

PENNSYLVANIA LIQUOR CONTROL BOARD

INVITATION FOR BID 270011

PLASTIC SHOPPING BAGS

OVERVIEW

The Pennsylvania Liquor Control Board (PLCB) is seeking a Bidder to furnish plastic shopping bags. These bags will be used in the PLCB's Fine Wine & Good Spirits stores to package products sold to customers.

ISSUING OFFICE

This Invitation for Bid (IFB) is issued by the PLCB, Purchasing and Contract Administration Division, Room 312, Northwest Office Building, 910 Capital Street, Harrisburg, PA 17124-0001. James Krammes is the Issuing Officer and the sole point of contact at the PLCB for this IFB, Email: jakrammes@pa.gov.

PLCB CONTRACTING OFFICER

The PLCB Contracting Officer is the PLCB official authorized to enter into and administer contracts and make written determinations with respect to contracts. The PLCB Contracting Officer is Melinda John, Manager of Purchasing and Contract Administration, Room 312, Northwest Office Building, 910 Capital Street, Harrisburg, PA 17124-0001, Email: meljohn@pa.gov.

PLCB CONTACT PERSON

The PLCB Contact Person, defined as the PLCB employee charged with the day-to-day supervision of the performance of the services and who interacts with the awarded Bidder is Adam Collier, Inventory Planner, Room 301, Northwest Office Building, 910 Capital Street, Harrisburg, PA 17124-0001, telephone: (717) 919-4156, Email: adcollier@pa.gov.

AWARDED BIDDER CONTACT PERSON

The awarded Bidder shall provide the PLCB with a single point of contact for all Contract related questions or problems. Immediately upon notification of award, the awarded bidder shall provide the PLCB with the name, address, email address, telephone number and facsimile number of this individual.

QUESTIONS

Questions regarding this IFB must be submitted via email only, with the subject line entitled “IFB 270011 Questions” to the Issuing Officer, James Krammes, at jakrammes@pa.gov no later than **12:00 p.m. on January 5, 2023**. The bidder shall not attempt to contact the Issuing Officer by any other means.

All questions received will be answered, in writing, and such responses shall be posted to the Department of General Services (“DGS”) website at www.emarketplace.state.pa.us as an addendum to the IFB by **C.O. B. on January 13, 2023**.

All questions and official responses are considered an addendum to, and part of, this IFB. The PLCB shall not be bound by any verbal information, nor shall it be bound by any written information that is not either contained within the IFB or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

ADDENDA TO THE IFB

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to the website at www.emarketplace.state.pa.us. **It is the Bidders responsibility to periodically check the website for any new information or addenda to the IFB.**

RESPONSE DATA

Bidders will submit their bids through the PLCB’s online self-service Oracle Supplier Portal (“Portal”). **ATTACHMENT #1 – Bid Form BOP-1206** must be signed in ink by an official authorized to bind the Bidder to its provisions. Failure to sign the Bid Form BOP-1206 shall disqualify your bid immediately. All applicable bid documents must be uploaded through the Portal. For this IFB, the bid must remain valid for at least sixty days. The contents of the bid of the awarded bidder will be incorporated into the contract. See the Supplier Registration section below for more information on accessing the Portal and registering as a Supplier.

To be considered, submit your bid through the Portal on or before **12:00 PM on January 27, 2023**. Bids not received on time shall be rejected. **ALL BIDS MUST BE SUBMITTED THROUGH THE PORTAL. EMAIL AND HARD COPY BIDS WILL NOT BE ACCEPTED.**

The following documents must be included with your bid. Failure to include these required documents will be considered a non-responsive bid and result in bid rejection:

ATTACHMENT #1 – BOP-1206	Referenced on Page 2
ATTACHMENT #2 – GSPUR-89	Referenced on Page 2
ATTACHMENT #3 – BOP-2201	Referenced on Page 3

RECIPROCAL LIMITATIONS ACT

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete sections 3 and 4 of **ATTACHMENT #2 – GSPUR-89 Reciprocal Limitations Act Requirements** and submit with the bid.

WORKER PROTECTION AND INVESTMENT EXECUTIVE ORDER

This procurement is subject to Executive Order 2021-06 Worker Protection and Investment. Bidders must complete **ATTACHMENT #3 – BOP-2201 Worker Protection and Investment Certification Form** and submit with the bid.

