. 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 Contractor 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 Contractor 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.

38. INTEGRATION

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor 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 or 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 by a written amendment signed by both parties.

39. ORDER OF PRECEDENCE

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the solicitation; and the Contractor’s response to the solicitation.

40. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties’ agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

41. CHANGES

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Contract Controversies Provision.

42. BACKGROUND CHECKS

a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at
http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf. The background check must be conducted prior to initial access and on an annual basis thereafter.

b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terrorist behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.

d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 Amended (January 30, 2008) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

43. CONFIDENTIALITY

a. The Contractor agrees to guard the confidentiality of the Commonwealth’s confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.

b. The obligations stated in this Section do not apply to information:
1) already known to the recipient at the time of disclosure other than through the contractual relationship;

2) independently generated by the recipient and not derived from the information supplied by the disclosing party;

3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;

4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

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

44. MANUFACTURER’S PRICE REDUCTION

If, prior to the delivery of the awarded item(s) by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

45. NOTICE

Any written notice to any party under this Contract 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 following:

a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.

b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

46. RIGHT TO KNOW LAW

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

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

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

1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth’s disclosure of Requested Information pursuant to the RTKL.

i. The Contractor’s duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.
DEPARTMENT OF HUMAN SERVICES ADDENDUM TO
STANDARD CONTRACT TERMS AND CONDITIONS

A. APPLICABILITY

This Addendum is intended to supplement the Standard Terms and Conditions. To the extent any of the terms contained herein conflict with terms contained in the Standard Contract Terms and Conditions, the terms in the Standard Contract Terms and Conditions shall take precedence. Further, it is recognized that certain terms contained herein may not be applicable to all the services which may be provided through Department contracts.

B. CONFIDENTIALITY

The parties shall not use or disclose any information about a recipient of the services to be provided under this contract for any purpose not connected with the parties’ contract responsibilities except with written consent of such recipient, recipient’s attorney, or recipient’s parent or legal guardian.

C. INFORMATION

During the period of this contract, all information obtained by the Contractor through work on the project will be made available to the Department immediately upon demand. If requested, the Contractor shall deliver to the Department background material prepared or obtained by the Contractor incident to the performance of this agreement. Background material is defined as original work, papers, notes and drafts prepared by the Contractor to support the data and conclusions in final reports, and includes completed questionnaires, materials in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings and all data directly related to the services being rendered.

D. CERTIFICATION AND LICENSING

Contractor agrees to obtain all licenses, certifications and permits from Federal, State and Local authorities permitting it to carry on its activities under this contract.

E. PROGRAM SERVICES

Definitions of service, eligibility of recipients of service and other limitations in this contract are subject to modification by amendments to Federal, State and Local laws, regulations and program requirements without further notice to the Contractor hereunder.

F. CHILD PROTECTIVE SERVICE LAWS

In the event that the contract calls for services to minors, the contractor shall comply with the provisions of the Child Protective Services Law (Act of November 26, 1975, P.L. 438, No. 124; 23 P.S. SS 6301-6384, as amended by Act of July 1, 1985, P.L. 124, No. 33) and all regulations promulgated thereunder (55Pa. Code, chapter 3490).

G. PRO-CHILDREN ACT OF 1994

The Contractor agrees to comply with the requirements of the Pro-Children Act of 1994; Public Law 103-
277, Part C-Environment Tobacco Smoke (also known as the Pro-Children Act of 1994) requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health care services, day care and education to children under the age of 18, if the services are funded by Federal programs whether directly or through State and Local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug and alcohol treatment.

H. MEDICARE/MEDICAID REIMBURSEMENT

1. To the extent that services are furnished by contractors, subcontractors, or organizations related to the contractor/subcontractor and such services may in whole or in part be claimed by the Commonwealth for Medicare/Medicaid reimbursements, contractor/subcontractor agrees to comply with 42 C.F.R., Part 420, including:

   a. Preservation of books, documents and records until the expiration of four (4) years after the services are furnished under the contract.

   b. Full and free access to (i) the Commonwealth, (ii) the U.S. Comptroller General, (iii) the U.S. Department of Health and Human Services, and their authorized representatives.

2. Your signature on the proposal certifies under penalty of law that you have not been suspended/terminated from the Medicare/Medicaid Program and will notify the contracting DPW Facility or DPW Program Office immediately should a suspension/termination occur during the contract period.

I. TRAVEL AND PER DIEM EXPENSES

Contractor shall not be allowed or paid travel or per diem expenses except as provided for in Contractor’s Budget and included in the contract amount. Any reimbursement to the Contractor for travel, lodging or meals under this contract shall be at or below state rates as provided in Management Directive 230.10, Commonwealth Travel Policy, as may be amended, unless the Contractor has higher rates which have been established by its offices/officials, and published prior to entering into this contract. Higher rates must be supported by a copy of the minutes or other official documents, and submitted to the Department. Documentation in support of travel and per diem expenses will be the same as required of state employees.

