



**FULLY EXECUTED - CHANGE 6**  
Contract Number: 4400004306  
Original Contract Effective Date: 05/01/2009  
Contract Change Date: 02/08/2022  
Valid From: 04/01/2009 To: 12/31/9999

All using Agencies of the Commonwealth, Participating Political  
Subdivision, Authorities, Private Colleges and Universities

Your SAP Vendor Number with us: 118289

**Purchasing Agent**

Name: Goodling Betty  
Phone: 717-787-7324  
Fax: 717-783-6241

**Supplier Name/Address:**  
UNIQUESOURCE PRODUCTS AND SERVICES  
500 BENT CREEK BLVD  
MECHANICSBURG PA 17050-1876 US

Supplier Phone Number: 800-447-8860  
Supplier Fax Number: 717-710-2478

**Please Deliver To:**

To be determined at  
the time of the Purchase Order  
unless specified below.

**Contract Name:**  
UniqueSource punch-out

**Payment Terms**  
NET 30

Solicitation No.: \_\_\_\_\_ Issuance Date: \_\_\_\_\_  
Supplier Bid or Proposal No. (if applicable): \_\_\_\_\_ Solicitation Submission Date: \_\_\_\_\_

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
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**General Requirements for all Items:**

**Information:**

Supplier's Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_

Title \_\_\_\_\_  
Date \_\_\_\_\_



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**Supplier Name:**  
UNIQUESOURCE PRODUCTS AND SERVICES

**Header Text**

1/9/2014:  
Vendor name changed from PIBH to UniqueSource Products & Services. SAP Vendor Number and TIN remain the same; web address changed from www.pibh.org to www.uniquesource.com.

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10/25/2013:  
Non-inventoried materials should be ordered via the PIBH punch-out catalog in SRM (Contract 4400004306).  
  
Inventoried materials and/or specialty materials/services should be ordered against SRM Contract 4400004695.  
  
The original inventory contract 4600013889 has been terminated in its entirety. (Refer to SRM Contract 4400004695 to order inventoried materials.)

COSTARS Participation: Yes

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04/01/2009:  
Contract 4400004306 with Pennsylvania Industries for the Blind & Handicapped ("PIBH") shall be used by agencies to purchase materials and/or services that are listed in the PIBH Punch-Out Catalog in SRM, Requisitioner.  
Refer to contract 4400004695 for special order materials and/or services that require a quote from PIBH.  
  
Refer to contract 4600013889 to purchase inventoried materials (MRP only).

COSTARS Participation: Yes  
No further information for this Contract

**Information:**

3/29/09

**DEPARTMENT OF GENERAL SERVICES  
STATEWIDE REQUIREMENTS CONTRACT  
FOR THE PROCUREMENT OF GOODS MANUFACTURED  
AND SERVICES PERFORMED BY PERSONS WITH DISABILITIES**

This Department of General Services Statewide Requirements Contract For the Procurement of Goods Manufactured and Services Performed By Persons With Disabilities ("Contract") is entered into this 1<sup>st</sup> day of March, 2005, by and between the **Commonwealth of Pennsylvania** acting through the Department of General Services ("Department") and **Pennsylvania Industries for the Blind and Handicapped, Inc.** ("PIBH").

**WHEREAS**, PIBH is the central non-profit agency in Pennsylvania for the marketing and sale of goods manufactured and services performed by persons with disabilities ("Goods and Services") through non-profit agencies for persons with disabilities; and

**WHEREAS**, Section 520 of the Commonwealth Procurement Code, 62 Pa.C.S. § 520 ("Code"), requires the Commonwealth of Pennsylvania to procure Goods and Services at Department-established fair market prices; and

**WHEREAS**, the Code provides that all Goods and Services shall be procured in accordance with applicable specifications of the Department and of other Commonwealth agencies; and

**WHEREAS**, the Department and PIBH entered into an agreement that defines the operational requirements and procedures for the Commonwealth's procurement of Goods and Services ("Operational Agreement"), dated Oct. 26, 2005 and incorporated by reference as an integral part of this Contract.

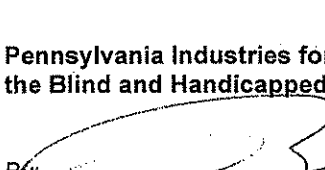
**NOW THEREFORE**, intending to be legally bound, the Department and PIBH agree as follows:

1. Commonwealth Purchasing Agencies shall purchase through PIBH, and PIBH through its affiliated agencies shall sell to the Commonwealth, the Goods and Services identified on the PIBH Carve-Out List (See Exhibit A of the Operational Agreement) and/or as identified in the most current Department-approved PIBH Catalog ("Catalog").
  - a. For Goods and Services priced in the current Catalog, which Catalog, including all periodic updates, is incorporated into this Contract as a material part, the purchase prices shall be as set forth in the Catalog.
  - b. For Goods and Services for which Catalog pricing is not specified or which are not listed in the current Catalog, pricing shall be at the Department-established fair market price.
2. The parties may add new Goods and Services to the Catalog from time to time in accordance with the requirements and procedures set forth in the Code and the Operational Agreement. At any time when additional Goods and Services may be identified, PIBH, at the Department's direction, shall produce a new Catalog listing all existing and new Goods and Services PIBH affiliates may offer, including current pricing information where applicable.
3. The Department and PIBH agree to the following documents that are incorporated by reference into, and made a part of, this Contract:

