



Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

Offices: Room 400 • Finance Building • Harrisburg • Tel: (717) 783-1600

Mailing Address: P.O. Box 8737 • Harrisburg, PA 17105-8737

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REQUEST FOR PROPOSAL

(RFP #2017-1)

for

A Study Relating to the Long-Term Sustainability and Viability
of the Pennsylvania State System of Higher Education

To Be Conducted in Response to Senate Resolution 2017-34

Issued by

The Pennsylvania Legislative Budget and Finance Committee

July 28, 2017

Note: General Instructions have been prepared that pertain to this RFP. The General Instructions, which are attached, must be read in conjunction with the RFP. The RFP contains only a "project description" and statement of "required product"; all other pertinent information is set forth in the General Instructions.

Request for Proposal 2017-1 (Continued)

A. Project Description

The Pennsylvania Senate has directed the Legislative Budget and Finance Committee (LBFC) to conduct a study and issue a report relating to the long-term sustainability and viability of the Pennsylvania State System of Higher Education (PASSHE).^[1] A copy of Senate Resolution 34 is included as Appendix A.

As a result of the release of a PASSHE sponsored study, Pennsylvania State System of Higher Education Strategic System Review by the National Center for Higher Education Management Systems (NCHEMS) in July 2017, the scope of issues to be addressed under Senate Resolution 34 has been narrowed to:

1. What options are available and should be considered for PASSHE's struggling universities? Issues to address include:
 - a) At what point does it cease to make sense to continue to provide Commonwealth support to universities with declining enrollments and increasing costs?
 - b) What is the potential to use shared services/programs among the universities to contain costs at struggling universities while still addressing student needs?
 - c) To what extent are state regulations, board policies, and collective bargaining issues limiting flexibility?
 - d) Can greater emphasis on adult learners/workforce development help turn struggling universities around and better meet the needs in the region where they are located?
 - e) What are the potential barriers/constraints involved in pursuing the identified options?
 - f) What specific actionable items need to be undertaken at the Chancellor's Office level, Board level, gubernatorial level, and legislative level to address the issue of struggling universities?

2. Should a new or restructured entity be created with authority and responsibility for statewide policy coordination and leadership across all of Pennsylvania's postsecondary institutions (including state-related institutions, community colleges, and PHEAA)? Issues to address include:
 - a) Do other states have such a body? If so, what are their duties and responsibilities, how are they structured, and is there any demonstrable evidence they have had a meaningful impact on statewide policy coordination and leadership?

^[1] PASSHE universities include the following: Bloomsburg, California, Kutztown, Lock Haven, Cheyney, Clarion, East Stroudsburg, Edinboro, Mansfield, Millersville, Shippensburg, Slippery Rock, Indiana, and West Chester.-

- b) What would such a body's role be in determining priorities for allocating state funds, including PHEAA funds, to the various higher education sectors and/or to specific colleges/universities?
- c) How would such a body coordinate with the Pennsylvania Department of Education?

In compiling this report, the Contractor must seek input from PASSHE, the Board of Governors, the Office of the Chancellor, the Councils of Trustees, the university presidents, the faculty, university alumni, business leaders, university students, the private nonprofit charitable foundations affiliated with PASSHE universities and any other person who may have relevant information.

The contractor is expected to consider, as appropriate, the findings, conclusions, and recommendations of the NCHEMS report in the final SR 34 report.

B. Required Products

The Contractor's report should include, at a minimum, the required analysis set forth above under the Project Description. Deliverables from the Contractor include the following:

1. On or before the close of business on October 12, 2017, the Contractor shall provide the LBFC with a written outline of the report indicating preliminary findings and the materials collected to date to support those findings, and a progress report on the required study items listed above, and, if requested, provide an oral report of preliminary findings.
2. On or before the close of business on January 5, 2018, a confidential draft of the report shall be delivered to the LBFC offices as a Microsoft Word document and PDF and hard copy for review and discussion with LBFC staff.
3. On or before the close of business on January 19, 2018, a final report shall be delivered to the LBFC offices electronically as a Microsoft Word document and PDF and hard copy.
4. As part of the contract price, the Contractor must be available to provide oral testimony and make a presentation before the Pennsylvania General Assembly, likely through the Legislative Budget and Finance Committee.
5. If requested, the Contractor must also be available to make up to two additional presentations to legislative committees. The cost of these additional presentations will be separately negotiated as needed.
6. At any time during the project, the contractor will provide oral progress reports within seven days of an LBFC request.



