

**INVITATION TO QUALIFY  
FOR THE SALE OF**

**ENERGY COMMODITY SUPPLY AND RELATED  
SERVICES TO THE COMMONWEALTH OF  
PENNSYLVANIA**

**ISSUING OFFICE**



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES  
BUREAU OF PROCUREMENT  
555 Walnut Street  
Forum Place, 6<sup>th</sup> Floor  
Harrisburg, PA 17101-1914**

**Statewide Multiple Award Contract 4400002702**

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## Part 1

### General Information for Interested Energy Service Providers

- I-1 **Purpose:** In the midst of an ever-changing and increasingly challenging energy market, the Commonwealth is issuing this Invitation to Qualify for the sale of Energy Commodity Supply and Related Services. The Commonwealth owns and operates a diverse portfolio of facilities and complexes ranging from fish hatcheries to hospitals and prisons to large universities. No matter the size or scope of operations, these facilities require energy commodities such as electricity and natural gas to fulfill their service requirements to the citizens of Pennsylvania. The purpose of this ITQ contract is to provide a vehicle to obtain supply of these energy commodities and the services needed to manage their use by establishing a pool of suppliers qualified to provide them.

This Invitation to Qualify (ITQ) provides interested energy service providers with the information necessary to adequately prepare submittals for consideration by the Commonwealth of Pennsylvania. Once an interested supplier is deemed qualified, that Qualified Supplier is issued a statewide multiple-award participation contract. This is a zero-dollar contract that signifies an energy service provider's qualification to respond to requests for quote for the items and services for which it has been qualified. The Commonwealth will issue these requests for quotes based on both the needs of the using location and on market conditions. A Qualified Supplier is not obligated to provide any items or services on this contract until it successfully responds to a request for quote.

This ten-year contract allows the Commonwealth to establish long-term partnerships with its energy service providers yet also provides the flexibility to respond to the future needs and developments of a complex market.

- I-2 **Issuing Office:** This ITQ is issued for the Commonwealth by the Pennsylvania Department of General Services, Bureau of Procurement. The Issuing Office is the sole point of contact in the Commonwealth for this ITQ. Please refer all inquiries to:

George Landis  
Commodity Specialist  
Department of General Services  
Bureau of Procurement  
555 Walnut Street, 6<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1914  
(717) 346-2679  
gelandis@state.pa.us

- I-3 **Submittal Address:** Hard copies of submittals to this Invitation to Qualify are to be sent to the following:

Department of General Services  
Bureau of Procurement  
Supplier Services  
Re: Energy ITQ Submittal  
555 Walnut Street, 6<sup>th</sup> Floor Forum Place  
Harrisburg, PA 17101-1914

- I-4 **Scope:** This ITQ contains instructions governing the submittals and the material to include with the submittals; requirements that must be met to be eligible for consideration, description of the Energy Commodity Supply and Related Services being sought; other requirements to be met by each energy service provider seeking to become qualified, the terms and conditions of the ITQ Contract, a contract signature page, and other hardcopy forms that require a signature and inclusion with any submittal.

- I-5 **Problem Background:** The Commonwealth of Pennsylvania, Department of General Services, Bureau of Procurement utilizes this ITQ Contract as a means to easily purchase Energy Commodity Supply and Related Services for participating Commonwealth locations. These services include but are not limited to, the delivery of one or more of the following: electricity generation and transmission, natural gas commodity supply and transmission, and renewable energy credits,. See Part II – Work Statement for a description of each service category.
- I-6 **Pre-Proposal Conference:** If energy service providers express sufficient interest, the Commonwealth will schedule and hold a pre-proposal conference. The purpose of this conference would be to clarify any points in the ITQ that are not clearly understood. This conference would not be mandatory and would be information purposes only. Answers provided at the conference are not official until verified, in writing, by the Contracting Officer.
- I-7 **Rejection of Submittals:** The Commonwealth reserves the right to reject any and all submittals received as a result of this Invitation to Qualify.
- I-8 **Submittals:** To be considered, interested energy service providers must submit a complete response to this ITQ, using the format provided in Part III. Instructions regarding this process and the requirements that must be met for a submittal to be considered are included in Part III. The contents of the submittal of a Qualified Supplier will become contractual obligations if that supplier is awarded a contract as a result of the submittal.

Each and every licensed energy service provider making a submittal specifically waives any right to withdraw or modify it, except as hereinafter provided. Submittals may be withdrawn by written notice in the form of a letter, facsimile, or e-mail notice received by the Contracting Officer prior to the issuing of a contract resulting from that submittal. However, if the energy service provider chooses to attempt to provide such written notice by facsimile transmission, the Commonwealth is not responsible or liable for errors in that transmission. A submittal may also be withdrawn in person by an energy service provider or its authorized representative, provided the identity of this representative is made known and her or she signs a receipt for the submittal, but only if the withdrawal is made prior to the issuing of a contract resulting from that submittal.

- I-9 **Open Enrollment:** Interested energy service providers, who do not hold a multiple award participation contract with the Commonwealth to provide Energy Commodity Supply and Related Services, may seek addition as a Qualified Supplier at any time. Existing Qualified Suppliers may also seek qualification for additional service categories for which they were not previously approved to provide at any time. Submittals will be evaluated upon receipt by the contracting officer and shall be accepted at any time following the issuance of this document.
- I-10 **Contract:** This ITQ, together with a successful response from an energy service provider, when executed, approved and delivered, with all exhibits incorporated by reference, shall constitute the final, complete, and exclusive contract between the Commonwealth and each Qualified Supplier.

Except as otherwise provided in Paragraph I-7, a multiple-award participation contract is executed with each responsible energy service provider who meets all requirements and qualification criteria outlined in this ITQ. These contracts will constitute a statewide multiple-award participation contract that will allow using agencies to purchase Energy Commodity Supply and Related Services on an as-needed basis. Service requirements initiated under this multiple-award contract may involve varying levels of services related to the electric and natural gas utility industry.

- I-11 **Term of Contract:** The term of the Contract shall begin on January 1, 2009 (or the Effective Date, whichever is later) and will expire on December 31, 2018.
- I-12 **Requests for Quote (RFQ):** After contract execution, Commonwealth agencies may procure one of the energy service categories of this contract by issuing an RFQ to all Qualified Suppliers qualified in the needed energy service category. Qualified Suppliers interesting in participating

must submit a pricing proposal at the time and in the manner defined by each individual RFQ. A more detailed description of what may be included in an RFQ is included in Part II-2 of this document.

- I-13 **Incurring Costs:** The Commonwealth is not liable for any cost or expenses incurred by energy service providers in the preparation of their response or for attendance at any conferences or meetings related to this ITQ.
- I-14 **Prime Contractor Responsibilities:** Each energy service provider, who is successfully qualified for one or more Deregulated Energy Supply and related Services categories, is considered a prime contractor with respect to any orders issued to the Qualified Supplier for all products and services provided in accordance with this ITQ Contract. Each qualified Supplier is required to assume responsibility for delivery of all the goods and/or services specified in the order. Further, the Commonwealth will consider the qualified Supplier the sole point of contact with regard to contractual matters, including payment of any and all charges.
- I-15 **Subcontracting:** The Commonwealth must approve, in writing, the use of any subcontractors by a Qualified Supplier on delivery of the goods/services obtained through any RFQ issued against this contract.
- I-16 **Economy of Preparation:** Responses must provide a straightforward, concise description of the energy service provider's ability to meet the requirements of this ITQ.
- I-17 **Disclosure of Submittal Contents:** The submittal of each qualified Supplier will become part of the multiple-award contract resulting from this ITQ, and is not, therefore, confidential. All other material submitted becomes the property of the Commonwealth of Pennsylvania and can be returned only at the Commonwealth's option. Submittals may be reviewed and evaluated by any person other than competing providers at the discretion of the Commonwealth. The Commonwealth has the right to use any or all concepts presented in any reply to this ITQ. Selection or rejection of a submittal does not affect this right.
- I-18 **Alternate Submittals/Proposals:** For this ITQ, alternate submittals or proposals are **not** permitted.
- I-19 **Addenda to the ITQ:** If it becomes necessary to revise any part of this ITQ, addenda are posted on the Department of General Services website at [www.portal.state.pa.us](http://www.portal.state.pa.us) and the Commonwealth's statewide ITQ contract website at [www.itq.state.pa.us](http://www.itq.state.pa.us). Interested energy service providers are encouraged to frequently check these websites to obtain the most current information regarding the ITQ.
- I-20 **Debriefing Conference:** Energy service providers who are not selected are notified and given an opportunity to request a debriefing. The purpose of the debriefing is not to compare licensed energy service providers' submittals but to provide information explaining the Commonwealth's reason or reasons for not accepting an individual service provider's proposal. The Issuing Office will schedule the date, time, and location of any debriefing conferences.
- I-21 **News Releases:** News releases pertaining to this ITQ are prohibited without Commonwealth approval, and then only in coordination with the Issuing Office.
- I-22 **Restriction of Contact:** From the issue date of this ITQ until a determination is made regarding the selection of a responding energy service provider as a Qualified Supplier, all contacts with Commonwealth personnel concerning this ITQ are to be made through the Issuing Office.