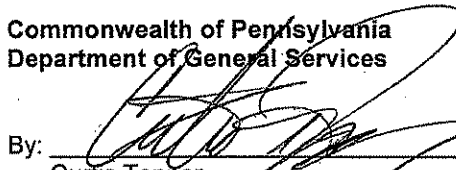
- a. The Operational Agreement between PIBH and the Department;
- b. The Special Terms and Conditions set forth in Exhibit A;
- c. The Standard Contract Terms And Conditions For Department of General Services Statewide Contracts For Supplies – SAP, GSPUR-12E (SAP) Rev. 05/07/04 or the Standard Contract Terms And Conditions For Department of General Services Statewide Contracts For Services – SAP, GSPUR-12F (SAP) Rev. 05/07/04; and
- d. The Department-approved 2005 PIBH Catalog.

IN WITNESS WHEREOF, the parties have signed this Contract.

Pennsylvania Industries for  
the Blind and Handicapped

By:  9/29/05  
Alfred W. Baker Date  
President, CEO  
Federal I.D. Number: 23-1523064

Commonwealth of Pennsylvania  
Department of General Services

By:  9/30/05  
Curtis Topper Date  
Deputy Secretary for Procurement

APPROVED AS TO FORM AND LEGALITY:

Approval obtained electronically Approval obtained electronically  
Office of Chief Counsel Date Office of General Counsel Date

Approval obtained electronically  
Office of Attorney General Date

APPROVED BY:

Approval obtained electronically  
State Treasurer Date

**SPECIAL CONTRACT TERMS AND CONDITIONS**

These SPECIAL TERMS AND CONDITIONS shall be a part of the Statewide Requirements Contract For Goods Manufactured and Services Performed By Persons With Disabilities between the Commonwealth of Pennsylvania, acting through the Department of General Services ("Department") and Pennsylvania Industries for the Blind and Handicapped ("PIBH").

**1. CONTRACT/SCOPE/OVERVIEW:**

This Contract, ~~SAP Contract No. 4600009099, (Legacy No. 9980-02)~~ consisting of SRM Contract No. 4400004306, SRM Contract No. 4400004695 and SAP Contract No. 4600013889, (identified here and in other documents as the "Contract") will cover the requirements of Commonwealth agencies for goods manufactured and services performed by persons with disabilities ("Goods and Services") in accordance with the requirements of the operational agreement between the parties ("Operational Agreement").

 3/27/09

**2. ORDER OF PRECEDENCE:**

These Special Contract Terms and Conditions supplement the Standard Contract Terms and Conditions for Statewide Contracts for Supplies and Services, as applicable. To the extent that these Special Contract Terms and Conditions conflict with the applicable Standard Contract Terms and Conditions, these Special Contract Terms and Conditions shall prevail.

**3. TERM OF CONTRACT:**

This Contract shall commence on the Effective Date, which will be fixed by the Department after Contract execution. The Department shall notify PIBH of the effective date in writing. The Contract shall terminate 60 days after one party gives the other party written notice of termination, subject to any other applicable Contract provisions, including without limitation the provisions in Section XVII. of the Operational Agreement, "Non-Compliance".

**4. CATALOG:**

PIBH shall maintain a catalog ("Catalog") identifying all Goods. The catalog shall also include any Services appropriate for inclusion, as identified by mutual consent of the parties.

- a. On an annual basis, upon the Department's review and approval, PIBH agrees to print and distribute the Catalog to all Commonwealth agencies.
- b. Within two weeks of completion of the annual printing, PIBH agrees to provide copies of the Catalog to all Commonwealth agencies the Department has identified as requiring Catalog copies, at no cost to the Commonwealth (including its agencies). PIBH shall furnish additional Catalog copies to any requesting Commonwealth agency within ten calendar days after the agency's request.

**5. FAIR MARKET PRICE:**

The Commonwealth shall not purchase, and PIBH shall not sell to the Commonwealth, any Goods or Services for which the Department has not first established a fair market price. For Goods and Services not priced in the Catalog, Commonwealth Purchasing Agencies shall submit their requests for fair market price determinations to the Program Manager of this Contract.

**6. DELIVERIES OF GOODS:**

All Goods shall be delivered F.O.B. Destination (to any point within the Commonwealth of Pennsylvania) within a reasonable time, not to exceed 30 calendar days after receipt of the

applicable purchase order, unless otherwise agreed to, in writing, between the Commonwealth Purchasing Agency and PIBH.

**7. CHANGE ORDERS:**

The Program Manager may issue change orders against this Contract to add and/or delete Goods or Services, and to incorporate the most current Department-approved PIBH Catalog. In addition, if both parties agree, the Program Manager may issue a change order to incorporate the most current revision of the Department's Standard Terms and Conditions for Supplies and Services.

**8. RETURN POLICY:**

If a Commonwealth Purchasing Agency receives damaged or defective Goods, PIBH will replace the damaged or defective Goods at no charge to the purchasing agency. For any warranty/return issue, the Commonwealth Purchasing Agency will return the Goods to PIBH for full credit or a replacement, and PIBH will be responsible to return the damaged or defective Goods to its affiliated agency.