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GENERAL INSTRUCTIONS FOR THE COMPLETION OF A REQUEST FOR PROPOSAL

for

A Study Relating to the Long-Term Sustainability and Viability
of the Pennsylvania State System of Higher Education

(RFP #2017-1)

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Table of Contents

| | |
|--|----|
| Part I - General Information for the Contractor..... | 1 |
| Part II - Information Required From the Contractor | 5 |
| Part III - Criteria for Selection..... | 7 |
| Appendix A – Senate Resolution 2017-34 | 8 |
| Appendix B – Standard Contract..... | 11 |

PART I

General Information for the Contractor

1. **Purpose** - These General Instructions, when read in conjunction with the Request for Proposal (RFP), provide interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Legislative Budget and Finance Committee to satisfy a need for a study relating to the long-term sustainability and viability of the Pennsylvania State System of Higher Education (PASSHE).¹
2. **Issuing Office** - The RFP (RFP #2017-1) is issued by the Pennsylvania Legislative Budget and Finance Committee. The issuing office is the sole point of contact in the Commonwealth for the RFP.
3. **Scope** - These General Instructions pertain to the proposals to be submitted in response to the RFP and the materials to be included therein, requirements that must be met to be eligible for consideration, general evaluation criteria, and other requirements to be met by each proposal.
4. **Problem Statement** - The purpose of this project for which proposals are being requested is to satisfy a need for a study relating to the long-term sustainability and viability of the Pennsylvania State System of Higher Education. As a result of the release of a PASSHE sponsored study, Pennsylvania State System of Higher Education Strategic System Review by the National Center for Higher Education Management Systems (NCHEMS) in July 2017, the issues to be addressed pursuant to Senate Resolution 34 have been narrowed to:
 - A. What options are available and should be considered for PASSHE's struggling universities? Issues to address include:
 - i. At what point does it cease to make sense to continue to provide Commonwealth support to universities with declining enrollments and increasing costs?
 - ii. What is the potential to use shared services/programs among the universities to contain costs at struggling universities while still addressing student needs?
 - iii. To what extent are state regulations, board policies, and collective bargaining issues limiting flexibility?
 - iv. Can greater emphasis on adult learners/workforce development help turn struggling universities around and better meet the needs in the region where they are located?

¹ PASSHE universities include the following: Bloomsburg, California, Kutztown, Lock Haven, Cheyney, Clarion, East Stroudsburg, Edinboro, Mansfield, Millersville, Shippensburg, Slippery Rock, Indiana, and West Chester.-

- v. What are the potential barriers/constraints involved in pursuing the identified options?
 - vi. What specific actionable items need to be undertaken at the Chancellor's Office level, Board level, gubernatorial level, and legislative level to address the issue of struggling universities?
- B. Should a new or restructured entity be created with authority and responsibility for statewide policy coordination and leadership across all of Pennsylvania's postsecondary institutions (including state-related institutions, community colleges, and PHEAA)? Issues to address include:
- i. Do other states have such a body? If so, what are their duties and responsibilities, how are they structured, and is there any demonstrable evidence they have had a meaningful impact on statewide policy coordination and leadership?
 - ii. What would such a body's role be in determining priorities for allocating state funds, including PHEAA funds, to the various higher education sectors and/or to specific colleges/universities?
 - iii. How would such a body coordinate with the Pennsylvania Department of Education?

In compiling this report, the Contractor must seek input from PASSHE, the Board of Governors, the Office of the Chancellor, the Councils of Trustees, the university presidents, the faculty, university alumni, business leaders, university students, the private nonprofit charitable foundations affiliated with PASSHE universities and any other person who may have relevant information.

The contractor is expected to consider, as appropriate, the findings, conclusions, and recommendations of the NCHEMS report in the final SR 34 report.

- 5. **Type of Contract** - It is proposed that if a contract is entered into as a result of the RFP it will be a fixed cost contract. Negotiations may be undertaken with contractors whose proposals as to price and other factors show them to be qualified, responsible, and capable of performing the work.
- 6. **Rejection of Proposals** - The Legislative Budget and Finance Committee reserves the right to reject any and all proposals received as a result of this request or to negotiate separately with competing contractors.
- 7. **Incurring Costs** - The Legislative Budget and Finance Committee is not liable for any cost incurred by contractors prior to issuance of a contract.
- 8. **Pre-proposal Conference** – A pre-proposal conference may be held if determined necessary by the LBFC. LBFC will notify potential bidders of the specific time and place. The purpose of this conference would be to clarify any points in the RFP

which may not be clearly understood by potential proposers. If held, questions must be forwarded to the LBFC offices prior to the conference to ensure that sufficient analysis can be made before an answer is supplied. Questions will not be accepted after the pre-proposal conference closing. In view of the limited facilities available for the conference, it is requested that representation be limited to two representatives from each potential proposer. The pre-proposal conference is for information purposes only. Answers furnished during the conference will not be official until verified in writing by the LBFC