J. INSURANCE

1. The contractor shall accept full responsibility for the payment of premiums for Workers’ Compensation, Unemployment Compensation, Social Security, and all income tax deductions required by law for its employees who are performing services under this contract. As required by law, an independent contractor is responsible for Malpractice Insurance for health care personnel. Contractor shall provide insurance Policy Number and Provider’s Name, or a copy of the policy with all renewals for the entire contract period.

2. The contractor shall, at its expense, procure and maintain during the term of the contract, the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:
a. Worker’s Compensation Insurance for all of the Contractor’s employees and those of any subcontractor, engaged in work at the site of the project as required by law.

b. Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claim for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from the activities performed under this contract or the failure to perform under this contract whether such performance or nonperformance be by the contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than $500,000 each person and $2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designated to limit or restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the contract and during the term of the contract, the Contractor shall provide the Department with current certificates of insurance. These certificates shall contain a provision that the coverages afforded under the policies will not be cancelled or changed until at least thirty (30) days’ written notice has been given to the Department.

K. PROPERTY AND SUPPLIES

1. Contractor agrees to obtain all supplies and equipment for use in the performance of this contract at the lowest practicable cost and to purchase by means of competitive bidding whenever required by law.

2. Title to all property furnished in-kind by the Department shall remain with the Department.

3. Contractor has title to all personal property acquired by the contractor, including purchase by lease/purchase agreement, for which the contractor is to be reimbursed under this contract. Upon cancellation or termination of this contract, disposition of such purchased personal property which has a remaining useful life shall be made in accordance with the following provisions.

   a. The contractor and the Department may agree to transfer any item of such purchased property to another contractor designated by the Department. Cost of transportation shall be born by the contractor receiving the property and will be reimbursed by the Department. Title to all transferred property shall vest in the designated contractor. The Department will reimburse the Contractor for its share, if any, of the value of the remaining life of the property in the same manner as provided under subclause b of this paragraph.

   b. If the contractor wishes to retain any items of such purchased property, depreciation tables shall be used to ascertain the value of the remaining useful life of the property. The contractor shall reimburse the Department in the amount determined from the tables.

   c. When authorized by the Department in writing, the contractor may sell the property and reimburse the Department for its share. The Department reserves the right to fix the minimum sale price it will accept.
4. All property furnished by the Department or personal property acquired by the contractor, including purchase by lease-purchase contract, for which the contractor is to be reimbursed under this contract shall be deemed “Department Property” for the purposes of subsection 5, 6 and 7 of this section.

5. Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, preservation and insurance of Department Property so as to assure its full availability and usefulness.

6. Department property shall, unless otherwise approved in writing by the Department, be used only for the performance of this contract.

7. In the event that the contractor is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to Department Property, it shall use the proceeds to replace, repair or renovate the property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall reimburse the Department, at the Department’s direction.

L. DISASTERS

If, during the terms of this contract, the Commonwealth’s premises are so damaged by flood, fire or other Acts of God as to render them unfit for use; then the Agency shall be under no liability or obligation to the contractor hereunder during the period of time there is no need for the services provided by the contractor except to render compensation which the contractor was entitled to under this agreement prior to such damage.

M. SUSPENSION OR DEBARMENT

In the event of suspension or debarment, 4 Pa Code Chapter 60.1 through 60.7, as it may be amended, shall apply.

N. COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business). For breach or violation of this warranty, the Department shall have the right to annul this contract without liability or, in its discretion, to deduct from the consideration otherwise due under the contract, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

O. CONTRACTOR’S CONFLICT OF INTEREST

The contractor hereby assures that it presently has not interest and will not acquired any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The contractor further assures that in the performance of this contract, it will not knowingly employ any person having such interest. Contractor hereby certifies that no member of the Board of the contractor or any of its officers or directors has such an adverse interest.

P. INTEREST OF THE COMMONWEALTH AND OTHERS

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

Q. CONTRACTOR RESPONSIBILITY TO EMPLOY WELFARE CLIENTS

(Applicable to contracts $25,000 or more)

1. The contractor, within 10 days of receiving the notice to proceed, must contact the Department of Public Welfare’s Contractor Partnership Program (CPP) to present, for review and approval, the contractor’s plan for recruiting and hiring recipients currently receiving cash assistance. If the contract was not procured via Request for Proposal (RFP); such plan must be submitted on Form PA-778. The plan must identify a specified number (not percentage) of hires to be made under this contract. If no employment opportunities arise as a result of this contract, the contractor must identify other employment opportunities available within the organization that are not a result of this contract. The entire completed plan (Form PA-778) must be submitted to the Bureau of Employment and Training Programs (BETP): Attention CPP Division. (Note: Do not keep the pink copy of Form PA-778). The approved plan will become a part of the contract.

2. The contractor’s CPP approved recruiting and hiring plan shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to the CPP Division which will make a recommendation to the Contracting Officer regarding course of action. If a contract is assigned to another contractor, the new contractor must maintain the CPP recruiting and hiring plan of the original contract.