**9. PRICE ADJUSTMENTS:**

The Commonwealth understands that the costs of materials and labor related to the Contract are likely to fluctuate during the term of this Contract. Therefore, for Goods and Services, the Program Manager shall adjust the unit prices based on the terms contained in the Operational Agreement between the Department and PIBH. For Service contracts and purchase orders, where the Program Manager has not included a price adjustment in the Catalog, the Commonwealth Purchasing Agency shall adjust the unit prices based on the terms contained in the Operational Agreement between the Department and PIBH.

- a. Any re-established fair market price and/or Department-approved price adjustment shall be effective for new Contract purchase orders placed on or after the effective date of the increase.
- b. Both parties agree that the Commonwealth shall be given the immediate benefit of any price decrease. PIBH shall promptly notify the Department's Program Manager of the amount and effective date of any decrease. Invoices shall reflect Contract prices in effect on the date the applicable Contract purchase order was written.

**10. MINIMUM ORDER:**

There is no minimum order for shipments qualifying for F.O.B. delivered prices.

**11. COSTARS PROGRAM: See attached "COSTARS PROGRAM CLAUSE (REV 04-30-10)"**

~~PIBH understands that the Department, via its COSTARS program, permits local public procurement units ("LPPUs") and state-related entities, as those entities are defined in Section 1901 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1901, to purchase Goods and Services from certain statewide contracts for which the Department is the overall purchasing entity. PIBH specifically agrees that the Department-registered LPPUs and state-affiliated entities shall be eligible purchasers of PIBH Goods and Services, and any other item for which the Department has established a fair market price.~~

- ~~a. PIBH shall require its affiliated agencies to provide, under the same terms and conditions as those applied to a Commonwealth agency under this Contract, any Goods and Services requested by any Department-registered COSTARS member submitting a purchase order at the Department-established fair market price.~~

b. ~~PIBH shall require its affiliated agencies to provide monthly reports of any COSTARS member purchases of Goods or Services under this Contract ("Reports"). PIBH shall compile the Reports and furnish to the Department's COSTARS Division no later than the 15th of the following month, preferably in spreadsheet format, a combined electronic COSTARS sales report for all PIBH affiliate agencies. PIBH shall e-mail the Reports to both [sploeker@state.pa.us](mailto:sploeker@state.pa.us) and [begoodling@state.pa.us](mailto:begoodling@state.pa.us), [GSPACostars@state.pa.us](mailto:GSPACostars@state.pa.us), or to such other e-mail addresses as the Department may from time to time provide in writing to PIBH. Each report should include the name and address of each PIBH affiliate agency supplying goods or services to COSTARS purchasers as well as the specific reporting period covered. The report should list the following information for each order received:~~

*B*  
3/27/09

- ~~• Item No. (where applicable)~~
- ~~• Material Code (where applicable)~~
- ~~• Description~~
- ~~• Quantity~~
- ~~• Unit Price~~
- ~~• Total Price~~
- ~~• Name of COSTARS member purchaser~~

*B* 3/29/09

~~PIBH shall direct any questions regarding the COSTARS program to Susan Plecker, COSTARS Systems Coordinator, at 717-787-1105 or 1-866-768-7827.~~

*B* 3/27/09

**12. ANTI-SWEATSHOP PROCUREMENT POLICY:**

As required by Executive Order 2004-4 (Anti-Sweatshop Procurement Policy), the Department (or other Commonwealth Purchasing Agencies) shall not enter into a contract for the procurement of apparel unless and until the Department (or other Commonwealth Purchasing Agency) determines, in its sole discretion, that the apparel will not be manufactured in a facility that utilizes sweatshop conditions.

PIBH shall complete a certification form and provide a complete list of raw material suppliers/subcontractors for each of these contract purchase orders (refer to the most current revision of the Anti-Sweatshop Clause and Anti-Sweatshop Certification Form stored on the website address at <http://www.dgs.state.pa.us>). PIBH shall submit this documentation to the Commonwealth Purchasing Agency for each contract purchase order issued against this Contract.

**13. PROGRAM MANAGER**

The Program Manager for this contract is:

Betty J. Goodling-Weimer  
[begoodling@state.pa.us](mailto:begoodling@state.pa.us)  
Bureau of Procurement  
Programs & Systems Division  
Forum Place, 6<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1914  
Tel. 717-787-7324

PIBH shall direct all notices or inquiries to the Program Manager.

**COSTARS PROGRAM CLAUSE**

**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 Members”) to participate in Commonwealth procurement contracts that the Department of General Services (“DGS”) may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members’ participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A “local public procurement unit” is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

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 Education Facilities Authority, and
- The State System of Higher Education.

The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, or any Commonwealth executive or independent agencies, boards, or commissions not listed above. Statewide “row” offices, including the Auditor General, Attorney General, and State Treasurer are not State-affiliated entities under the Procurement Code.