9. **Amendment to the RFP** - If it becomes necessary to revise any part of the RFP, an amendment will be issued to all contractors who received the basic RFP.
10. **Response Date** - To be considered, **proposals must arrive at the offices of the Legislative Budget and Finance Committee on or before noon on August 28, 2017 (receipt by email is acceptable)**. Contractors mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals.
11. **Proposals** - Contractors are to submit a complete response to the RFP, using the format provided in Part II of these General Instructions. Each proposal must be submitted in three (3) copies to the issuing office (if submitted electronically, only one copy is needed). No other distribution of proposals will be made by the contractor. Proposals must be signed by an official authorized to bind the contractor to its provisions. For RFP #2017-1, the proposal must remain valid for at least 90 days. Moreover, the contents of the proposal of the successful bidder will become contractual obligations if a contract is entered into.
12. **Economy of Preparation** - Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor's ability to meet the requirements of the RFP.
13. **Oral Presentation** - Contractors who submit proposals may be required to make an oral presentation of their proposal to the Legislative Budget and Finance Committee and/or members of its staff. Such presentations provide an opportunity for the contractor to clarify his/her proposal to ensure thorough mutual understanding. If necessary, the Legislative Budget and Finance Committee will schedule these presentations.
14. **Prime Contractor Responsibilities** - The selected contractor will be required to assume responsibility for all services offered in his/her proposal whether or not he/she produces them. Further, the Legislative Budget and Finance Committee will consider the selected contractor to be the sole point of contact with regard to contractual matters.
15. **Disclosure of Proposal Contents** - The total bid price may be publicly disclosed; however, detailed cost and price information provided in proposals will be held in confidence and, except for the one selected, will not be revealed or discussed with competitors. All other material submitted becomes the property of the Legislative

Budget and Finance Committee and may be returned only at the Committee's option. Proposals submitted may be reviewed and evaluated by any person other than competing bidders at the discretion of the Committee. The Legislative Budget and Finance Committee has the right to use any or all ideas presented in any reply to the RFP. Selection or rejection of the proposal does not affect this right.

16. **Conflict of Interest** - The proposer certifies that to its knowledge it has no undisclosed public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest, and that the proposer has no association, direct or indirect, which interest or association does conflict in any manner with the performance of the services or obligations under the proposed contract.
17. **Standard Contract** - The selected contractor will be expected to enter into a contractual agreement with the Legislative Budget and Finance Committee. The contract shall not become effective until it has been signed by the Legislative Budget and Finance Committee Executive Director and at least a majority of the Legislative Budget and Finance Committee Officers. All contracts, once executed, shall be a matter of public record and available to interested members of the public.
18. **Ownership of Reports Produced** - In regard to any contract that is let as a result of the RFP, all written reports that are produced by the contractor during and as a part of fulfillment of the contract will be the property of the Legislative Budget and Finance Committee. Additionally, news releases pertaining to this project will not be made without prior approval of the Legislative Budget and Finance Committee, and then only in coordination with the Committee.

PART II

Information Required From the Contractor

Contractor proposals must be submitted in the format outlined below. To be considered, the proposal must respond to all requirements in this part of the General Instructions. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

1. **Statement of the Problem** - State in succinct terms your understanding of the problem presented and the services required by the RFP.
2. **Management Summary** - Include a narrative description of the proposed effort and a list of the items to be delivered and services to be provided.
3. **Work Plan** - Describe briefly your technical plan for accomplishing the work.
4. **Qualifications, Experience, and References** - Include a brief history of your company including the number of years in business and your organizational structure. Describe the background, mission, goals, and services of your organization. Include specific references to your history and experience that relate to the Scope of Work in this RFP and demonstrate capacity for delivering the consulting services. Describe your organization's experience as it pertains to providing services similar in size, complexity, and scope to the services required under this RFP, and in the manner required pursuant to this RFP. Include the number of years providing services similar in size and scope to those requested in this RFP. Provide a minimum of three clients for whom your firm has provided similar services. Include a brief description of the scope of services provided to those clients and the duration of the contracts. Include current contact information for each reference. Also include: (1) any industry best practices you utilize and/or any industry awards received; (2) specific references to history and experience that relate to the Problem Statement in this RFP and demonstrate capacity for delivering the consulting services; and (3) a description of the tools/methods used for gathering input, conducting analysis, and communicating with stakeholders.
5. **Personnel** - Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where personnel will be physically located during the time they are engaged in the work. Include education and relevant experience. Indicate the responsibilities each will have in this project and how long each has been with your company.
6. **Cost and Price Analysis** - The information requested in this section is required to support the reasonableness of your quotation and is for internal Legislative Budget and Finance Committee use only. This portion of the proposal must be bound and sealed separately from the remainder of the proposal.

- a. Direct Labor Costs - Itemize so as to show the following for each category of personnel with a different rate per hour:
 - (1) Category (e.g., partner, project manager, analyst, senior auditor, research associate)
 - (2) Estimated hours
 - (3) Rate per hour
 - (4) Total cost for each category and for all direct labor costs
 - b. Other Direct Costs - Itemize
 - c. Overhead and Indirect Costs - Itemize
 - d. Total Cost
7. **Conflict of Interest** – List any and all contracts your company has had with PASSHE or its affiliated universities since 2002. Briefly describe the services provided under the contracts. Also, list any reports since 2002 your company has participated in developing that directly pertain to PASSHE or its affiliated universities, regardless of the report's sponsor.