I-23 **Contractor's Representations and Authorizations:** Each energy service provider by making a submittal to this ITQ understands, represents, and acknowledges that:

- a. All information provided by, and representations made by, the energy service provider in the submittal to this ITQ are material and important and relied upon by the Issuing Office in awarding the contract(s). Any misstatement is treated as fraudulent concealment from the Issuing Office of the true facts relating to the submittal. A misrepresentation is punishable under 19 Pa. C.S. 4904.
- b. No attempt was made or will be made to induce any firm or person to refrain from making a submittal to this contract.
- c. The submittal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive submittal.
- d. To the best knowledge of the person signing the submittal for the energy service provider, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as disclosed by the energy service provider in its submittal.
- e. To the best of the knowledge of the person signing the submittal for the energy service provider and except as otherwise disclosed by the energy service provider in its submittal, the energy service provider has no outstanding delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the energy service provider that is owed to the Commonwealth.
- f. The energy service provider making the submittal is not currently under suspension or debarment by the Commonwealth, or any other state, or the federal government, and if the energy service provider cannot certify, then it shall submit along with the submittal a written explanation of why such certification cannot be made.
- g. The energy service provider has not, under separate contract with the Issuing Office, made any recommendations to the Issuing Office concerning the need for the services described in the submittal or the specifications for the services described in the submittal.
- h. Each energy service provider, by making its submittal, authorizes all Commonwealth agencies to release to the Commonwealth information related to the liabilities to the Commonwealth including but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

I-24 **Agreement to Abide By Agency Requirements:** All Qualified Suppliers must abide by agency specific requirements concerning confidentiality of data and practices. All Qualified Suppliers must also abide by agency specific requirements regarding conduct of contractor staff on the work site and health and background checks (drug checks, criminal background checks, credit checks) of contractor staff by those agencies requiring such information should any need arise for work to be performed on Commonwealth property as a result of an award against this ITQ Contract. Qualified Suppliers on this ITQ Contract must protect the confidentiality of Commonwealth information. A supplier qualified on this ITQ Contract agrees that any breach of this agreement will result in immediate disqualification and may result in legal actions.

## Part II Work Statement

II-1 **Service Categories:** Energy service providers may qualify to provide Energy Commodity Supply and Related Services in one or more of the following categories.

Service Category	Description
Electricity Generation and Transmission	Upon the successful response to a Request for Quote for electricity generation and transmission, a qualified Supplier shall provide electrical energy to service location(s) identified in the Request for Quote. The Commonwealth reserves the right to seek generation and transmission comprised of any percentage mix from renewable sources as it sees fit. The qualified Supplier is responsible for scheduling and ensuring delivery of the electricity to the specified location(s).
Natural Gas Supply	Upon the successful response to a Request for Quote for natural gas volume delivery, the Qualified Supplier shall provide natural gas volumes to the city gate of the respective LDC(s). The Qualified Supplier is responsible for meeting the requirements of the respective LDC and ensuring that the volumes delivered to the city gate are sufficient to meet the needs of the using location(s).
Renewable Energy Credits	Upon the successful response to a Request for Quote for Renewable Energy Credits, the Qualified Supplier shall provide proof of generation and ownership of the credits relating to such generation to the Ordering Location.
Multi-Fuel Services	Many Commonwealth facilities have the capability to switch between natural gas and heating oil as primary heating sources and do so according to economic conditions and availability. Upon the successful response to a Request for Quote for Multi-Fuel Services, the Qualified Supplier shall provide recommendations concerning which fuel to use during a given time period to the Ordering Location and shall supply the recommended fuel to that location.

The Commonwealth reserves the right to add additional energy related service categories to this contract on as needed basis in response to changing market conditions.

II-2 **Requests for Quote:** After contract execution, Commonwealth agencies may procure needed Energy Commodity Supply and Related Services by issuing Requests for Quote to all Qualified Suppliers for the applicable energy service category. Qualified Suppliers are not required to bid on any particular RFQ but do so at their discretion.

The RFQ will provide specific delivery requirements of the desired products or services. It will contain all known information for Qualified Suppliers to submit quotes. This information includes the specific delivery terms required, any applicable and available account data including historical usage, and the specific pricing scenarios and term lengths requested. Interested Qualified suppliers must respond to the Request for Quote by submitting a pricing proposal to furnish the needed Deregulated Energy Supply and/or Related Services in accordance with the specific requirements of the Request for Quote.

**The total quoted price for all products or services ordered via Requests for Quote against this contract are comprehensive and inclusive of all ancillary charges unless specified otherwise in a Request for Quote. No adders are permitted for capacity, congestion, reserves, losses, shrinkage, pooling charges, or any other charge.**

**If due to an unforeseen regulatory change or some other unforeseen event, a Qualified Supplier may petition the Commonwealth to allow a specific ancillary charge. The burden of substantiating the need for this charge rests solely with the supplier and can only be**

**assessed by written consent of the Commonwealth. Any ancillary charge approved via written consent of the Commonwealth shall be fixed for the duration of the specific award to which it applies unless otherwise decreased in amount, that by mutual written agreement between the Commonwealth and the Qualified Supplier.**

**The assessment of any such charge by a Qualified Supplier unless as specified in this Part II-2 or in the specific Request for Quote may result in termination for cause of the award in question.**

**The Commonwealth is a tax exempt organization. Any taxes from which the Commonwealth is exempt that are invoiced by a Qualified Supplier, including but not limited to Gross Receipts Taxes and Sales Taxes, shall not be paid.**

II-3 **COSTARS Participation:** The COSTARS program is the Commonwealth's co-operative sourcing program for municipalities, school districts, and other public or non-profit procurement entities. As it relates to this particular contract, the Department of General Services will issue RFQs for the service categories listed above for COSTARS members through the structure of this contract or will use this contract to provide a pool of qualified energy service providers to which COSTARS members can issue their own RFQs. Any RFQs issued by the Commonwealth on the behalf of COSTARS members shall be independent from any RFQ issued for agencies of the Commonwealth.

Interested energy service providers are required to complete the COSTARS Questionnaire included in **Appendix A**. Providers who wish to be eligible to provide the service categories for which they are seeking qualification to COSTARS members should answer yes in the boxed area at the bottom of the second page of the questionnaire. Participation in the COSTARS program is completely voluntary and will in no way be used as a criteria for evaluation of an interested energy service provider's submittal.



## Part III

### Information and Action Required From Interested Energy Service Providers

III-1 **ITQ Submittals:** For consideration, submittals for this ITQ must consist of a complete response using the format provided in this Part III of this document. Interested energy service providers are not given an opportunity to change any submittal for this ITQ after submission. Interested energy service providers shall:

- Complete all forms accompanying this document, including a completed contract signature page bearing the original signature of an official authorized to bind the company to the provisions of this document in each of the copies provided.
- Provide copies of all applicable licenses or product descriptions with the completed submittal as described in Part III-3.
- Send two (2) hard copies of the submittal and all related documents to the address listed in Part I-3

It is anticipated that the Commonwealth will develop an electronic means of making submittals to this ITQ Contract at some point during its 10-year term. When such event occurs, an addendum shall be issued to this Part III-1 providing instructions for the electronic method of submission to be used.

III-2 **Supplier Registration:** Contracts resulting from successful submittals to this ITQ shall be issued and managed through the Commonwealth's Supplier Relationship Management (SRM) system. Interested energy service providers who have not previously done business with the Commonwealth are required to register as a new supplier in the SRM system at [www.pasupplierportal.state.pa.us](http://www.pasupplierportal.state.pa.us). Interested energy service providers who have previously done business with the Commonwealth are also required to register as an existing supplier at the same web address as above. Through this registration, interested energy service providers will create a username and password for logging in to the system. Registration in this system is required in order for a Qualified Supplier's contract to be processed.

Through the SRM portal website, suppliers are able to maintain their company information, including bank account information for electronic payment. Qualified Suppliers are encouraged to enter their bank data and to enable electronic payment, thereby quickening the payment process. Qualified Suppliers are also encouraged to maintain the company address so that the designated company office or individual is the most logical to receive purchase orders issued as a result of RFQs against this ITQ Contract. The primary function of SRM is to serve as an online bidding platform for the Commonwealth. Bids for RFQs issued against this ITQ contract may be conducted through this system.

Instructions for registration, bidding, and maintaining company information can be found by clicking on the "SRM Customer Support" link on the front page of the SRM portal site.

III-3 **Statement of Qualifications:** Interested energy service providers shall submit the following information with their response to this ITQ.