BID TABULATIONS RESULTS

Results of this bid will be posted within 48 hours to the DGS website at <http://www.emarketplace.state.pa.us/>. Any additional information will require a Right to Know request, instructions for which may be found at: <http://www.openrecords.pa.gov/RTKL/CitizensGuide>.

Bid results do not confer any legal or contractual rights until a formal Notice to Proceed has been issued by the Issuing Officer.

REJECTION OF INVITATION FOR BID QUOTES

The PLCB reserves the unqualified right to reject any and/or all bids received as a result of this IFB, to waive technical defects or any informality in bids and to accept or reject any part of any bid if, in its judgment, the best interest of the Commonwealth is thereby served.

TERM OF CONTRACT

The Contract shall commence on the Effective Date, which will be defined in the Notice to Proceed and reflects the last date on which all required Commonwealth approvals are received and will continue for one year from the Effective Date. The PLCB reserves the right to renew this Contract for four additional one-year Option Years at its sole discretion.

METHOD OF AWARD

This contract will be awarded to the single lowest responsive and responsible bidder that meets the requirements and criteria set forth in this IFB.

TERMS AND CONDITIONS

The Contract resulting from this IFB shall be governed by the PLCB's Standard Contract Terms and Conditions for Non-Merchandise Purchase Orders (Form 54-FA-2.0).

INCURRING COST

The PLCB is not liable for any cost incurred by anyone prior to issuance of a Contract. The PLCB will pay the awarded Bidder for services rendered and goods accepted only at the rates set forth in the Contract.

OFFSET PROVISION

The awarded Bidder agrees that the Commonwealth may set off the amount of any state tax liability or other debt or obligation to the Commonwealth or its subsidiaries that is owed to the Commonwealth and is not being contested on appeal against any payments due the Contractor under this or any other contract with the Commonwealth.

SUPPLIER REGISTRATION

All Bidders will be required to register in the PLCB's online self-service Oracle Supplier Portal as a "Non-Merchandise" supplier of goods and services. Registration must be completed before a bid can be submitted or a Purchase Order (PO) fully executed. Information on how to register and related training can be found by clicking the link below. **(Please Note: A PLCB Supplier number will NOT be immediately generated upon submission of registration. The request will be processed by the LB Supplier unit within 3-5 business days from date received. It is recommended that all Bidders allow sufficient time to register before the bid deadline).**

<https://www.lcb.pa.gov/JoinOurTeam/Pages/ERP-Resources-for-Goods-and-Services-Suppliers.aspx>

After registration, suppliers will use the Portal to manage and update account information, upload and view invoices, view and acknowledge purchase orders and related documents, view and track payment information and status.

It is the supplier's responsibility to ensure that the supplier information contained in the Supplier Portal is accurate and complete. **Failure to update the Supplier Portal of any changes to supplier information may result in delayed payments.**

INVOICING

Upon award, a Blanket Purchase Agreement (BPA) will be issued to the awarded Bidder. Individual Purchase Orders (PO) will be issued for plastic shopping bags to be shipped to each of the PLCB's two Distribution Centers on an as-needed basis.

Upon delivery of item(s), the awarded Bidder will be required to create and submit their invoice(s) via the Portal. Invoices must include the PO number and all charges must be itemized, providing the description and date. Amounts charged must match the charges referenced on the IFB and PO line item. Invoices will only be paid if record of materials provided is documented and confirmed by the PLCB.

If assistance is needed to create and submit an invoice via the Portal, please review the course on how suppliers enter an invoice in the Portal and/or quick reference guide located on the PLCB's public website at the following link: <https://www.lcb.pa.gov/JoinOurTeam/Pages/ERP-Resources-for-Goods-and-Services-Suppliers.aspx> .

PAYMENT

- 1) The PLCB shall put forth reasonable efforts to make payment of undisputed amounts billed, less applicable credits, within 30 days of receipt of a proper invoice. A "proper" invoice is not received until it has been submitted to the Supplier Portal and the PLCB accepts the service as satisfactorily performed and goods satisfactorily received. The PLCB will make contract payments through Automated Clearing House (ACH).

- 2) Within 10 days of award of the contract the awarded Bidder must submit or must have already submitted their ACH information within their user profile in the Portal.
 - a. The awarded Bidder must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the PLCB's ACH remittance advice to enable the awarded Bidder to properly apply the State agency's payment to the invoice submitted.
 - b. It is the responsibility of the awarded Bidder to ensure that the ACH information contained in the Supplier Portal is accurate and complete. Failure to maintain accurate and complete information may result in delays in payment.