PART III

Criteria for Selection

1. All proposals received from contractors will be reviewed and evaluated by an evaluation committee composed of Legislative Budget and Finance Committee staff. During this review process the staff shall have the authority to meet with bidders as necessary for purposes of clarification of the proposals submitted. The staff shall not be permitted, however, to discuss the proposals submitted by one bidder with any other bidder. The following areas of consideration will be used in making the selection:
 - a. **Responder Qualifications** - This criterion includes the ability of the responder to meet the terms of the RFP, especially the time constraint, and the quality, relevancy, and recency of studies and projects completed by the responder.
 - b. **Experience** - Emphasis here is on experience with analyzing revenues and expenses of universities, enrollment trends, potential for cost reductions and efficiencies; governance, and infrastructure needs particularly in university settings.
 - c. **Professional Personnel** - This refers to the competence of professional personnel who would be assigned to the job by the responder. Qualifications of professional personnel will be measured by education and experience, with particular preference to experience with study activities similar to that described in the RFP.
 - d. **Soundness of Approach** - Emphasis here is on the planned approach to meet the study requirements of the **Problem Statement**.
 - e. **Cost** – Cost will be considered, but it will not necessarily be the deciding factor in the selection process.
 - f. **Demonstrated Adherence to Nondiscrimination and Equal Opportunity Requirements** - In order to be considered for selection, responders must be in compliance with 16 Pa. Code §49.1 *et seq.* Responders must provide information indicating compliance and acceptance as a precondition to the contract.
 - g. **Availability Required** - In order to be considered for selection, a responder must have sufficient and appropriate resources available to fully complete the work required by the RFP by January 19, 2018. The Contractor shall also be expected to provide a draft report no later than January 5, 2018, and meet with the Legislative Budget and Finance Committee staff to discuss its findings, conclusions, and recommendations to be included in the contractor's final report.

Appendix A

PRIOR PRINTER'S NO. 482

PRINTER'S NO. 624

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 34 Session of
2017

INTRODUCED BY ARGALL, AUMENT, BAKER, SCHWANK, VULAKOVICH,
FOLMER, RAFFERTY, WHITE, ALLOWAY, MARTIN, SCAVELLO,
RESCHENTHALER, TOMLINSON, HUTCHINSON, BROWNE, BOSCOLA,
EICHELBERGER, WAGNER AND BREWSTER, MARCH 2, 2017

SENATOR EICHELBERGER, EDUCATION, AS AMENDED, MARCH 29, 2017

A RESOLUTION

Directing the Legislative Budget and Finance Committee to
conduct a study and issue a report relating to the long-term
sustainability and viability of the Pennsylvania State System
of Higher Education.

WHEREAS, The Pennsylvania State System of Higher Education
(PASSHE) was established by the act of November 12, 1982
(P.L.660, No.188); and

WHEREAS, Today the system is the largest provider of higher
education in this Commonwealth, with nearly 107,000 degree-
seeking students and thousands more who are enrolled in
certificate and other career-development programs; and

WHEREAS, Nearly 90% of enrolled individuals are Pennsylvania
residents; and

WHEREAS, Act 188 of 1982 brought together 14 existing State
colleges that varied in size and the number of bachelor degrees
awarded; and

WHEREAS, PASSHE now includes several branch campuses and
multi-institution centers in addition to the 14 main campuses;
and

WHEREAS, An underlying policy goal of PASSHE's establishment
was to provide greater access to affordable higher education in
Pennsylvania; and

WHEREAS, PASSHE universities have accounted for more than
one-fifth of the bachelor's degrees awarded in Pennsylvania in
recent years, which is critical to the current and future

economy of this Commonwealth; and

WHEREAS, Taxpayers of this Commonwealth are increasingly concerned about the rising cost of higher education; and

WHEREAS, PASSHE represents a significant investment of taxpayer resources, and it is therefore incumbent upon policymakers to ensure that the system fulfills its mission; and

WHEREAS, Fluctuating appropriations and enrollment levels coupled with perpetually increasing administrative costs have resulted in unprecedented fiscal pressures on PASSHE universities; and

WHEREAS, The Board of Governors of PASSHE, the Office of the Chancellor, the university presidents and the Councils of Trustees are concerned about increasing student debt; and

WHEREAS, PASSHE universities are significant economic enterprises contributing to the overall cultural, educational and financial success of the regions in which they are located throughout this Commonwealth; therefore be it

RESOLVED, That the Senate direct the Legislative Budget and Finance Committee to conduct a study and issue a report relating to PASSHE's long-term sustainability and viability; and be it further

RESOLVED, That, for the purposes of this study, sustainability and viability include:

(1) a detailed assessment of all revenue and expenses of PASSHE, including long-term debt and the current and projected cost and funding status of health and pension benefits for at least the next 10 years;

(2) college affordability, including a review of the price elasticity of tuition and room and board expenses at PASSHE universities over the next 10 years;

(3) student enrollment trends at PASSHE universities over the last 10 years and the next 10 years;

(4) potential for improved PASSHE efficiencies and overall cost reductions, including an analysis of faculty productivity, shared services or potential savings through cooperation with all other institutions of higher education;

(5) a review of shared governance within PASSHE that includes a review of the powers and duties of the various parties enumerated in Act 188 of 1982, including the Office of the Chancellor, the Board of Governors, the university presidents and the Councils of Trustees;

(6) evaluation of current and future infrastructure needs at PASSHE universities, including academic buildings, residence halls and other student-financed buildings and including a review of deferred maintenance projects and future information technology needs;

(7) assessment of the contributions made by university

affiliates, subsidiaries and foundations;