1. A completed COSTARS Questionnaire form found in **Appendix A**. COSTARS participation is voluntary.
2. A completed Mandatory Requirements Form found in **Appendix B**.
3. A completed contract signature page.
4. Information regarding the Energy Commodity Supply and/or Related Service (Service Category) that the energy service provider is willing and able to provide. The information

provided for each Service Category includes the name, address, telephone number, and e-mail of the individual who is responsible for receiving RFQs and for preparing and submitting quotes as well as the names of three separate references. See **Appendix C**.

5. Copies of current Pennsylvania Public Utility Commission (PUC) licenses and any other applicable current licenses for desired Service Categories as defined below.
  - a. Natural Gas Supply – PUC License as natural gas supplier
  - b. Electricity Generation and Transmission – PUC License as electricity supplier, Federal Energy Regulatory Commission (FERC) power marketing certificate or proof of ownership of such certificate.

Responses from interested energy service providers who do not hold a FERC power marketing certificate will be considered provided that an explanation is given as to why the certificate is not needed.

6. Energy service providers seeking qualification to provide Renewable Energy Credits are required to be capable of purchasing the credits on the Commonwealth's behalf and retiring such credits when specified in an applicable RFQ. Suppliers seeking qualification in this service category should provide any literature describing their capability of providing this service category.
7. Energy service providers seeking qualification to provide Multi-Fuel Services are required to be capable of providing heating oil to Ordering Locations and are required to provide a copy of a current PUC license as a natural gas supplier, either separately for this Service Category or in conjunction with qualification for Natural Gas Supply.
8. A copy of the company's most recent 10-K annual report as filed with the Federal Securities and Exchange Commission. In the case of a private firm, a company prospectus including an income statement, balance sheet, and statement of cash flow that are no more than one (1) year old shall be acceptable.
9. A statement indicating any penalties paid for failure to provide any Service Categories as outlined in Part II-1 in the previous five (5) years along with an explanation of the situation(s) resulting in the penalties.
10. Additional materials the interested energy service provider wishes to submit to demonstrate its ability to meet the agreement provisions.

III-4 **Qualification for Additional Service Categories:** If during the term of an executed contract, a Qualified Supplier seeks qualification in one or more service categories in addition to any for which it has previously been qualified, it shall be required to submit an official notice requesting to be qualified for the additional service categories as well as any required license(s) or product description(s) as outlined in Part III-3 above. Should the lapse of time between the initial qualification and the proposed qualification for an additional service category be more than three (3) years, the Qualified Supplier shall be required to submit an updated 10-K report or company prospectus as outlined in Part III-3 (10).

## **Part IV Criteria for Qualification**

IV-1 **Evaluation of Submittals:** Submittals are evaluated based on compliance with the Information and Action Required From Interested Energy Service Providers as defined in Part III of this ITQ document and evaluation of the written submissions as outlined below.

1. Submittals are first reviewed to discover if each submittal included acceptance and compliance with all of the mandatory requirements found in Appendix B. Non-acceptance or noncompliance may result in disqualification of the submittal.
2. Failure to provide complete information found in Appendix C regarding the Energy Commodity Supply and Related Services (Service Categories) for which the energy service provider is seeking qualification to provide is grounds for disqualification.
3. Failure to provide a copy of current PA PUC license(s) (where applicable) shall result in disqualification
4. Failure to provide a FERC power marketing license (where applicable) shall result in disqualification.
5. Interested energy service providers must have been in operation for a minimum of 1 year in order to be deemed a Qualified Supplier.
6. Particular attention is paid to the energy service provider's operating and fiscal history provided, particularly if the company has been in operation for less than three (3) years. The management, financial, and technical capabilities of the energy service provider are considered. Criminal conviction is grounds for disqualification.
7. Failure to disclose any penalties assessed against the energy service provider due to non-performance in any proposed Service Categories is grounds for disqualification. The impact the payment of any penalties assessed against the energy service provider will have or has had on its ability to provide Energy Commodity Supply and Energy Services under this contract is evaluated.
8. Failure to provide a response to the COSTARS Questionnaire found in **Appendix A** is grounds for disqualification. (Electing not to participate in the program is not grounds for disqualification)

## Part V Glossary of Terms

V-1 **General Definitions:** the following definitions apply to the words and phrases used in this Part V and subsequent RFQ documents, unless the text or usage clearly indicates otherwise.

**Basic Services** - Services necessary for the physical delivery of energy commodities, including generation, transmission and distribution, load following, voltage control, etc. Transition charges, although temporary in scope, are basic service charges. (See definition of transition charges).

**Best Economic Value** – A combination of quantity, price offering, and delivery term length that results in:

1. The lowest economic cost to an organization when contrasted against published futures prices, and/or
2. Provides the greatest adherence to economic attributes established within a Request For Quote.

**Contractor** – A Qualified Supplier.

**DOE** – United States Department of Energy.

**Effective Date** – The Effective Date is the date, fixed by the Contracting Officer, after the Contract is fully executed by the Supplier and by the Commonwealth, all approvals required by Commonwealth contracting procedures are obtained and the Contract is sent to the Supplier. The Supplier shall not start the performance of any work prior to the Effective Date and the Commonwealth entities are not liable to pay the supplier for any service or work performed or expenses incurred before Effective Date. No Commonwealth employee has the authority to direct the commencement of any work under this Contract prior to the Effective Date.

**Energy Related Services** – The supply and transmission of electricity commodity from either traditional or renewable sources, the supply and transmission of natural gas commodity, and/or the delivery of other commodity and non-commodity purchases that may include, but are not limited to, renewable energy credits, meter reading services, billing services, nomination and balancing services, non-basic services, and other electric and natural gas account needs.

**EPA** – United States Environmental Protection Agency.

**Federal Energy Regulatory Commission (FERC)** - A quasi-independent regulatory agency within the Department of Energy having jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, interstate gas pipelines and interstate gas sales under the Natural Gas Act, gas pipeline certification, and deregulation of the natural gas industry (FERC Order 436 and Order 636).

**Force Majeure** - Defined as an act of God, strike, lockout, war, civil disturbance, explosion, breakage, accident to machinery or pipeline, failure of wells of sources of gas supply, federal, state or local law, binding order of a court or governmental agency or by any other cause beyond the reasonable control of buyer or seller.

**Non-Basic Services** - Optional recurring services which are distinctly separate and clearly not required for the physical delivery of energy.

**New York Mercantile Exchange (NYMEX)** – Energy commodities are traded on NYMEX as a "futures" commodity. NYMEX price results may be used in establishing "index" prices, upon which index/market-based prices are built.

**Ordering Location** – The Commonwealth facility, institution, or university that receives delivery of services ordered, regardless of the point of origin of the order; i.e., Administrative Office rather than the receiving facility, institution, or university.

**Pennsylvania Preferred Power (PPP)** – Energy generated from sources of value to the Commonwealth of Pennsylvania, particularly indigenous resources. Value shall be interpreted based on the sources impact on economic development, environmental benefits, and energy security. Types of PPP sources may include, but are not limited to, various renewable resources, methane resources, and waste coal resources.

**Public Utilities Commission (PUC)** - State energy regulatory division that oversees tariffs and regulatory issues for all utilities. References to the PUC are considered the Pennsylvania Public Utility Commission unless otherwise stated.

**Qualified Supplier** – A licensed energy supplier that has met all the requirements of this Energy Commodity Supply and Related Services ITQ, and issued a Contract fully executed by the Supplier and the Commonwealth.

**Request For Quote (RFQ)** – Procurement vehicle used to seek information about the bidder and other service and pricing terms being offered by Qualified Suppliers. The RFQ defines the specific scope of services for pricing by the participating Qualified Suppliers. The intent of issuing an RFQ is to award the defined scope of services to the Qualified Supplier offering the Best Economic Value.

**Service Location** - The location of the meter measuring electrical or natural gas supply to buildings, structures, infrastructure, utility or improvement placed or naturally occurring in or above the real property belonging to the Commonwealth.

**Supplier** – The Qualified Supplier selected (awarded scope of services in response to a RFQ) and obligated to provide Energy Related Services to the Ordering Location.

**Tariff** - Formal documentation of local distribution company (utility) and pipeline protocols and prices. Requires approval by the state PUC.

V-2 **Electricity Definitions:** The following definitions apply to the words and phrases used in this Part V and subsequent RFQ documents, unless the text or usage clearly indicates otherwise.

**Aggregator** - An entity licensed by the Public Utilities Commission that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. An aggregator assembles customers into buying groups for the purpose of purchasing electricity. The assumption behind aggregation is that a group has more buying power than an individual or single business.

**Bulk Power System** - A term that includes all electric generating plants, transmission lines and equipment, such as transformers and substations.

**Competitive Transition Charge** - A nonbypassable charge applied to the bill of each customer accessing the transmission or distribution network which (charge) is designed to recover an electric utility's transition or stranded costs as determined by the PUC.