However, elements of the court system, the General Assembly, and independent agencies, boards, or commissions have been deemed eligible for COSTARS membership as entities that spend public funds for the procurement of supplies, services, and construction.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.dgsweb.state.pa.us/COSTARSReg/Member.aspx>



- B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members 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 a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that 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 COSTARS Member unless substantial interests of the Commonwealth are involved.
- D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
<b>Qualified Small Business Bidder</b> , defined as having less than 100 full-time employees or full-time equivalent employees and Gross Annual Revenue less than \$20,000,000 (\$25,000,000 for IT sales or service businesses)	\$500
All Other Bidders	\$1,500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is asserting that it is a Qualified Small Business, a completed Department of General Services Small Business Certification must be returned with the bid package.
  2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.
- F. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.
  2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
    - a. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
    - b. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
    - c. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
    - d. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
    - e. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
    - f. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.
- G. 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. The Contractor shall submit the reports via the web-based COSTARS Suppliers' Gateway at [www.dgs.state.pa.us/costars](http://www.dgs.state.pa.us/costars). If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, 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 17101-1914.

2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and 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.

H. 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 Members who elect to participate in the contract? If your answer is "YES", your firm agrees to pay the applicable Administrative Fee (\$1500 or \$500 for Qualified Small Businesses) upon contract award and each contract renewal date.**

Please Answer: YES  NO

**If you are asserting that your firm is a Qualified Small Business, have you completed, signed and included with your bid the required Department of General Services Small Business Certification form?**

Please Answer: YES  NO

PIBA

Corporate or Legal Entity Name

Gary E. Crowell 7/8/2011  
 Signature Date

GARY E. CROWELL, PRES.  
 Printed Name & Title

**OPERATIONAL AGREEMENT  
for the  
Procurement of Goods Manufactured  
and Services Performed by Persons with Disabilities**

This Agreement is made and entered into this 26th day of October, 2005 by and between the Department of General Services (“the Department”) acting on behalf of the Commonwealth of Pennsylvania (“the Commonwealth”), and Pennsylvania Industries for the Blind & Handicapped (“PIBH”), a Pennsylvania non-profit organization.

**WITNESSETH**

**WHEREAS**, Section 520 of the Commonwealth Procurement Code, 62 Pa.C.S. § 520, (“Code”) establishes a statutory framework for the Commonwealth to procure goods manufactured and services performed by persons with severe disabilities (“Goods and Services”); and

**WHEREAS**, the Department, with the approval of the Department of Public Welfare (DPW), may designate a central non-profit agency to facilitate orders to Agencies For Persons With Disabilities and to market and sell to Commonwealth agencies Goods and Services; and

**WHEREAS**, the Department and PIBH intend to work together toward the mutual goal of encouraging and assisting persons with severe disabilities in achieving maximum personal independence by providing meaningful employment and training for them; and

**WHEREAS**, the Department and PIBH want to enter into an agreement that defines the operational procedures for the Department and PIBH to follow in the Commonwealth’s procurement of Goods and Services.

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, and intending to be legally bound, the Department and PIBH agree as follows:

**I. TERM**

The term of this Agreement shall commence on the date the Agreement has been fully executed by both PIBH and the Department, including all required Commonwealth approvals, and shall, unless earlier terminated pursuant to this Agreement, terminate sixty (60) days after one party gives the other party written notice of termination of this Agreement. The Agreement shall not be legally binding until after the Department has sent a copy of the fully-executed Agreement to PIBH.

**II. DEFINITIONS**

Both parties agree that, in addition to the definitions outlined in the Code, the following words and phrases as used in this Agreement shall have the meanings given to them in this subsection:

**A. Agency For Persons With Disabilities** – A charitable, non-profit agency incorporated under the laws of the Commonwealth of Pennsylvania that is affiliated with PIBH and has been approved by the Department through which Persons With Disabilities manufacture Goods or perform Services in Pennsylvania.

**B. Allowable Costs** – In addition to salaries and wages, payroll taxes, and fringe benefits for employees with disabilities who are engaged in direct labor, other

costs regularly associated with manufacturing Goods and/or performing Services, as determined by the Department in its discretion, shall be allowable expenses when determining the amount of the payment for purposes of ascertaining compliance with the Payment Requirement. Allowable costs shall include salaries and wages for supervisors and managers, payroll taxes for supervisors and managers, fringe benefits for supervisors and managers, liability insurance, performance bonds, raw material/essential component parts, machinery/equipment/tools, depreciation, supplies, warehousing/shipping, overhead/indirect costs, PIBH commission, and amounts paid to subcontractors to cover the costs of ancillary or support services to the prime contract.

- C. Appreciable Contribution-** The level of effort, as determined by the Department, which must be provided by Persons With Disabilities in manufacturing a good or performing a service in order to qualify, along with other requirements, as an approved Good or Service. At a minimum, the level of participation by Persons With Disabilities must meet the Direct Labor Requirement.
- D. Approved Goods and Services** - Those Goods and Services that the Department has identified as meeting the requirements of Section IV.A. of this Agreement.
- E. Carve-Out Items** - Specific Goods and Services that the parties have identified and the Department has set aside for procurement from PIBH and its Agencies For Persons With Disabilities, provided that PIBH and its Agencies For Persons With Disabilities can provide them at a fair market price and meet the requirements of Subsection IV.A.
- F. Commonwealth Purchasing Agency** - A Commonwealth executive or independent agency or a state-affiliated entity (as those terms are defined by the Code) that is authorized to enter into contracts for itself or as the agent for another Commonwealth agency.
- G. Direct Labor** – All labor or work identified specifically with Goods and Services pursuant to this Agreement. The term does not include supervision, administration, inspection, overhead, or shipping.
- H. Direct Labor Requirement** – The requirement that at least seventy-five percent (75%) of the personnel engaged in the direct labor related to Goods and Services in this Commonwealth must be persons with disabilities.
- I. Disability Determination Documentation** – The documentation necessary to confirm that an individual is visually impaired, mentally retarded, or physically disabled. The acceptable forms of documentation for each of the categories of disabilities are:
  - 1. Mentally Retarded** – A psychiatrist, psychologist, or other medical evaluation form.
  - 2. Physically Disabled/Mentally III** – A medical doctor, psychiatrist, psychologist, or other medical evaluation form.
  - 3. Visually Impaired** – An ophthalmologist or optometrist examination form. In exceptional circumstances, alternate medical documentation acceptable to the Department may be substituted for this form.