(8) a review of the human capital needs at PASSHE universities, including impending retirements over the next 5 to 10 years, along with the course offerings required to meet future vocational needs; and

(9) assessment of best practices undertaken by policymakers in other states to address enrollment and fiscal pressures in public higher education;

and be it further

RESOLVED, That the Legislative Budget and Finance Committee conduct a comprehensive review of the legislative intent of Act 188 of 1982 and system policies, procedures and shared governance to determine whether current practices, policies and procedures are consistent with the language, intent and underlying policy of the act; and be it further

RESOLVED, That, in compiling its report, the Legislative Budget and Finance Committee seek input from PASSHE, the Board of Governors, the Office of the Chancellor, the Councils of Trustees, the university presidents, the faculty, university alumni, business leaders, university students, the private nonprofit charitable foundations affiliated with PASSHE universities and any other person who may have relevant information; and be it further

RESOLVED, That the Legislative Budget and Finance Committee report its findings and recommendations to the Senate no later than ~~September 1~~ DECEMBER 31, 2017.

Appendix B

Agreement

This Agreement made this _____ 2017 between the Pennsylvania LEGISLATIVE BUDGET AND FINANCE COMMITTEE, a statutorily created committee of the Pennsylvania Legislature, hereinafter referred to as the “LBFC,” with principal offices in the Finance Building (mailing address is P.O. Box 8737) Harrisburg, PA 17105-8737, and _____, hereinafter referred to as the “CONTRACTOR,” with offices at _____.

WITNESSETH:

WHEREAS, Act 1959-195, as amended, 46 P.S. §70.1 *et seq.*, enacted on August 4, 1959, amended September 20, 1961, authorizes the LBFC to request, receive, review, examine, study, ascertain, and compare fiscal information concerning the budget, the revenues, and expenditures of the Commonwealth; and

WHEREAS, Act 1959-195, as amended, 46 P.S. §70.3(8), enacted on August 4, 1959, amended September 20, 1961, authorizes the LBFC to select and employ other personnel that it may deem necessary in the performance of its duties; and

WHEREAS, on April 18, 2017, the Pennsylvania Senate adopted Senate Resolution 34, calling on the LBFC to conduct a study and issue a report relating to the long-term sustainability and viability of the Pennsylvania State System of Higher Education.;

WHEREAS, the LBFC requires specialized/technical assistance in carrying out the requirements of Senate Resolution 34;

NOW, THEREFORE, the parties intending to be legally bound hereby agree as follows:

(1) **Term.** The term of the Agreement shall be from _____, 2017 through completion and release of the final report.

(2) **Required Products and Services.**

(a) **Reports.** The CONTRACTOR shall deliver the required reports and other products set forth under Section B of the Request for Proposal (RFP #2017-1 hereinafter “RFP”) which is attached to this Agreement as Attachment A and incorporated herein. The required products shall be in the form and substance required by the RFP and be delivered on or before the dates specified below. The final report shall not include color pages unless expressly authorized by the LBFC Executive Director.

- i. On or before the close of business on October 12, 2017, the CONTRACTOR shall provide the LBFC with a written outline of the report indicating preliminary findings and the materials collected to date to support those findings and a progress report on the ten (10) required study items as defined in the RFP, and, if requested, provide an oral report of preliminary findings.
- ii. On or before the close of business on January 5, 2018, a confidential draft of the report shall be delivered to the LBFC offices electronically as a Microsoft Word document and PDF and hard copy for review and discussion with LBFC staff. At any time during the project, the contractor will provide oral progress reports within seven days of an LBFC request.
- iii. All required products must be delivered to the LBFC offices in their final form no later than noon on January 19, 2018. The final report shall be delivered to the LBFC offices electronically as a Microsoft Word document and PDF and hard copy.
- iv. The CONTRACTOR must be available to provide oral testimony and make a presentation before the Pennsylvania General Assembly, likely through the LBFC.
- v. If requested, the CONTRACTOR must also be available to make up to two additional presentations to legislative committees. The cost of these additional presentations will be separately negotiated as needed.

(b) **Testimony.** Hearing dates will be after the delivery of the final report by the CONTRACTOR to the LBFC. Notification will be provided to the CONTRACTOR by the LBFC at least five (5) working days prior to the hearing dates.

(3) **General Terms.** All work performed in fulfillment of this Agreement shall be subject to the terms and conditions of this Agreement and shall be in conformity with:

(a) The General Instructions for the Completion of the RFP and made part of this Agreement and incorporated as Attachment A.

(b) Any express, written, signed modification or waiver of this Agreement which has been physically attached to the original of this Agreement.

(c) CONTRACTOR'S proposal dated ____ made in response to the RFP (hereinafter "Contractor's Proposal") which is made part of this Agreement and incorporated herein as Attachment B.

(4) **Payment.** The LBFC agrees to pay the CONTRACTOR pursuant to this Agreement as follows:

(a) A total fee for completion of the report not to exceed \$____: 10% on the contract execution date; 20% after delivery and acceptance by the LBFC of a written draft outline of the contractor's report indicating preliminary findings and the materials collected to date to support those findings; 30% after delivery and acceptance by the LBFC of the draft report; 30% after delivery and acceptance by the LBFC of the final report; and 10% after CONTRACTOR'S testimony at the LBFC hearing or no later than two months after the release of the report at the LBFC public meeting. Acceptance of the report outline, draft, and final reports is at the sole discretion of the LBFC Executive Director. Such acceptance shall not be unreasonably withheld.