PAYMENT INQUIRIES/QUESTIONS

Any question or inquiries concerning payment of invoices shall be emailed to Comptroller Operations at: RA-PLCBExceptionProcess@pa.gov.

LIQUIDATED DAMAGES FOR NON-COMPLIANCE WITH CARRIER APPOINTMENTS

When completing deliveries to Distribution Centers, the awarded Bidder will be required to adhere to the PLCB Carrier Appointment standards. Any non-compliance with the standards will result in liquidated damages. Additional information on Carrier Appointment standards and associated fees can be found at: [PLCB DC Noncompliance Fee Schedule_120122.pdf \(pa.gov\)](#). The awarded Bidder will be notified monthly of any violations and be presented with documentation of non-compliance. The awarded Bidder will be billed monthly for non-compliance. If the awarded Bidder has pending invoices to be paid, non-compliance fees will be offset against monies due. If there is not a pending invoice, the awarded Bidder will receive a bill for non-compliance fees. PLCB reserves the right to change the standards and/or fee amounts at any time. The awarded Bidder will be given thirty calendar day's-notice of any changes made to Carrier Appointment standards and/or fees.

IFB 270011
PLASTIC SHOPPING BAGS
SPECIFICATIONS – PART A

A. CONTRACT SCOPE

- 1) The PLCB is seeking a Bidder to furnish plastic shopping bags. These bags will be used in the PLCB's Fine Wine & Good Spirits stores to package products sold to customers.
- 2) **Method of Award:** This will be a single award to the lowest responsive and responsible bidder.
- 3) **Price:** Bidders must enter a per case price for each line item identified on the bid in the Portal. Bidders are required to submit pricing for both line items. Failure to enter a bid price for either of the line items will result in your bid being deemed non-responsive, and your bid will be rejected. These bid prices will be incorporated into any resulting Contract and the awarded Bidder will be required to provide the item(s) at the prices quoted, for the initial term of the Contract.

B. SPECIFIC REQUIREMENTS.

- 1) The bags must be manufactured in accordance with the requirements identified in the 'SPECIFICATIONS – PART B' and **Appendix C, Plastic Shopping Bag Dispenser**. The awarded Bidder shall not substitute products which have not been pre-approved by PLCB in place of a discontinued or defective product as further identified in **Appendix D, Service Level Agreements**.
- 2) **Samples:** The awarded Bidder may be required to submit one carton of each bag design (standard and holiday) to the Contracting Officer prior to delivering finished product. To be clear, the quantity of one carton is 1,000 bags. The PLCB will not issue any POs against the Contract until such time as the sample lot, the sample testing and the sample artwork have been approved. PLCB reserves the right to solicit independent product testing at the awarded Bidders expense to determine conformance to specification.
- 3) **Testing Data:** The following testing data must be included with the submitted sample bags:
 - a. Each sample bag must be checked in ten different points with thickness readings from each point.
 - b. Thickness measurements should be carried out to three digits.
 - c. For the above test, the awarded Bidder must sample ten bags and provide data on each individual bag numbered 1 through 10.
- 4) **Artwork Proofs:** The awarded Bidder must submit artwork proofs (match prints) to the PLCB for final approval within fourteen calendar days of receipt of Notice of Award. Proofs should be sent to the Issuing Officer identified in the solicitation. The PLCB retains ownership of all artwork and proofs; examples are presented in **Appendices A and B**.

- 5) **Artwork Changes:** The artwork may change during the term of the contract and the awarded Bidder will be provided with updated artwork as required by the Marketing Department of the PLCB.