**Delivery Point** - The point on an electrical distribution system at which it delivers electricity that was supplied. The service location's meter is the delivery point for electricity supply.

**Distribution Charges** - Basic service charges for delivering electricity from the transmission system over a distribution system to a customer's residence or business.

**Distribution Company** - The regulated portion of an electric company that constructs and maintains the wires that connects the transmission grid to the customer's residence or business where the power is used.

**Electric Distribution Company (EDC)** - The public utility providing facilities for the transmission and distribution of electricity to retail customers.

**Electric Generation Supplier (EGS)** - A firm or company that sells electricity or related services to end-use customers using the transmission or distribution facilities of an electric distribution company.

**Electricity** - deregulated electricity that is purchased from a Supplier pursuant to this agreement and that is delivered to the facility's meter by the electric distribution company.

**Electricity Providers** - The term refers collectively to the electric distribution company, the electric generation supplier, electricity supplier, marketer, aggregator and/or broker, as well as any third party acting on behalf of these entities.

**Energy Service Company (ESCO)** - A company that offers to manage and perhaps reduce a client's energy consumption for a fee or on a cost or savings-sharing basis.

**Exempt Wholesale Generator** - An independent power producer that generates and sells electricity in the wholesale market and is exempt from restrictions of the Public Utility Holding Company Act (PUHCA). The Energy Policy Act of 1992 to expand competition in wholesale electricity generation created EWGs.

**Firm Power** - Power or power producing capacity intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

**Generation Charges** - Basic service charges for generation supply to retail customers. This excludes charges for transmission or other charges related to electric service.

**Generation Company** - The traditional vertically integrated electric company structure was comprised of generation, transmission and distribution. In a deregulated environment, it is expected that these components are separated (see unbundling). The Genco is the term used for the generation portion.

**Grid** - An arrangement of power lines connecting power plants and customers over a large area.

**Independent Power Producer (IPP)** - A company that operates a generation facility and sells power to electric utilities. The terms of power purchase agreements between IPPs and power purchasers are subject to approval by the Federal Energy Regulatory Commission (FERC).

**Independent System Operator (ISO)** - an organization formed at the direction or recommendation of the Federal Energy Regulatory Commission (FERC). In the areas where an ISO is established, it coordinates, controls and monitors the operation of the electrical power system, usually within a single US State, but sometimes encompassing multiple states.

**Interruptible Load** - Refers to program activities that, in accordance with contractual arrangements, can interrupt consumer load at times of seasonal peak load by direct control of the utility system operator or by action of the consumer at the direct request of the system operator. It usually involves commercial and industrial consumers.

**Kilowatt (kW)** - One thousand watts.

**Kilowatt hour (kWh)** - One thousand watts used for one hour.

**Licensed Generation Supplier** - An entity licensed by the PUC as a firm capable, and in the business of providing electricity for sale and delivery to the public.

**Load Factor** - A measurement determined by dividing the average demand by the maximum demand. It is usually expressed as a percentage.

**Market-based Rates** - Rates for electric power that are established in an unregulated, competitive market through competitive bidding or through negotiations between the buyer and seller.

**Marketer or Broker** - An entity, licensed by the PUC, that acts as an agent or intermediary in the sale and purchase of electric energy and does not take title to the electric energy.

**Maximum Peak Demand** – The average number of kilowatts supplied during a 15, 30, or 60 minute period of maximum use during the time periods designated as On-Peak or Peak by the electric distribution company. In the event the electric distribution company does not designate an On-Peak period, then the Maximum Peak Demand means the average number of kilowatts supplied during the 15, 30, or 60 minute period of maximum use during the billing period.

**Native Load Customers** - The wholesale and retail customers on whose behalf the transmission provider, by statute, franchise, regulatory requirements or contract, has undertaken an obligation to construct and operate the transmission provider's system to meet the reliable electric needs of such customers.

**Non-firm Power** - A supply of power or power producing capacity having limited or no assured availability.

**Non-utility Generator (NUG)** - A term that describes qualifying facilities, independent power producers, exempt wholesale generators, and any other companies in the power generation business that were exempted from traditional utility regulation. Some NUG facilities are built by users primarily for their own energy needs. Other NUGs are built to sell power to utilities under long-term contracts.

**Open Access Same-time Information System (OASIS)** - An electronic information system that allows users to receive data on the current operating status and transmission capacity of a transmission provider.

**Open Transmission Access** - Provides all participants in the wholesale market equal access to transmission service - as long as capacity is available - with the objective of creating a more competitive wholesale power market.

**PJM Interconnection LLC (PJM)** - A regional transmission organization that ensures the reliability of the electric power supply system in 13 mid-Atlantic states and the District of Columbia. PJM operates the wholesale electricity market and manages a long-term regional electric transmission planning process to maintain the reliability of the power supply system.

**PJM System** - The transmission facilities located in the Mid-Atlantic region that are controlled by PJM.

**Power** - The rate at which energy is transferred, usually measured in watts.

**Power Broker** - An individual or firm that arranges power sales between other parties, but never actually owns the power. Power brokers are not required to register with the Federal Energy Regulatory Commission (FERC).

**Power Marketer** - An individual or firm that sells power that it either buys or generates on its own. Power marketers require certification by the Federal Energy Regulatory Commission (FERC).

**Price to Compare** – The representative cost of electricity generation and transmission charged by the EDC, or Provider of Last Resort. The price is dictated primarily by published tariffs, but may also include ancillary charges determined reasonable by the issuer of a Request For Quote.

**Real-time Pricing** - The instantaneous pricing of electricity by the seller based on the cost of electricity in the open wholesale power market at the time it is needed by the customer.

**Regional Transmission Organization (RTO)** - An organization regulated by the Federal Energy Regulatory Commission that owns and/or operates all or part of the transmission systems of several companies in order to ensure independence and non-discriminatory access for all users. Regional transmission organizations include independent system operators, transmission companies (Transcos), and independent transmission companies.

**Retail Customer** - Customers, including residences and businesses, who consume the electricity they purchase.

**Retail Wheeling** - The sale of electricity by a utility or other supplier to a customer in another utility's retail service area. Wheeling refers to the use of the local utility's transmission and distribution lines to deliver the power from a wholesale supplier to a retail customer by a third party.

**Shopping Credit** - The amount not paid to the local utility if the customer buys power from another supplier. It is the price a customer should use to determine savings when buying electricity from a new supplier rather than paying the utility's regulated rates.

**Slamming** - A practice in which the right to provide products or services to a customer is transferred to another supplier without that customer's permission.

**Stranded Investments** - Costs incurred by utilities to meet their obligation to serve their customers in a regulated environment with the understanding that the costs are recovered through electric rates. These costs would become stranded when customers leave their present utility for another supplier and no longer pay their share of these costs - which are not yet fully recovered for the most part and are already built into the utility's rate structure.

**Supplier of Last Resort** – The Company that provides at least transmission and distribution services to customers who exercise generation choice. This company will still provide generation services to those who do not choose another generator, or for some reason no longer have generation services from another company.

**Transition Charges** - These are charges that generally represent the costs of government policies, practices or mandates and otherwise would not exist in a competitive market. Recovery of these costs will not increase customer prices over current levels.

**Transmission Charges** - Basic service charges for the cost of transporting electricity over high voltage wires from the generator to the distribution system of an electric distribution company.

**Unbundling** - In a regulated environment, the generation, transmission and distribution of electric power to the customer is provided as a single package. In unbundling, these services are separated into individually priced components.



**Watt** - A unit of electric power. For example, a 100-watt bulb turned on for 10 hours would use 1,000 watts of electricity or one kilowatt-hour.

**Wheeling Service** - The movement of electricity from one system to another over transmission facilities of intervening systems.

**Wholesale Customers** - Municipal utilities, private utilities, rural electric cooperatives and others that purchase electricity from other (wholesale) suppliers to resell to their own retail customers.

**Wholesale Wheeling** - The process of sending electricity from one wholesale supplier to another wholesale supplier by a third party. Under the Energy Policy Act of 1992, electric companies are required to provide wholesale transmission wheeling services to any electric utility, federal power marketing agency, or other company generating electric energy for sale in the wholesale market.

V-3 **Natural Gas Definitions:** The following definitions apply to the words and phrases used in this Part V and subsequent RFQ documents, unless the text or usage clearly indicates otherwise.

**Balancing** - The act of making the receipts into and withdrawals out of the pipeline or LDC equal.

**Bcf** - Billion cubic feet.

**Broker** - An agent, independent of the end-user and gas supplier, who negotiates contracts for gas purchases or transportation; but does not generally take title to the supply.

**British Thermal Unit (Btu)** - A unit of measurement representing the amount of heat that is necessary to raise the temperature of one pound of water by one degree Fahrenheit.

**Bundled Service** - Natural gas sales service and pipeline transportation service packaged together in a single transaction in which the pipeline, on behalf of the utility, buys gas from producers and then delivers it to the utility.