(b) **Availability of Data.** If after reasonable efforts and through no fault of its own, as determined in the sole discretion of the Executive Director, CONTRACTOR is unable to acquire the data necessary to complete all work to be performed in fulfillment of this Agreement, the total payment due under the contract may be reduced by an appropriate percentage as determined by the Executive Director. CONTRACTOR will remain responsible for completing all other requirements under this Agreement.

(5) **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. Any modifications or waivers of this Agreement shall only be valid when they have been reduced to writing, duly signed, and attached to the original of this Agreement. Continuation of this Agreement is based on compliance with all its terms and conditions. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.

(6) **Disputes.** The parties may initiate a dispute concerning this Agreement by written notice to the dispute participants requesting a meeting of representatives of the LBFC and CONTRACTOR to review the circumstances, resolve issues, and formalize a future course of action including modification of existing contractual agreements. Such a meeting will be held within 10 days following a receipt of said notice.

(7) **Access to Records and Confidentiality.** Pursuant to statutory authority, the LBFC approaches this study with the expectation that it shall receive full

and unobstructed access to all files, records, and documents of the agencies involved, insofar as such are pertinent to matters being inquired into by the LBFC as part of this study.

(a) For the limited purpose of gaining access to such files, records, and documents, CONTRACTOR personnel authorized by the LBFC will act in an agency capacity of the LBFC. All such authorized CONTRACTOR personnel shall abide by all procedures and requirements applicable to LBFC personnel in regard to confidentiality of information. The LBFC shall provide the CONTRACTOR with written information regarding applicable procedures and requirements. The CONTRACTOR agrees to maintain all information developed and obtained during and at the completion of this contract in accordance with LBFC's policy statement on the access, maintenance, and disclosure of records, published at 101 Pa. Code Chapter 401.

(b) The CONTRACTOR and its employees recognize the responsibility to properly handle and protect the confidentiality of all information which is protected by law from public disclosure. The CONTRACTOR and its employees also recognize the personal liability for penalties that are applicable to individuals who improperly or illegally disclose confidential information.

(c) The CONTRACTOR shall not use or disclose any information gained as a result of any aspect of this Agreement for any purpose not connected with its responsibilities under this Agreement, except with prior written approval of the LBFC Executive Director.

(d) The CONTRACTOR shall not release the draft or final report prepared under this contract to any third party without the explicit written permission of the LBFC Executive Director prior to the public release at the LBFC meeting.

(8) **Subcontracts.** Except for any subcontractors specifically authorized by this Agreement, CONTRACTOR shall not enter into any subcontracts without obtaining prior written approval from the LBFC Executive Director.

(9) **Records.** The CONTRACTOR agrees to maintain books, records, documents, and other evidence pertaining to the cost of this Agreement. The CONTRACTOR further agrees to make available at all reasonable times during normal business hours on reasonable advance written notice during the term of this Agreement any of the above evidence for inspection, audit, or reproduction by any authorized representative of the LBFC.

(10) **Independent Contractor.** The CONTRACTOR shall perform its obligations under this Agreement as an independent contractor and shall provide all liability, property damage, workers' compensation, or any other insurance as required by law.

(11) **Construction and Severability.** Insofar as possible, this Agreement is to be governed by and construed according to the laws of the Commonwealth of Pennsylvania. If any part, term, or provision is held by the courts to be illegal or in conflict with the laws of Pennsylvania, then the terms of the Agreement that may conflict with the laws of the Commonwealth of Pennsylvania shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to such rule of law unless the purpose of the Agreement would be frustrated in which case this Agreement would be deemed null and void.

(12) **Hold Harmless.** CONTRACTOR, being bound by all applicable state regulations, hereby expressly agrees to indemnify, defend, and hold the LBFC harmless against any and all claims or losses arising from any act or omission of the CONTRACTOR, its employees, or agents, caused by CONTRACTOR's negligence or willful misconduct and arising directly out of the performance of this Agreement. CONTRACTOR shall not be required hereunder to indemnify, defend, or hold harmless the Commonwealth of Pennsylvania, in part or in whole, from any claim resulting solely from the negligent acts or omissions of the Commonwealth of Pennsylvania or any third party. The indemnity obligations contained herein are contingent upon LBFC giving CONTRACTOR reasonably timely written notice of any such claim and reasonable cooperation in defense of any such claim.

(13) **Property Rights and Materials.** The materials developed by the CONTRACTOR during this Agreement and delivered to the LBFC, as the final report(s) required by this Agreement shall be the property of the LBFC.

(a) CONTRACTOR relinquishes any and all copyrights and/or privileges to the final report developed under this Agreement. CONTRACTOR shall not include in the final report any copyrighted matter without the approval of the LBFC Executive Director or unless the CONTRACTOR provides the LBFC with written permission of the copyright owner for the LBFC to use such copyrighted matter in the manner provided herein.