**J. Documentation of Preclusion From Competitive Employment** – The documentation necessary to confirm preclusion from competitive employment if the person is physically disabled/mentally ill. The acceptable forms of documentation shall be provided in one of the following forms:

1. A written referral from the Pennsylvania Department of Labor and Industry's Office of Vocational Rehabilitation, Bureau of Blindness and Visual Services (OVR/BBVS), the Social Security Administration through SSI/SSDI, the Department of Public Welfare's Office of Mental Health/Mental Retardation (DPW MH/MR), the United States Veterans' Administration (VA), or a Pennsylvania Board of Education-certified school psychologist; or
2. A completed Disability Determination Worksheet (PIBH-DDW1) signed by a Vocational Rehabilitation Specialist (VRS) certifying that the disability precludes the individual from competitive employment. The PIBH-DDW1 form may be revised if the parties mutually agree; or
3. Medical documentation from the physician that includes the conclusion that the disability precludes the individual from competitive employment.

**K. Goods** – Commodities, products, supplies, and items of all types, but not services, even when the services may be related to goods.

**L. Non-Allowable Costs** - The costs that are not to be taken into consideration when determining compliance with the Payment Requirement. Non-Allowable Costs, as used in this definition, include: salaries & wages for non-disabled direct labor employees, payroll taxes for non-disabled direct labor employees, fringe benefits for non-disabled direct labor employees, profit, and amounts paid to subcontractors performing the main scope of work under the prime contract.

**M. Overhead** – Operating expenses not readily identified with a particular contract but necessary for the general operation of the contract, exclusive of labor and materials. "Expenses" as used in this definition include rent, utilities, accounting, training, transportation, uniforms, clerical support, licenses, office expenses and such expenses as approved by the Department in its sole discretion.

**N. Payment Requirement** –

1. **Non-photo license contracts.** The requirement that at least 75% of the amount the Commonwealth Purchasing Agency pays for the Goods and/or Services be remitted to the Agency For Persons With Disabilities to cover Allowable Costs of the Agency For Persons With Disabilities in manufacturing Goods and/or performing Services.
2. **Special requirement for photo license contract.** When a Commonwealth Purchasing Agency enters into a contract under the Code for the operation of driver's license photo centers, at least 70% of the amount paid by the Commonwealth Purchasing Agency shall be used to cover payment of wages and salaries to persons with disabilities, Allowable Costs, real estate lease costs, property insurance, and other costs which are specifically required by contract.

**O. Persons With Disabilities** – Those persons who are visually impaired, mentally retarded or physically disabled as defined by Section 520 of the Code.

- P. Statewide Requirements Contract** – A Department contract that covers the annual, semiannual, and quarterly requirements of Commonwealth agencies for specific Goods or Services and allows the agencies to order needed Goods or Services directly from PIBH.
- Q. Subcontractor** – An individual or company that performs part of the contract on behalf of PIBH and/or the Agency For Persons With Disabilities. The Department and PIBH agree that for the purpose of this section, there are two types of sub-contracting:
  - 1. Main scope of work under the prime contract, and
  - 2. Ancillary or support services to the prime contract. Such services are not essential to the main scope of work under the prime contract.
- R. Working Manager** – An employee who not only manages working supervisors, but also engages in direct labor.
- S. Working Supervisor** – An employee who not only supervises non-supervisory employees, but also engages in direct labor.

### **III. DESIGNATION AS CENTRAL NON-PROFIT AGENCY**

The Department, with the approval of DPW, has designated PIBH as the central non-profit agency to facilitate orders to Agencies For Persons With Disabilities and to market and sell to Commonwealth agencies Goods and Services.

### **IV. PROCUREMENT OF GOODS AND SERVICES**

- A.** In accordance with the requirements of the Code and this Agreement, the Commonwealth shall purchase from PIBH, and PIBH shall sell to the Commonwealth, any Goods or Services that meet the Commonwealth's specifications and requirements when PIBH has agreed to sell the Goods or Services at the Department-established fair market price and the Department has determined that:
  - 1. Persons With Disabilities will make an Appreciable Contribution to manufacturing the Goods and/or performing the Services, and
  - 2. The Agency(ies) For Persons With Disabilities is capable of manufacturing the Goods or performing the Services in accordance with the requirements of the contract.
- B.** The Department and PIBH may also enter into statewide requirements contracts for the procurement of Goods manufactured, and Services performed by, persons with disabilities. Any Commonwealth Purchasing Agency may issue contract purchase orders against such statewide requirements contracts.
- C.** The Commonwealth and PIBH shall enter into contracts or, when the Statewide Requirements Contract is used, purchase orders for procurement of the Goods and Services when such procurements meet the requirements of Subsection A. of this Section. Each contract or purchase order, as applicable, shall contain the Department's standard terms and conditions for procuring Goods and/or Services, as well as special contract or purchase order terms and conditions as required by the Commonwealth Purchasing Agency for the particular Goods or Services to be procured.