**Burnertip** - End user's physical point of burning natural gas.

**Capacity** - The maximum amount of natural gas produced, transported, stored, distributed, or utilized in a given period of time under design conditions.

**Ccf** - Abbreviation for 100 cubic feet of gas. Typically used for residential consumption.

**Citygate** - A location at which custody and title of gas passes from an interstate natural gas pipeline company to a Local Distribution Company (LDC).

**Commodity** - The actual product sold (e.g. natural gas). The commodity charge is the charge per unit (volume or heat content) delivered to the customer.

**Conversion Factors** - 1 Cf (cubic foot) approx. 1,030 Btu's

1 Ccf = 100 Cf approx. 1.03 Therm = 103,000 Btu's = 30.25 kWh

1 Mcf = 10 Ccf approx. 10.3 Therms = 1.03 Dekatherm (Dth) = 1.03 mmBtu = 302.5 kWh

1 MMcf = 1,000 Mcf approx. 10,300 Therms = 1,030 Dth = 1,030 mmBtu = 302,500 kWh

1 Tcf = One trillion cubic feet approx. 10,300,000 Therms

1 kWh approx. 3.306 cubic feet of natural gas

**Delivery Point** - The point on a gas pipeline's system at which it delivers natural gas that it has transported. The citygate is the delivery point for a pipeline or transportation company because this is where the gas is transferred to the Local Distribution Company.

**Distribution** - Mains, service connections and equipment that carry or control the supply of natural gas from the point of local supply to and including the sales meters.

**Dekatherm (Dth)** - A unit of heating value equal to 10 Therms or one millions Btu's (1 MMBtu).

**Firm Contract Service** - A type of contracted pipeline service wherein the distributor agrees to provide the buyer with uninterrupted natural gas transportation.

**Firm Transportation** - The obligation to purchase and sell is unconditional. The only exception to this obligation standard is when it is suspended due to an event recognized by the parties under this agreement as a "Force Majeure" event.

**Fixed Rate Pricing** - The price of commodity is established and "fixed" (unchanged) for a specified term.

**Gas Cost Recovery (GCR)** - A mechanism by which utilities are required to pass-thru their actual cost of natural gas and interstate pipeline services to the consumer. A GCR rate is the LDC's actual cost of the gas commodity, transportation, storage, etc., including add-ons to cover all expenses such as non-paying customers.

**Hedge** - The risk management method used to minimize the financial risk of a gas price change on fixed price gas supply deals.

**Independent Producer** - Basically a non-integrated company, which receives nearly all of its revenues from production at the wellhead.

**Index/Market-Based Pricing** - The price of commodity is based on one of several monthly market indexes and fluctuates accordingly.

**Interruptible Service** - A contract allowing a distributing party to temporarily suspend delivery of gas to a buyer in order to meet the demands of customers who purchased firm service. Interruptible service is less expensive than firm service, and is used by customers who can either accommodate interruption, or switch to alternative fuels temporarily.

**Licensed Natural Gas Supplier** – An entity licensed by the PUC as a firm capable, and in the business of providing natural gas for sale to the public.

**Local Distribution Company (LDC)** - A retail gas distribution company that delivers natural gas to end users (consumers).

**Marketer** - An entity engaged in bringing together sellers and buyers, usually on a spot-market basis, assisting in negotiations and arranging transportation and delivery terms.

**Mcf** - 1,000 cubic feet of gas.

**Methane** – The main component of natural gas (approximately 90%).

**Natural Gas** - A naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in porous geological formations beneath the earth's surface, often in association with petroleum. The principal constituent is methane, CH<sub>4</sub>.

**Nomination** - A request for a specific quantity of gas under a specific purchase, sales or transportation agreement, or for all contracts at a specific point.

**Off Peak Period** - The period of time during a day, week, month or year when gas use on a particular system is not at its maximum.

**Operational Flow Order (OFO)** - Used by utilities to regulate curtailments and interruptions due to weather extremes, emergency situations and ensure proper deliveries on established priorities (e.g. human needs - hospitals).

**Peak Use Period** - The period of time when gas use on a particular system is at its maximum. This is the period when gas supply is most likely suspended for interruptible service customers. Distributors also employ techniques such as peak shaving to soften the impacts of high demand on the pipelines.

**Producer** - A natural gas producer is generally involved in exploration, drilling, and refinement of natural gas. There are independent producers, as well as integrated producers, which are generally larger companies that produce, transport and distribute natural gas.

**Spot Market** - A product of deregulation, the spot market is a method of contract supply and purchasing whereby commitments by the buyer and seller are of a short duration at a single volume purchase.

**Spot Purchase** - Natural gas purchased on the spot market, on a commitment of 30 days or less.

**Storage** - Is the actual gas storage space, whether it is underground salt domes, depleted oil or gas wells, or aquifers, etc.

**Transportation** - Is the space (capacity) in the pipeline. Transportation costs are used to pay for space on the pipeline to move the gas from the supplier to the end user.

**Unbundled Services** - Unbundling, or separating, pipeline transmission, sales and storage services on the pipelines for all gas shippers.

## Part VI Contract Terms and Conditions

VI-1 **Order Method:** Qualified Suppliers who are selected to provide a product or service through their response to an RFQ against this contract shall receive an Award Letter from the Issuing Office specified in Part I-2. This Award Letter constitutes a Qualified Supplier's official binding notice of award and its authority to supply the services outlined in the RFQ to the ordering location. All awards incorporate the terms and conditions of the corresponding RFQ for the accounts indicated, as well as the terms and conditions of this ITQ contract. Unless specified otherwise in an RFQ, Qualified Suppliers will be issued a purchase order for the item(s) or service(s) awarded

VI-2 **Supplier Duties:** The supplier, subject to the terms and conditions set forth in the contract, shall provide awarded Deregulated Energy Supply and/or Related Services to the Ordering Location by:

- Performing and managing the delivery of electricity as specified, to an electric distribution company for the ordering location's account(s), and/or
- Acquiring renewable energy credits as defined in Requests for Quote and providing documentation attesting to the transfer of ownership of such credits to the ordering location, and/or
- Performing and managing the delivery of natural gas to a LDC for the ordering location's account(s), and/or
- Providing recommendations of use of fuel types for Ordering Locations capable of using natural gas or heating oil and providing the amount of recommended fuel required by the Ordering Location, and/or
- Providing load monitoring and/or control devices as defined in Request for Quote to the ordering location, and/or
- Providing awarded miscellaneous energy services as defined in the scope of services in the Requests for Quote from which the award resulted.

The Supplier shall bill, and accept as compensation, for the duties defined above, the compensation set forth in Part VI-4, Supplier Compensation.

Upon receipt of an award for electricity or natural gas, commodity delivery or where otherwise applicable, the contractor shall notify the corresponding distribution company of its selection as the supplier for Ordering Location. If the contractor fails to timely notify the distribution company, the contractor is liable for any costs, expenses, or price increases resulting from such failure.

VI-3 **Invoicing and Payment Method:** Qualified Suppliers are to furnish a monthly invoice to the location specified by the Issuing Office. Suppliers may be required to provide an aggregate invoice of all items or services provided to multiple locations or accounts across multiple Commonwealth agencies.

Ordering Locations may make payment to awarded Qualified Suppliers for the item(s) or service(s) provided through this ITQ Contract through multiple methods. The invoicing and payment method to be used is at the sole discretion of the Issuing Office and shall be specified in a particular RFQ. The Commonwealth reserves the right to use its Commonwealth Procurement VISA card, or any other subsequent credit card program to pay for items or services provided under this contract.

Where possible, Qualified Suppliers are to invoice electronically for any items or services provided under this contract in a format acceptable to the Commonwealth. Suppliers may receive payment for items or services provided by electronic funds transfer (EFT) at their discretion.

VI-4 **Supplier Compensation:** The Ordering location shall pay the Supplier for energy commodity or service delivered on behalf of the Ordering Location as registered by the Ordering Location or at the Ordering Location's meter in accordance with the price structure contained in the RFQ

against which the order was placed. The Supplier agrees that the Ordering Location may set off the amount of any state tax liability or other debt of the Supplier or its subsidiaries that is owed to the Commonwealth and not being contested or appealed against any payments due the Supplier under this agreement or any other contract with the Commonwealth.

VI-5 **Payment:** The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is (a) the date payment is due under the terms of the Contract, (b) thirty (30) days after a proper invoice actually is received at the Comptroller office address specified via purchase order or at the time of award (if a date when payment is due is not specified in the Contract, a "proper" invoice is not received until the Commonwealth accepts the item(s) or service(s) 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) established through the RFQ. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in Accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Qualified Supplier as acceptance of the item(s) or service(s) furnished by the Qualified Supplier. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) or service(s) furnished by the Qualified Supplier. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) or service(s) if such post payment testing or inspection discloses a defect or failure to meet specifications. The Qualified Supplier agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Qualified Supplier or its subsidiaries to the Commonwealth against any payments due the Qualified Supplier under any contract with the Commonwealth.