(b) CONTRACTOR shall defend any suit or proceeding brought against the LBFC on account of any alleged infringement of any copyright arising out of the performance of this Agreement provided that the LBFC shall provide reasonably timely notification of such suit or proceeding, together with full right, authorization, and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. The CONTRACTOR shall pay all damages and costs

awarded therein against the LBFC and shall bear any costs in the defense thereof. If any materials are held to constitute infringement, the CONTRACTOR shall, at its own expense and option, obtain the rights to use such materials, replace them, or modify them so that they are no longer infringing.

(14) **Non-Discrimination Compliance.** During the term of this contract, CONTRACTOR agrees as follows:

(a) CONTRACTOR shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, handicap, ancestry, national origin, age, or sex.

CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees or agents are treated during employment without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

CONTRACTOR shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

(b) CONTRACTOR shall in advertisements or requests for employment placed by it or on its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

(c) CONTRACTOR shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by CONTRACTOR.

(d) It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that CONTRACTOR had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its

obligations. However, if the evidence indicates that the CONTRACTOR was not on notice of the third-party discrimination or made a good faith effort to correct it; such factor shall be considered in mitigation in determining appropriate sanctions.

(e) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that CONTRACTOR will be unable to meet its obligations under the nondiscrimination clause, CONTRACTOR shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(f) CONTRACTOR shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of CONTRACTOR's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and CONTRACTOR may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

(g) CONTRACTOR shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the LBFC and the Human Relations Commission, for purposes of investigating to ascertain compliance with the provisions of this clause. If CONTRACTOR does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

(h) CONTRACTOR shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

(i) CONTRACTOR shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

(j) The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

(k) CONTRACTOR obligations under this clause are limited to the CONTRACTOR's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

(15) **ADA Compliance.** CONTRACTOR agrees to comply with the Americans with Disabilities Act provisions as follows:

(a) Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C.F.R. §35.101 *et seq.*, CONTRACTOR understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the CONTRACTOR agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

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

(16) **LBFC Responsibilities.** The LBFC will provide limited facilities and services to the CONTRACTOR including the following:

(a) General liaison services with the agencies identified for review by the CONTRACTOR.

(b) Work services and space in the LBFC offices and limited clerical support and telephone and reproduction facilities.

(c) Ready access to LBFC Executive Director and Contract Compliance Officer.

(d) Coordination and sharing of information services to prevent duplication.

Final typing and reproduction of the CONTRACTOR’s final report will be the CONTRACTOR’s responsibility.

(17) **Contract Integrity.** No officer, member, or employee of the Commonwealth and no Member of the General Assembly who exercises any function or responsibilities under this Agreement, shall participate in any decision relating to the Agreement 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 Members of the General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

The CONTRACTOR covenants that it presently has no undisclosed public or private interest, direct or indirect, and shall not acquire any such interest directly or in-directly which would conflict in any manner or degree with the performance of its services or obligations hereunder. The CONTRACTOR further covenants that in the performance of this Agreement it shall not knowingly employ any person having such interest.

(18) Breach and Termination. If, through any cause, the CONTRACTOR shall fail in any material respect to fulfill in timely or proper manner its obligations under this Agreement or if the CONTRACTOR shall violate in any material respect any of the covenants or stipulations of this Agreement, the LBFC shall thereupon have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In that event, all finished documents, data, studies, photographs, and reports or other material (including computer disks) prepared by the CONTRACTOR for delivery to the LBFC under this Agreement shall become property of the LBFC and be returned by the CONTRACTOR immediately to the LBFC. The CONTRACTOR shall be entitled to receive just and equitable compensation for satisfactory completion of work prior to termination of the Agreement. Compensation for material prepared by the CONTRACTOR other than the completed final report shall be determined solely at the discretion of the LBFC.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the LBFC for damages sustained by the LBFC by virtue, in any manner or degree, of the CONTRACTOR's performance of its services hereunder.

Without limiting the foregoing, the LBFC and the CONTRACTOR agree that completion of the requirements of this Agreement by the completion dates is an essential requirement of this Agreement. Failure by the CONTRACTOR to provide the completed reports by the stated completion dates in this Agreement is a material breach of the Agreement by the CONTRACTOR.

The LBFC and the CONTRACTOR reserve the right to waive any breach of this Agreement. Such waiver shall be in writing.

It is understood that providing oral testimony at public hearings after the delivery of the report is an essential requirement of this Agreement. Failure to provide such testimony will represent a material breach of this Agreement by the CONTRACTOR. CONTRACTOR's maximum liability to the LBFC arising for any reason

relating to service rendered under this agreement shall be limited to two times the total fees under the contract.

(19) **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.

(20) **Change in Circumstances.** If at any time there is a change in circumstances that makes the completion of this contract no longer necessary, the LBFC agrees to pay the CONTRACTOR a fair and reasonable amount as determined by the Executive Director, based on the total amount of the contract, for work completed to date, and, at that time, the contract will be terminated.