## **V. PIBH RESPONSIBILITIES**

PIBH shall have the following responsibilities under this Agreement:

- A.** Represent Agencies For Persons With Disabilities in dealing with the Department and other Commonwealth agencies under the Code.
- B.** Evaluate Agencies For Persons with Disabilities' qualifications and capabilities to manufacture Goods and perform Services for Commonwealth agencies.
- C.** Provide the Department with pertinent data concerning Agencies For Persons With Disabilities, their status as qualified non-profit agencies, their manufacturing or service capabilities, their estimated and actual costs of operations and raw materials, and other information as the Department may require.
  - 1.** Submit cost information and a Material List Worksheet to the Department in the Department-approved form and format.
  - 2.** PIBH agrees to provide supporting documentary evidence for the figures in the submissions required by Paragraph 1 of this Subsection V.C. upon the Department's request.
- D.** Provide the Department with information relating to the Payment Requirement and the Direct Labor Requirement using the Appreciable Contribution Worksheet for Services (PIBH-220) or the Appreciable Contribution Worksheet for Goods (PIBH-230). PIBH must submit the worksheet to the Department at the time that PIBH requests establishment of a fair market price. The PIBH-220 and PIBH-230 forms may be revised if both parties mutually agree.
- E.** Provide the Department with a completed PIBH Agency Certification Form (PIBH-210) for each Person with Disabilities that will be engaged in the direct labor of manufacturing Goods or performing Services. PIBH shall submit the forms to the Department at the time that PIBH requests establishment of a fair market price, or within 30 days of commencement of a contract, unless the Department in its sole discretion grants a longer period for submission. The PIBH-210 form may be revised if both parties mutually agree.
- F.** Upon request, submit recommended prices and price adjustments to the Department, with appropriate justification, for procurement of Goods or Services from Agencies For Persons With Disabilities.
- G.** Distribute, within any applicable Department policy guidelines, orders from Commonwealth agencies among Agencies For Persons With Disabilities capable of fulfilling the order requirements.
- H.** Maintain the necessary records and data on Agencies For Persons With Disabilities to enable PIBH to allocate orders equitably.
- I.** Supervise Agencies For Persons With Disabilities to insure contract compliance in the manufacture of Goods or performance of Services.
- J.** Monitor and inspect the activities of Agencies For Persons With Disabilities to ensure compliance with the Code and this Agreement.



- K. When authorized by the Department, enter into contracts and/or purchase orders with Commonwealth Purchasing Agencies to furnish required Goods and Services.
- L. Submit annually to the Department by September 30th of each year, for the PIBH fiscal year ending the preceding May 31<sup>st</sup>, a comprehensive annual report concerning the operations of PIBH and all Agencies For Persons With Disabilities. The report shall include a summary of significant accomplishments and developments, the total dollar amount of Goods and Services sold to Commonwealth agencies, and such other details as PIBH may consider appropriate or the Department may request.

**VI. AGENCY FOR PERSONS WITH DISABILITIES' RESPONSIBILITIES**

PIBH shall require each Agency For Persons With Disabilities selected to manufacture Goods for, or provide Services to, a Commonwealth agency to:

- A. Furnish Goods or Services in full compliance with the contract specifications, including delivery and any additional requirements.
- B. Maintain records of each worker's direct labor hours on, as well as the costs and expenses relating to the fulfillment of, each Commonwealth purchase order or contract.
- C. Comply with applicable Federal and State occupational health and safety standards.
- D. Maintain a file including information and reports on the nature and severity of the disability for each person with disability employed by the Agency For Persons With Disabilities. At a minimum, the Agency For Persons With Disabilities must obtain and maintain in its files each employee's Disability Determination Documentation.

**VII. SERVICE FEE**

PIBH shall charge Agencies For Persons With Disabilities an established fee that shall compensate PIBH for its services under this Agreement. The fee as of the date of execution of this Agreement ("Execution Date") is 8% for Goods and 5% for Services. The Department must approve any increase in the fee before PIBH charges and collects any increase.

**VIII. PREPARATION OF CATALOG**

PIBH shall annually prepare, maintain, and update a catalog ("the Catalog") that includes all Approved Goods and Services for which the Department has established a statewide requirements contract. For each Catalog listing, the Catalog shall include a short description, the applicable statewide contract number, and the fair market price. The Catalog may also contain those Carve-Out Items that the Department and PIBH have established pursuant to Section XII. of this Agreement. If the Catalog does not list prices for these Carve-Out Items, the entries should direct Commonwealth agencies to contact the Department for the establishment of a fair market price. PIBH shall not print and distribute the Catalog until after the Department has reviewed and approved it.

**IX. FAIR MARKET PRICE**

- A. The Commonwealth shall not purchase, and PIBH shall not sell, any Goods manufactured or Services performed by Agencies For Persons With Disabilities

unless and until the Department has established a fair market price and PIBH has agreed to manufacture the Goods or perform the Services at the Department-established fair market price.