C. DELIVERY REQUIREMENTS.

- 1) **Minimum Order for F.O.B. Delivered Prices.** The minimum order qualifying for F.O.B. delivered prices placed against this contract shall be one full truckload. One full truckload is 1,920 cases of plastic shopping bags.
- 2) **Labeling Requirements.** All shipments must be labeled and barcoded in accordance with the 'SPECIFICATIONS – PART B'.
- 3) **Delivery Locations.** All shipments shall be delivered to one of the two PLCB Distribution Centers identified in **Appendix E, PLCB Distribution Centers.**
- 4) **Lead Time/Delivery Date.** The awarded Bidder shall make delivery twenty-eight calendar days from receipt of order. If the awarded Bidder has any delays in making delivery within twenty-eight calendar days from receipt of order, the PLCB must be notified immediately. If the awarded Bidder is out of stock on an item, they are required to notify the PLCB contact person within twenty-four hours of receipt of an order. If the twenty-four hour period ends on a weekend or holiday, the awarded Bidder must notify the PLCB contact person by 3:00 p.m. the next business day. See **Appendix D, Service Level Agreements.**
- 5) **Delivery and Shipping Permits.** The PLCB Bureau of Planning & Procurement, Product Procurement Division will provide the permit and estimated arrival date upon issuance of a Purchase Order. The shipper must contact the appropriate Distribution Center and obtain a delivery appointment. Appointments can be made between two and ten calendar days prior to the scheduled arrival date. Appointment availability varies based on seasonal volumes and shippers are strongly encouraged to make an appointment as early as is permissible. **NOTE:** Shipper shall notify carrier of permit delivery requirements.
- 6) **Manifest of Shipment.** A Manifest of Shipment must be supplied and filled in completely showing the PLCB Purchase Order Number, number of bundles of bags, Shipping Permit number, and delivery due date on truck shipments. Attach manifest to last pallet loaded, to rear door, or to inside wall adjacent to rear door of the trailer. Any truck arriving without the manifest (packing slip) will be delayed in unloading until a manifest is available, and the PLCB will not assume responsibility for detention charges in such cases.
- 7) **Bill of Lading.** A completed Bill of Lading must be provided to the PLCB with all shipments of merchandise. The permit number for all deliveries to the PLCB under authorization of a PLCB Shipping Permit shall be included on the Bill of Lading. The arrival date for trucks shall also be included on the Bill of Lading.
- 8) **Returns.** Any items delivered in poor condition, in excess of the amount ordered, or not included in the Purchase Order may, at the discretion of the PLCB, be returned to the awarded Bidder at the awarded Bidders expense within thirty calendar days of the delivery date. Credit for the returned goods shall be made immediately by the awarded Bidder upon receipt of the returned items. There shall be no restocking fees assessed to the PLCB for the returned product.

D. GENERAL REQUIREMENTS.

- 1) **Bid Documents.** In addition to this Specification document, the documents identified below are incorporated as appendices and made part of these Specifications.

Appendix A	Artwork Fine Wine and Good Spirits
Appendix B	Artwork Happier Holidays
Appendix C	Plastic Shopping Bag Dispenser
Appendix D	Service Level Agreements
Appendix E	PLCB Distribution Centers

- 2) **Price Adjustments.** The PLCB recognizes that during the term of the contract there may be significant cost changes relative to the raw materials required to manufacture these products. Therefore, the PLCB will make price adjustments on a quarterly basis for the duration of the Contract, including renewals or extensions. The first review will begin three months after the execution of the Contract. These cost changes will be done in accordance with the U.S. Department of Labor’s stated Producer Price Index (“PPI”) and will only occur if costs change increases or decreases at least 3% from the previous cost base.

The U.S. Department of Labor’s stated PPI are subject to monthly revisions up to four months after original publication. Due to this information from their site, the PLCB will not utilize the Preliminary index, only the final, published index to determine any cost changes. The adjustments will be made by the PLCB fifteen days prior to adjustment date of the contract. The base line for the first review will be using the final submitted price and the PPI from the month in which the bid was submitted.

The Producer Price Index (PPI), from the U. S. Department of Labor, for Plastic Material and Resin Manufacturing (325211) will be the established document for this contract’s price fluctuations. The adjustment will be based on the total quoted unit cost. The adjustment portion will then be added to or subtracted from the unit cost depending on PPI fluctuation for the review period. If the resulting calculated price is less than 3% of the current contract price, no price adjustment will be made. Adjustments will only be made when the calculation is 3% or greater. The first PPI adjustment will be calculated based on the submitted bid price and the corresponding PPI at the time that the bid was submitted.

Example:

The first PPI adjustment will be at the three- month mark of the contract.

Submitted bid price \$20.00 per case

PPI at time bid was submitted is 100.0

PPI at first adjustment is 103.0

Calculation:

$$103.0/100 = 3\%$$

$$3\% \times \$20.00 = \$.60$$

$$\$20.00 + \$.60 = \$20.60$$

\$20.60 is the new price and the new base line.

The second PPI adjustment will be at the six (6) month mark of the contract.

Example: PPI is 103.0 and new baseline is \$20.60

PPI is 104.9

Calculation:

$104.9/103 = 1.8\%$ increase

No adjustment is made because the calculation is less than 3%.