(21) **Non-assignability.** The CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written approval of the LBFC Executive Director thereto, which shall be attached to the original Agreement, and subject to such conditions and provisions as the LBFC may deem necessary. No such approval by the LBFC of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the LBFC in addition to the total agreed-upon price.

(22) **Non-collusion.** The CONTRACTOR warrants that in the preparation of its bid proposal and cost estimates resulting in this Agreement, the CONTRACTOR did not collaborate, collude, or otherwise cooperate with any other bidder involved in the competitive bidding process with the LBFC. For breach or violation of this warranty, the LBFC shall have the right to annul this Agreement without liability.

(23) **Availability of Funds.** The obligations of the LBFC under this Agreement are subject to the appropriation of sufficient funds by the General Assembly of Pennsylvania. However, CONTRACTOR shall be entitled to receive payment for services rendered.

(24) **Contractor Qualified.** The CONTRACTOR covenants that it is presently qualified to do business in the Commonwealth. The CONTRACTOR, therefore, certifies that all registrations and licenses necessary to perform the services or supply the items under this contract have been acquired prior to contracting with the LBFC.

(25) **Access to Agencies.** The LBFC staff will serve in a liaison role between CONTRACTOR personnel and the Commonwealth agencies identified for this project.

(a) The CONTRACTOR and its employees shall abide by all procedures and requirements applicable to LBFC personnel in regard to the relationship with the Commonwealth agencies identified for this project. The LBFC shall provide the CONTRACTOR with written information regarding applicable procedures and requirements.

(b) All CONTRACTOR personnel shall maintain appropriate identification at all times during performance of this Agreement. The LBFC shall provide identification cards to CONTRACTOR personnel. All identification cards issued to CONTRACTOR personnel shall be returned to the LBFC upon termination of this Agreement.

(c) All CONTRACTOR personnel shall continuously keep the LBFC staff informed of developments in their contact with the Commonwealth agencies identified for this study. The LBFC staff shall have the right to participate in any and all contacts between the CONTRACTOR and its employees and the Commonwealth agencies. The LBFC shall have the right to review and receive all information of any type received from the agencies by the CONTRACTOR personnel during the performance of this Agreement at any time during the term of this Agreement.

(26) **Progress Reports.** The CONTRACTOR shall periodically keep the LBFC staff informed of its progress in the performance of its study. This includes meetings to discuss CONTRACTOR progress and work activities with the LBFC staff or any other periodic reporting and review as may be requested by the LBFC Executive Director.

(27) **Incorporation of Documents.** In addition to the terms and conditions set forth in the 30 paragraphs to this document, the CONTRACTOR and the LBFC expressly agree that:

(a) RFP and the General Instructions for its completion are hereby made part of this Agreement and incorporated as Attachment A.

(b) CONTRACTOR's Proposal is hereby made part of this Agreement and incorporated as Attachment B except to the extent that any provisions of such CONTRACTOR proposal are inconsistent with any of the terms and conditions of this Agreement. Any such inconsistent provision in Contractor's Proposal shall be null and void and shall in no manner affect

CONTRACTOR's performance, rights, or obligations under this Agreement.

(28) **Conduct of Work.** In preparation of the required draft and final reports, CONTRACTOR shall perform all work in accordance with the provisions of Contractor's Proposal, except as provided in Paragraph 27(b) above.

(29) **Captions.** The captions used herein are for the convenience of reference only, shall not be deemed to be a part of this Agreement and shall not have independent significance.

(30) **Right-to-Know Law.**

(a) Notwithstanding any other provision of this Agreement, LBFC shall provide access to legislative records and contracts in accordance with the Pennsylvania Right-to-Know Law (PA Act 3 of 2008) ("RTK Law").

(b) The RTK Law also requires the LBFC to disclose the details of any contract in excess of \$5,000 along with a copy of the contract to the Pennsylvania Treasury for posting on an internet web page available to the general public. The RTK Law allows for redaction of information considered to be privileged or proprietary. CONTRACTOR agrees to notify the LBFC, no later than the execution date of this Agreement, of any information the CONTRACTOR considers to be privileged or proprietary and subject to redaction. Such notice shall be in writing and sent to the LBFC at the address listed at the beginning of this Agreement. The notice is to include a detailed listing of the information to be redacted and the reason(s) for the redaction.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their officials thereunto duly authorized.

CONTRACTOR

| | | | |
|-------------|--------|-------------|--------|
| _____ | _____ | _____ | _____ |
| (Signature) | (Date) | (Signature) | (Date) |
| Name _____ | | Name _____ | |
| Title _____ | | Title _____ | |

LEGISLATIVE BUDGET AND FINANCE COMMITTEE

OFFICERS (This Agreement shall not become effective until signed by a majority of LBFC Officers.)

(Signature) (Date)

Honorable Robert Mensch
Chairman

(Signature) (Date)

Honorable James R. Brewster
Vice Chairman

(Signature) (Date)

Honorable Robert W. Godshall
Secretary

(Signature) (Date)

Honorable Jake Wheatley, Jr.
Treasurer

EXECUTIVE DIRECTOR

(Signature) (Date)

Philip R. Durgin

COUNSEL

(Signature) (Date)

Patricia A. Berger