- B.** While the Department's primary method of determining fair market price shall be the cost model methodology described in Section XI. of this Agreement, the Department shall have the discretion to determine fair market prices for Goods and Services by any one, or a combination of, the following methods:
1. Cost model methodology;
  2. Market research;
  3. Consideration of the current price of the Goods or Services; or
  4. Soliciting competitive bids on the open market and establishing the low bid/quote price as the fair market price unless:
    - a. the low bid/quote is not responsive,
    - b. the low bidder is not a responsible bidder,
    - c. the price is unreasonably low and the Department considers the price to be a "low ball" bid/quote, or
    - d. only one unreasonably high bid/quote is received and the Department considers the price to be a "high ball" bid/quote.
- C.** In no event will the fair market price be set at a price that is more than 20% higher than the lowest responsive and responsible bid price/quote. The lowest bid or quote shall be considered a "low ball" bid/quote (and thus nonresponsive) if it is more than 20% below the second low bid/quote where the Department receives three or more bids/quotes. When the Department receives a single bid or quote and, in its discretion, determines that the single bid/quote is unreasonably high, the bid/quote shall be considered a "high ball" bid/quote (and thus nonresponsive).

## **X. FAIR MARKET PRICE ADJUSTMENTS**

- A. PIBH Catalog:** For PIBH Catalog items, the Department and PIBH agree to make annual price adjustments for Approved Goods and Services as specified in this Subsection:
1. When available, the Department and PIBH shall assign the appropriate industry code from the North American Industry Classification System (NAICS).
  2. The price adjustment shall be based on the percentage change in the Producer Price Index (PPI) or the Employment Cost Index (ECI) as of the date of the U.S. Department of Labor Bureau of Labor Statistics' most recent final determination of the PPI or ECI, the most recent final Consumer Price Index for All Urban Users (CPI-U), and/or the changing market conditions not reflected by the PPI, ECI or CPI-U.

3. If the percentage change in the PPI, ECI or CPI-U exceeds 4% during any one-year period, and PIBH wants to adjust the price in accordance with the PPI, ECI or CPI-U change, PIBH shall submit documentation to the Department to justify their request for a price adjustment. If the documentation is not acceptable to the Department, then the Department shall establish a new fair market price for the upcoming year.
4. The base month for determining the annual price adjustments shall be June of the calendar year in which the price adjustment is initiated, and the annual price adjustments shall be effective on January 1<sup>st</sup> of each year.
5. Both parties agree that the Department, at its discretion, may re-establish the fair market price of any Goods or Services listed in the Catalog once each year after the initial fair market price determination. All re-established fair market prices shall be effective on the 1<sup>st</sup> of January, and the re-established price shall remain firm for at least the first year.
6. Any re-established fair market price and/or approved price adjustment is effective for new Commonwealth Purchasing Agency contract/purchase orders placed on or after the effective date of the increase(s).
7. Both parties agree that the Commonwealth shall be given the immediate benefit of any price decrease, and PIBH shall promptly notify the Department's Program Manager of the amount and effective date of all decreases. Invoices shall reflect contract prices in effect on the date the order was written. In the event a purchase order is issued on or after the effective date of a price decrease, but the purchase order does not reflect the price decrease, the Commonwealth Purchasing Agency shall be entitled to a price adjustment equal to the difference between the total purchase order amount before and after the price decrease.

**B. Contracts/Purchase Orders for Services** - Fair market prices for service contracts/purchase orders shall remain firm, unless stated otherwise in the contract/purchase order, for a one (1) year period after the effective date of the contract/purchase order.

1. PIBH, and/or the Commonwealth Purchasing Agency, may make written request to the other party for adjustment in prices annually for each subsequent year of the contract/purchase order. The other party must receive such requests for price adjustments no later than forty-five (45) days prior to the anniversary date of the effective date of the contract/purchase order.
2. When available, the Commonwealth Purchasing Agency and PIBH shall assign the appropriate industry code from the North American Industry Classification System (NAICS).
3. The price adjustment shall be based on the percentage change in the Producer Price Index (PPI) or the Employment Cost Index (ECI) as of the date of the U.S. Department of Labor Bureau of

Labor Statistics' most recent final determination of the PPI or ECI, the most recent final Consumer Price Index for All Urban Users (CPI-U), and/or the changing market conditions not reflected by the PPI, ECI or CPI-U.

4. If the percentage change in the PPI, ECI or CPI-U exceeds 4% during any one-year period, and a party wants to adjust the price in accordance with the PPI, ECI or CPI-U change, the requesting party shall submit documentation to the other party to justify their request for a price adjustment. If the documentation is not acceptable to the receiving party, the receiving party shall ask the Department to establish a new fair market price for the upcoming year.
5. The Commonwealth Purchasing Agency may adjust the contract/purchase order price according to these factors without prior approval from the Department.
6. The Department and PIBH agree that the Department shall re-establish the fair market price of any service contract/purchase order every five (5) years after the effective date of the contract/purchase order, and/or at the time any changes are made to the contract or purchase order specifications/scope of work.
7. The Commonwealth Purchasing Agency may not issue a contract/purchase order for services for more than a five (5) year term. Approximately three (3) months prior to the expiration of any contract/purchase order for services, the Commonwealth Purchasing Agency shall request that the Department re-establish the fair market price for the new contract term.