To access the PPI information from the Bureau of Labor Statistics, please follow the link below.

- Go to the Bureau of Labor Statistics website at <http://data.bls.gov/cgi-bin/dsrv?pc>
- At Screen 1, enter “325211”, which is the code for plastic material and resin manufacturer (mfg.), then click “Find”.
- At Screen 2, selections will populate in the table. Click on the first selection, code 325211
- Click on “Retrieve Data” at Screen 3. A new window will open showing a table with each month’s PPI data.

- 3) Addition/Deletion of Products:** Additional line items that are reasonably construed to be within the scope of this procurement may be added to the contract at the request of the PLCB. In the event that the PLCB determines that the additional line item should be added, the following procedures will be followed. PLCB will contact the awarded Bidder and allow it the opportunity to provide the item. PLCB, in its sole discretion, will determine if the price quoted by the awarded Bidder is fair and reasonable. At no point is the awarded Bidder allowed to unilaterally change products or pricing.
- 4) Usage Reports:** The awarded Bidder shall provide usage reports upon request. This report shall include all orders received (item description, quantity, unit price, unit of measure, delivery date,) from beginning of Contract through report submittal date. These reports should be easy to read and customer-friendly and shall be in an electronic format utilizing Microsoft Excel®.
- 5) Post Award Administration:** The awarded Bidders performance shall be monitored and evaluated in accordance with the requirements outlined in the Contract. At a minimum, the awarded Bidders performance shall be evaluated on an annual basis. The awarded Bidder may be required to attend Contract Performance Review meetings. These meetings will be for the purpose of providing Bidder performance reviews, discussion of issues either party may have concerning the Contract, or to evaluate the overall progress of the Contract. The meetings will be held quarterly, semi-annually or annually at the discretion of PLCB.

IFB 270011
PLASTIC SHOPPING BAGS
SPECIFICATIONS – PART B

A. BAG SPECIFICATIONS.

1. Color. Beige/Tan, PMS #468
2. Bag Dimensions. Overall, 11-1/2 inches W x 7 inches D x 23 inches L, +/-5%
3. Length Without Handles. 17 inches +/- 5%
4. Thickness. .84 mils +/- 10%
5. Film Material. Single layer of high-density polyethylene with an average density of 0.95 to 0.97 grams per cubic centimeter.
6. Handles. Shall have a hole or slot for use with PLCB dispenser racks, **see Appendix C, Plastic Shopping Bag Dispenser** for a photo of the dispenser. Slot shall be approximately 1 inch in length x ½ inch wide and positioned proportionately, as closely as possible, between the top and bottom of the handle. Top edge of the slot shall be a minimum of 2 inches from the top of the handle. There shall be approximately ½ inch between the inside edge of the slot and handle.
7. Center Tab. Located at the top of the body of the bag shall be a center tab with a slot for use with PLCB dispenser racks. Slot shall be approximately 1 inch wide.
8. Seal. Shall have a bottom seal and side gussets to assist in squaring off the bag.
9. Graphics. Front of bag shall be printed with one of the attached scale layouts as directed by PLCB. Color of bottles in general layout is PMS #4515C. Color of Fine Wine & Good Spirits logo shape, URL copy and social media icons is PMS #1817C. Color of Happier Holidays ribbon is PMS #3015C. White areas on layouts indicate the absence of printing—to assume the color of the bag material on the finished product. The statement “Warning: To avoid danger of suffocation, keep this plastic bag away from babies and children.” shall be printed in minimum 1/8-inch-tall PMS #1817C letters on the side gusset. Appropriate recyclability information shall be printed in PMS #1817C on the side gusset. PLCB shall be allowed to submit new graphics and color specifications at any time.
10. Packaging.
 - a) Bags must be heat welded together in bundles of fifty bags.
 - b) Manufacturer’s standard bundles per case (1,000 Bags).
 - c) Sixty cases per pallet.
 - d) Each pallet must be shrink wrapped.
11. Carton.
 - a) RSC 250 pound C flute
 - b) Box size – 12.5” x 11.5” x 5.75”
 - c) Boxes to be labeled in black ink on ends of carton at the upper right-hand corner with the following information: “**LIQUOR TOTE PLASTIC BAGS #33312 1000/CASE**”

- 12. Latent Defects.** If latent defects should be discovered after bags have been delivered and accepted, the awarded Bidder will be required to reimburse the PLCB for the cost value of bags reported to the awarded Bidder as being defective and any actual staff costs incurred by the PLCB as a result of the defective bags, including but not limited to, removal of the bags from the warehouses and/or store locations. If requested by the awarded Bidder, said defective bags will be returned to the awarded Bidder at its expense; otherwise, the bags will be disposed of by PLCB. Request for the return of defective bags to be made by the awarded Bidder not later than thirty days after the awarded Bidder has been notified of said defective bags.