VI-6 **Purchase Orders:** Ordering locations may elect to issue purchase orders against this contract. Each PO will incorporate the terms and conditions as set forth in this Contract and any applicable RFQ. PO's are issued to a Qualified Supplier based on its responses submitted to an RFQ.

Purchase Orders against the previous Commonwealth contract, titled Invitation to Qualify for the Sale of Energy to the Commonwealth of Pennsylvania, reference 9120-08 effective January 1, 2004 and ending December 31, 2008, which this ITQ Contract replaces, may be carried over to this ITQ Contract. Should a Purchase Order against the preceding ITQ contract be carried over into this ITQ Contract, the terms and conditions of the original RFQ and preceding ITQ contract shall continue to apply to that Purchase Order.

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

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

The fully-executed Purchase Order may be sent to the Qualified Supplier electronically or through facsimile equipment. The electronic transmission of a Purchase Order shall require acknowledgement of receipt of the transmission by the Qualified Supplier. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of the fully-executed Purchase Order.

The Commonwealth and the Qualified Supplier specifically agree as follows:

- a. No handwritten signature shall be required in order for the Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Purchase Order acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Purchase Order acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order acknowledgement were not in writing or signed by the parties. A Purchase Order acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase orders under five thousand dollars (\$5000) in total amount may also be made in person or by telephone using a Commonwealth Procurement VISA Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Qualified Suppliers agree to accept payment through the use of the Commonwealth Procurement VISA card.

- VI-7 **Independent Contractors:** In performing the obligations required by the Contract, the Qualified Supplier will act as an independent contractor and not as an employee or agent of the Commonwealth.
- VI-8 **Compliance with Law, Permit, and Licensure Requirements:** The Qualified Supplier shall comply with all federal, state, and local laws and regulations and local ordinances in the performance of the Contract. The Qualified Supplier shall procure, at its expense, all licenses and all permits necessary for the fulfillment of its obligations.
- VI-9 **Environmental Provisions:** In the performance of the Contract, the Qualified Supplier shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.
- VI-10 **Title:** Title to, and risk of loss of energy commodity shall pass from the Qualified Supplier to the Commonwealth at the Delivery Point.
- VI-11 **Warranty:** The Qualified Supplier warrants title and the right to all energy commodities sold hereunder. The Commonwealth acknowledges that it will enter into the Contract based solely upon these express warranties. The Supplier disclaims any other warranties, including the warranties of merchantability and fitness for a particular purpose.
- VI-12 **Service from Distribution Company:** During the term of the contract the Commonwealth agrees to make and maintain the necessary arrangements so that the Electric Distribution Company and the Local Distribution Company provides service to the Ordering Location(s). The Ordering Location is responsible for the distribution fees charged by the Electric Distribution Company and the Local Distribution Company as approved by the PUC unless specified otherwise in a particular RFQ.
- VI-13 **Changes in Commodity Requirements:** The Ordering location is required to provide written notice to the awarded Qualified Supplier of any significant changes, plus or minus ten (10) percent, in the Ordering Location's estimated requirements for energy commodity, as soon as practicable, upon the Ordering Location's learning of such occurrence, but in no event later than

fifteen (15) days of such modification. This includes modifications due to new facility construction, facility closings, strikes, or other events that significantly increase or decrease the agency's energy commodity needs. The Ordering Location's failure to provide such notice shall relieve the Supplier of its obligation to pay any charges imposed by the distribution company resulting from such lack of notice.

VI-14 **Taxes:** The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration no. 2374001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees, vehicle rental tax, and gross receipts 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.

VI-15 **Ownership Rights:** The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or delivered to the Commonwealth as part of the performance of the Contract.

Any data collected under the contract shall become the property of the Commonwealth and/or the respective Ordering Location and shall not be furnished to any other parties without written permission of the Commonwealth and/or the respective Ordering Location.

VI-16 **Assignment of Anti-Trust Claims:** The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's supplier resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the contract, and intending to be legally bound, the contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the supplies and services which are subject of the Contract.

VI-17 **Hold Harmless Provision:** The Qualified Supplier shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands, and actions based upon or arising out of any activities performed by the Qualified Supplier and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

VI-18 **Audit Provisions:** The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Qualified Supplier to the extent that the books, documents and records relate to costs or pricing data for awarded items or services. The Qualified Supplier agrees to maintain records that will support the prices charged and costs incurred for the awarded items or services.

The Qualified Supplier shall preserve books, documents, and records that relate to costs or pricing data for the awarded items or services for a period of three (3) years from date of final payment. The Supplier shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

VI-19 **Default:**

- a. The Commonwealth may, subject to the provisions of Part VI-20, Force Majeure, and in addition to its other rights under the Contract, declare the Qualified Supplier in default by written notice

thereof to the Qualified Supplier and terminate (as provided in Part VI-21, Termination Provisions), the whole or any part of this Contract including a purchase order, for any of the following reasons:

- (1) Failure to deliver the awarded item(s) within the time specified in the Contract or contract purchase order or as otherwise specified;
- (2) Improper delivery;
- (3) Failure to provide an item(s) which is in conformance with the specifications referenced in the applicable Request for Quote;
- (4) Delivery of a defective item;
- (5) Failure or refusal to remove and replace an item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
- (6) Insolvency or bankruptcy;
- (7) Assignment made for the benefit of creditors;
- (8) Failure to protect, to repair, or to make good any damage or injury to property; or
- (9) Breach of any provision of this Contract

- b. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those so terminated, and the Qualified Supplier shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.
- c. If the Contract is terminated in whole or in part as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Department of General Services, such partially manufactured or delivered item(s) as the Qualified Supplier has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for any partially manufactured or delivered item(s) accepted by the Commonwealth shall be in an amount agreed upon by the qualified Supplier and the Commonwealth. The Commonwealth may withhold from amounts otherwise due the Qualified Supplier for such partially manufactured or delivered items, such sum as the Commonwealth determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Qualified Supplier's administrative remedies as set forth in Part VI-23, the Qualified Supplier's exclusive remedy shall be to seek damages in the Board of Claims.

VI-20 **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 are not limited to, acts of God or war, changes in controlling law, regulations, orders, or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.



The Qualified Supplier shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Qualified Supplier becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe full 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 Qualified Supplier shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract or purchase order or to extend the time for performance as reasonably necessary to compensate for the Qualified Supplier's delay.

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

VI-21 **Termination Provisions:** The Commonwealth has the right to terminate this Contract for the following reasons. Termination shall be effective upon written notice to the Qualified Supplier.

- a. **Termination for Convenience:** The Commonwealth shall have the right to terminate the Contract or an award resulting from an RFQ against this Contract for its convenience if the Commonwealth determines termination to be in its best interests. The Qualified Supplier shall be paid for any item(s) or service(s) provided and work satisfactorily completed prior to the effective date of the termination. In addition, a Qualified Supplier may recover damages when the Qualified Supplier can demonstrate irrevocable purchase commitments made by the Qualified Supplier prior to the receipt of such termination notice, in preparation for deliveries under awards made as a result of an RFQ against this Contract. The Qualified Supplier shall take all prudent and reasonable steps to assign, sell, or dispose of commitments at the best market price obtainable. The Ordering Location will reimburse the Qualified Supplier for costs incurred in assigning, selling, or disposing of commitments. In addition, the Ordering Location shall pay the Qualified Supplier damages equal to the difference in the amount between the price at which the commitments are sold and the price the Ordering Location would have paid under the Contract. The burden of proof for such costs and damages rests solely and wholly with the Qualified Supplier. In no event shall the Qualified Supplier be entitled to recover loss of profits or those costs that may be charged between or among Qualified Supplier's subsidiary or other associated corporations or entities of any type.
- b. **Non-Appropriation:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or award resulting from an RFQ against this Contract. The contractor shall be paid for any item(s) or service(s) provided and work satisfactorily completed prior to the effective date of the termination. In addition, a Qualified Supplier may recover damages when the Qualified Supplier can demonstrate irrevocable purchase commitments made by the Qualified Supplier prior to the receipt of such termination notice, in preparation for deliveries under awards made as a result of an RFQ against this Contract. The Qualified Supplier shall take all prudent and reasonable steps to assign, sell, or dispose of commitments at the best market price obtainable. The Ordering Location will reimburse the Qualified Supplier for costs incurred in assigning, selling, or disposing of commitments. In addition, the Ordering Location shall pay the Qualified Supplier damages equal to the difference in the amount between the price at which the commitments are sold and the price the Ordering Location would have paid under the contract. The burden of proof for such costs and damages rests solely and wholly with the Qualified Supplier. In no event shall the Qualified Supplier be entitled to recover loss of profits or those costs that may be charged between or among Qualified Supplier's subsidiary or other associated corporations or entities of any type. The reimbursement amount may be paid from any appropriations available for that purpose.