3. The contractor, within 10 days of receiving the notice to proceed, must register in the Commonwealth Workforce Development System (CWDS). In order to register the selected contractor must provide business, location and contact details by creating an Employer Business Folder for review and approval, within CWDS at HTTPS://WWW.CWDS.State.PA.US. Upon CPP review and approval of Form PA-778 and the Employer Business Folder in CWDS, the Contractor will receive written notice (via the pink Contractor’s copy of Form PA-778) that the plan has been approved.

4. Hiring under the approved plan will be monitored and verified by Quarterly Employment Reports (Form PA-1540); submitted by the contractor to the Central Office of Employment and Training – CPP Division. A copy of the submitted Form PA-1540 must also be submitted (by the contractor) to the DPW Contract Monitor (i.e. Contract Officer). The reports must be submitted on the DPW Form PA-1540. The form may not be revised, altered, or re-created.

5. If the contractor is non-compliant, CPP Division will contact the Contract Monitor to request corrective action. The Department may cancel this contract upon thirty (30) days written notice in the event of the contractor’s failure to implement or abide by the approved plan.

R. TUBERCULOSIS CONTROL

As recommended by the Centers for Disease Control and the Occupational Safety and Health Administration, effective August 9, 1996, in all State Mental Health and Mental Retardation Facilities, all full-time and part-time employees (temporary and permanent), including contract service providers, having direct
patient contact or providing service in patient care areas, are to be tested serially with PPD by Mantoux skin
tests. PPD testing will be provided free of charge from the state MH/MR facility. If the contract service provider
has written proof of a PPD by Mantoux method within the last six months, the MH/MR facility will accept this
documentation in lieu of administration of a repeat test. In addition, documented results of a PPD by Mantoux
method will be accepted by the MH/MR facility. In the event that a contractor is unwilling to submit to the test
due to previous positive reading, allergy to PPD material or refusal, the risk assessment questionnaire must be
completed. If a contractor refuses to be tested in accordance with this new policy, the facility will not be able to
contract with this provider and will need to procure the services from another source.

S. ACT 13 APPLICATION TO CONTRACTOR

Contractor shall be required to submit with their bid information obtained within the preceding one-year period
for any personnel who will have or may have direct contact with residents from the facility or unsupervised
access to their personal living quarters in accordance with the following:

1. Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information) a report of
criminal history information from the Pennsylvania State Police or a statement from the State
Police that their central repository contains no such information relating to that person. The
criminal history record information shall be limited to that which is disseminated pursuant to 18
Pa.C.S. 9121(b)(2) (relating to general regulations).

2. Where the applicant is not, and for the two years immediately preceding the date of application
has not been a resident of this Commonwealth, the Department shall require the applicant to
submit with the application a report of Federal criminal history record information pursuant to
the Federal Bureau of Investigation’s under Department of State, Justice, and Commerce, the
For the purpose of this paragraph, the applicant shall submit a full set of fingerprints to the State
Police, which shall forward them to the Federal Bureau of Investigation for a national criminal
history check. The information obtained from the criminal record check shall be used by the
Department to determine the applicant’s eligibility. The Department shall ensure confidentially of
the information.

3. The Pennsylvania State Police may charge the applicant a fee of not more than $10 to conduct
the criminal record check required under subsection 1. The State Police may charge a fee of not
more than the established charge by the Federal Bureau of Investigation for the criminal history
record check required under subsection 2.

The Contractor shall apply for clearance using the State Police Background Check (SP4164) at their own
expense. The forms are available from any State Police Substation. When the State Police Criminal
History Background Report is received, it must be forwarded to the Department. State Police Criminal
History Background Reports not received within sixty (60) days may result in cancellation of the contract.

T. LOBBYING CERTIFICATION AND DISCLOSURE (applicable to contracts $100,000 or more)

Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services,
regardless of the source of funds. With respect to an award of a federal contract, grant, or cooperative
agreement exceeding $100,000 or an award of a federal loan or a commitment providing for the United States to
insure or guarantee a loan exceeding $150,000 all recipients must certify that they will not use federal funds for
lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. The
contractor will be required to complete and return a “Lobbying Certification Form” and a “Disclosure of Lobbying Activities form” with their signed contract, which forms will be made attachments to the contract.

U. AUDIT CLAUSE (applicable to contracts $100,000 or more)

This contract is subject to audit in accordance with the Audit Clause attached hereto and incorporated herein.
ENHANCED MINIMUM WAGE PROVISIONS

1. Enhanced Minimum Wage. Contractor/Lessor agrees to pay no less than $10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee’s hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.

2. Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor/Lessor shall pay its employees described in Paragraph 1. above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of $0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

3. Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
   a. exempt from the minimum wage under the Minimum Wage Act of 1968;
   b. covered by a collective bargaining agreement;
   c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
   d. required to be paid a higher wage under any state or local policy or ordinance.

4. Notice. Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.

5. Records. Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

6. Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.

7. Subcontractors. Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.