B. LABEL REQUIREMENTS AND SPECIFICATIONS.

- 1. Barcode.** All cases must be labeled with a 14-digit shipping container code scannable barcode (SCC-14). It is the responsibility of the awarded Bidder to develop the shipping container code numbers for their items. The awarded Bidder is also responsible for notifying the proper person(s) at the PLCB with all shipping container codes as they are established. Any time this data changes, the updated information, with a reliable effective date, must be provided to the PLCB. The awarded Bidder must also provide the case weight, case dimensions (height, width, length), and short item description (12 letters). If a product is received with a shipping container code that is not in the PLCB database, the product will be relabeled as incorrect and surcharged to the awarded Bidder.

The PLCB Distribution Centers use an Interleaved 2-of-5 symbology for their 14-digit shipping container codes. No other coding is currently scannable in the PLCB Distribution Centers. The symbology must include a ¼ inch “quiet zone” (white space) on both sides of the bar code. This quiet zone is considered a required part of the bar code and all placement and printing should be done with respect to the outer edges of that quiet zone. Bearer Bars are acceptable, either on the top and bottom or encompassing the entire code if they do not interfere with the size and placement requirements.

The following sample shows a SCC barcode readable with Bearer Bars.



The Barcode MUST be 1-¼ inches high and should be no shorter than 4 inches in length and no longer than 6 inches in length. The definition of the bars and clear unmarred white spaces is imperative in producing a clear and acceptable symbol. The readable figures are for visual confirmation of the bar coding if necessary and only need to be large enough as to be easily read. More detailed information regarding the structure of the bar within these symbologies is available on the UCC web site. Many software packages are available for the printing of shipping container code and/or UPC bar coding.

- 2. SCC Label & Barcode Placement.** The SCC barcode must be placed on two adjacent sides of each carton. The bottom edge of the bar code (not including the bearer bars) must be placed 1 ¼ inches (plus or minus 1/8 inch) from the container’s natural bottom. The outer edge of the bar code (not including the bearer

bars) shall be no closer than 1 ¼ inches to either vertical edge. Wrap-around shipping container code labels are permitted if they allow for the proper placement of the bar code in relation to the carton's edges. Proper placement not only allows for consistent scanning, but it also protects the label from edge crush.

C. Relabeling Fees:

1. Each case of product delivered to a PLCB Distribution Center (delivery location) that is not labeled in accordance with the requirements outlined herein will be assessed a relabeling fee. The Distribution Centers will relabel all product cases which are incorrectly labeled by the awarded Bidder and document all relabeling activities. The PLCB will assess the awarded Bidder with a relabeling fee based on the information provided by the Distribution Centers.
2. Each Distribution Center has predetermined relabel rate. See **'Liquidated Damages for Non-Compliance with Carrier Appointments'** section on **Page 5 of the IFB** for further details on relabeling fees.

**PENNSYLVANIA LIQUOR CONTROL BOARD
STANDARD CONTRACT TERMS AND CONDITIONS
FOR NON-MERCHANDISE PURCHASE ORDERS**

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 after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after Contractor is issued a Notice to Proceed directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Board shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

2. EXTENSION OF CONTRACT TERM

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

3. DEFINITIONS

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

- a. Agency: The Pennsylvania Liquor Control Board ("PLCB").
- b. Contracting Officer: The person authorized to administer this Contract for the PLCB 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.

4. 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.

5. 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 PLCB. 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 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.

6. 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 PLCB and that the PLCB 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 PLCB. The PLCB reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever the PLCB deems it to be in its best interest.

7. 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 PLCB. 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 PLCB.

8. 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 PLCB under the contract. The Contractor shall defend any suit or proceeding brought against the PLCB 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 PLCB 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 PLCB 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 PLCB 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 PLCB harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the PLCB 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 noninfringement 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 PLCB, only those items of equipment or software which are held to be infringing, and to pay the PLCB: 1) any amounts paid by the PLCB towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the PLCB 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.