- c. **Termination for Cause:** The Commonwealth shall have the right to terminate the Contract for Qualified Supplier Default under Part VI-19, Default, upon written notice to the qualified Supplier. The Commonwealth shall also have the right, upon written notice to the Qualified Supplier, to terminate the Contract or a purchase order for loss of required license or for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a contract purchase order for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under subparagraph a. above.

VI-22 **Disqualification After-The-Fact:** A Qualified Supplier seeking removal from this ITQ contract can do so by written request to the Issuing Office.

Qualified Suppliers with any current awards against this Contract are prohibited from seeking disqualification under this Part VI-22. Any such cases shall be addressed under Part VI-21, Termination of Agreement.

VI-23 **Contract Controversies:**

- a. In the event off a controversy or claim arising from the Contract, the Qualified Supplier 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 Qualified Supplier asserts a controversy exists. If the Qualified Supplier fails to file a claim or files an untimely claim, the Qualified Supplier is deemed to have waived its right to assert a claim in any forum.
- b. 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 Qualified Supplier. The contracting officer shall send his/her written determination to the Qualified Supplier. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Qualified Supplier may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Qualified Supplier shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Qualified Supplier pursuant to the terms of the Contract.

VI-24 **Remedies:** In the event the Commonwealth terminates the Contract or award resulting from an RFQ against the Contract, in whole or in part, pursuant to Part VI-21 (c) and except for acts or omissions under Part VI-20, Force Majeure, the Commonwealth may, in its discretion, procure, upon such terms and in such manner as it may deem appropriate, service similar to those terminated, and the Qualified Supplier shall be liable to the Commonwealth for the difference, if any, between the purchase price paid by the Commonwealth, utilizing commercially reasonable efforts for replacement and the price(s) established in the terminated awards resulting from and RFQ against the Contract, multiplied by the difference between the quantity specified hereunder and the quantity actually delivered by the Qualified Supplier for such day(s).

VI-25 **Severability:** Should any term of the Contract be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the Contract to the extent possible.

**VI-26 Assignability and Subcontracting**

- a. Subject to the terms and conditions of this Paragraph, the Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Qualified Supplier shall not subcontract with any person or entity to perform all or any part of the work to be performed under the Contract without prior written consent of the Contract Administrator, which consent may be withheld at the sole and absolute discretion of the Contract Administrator.
- c. The Qualified Supplier may not assign in whole or in part, the Contract or its rights, duties obligations, or responsibilities hereunder without the prior written consent of the Contract Administrator, which consent may be withheld at the sole and absolute discretion of the Contract Administrator.
- d. Notwithstanding the foregoing, the Qualified Supplier may, without the consent of the Contract Administrator, assign its rights to payment to be received under the Contract or award resulting from an RFQ against the Contract, provided that the Contractor provides written notice of such assignment to the Contract Administrator and the Ordering Location, together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.
- e. For the purposes of the 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 Qualified Supplier, 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 Contract Administrator shall be evidenced by a written assignment agreement executed by the Qualified Supplier 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 Qualified Supplier, following which the Qualified Supplier's federal identification number remains unchanged, shall not be considered an assignment. The Qualified Supplier shall give the Contract Administrator written notice of any such change of name.

**VI-27 Nondiscrimination/Sexual Harassment Clause:** Qualified Supplier agrees to the following:

- a. In the hiring of any employee(s) for the manufacture of supplier, performance of work, or any other activity required under the contract or any subcontract, the Qualified Supplier, subcontractor, or any person acting on behalf of the Qualified Supplier or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Qualified Supplier nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract on account of gender, race, creed, or color.
- c. Qualified Suppliers and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. Qualified Suppliers shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.
- e. The Qualified Supplier and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the

contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the Qualified Supplier or any subcontractor does not possess documents or records reflecting the necessary information requested, the Qualified Supplier or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

- f. The Qualified Supplier shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. 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 Qualified in the Contractor Responsibility file.

VI-28 **Contractor Integrity Provisions:**

a. Definitions:

- (1.) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
- (2.) **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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
- (3.) **Contractor** means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
- (4.) **Financial Interest** means:
  - (a.) Ownership of more than a 5% interest in any business; or
  - (b.) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- (5.) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

- b. The Qualified Supplier shall maintain the highest standard of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Qualified Supplier shall not disclose to others any confidential information gained by virtue of this agreement.
- d. The Qualified Supplier shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- e. The Qualified Supplier shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

- f. Except with the consent of the Commonwealth, neither the Qualified Supplier nor anyone in privity with him shall accept or agree from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
- g. Except with the consent of the Commonwealth, the Qualified Supplier shall not have any financial interest in any other qualified supplier, subcontractor, or supplier providing services, labor, or material on this Contract.
- h. The Qualified Supplier, upon being informed that any violation of these provisions has occurred or may occur shall immediately notify the Commonwealth in writing.
- i. The Qualified Supplier, by execution of this agreement and by the submission of any bills or invoice for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
- j. The Qualified Supplier shall, upon request of the Office of State Inspector General, reasonably and promptly make available to that office and its representatives, for inspection and copying, all business and financial records relevant to the enforcement of these provisions.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Qualified Supplier, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another qualified supplier to complete performance thereunder, and debar and suspend the Qualified Supplier from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, status, requisition, or otherwise.

VI-29 **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 sub grantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or sub grant with the Commonwealth, or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

- a. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers 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 the bid/proposal, a written explanation of why such certification cannot be made.
- b. The contractor must also certify, in writing that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.
- 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 contracting agency 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 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 fifteen (15) days of the date of suspension or debarment.
- d. The failure of the contractor to notify the contracting agency 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 investigation of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but are not 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 using the internet at the address below.

[http://www.portal.state.pa.us/portal/server.pt?open=512%objID=1271&&PageID=244340&level=3&css=L3&mode=2&in\\_hi\\_userid=16087&cached=true](http://www.portal.state.pa.us/portal/server.pt?open=512%objID=1271&&PageID=244340&level=3&css=L3&mode=2&in_hi_userid=16087&cached=true)

Contractors may also obtain this list by contacting the DGS Office of Chief Counsel at the following location:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-6472  
Fax: (717) 787-9138

VI-30 **Releases to Media:** The Qualified Supplier shall not issue any news releases about his Commonwealth program or the Contract without prior written consent of the Issuing Office. News releases pertaining to purchase orders resulting from this multi-award contract may not be made without the approval of the Ordering Locations.

VI-31 **The Americans With Disabilities Act Provisions:**

- a. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. Section 35.101 et. Seq., the Qualified Supplier understands and agrees that no individual with a disability shall, because of the disability, be excluded from participation in the contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Section 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act that are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contract with outside contractors.
- b. The Qualified Supplier 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 Qualified Supplier's failure to comply with the provisions of Part V-33 (a) above.

VI-32 **Covenant Against Contingent Fees:** The Qualified Supplier warrants that it has no employed or retained any company or person, other than a bona fide employee working solely for the Qualified Supplier, to solicit or secure the Contract, and that it has no paid or agreed to pay any company or person, other than a bona fide employee working solely for the qualified Supplier, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract or award resulting from and RFQ against the Contract without liability or, in its discretion, to deduct from a purchase order price, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

- VI-33 **Applicable Law:** the 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 Qualified Supplier 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 Qualified Supplier 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.
- VI-34 **Integration:** The Contract, including the Qualified Supplier's proposal and the ITQ, and all Exhibits attached thereto, and all purchase orders and awards issued thereunder, constitutes the entire agreement between the parties. It supersedes all prior agreements. No agent, representative, employee, or officer of either the Commonwealth or the Qualified Supplier 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 customer 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. All such amendments will be made using the appropriate Commonwealth form.
- VI-35 **Amendments:** The contract represents the complete agreement between the parties, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections, or additions to the Contract shall be in writing in the form of a supplemental agreement signed by both parties, setting forth therein the proposed change, correction, or addition.
- VI-36 **Patent, Copyright, and Trademark Indemnity:** The Qualified Supplier warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of the item(s) or the process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the Contract. The Qualified Supplier shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent copyright or trademark infringement in the United States of the item(s) provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If the Commonwealth at the Qualified Supplier's written request furnishes information and assistance, it shall be at the Qualified Supplier's expense, but the responsibility for such expense shall be only that within the Qualified Supplier's written authorization.

The Qualified Supplier shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the qualified Supplier or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Contract. If any of the item(s) provided by the Qualified Supplier are held in such suit or proceeding to constitute infringement and the use is enjoined, the Qualified Supplier shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with noninfringement equal performance item(s) or modify them so that they are no longer infringing. If the Qualified Supplier is unable to do any of the preceding, The Qualified Supplier agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the item(s) of the products, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less a reasonable 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 qualified Supplier under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Qualified Supplier without its written consent.



## Appendix A – COSTARS Response

**COSTARS Purchasers.** Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 (“Section 1902”), authorizes local public procurement units and state-affiliated entities (together, “COSTARS Purchasers”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Purchasers. DGS has identified this Contract as one suitable for COSTARS Purchaser participation.

- A. Only those COSTARS Purchasers registered with DGS may participate as COSTARS Purchasers in a Commonwealth contract. Several thousand COSTARS Purchasers are currently registered with DGS; therefore, the Contractor agrees to permit **only** to DGS-registered COSTARS members to make COSTARS purchases from this Contract.
1. **A “local public procurement unit” is:**
    - Any political subdivision;
    - Any public authority;
    - Any tax exempt, nonprofit educational or public health institution or organization;
    - Any nonprofit fire, rescue, or ambulance company; and
    - To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.
  2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.
- B. **COSTARS Purchasers have the option to purchase from a Contract awarded under this procurement, from any DGS contract established exclusively for COSTARS Purchasers in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that any prospective COSTARS Purchaser will place an order under this Contract, and that it is within the sole discretion of the registered COSTARS Purchaser whether to procure from this Contract or to use another procurement vehicle.**
- C. **DGS is acting as a facilitator for COSTARS Purchasers who may wish to purchase under this Contract. Registered COSTARS Purchasers who participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.**
- D. **Registered COSTARS Purchasers electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.**
- E. **The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter’s Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall**

submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

1. Until such time as DGS may provide the Contractor written notice of automated report filing, the Contractor shall either e-mail the reports to [GS-PACostars@state.pa.us](mailto:GS-PACostars@state.pa.us) or send the reports on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6<sup>th</sup> Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101. When DGS has instituted automated reporting, the Contractor shall comply with DGS's written notice and instructions on automated Contract reports. DGS will provide these instructions with sufficient advance time to permit the Contractor to undertake automated reporting.
2. The Contractor shall include on each report the Contractor's name and address, the Contract number, and the period covered by the report. For each PO received, the Contractor shall include on the report the name of each COSTARS-Registered Purchaser that has used the Contract along with the total dollar volume of sales to the specific Purchaser for the reporting period.
3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

F. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at [www.dgs.state.pa.us/costars](http://www.dgs.state.pa.us/costars).

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at [www.dgs.state.pa.us/costars](http://www.dgs.state.pa.us/costars), where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services  
COSTARS Program  
555 Walnut Street, 6<sup>th</sup> Floor  
Harrisburg, PA 17101  
  
Telephone: 1-866-768-7827  
E-mail [GS-PACostars@state.pa.us](mailto:GS-PACostars@state.pa.us)

If your firm is awarded a Contract, does it agree to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to registered COSTARS Purchasers who elect to participate in the contract?

Please Answer: YES \_\_\_\_\_ NO \_\_\_\_\_

## Appendix B – Mandatory Requirements Form

Each of the following mandatory requirements must be addressed **on this form** by indicating acceptance of each. **Include this completed form with your submittal**

**Non-acceptance of any of the mandatory requirements, or modification of, or the placing of conditions on acceptance of any of the mandatory requirements, in whole, or in part, shall result in immediate disqualification.**

**Check “YES” to accept. Check “NO” to reject. Failure to respond will be deemed as non-acceptance**

- | YES   | NO    |  |
|-------|-------|--|
| _____ | _____ | 1. Have you submitted a complete submittal to this ITQ using the format provided in PART III?  |
| _____ | _____ | 2. Does your submittal contain the Contract Signature Page with an <b><u>ORIGINAL SIGNATURE</u></b> of an official of your company authorized to bind you company to its provisions? |
| _____ | _____ | 3. Do you agree that the contents of your submittal will become part of any contract entered into as a result of this ITQ?   |
| _____ | _____ | 4. Have you included a response to the COSTARS Questionnaire in your submittal (check “yes” or “no” in area provided in APPENDIX A)?   |
| _____ | _____ | 5. Have you been in business for a minimum of one year?  |

**Appendix C – Energy Commodity Supply  
and Related Services Declaration Form**

<b>Company Name:</b>	
<b>Federal I.D. Number:</b>	

<b>Propose to Provide Service Category:</b> <b>Electrical Energy Generation &amp; Transmission</b> (Requires current PA PUC license as competitive electric supplier and FERC license as power marketer)		
The following individual is responsible for receiving Requests For Quote and for preparing and submitting quotations relating to Electrical Energy Generation & Transmission.		
<b>Name:</b>		
<b>Mailing Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Client References:</b> Provide three (3) client references for similar projects that did not end three (3) years prior to the proposal submittal date.		
<b>Reference #1</b>	<b>Reference #2</b>	<b>Reference #3</b>

<b>Propose to Provide Service Category:</b> <b>Renewable Energy Credits</b> (Requires current PA PUC license as competitive electric supplier and FERC license as power marketer)		
The following individual is responsible for receiving Requests For Quote and for preparing and submitting quotations relating to Renewable Energy Credits		
<b>Name:</b>		
<b>Mailing Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Client References:</b> Provide three (3) client references for similar projects that did not end three (3) years prior to the proposal submittal date.		
<b>Reference #1</b>	<b>Reference #2</b>	<b>Reference #3</b>

<b>Propose to Provide Service Category:</b> <b>Natural Gas Supply Services</b> <b>(Requires current PA PUC license as competitive natural gas supplier)</b>		
The following individual is responsible for receiving Requests For Quote and for preparing and submitting quotations relating to Natural Gas Supply Services.		
<b>Name:</b>		
<b>Mailing Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Client References:</b> Provide three (3) client references for similar projects that did not end three (3) years prior to the proposal submittal date.		
<b>Reference #1</b>	<b>Reference #2</b>	<b>Reference #3</b>

<b>Propose to Provide Service Category:</b> <b>Multi-Fuel Services</b> <b>(Requires current PA PUC license as competitive natural gas supplier)</b>		
The following individual is responsible for receiving Requests For Quote and for preparing and submitting quotations relating to Multi-Fuel Services		
<b>Name:</b>		
<b>Mailing Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Client References:</b> Provide three (3) client references for similar projects that did not end three (3) years prior to the proposal submittal date.		
<b>Reference #1</b>	<b>Reference #2</b>	<b>Reference #3</b>

## CONTRACT SIGNATURE PAGE

<b>SHEET NUMBER</b> Final	<b>CONTRACT NUMBER</b> 9120-08	<b>CONTRACT BEGIN DATE</b> January 1, 2009
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In compliance with the invitation to quality (ITQ) and subject to the terms and conditions thereof, the undersigned offers and agrees, if this proposal is accepted, to furnish any and all services upon for which purchase orders are issued. The undersigned acknowledges that the representations made in this proposal are material and important and will be relied upon by the Commonwealth in awarding the contract(s) for which the proposal is submitted. Any misstatement in this proposal is, and shall be treated as, fraudulent concealment from the Commonwealth of the facts relating to the submission of this proposal.

<p style="text-align: center;"><u>WHEN THE SUPPLIER IS AN INDIVIDUAL:</u></p> <hr/> <p>SUPPLIER'S NAME</p> <hr/> <p>SIGNATURE</p> <hr/> <p>SIGNATORY'S NAME</p> <hr/> <p>WITNESS</p>	<p style="text-align: center;"><u>WHEN THE SUPPLIER IS A PARTNERSHIP:</u></p> <hr/> <p>NAME OF PARTNERSHIP</p> <hr/> <p>SIGNATURE OF PARTNER</p> <hr/> <p>SIGNATORY'S NAME</p> <hr/> <p>WITNESS</p>
<p><u>WHEN THE SUPPLIER IS A CORPORATION:</u></p>	
<p>SIGNATURE OF PRESIDENT, VICE PRESIDENT, OR AN INDIVIDUAL WHO HAS AUTHORITY TO SIGN ON BEHALF OF CORPORATION PURSUANT TO A POWER OF ATTORNEY OR CORPORATE RESOLUTION</p> <hr/> <p>SIGNATORY'S NAME</p> <hr/> <p>TITLE</p>	<p>CORPORATION NAME</p> <hr/> <p>WITNESS (SECRETARY, ASSISTANT SECRETARY, TREASURER, OR ASSISTANT TREASURER MUST SIGN IF THE PRESIDENT OR VICE PRESIDENT HAS SIGNED)</p> <hr/> <p>WITNESS SIGNATURE</p> <hr/> <p>WITNESS TITLE</p>

The President's or Vice President's signature must be attested by the Corporate Secretary, Assistant Secretary, Treasurer, or Assistant Treasurer. If someone other than the President or Vice President signs on behalf of the corporation, or if the President's or Vice President's signature is not attested to by the Corporate Secretary, Assistant Secretary, Treasurer, or Assistant Treasurer, a copy of a corporate resolution must be attached to this proposal. Failure to include a copy of the appropriate authorization, if required, may result in the rejection of the proposal