9. OWNERSHIP RIGHTS

The PLCB 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 PLCB as part of the performance of the Contract.

10. ACCEPTANCE

No item(s) received by the PLCB shall be deemed accepted until the PLCB 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 PLCB within 15 days after notification.

Rejected item(s) left longer than 15 days will be regarded as abandoned, and the PLCB 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 PLCB'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 PLCB 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 PLCB.

11. PRODUCT CONFORMANCE

The PLCB 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 PLCB.
- b. Supply published manufacturer product documentation.
- c. Permit a PLCB 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.

12. REJECTED MATERIAL NOT CONSIDERED ABANDONED

The PLCB 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 PLCB, the PLCB may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the PLCB, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the PLCB.

13. 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.

14. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

15. POST-CONSUMER RECYCLED CONTENT

- a. Except as specifically waived by the Department of General Services in writing, any products which are provided to the PLCB 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 PLCB with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

16. COMPENSATION

- a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by the PLCB.
- 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 PLCB. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

17. BILLING REQUIREMENTS

Unless the Contractor has been authorized by the PLCB 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 Oracle Vendor number;
- b. Bank routing information, if ACH;
- c. Oracle Purchase Order number;
- d. Ship To Address, including name of PLCB location;
- e. Description of the supplies/services delivered in accordance with Oracle 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 PLCB may return the invoice as improper. If the PLCB returns an invoice as improper, the time for processing a payment will be suspended until the PLCB receives a correct invoice. The Contractor may not receive payment until the PLCB 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.

18. PAYMENT

- a. The PLCB 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) 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 PLCB 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 15 days after the required payment date, the PLCB 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 PLCB 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 PLCB may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the PLCB against any payments due the Contractor under any contract with the PLCB.

- b. The PLCB 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 PLCB. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the PLCB 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 PLCB 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 PLCB's procurement system (Oracle).
 - 2) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the PLCB'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 Oracle is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

19. TAXES

The PLCB 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 PLCB 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.

20. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the PLCB 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 PLCB. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the PLCB 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.

21. HOLD HARMLESS PROVISION

- a. The Contractor shall hold the PLCB harmless from and indemnify the PLCB 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 PLCB 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 PLCB may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

22. AUDIT PROVISIONS

The PLCB shall have the right, at reasonable times and at a site designated by the PLCB, 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 3 years from date of final payment. The Contractor shall give full and free access to all records to the PLCB and/or their authorized representatives.

23. DEFAULT

- a. The PLCB 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 PLCB terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the PLCB 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 PLCB 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 PLCB, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the PLCB 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 PLCB 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 PLCB shall be in an amount agreed upon by the Contractor and Contracting Officer. The PLCB 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 PLCB against loss.

- d. The rights and remedies of the PLCB 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 PLCB's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the PLCB 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.

24. 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 PLCB orally within 5 days and in writing within 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 PLCB may reasonably request. After receipt of such notification, the PLCB 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 PLCB by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

25. TERMINATION PROVISIONS

The PLCB 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 PLCB shall have the right to terminate the Contract or a Purchase Order for its convenience if the PLCB 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 PLCB'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 PLCB 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 PLCB 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 PLCB 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 PLCB erred in terminating the Contract or a Purchase Order for cause, then, at the PLCB's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

26. 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 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 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 PLCB shall compensate the Contractor pursuant to the terms of the Contract.

27. 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.

28. OTHER CONTRACTORS

The PLCB may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and PLCB 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 PLCB employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The PLCB shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

29. 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 by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual

orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

- c. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- d. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 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.

30. 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.

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 50% of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than 50% 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% or more interest in the Contractor.
- e. **"Financial Interest"** means either:
 - (1) Ownership of more than a 5% 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 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 it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. 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)*.
- g. 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.
- h. 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.
- i. 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.

- j. 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.

31. 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. 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:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

32. 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.

33. 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 or 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:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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.

34. 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.

35. 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.

36. INTEGRATION

This Contract, including all referenced documents, 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.

37. ORDER OF PRECEDENCE

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

38. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the PLCB. 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 PLCB.

39. CHANGES

The PLCB 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 PLCB 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 the Contract Controversies Provision.

40. 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 terroristic 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.

41. 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.

42. 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 PLCB's Supplier Registration system.
- b. If to the PLCB: the address of the Issuing Office as set forth on the Contract.

43. 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 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 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 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.