## **XI. COST MODEL METHODOLOGY**

Cost modeling analyzes the assets, labor, consumables, and material components of cost. The Department and PIBH agree to establish a cost model for determining the fair market price of any Goods or Services.

## **XII. CARVE-OUT**

Both parties agree to implement a carve-out program for Goods and Services performed by persons with disabilities to analyze the Agency For Persons With Disabilities' capability and capacity to manufacture Goods and/or perform Services. The initial mutually-established Carve-Out Goods and Services ("Carve-Out Items") are listed in Exhibit A to this Agreement.

- A. For any proposed Carve-Out Items not included in Exhibit A to this Agreement, the Department will conduct an analysis to determine whether the Agency For Persons With Disabilities is capable of and has the capacity for manufacturing the Goods and/or performing the Services. If the analysis concludes that PIBH has the required capability and capacity, the Department will then compile a list of the additional Carve-Out Items, identifying the specific Goods and Services to be supplied by PIBH and its Agencies For Persons With Disabilities, provided that PIBH and its Agencies For Persons With Disabilities can provide them at a fair market price and can meet the requirements of Subsection IV.A.
- B. If PIBH requests the opportunity to provide additional Goods or Services, PIBH must make the request in writing to the Department. PIBH shall make all such

requests on a semi-annual basis, preferably at a Disability Procurement Council meeting. At the Disability Procurement Council meetings and as new opportunities arise, the Department agrees to use its best efforts to inform PIBH of Goods and Services not on the Carve-Out list that the Department considers to be possible candidates for additions to the list of Carve-Out items.

- C. For those Goods or Services that the Department has determined pursuant to Subsections A. or B. of this Section XII. should not be included in the list of Carve-Out Items, PIBH may file a dispute under Section XV., Disputes.
- D. Commonwealth agencies may proceed with the procurement of any item that does not fall within the approved list of Carve-Out Items without being required to offer the items first to PIBH.

### **XIII. PROCUREMENT OF CARVE-OUT ITEMS**

The following procedures shall be standard for procurement of Carve-Out items that are not already the subject of a contract between the Commonwealth and PIBH:

- A. For Carve-Out items, the Commonwealth shall give PIBH a reasonable time period as specified by the Commonwealth Purchasing Agency, but not less than five business days, to review and comment on the procurement documents before proceeding with the release of any procurement documents for any such items.
  - 1. Should PIBH respond with comments within the specified period, the Commonwealth will review PIBH's comments prior to proceeding with the procurement. The Commonwealth may, in its sole discretion, contact PIBH to discuss the comments and/or revise the procurement documents.
  - 2. Should PIBH not respond within the specified period, the Commonwealth may proceed to issue the procurement without delay.
- B. Should PIBH desire to sell the Goods or perform the Services that are the subject of the procurement documents, PIBH shall submit a request for consideration to the Commonwealth Purchasing Agency within the specified period, except where the procurement is to be a Request For Proposals (RFP) rather than an Invitation For Bids, in which event PIBH shall submit its request for consideration to the Commonwealth Purchasing Agency, and the Commonwealth Purchasing Agency shall provide PIBH with a statement of work. PIBH shall respond with its proposal within such longer time frame as the requesting Commonwealth Purchasing Agency may specify.
  - 1. After the Commonwealth Purchasing Agency receives PIBH's proposal, the Commonwealth Purchasing Agency shall determine whether PIBH is responsive and whether PIBH is capable of meeting the contract requirements.
  - 2. If the Commonwealth Purchasing Agency determines that PIBH is responsive and responsible, the Commonwealth Purchasing Agency shall submit PIBH's proposal to the Department for a fair market price determination, and the Goods or Services shall be offered to PIBH at the Department-established fair market price.

3. If the Commonwealth Purchasing Agency determines that PIBH's proposal is not responsive or PIBH is not capable of meeting the requirements of the contract, then:
  - a. The Commonwealth Purchasing Agency may proceed with procuring the Goods or Services through another section of the Code (not Section 520).
  - b. The Commonwealth Purchasing Agency shall provide PIBH and the Department's Program Manager with a written explanation for its determination regarding PIBH's proposal.
  - c. If PIBH disagrees with the Commonwealth Purchasing Agency's determination under this Section, PIBH shall file its objection in writing according to Section XV. of this Agreement (Disputes).

#### **XIV. DISABILITY PROCUREMENT COUNCIL**

The Department shall organize a Disability Procurement Council ("Council") that shall meet annually (or more frequently if both parties agree) to discuss the Commonwealth's needs for Goods, Services, and repackaging with PIBH.

- A. The Council shall consist of, at a minimum, the Department's Program Manager, a PIBH employee for Goods, a PIBH employee for Services, and representatives from each Commonwealth Purchasing Agency.
- B. In addition to discussing the Commonwealth's needs for Goods, Services, and repackaging, the Council shall address any concerns about, suggestions for, or recommendations on improving the PIBH program. Each Council participant shall ensure that its agency is updated on any changes, issues, or other developments related to PIBH.
- C. The Program Manager shall consult with appropriate Department personnel on recommended changes of policy, procedures, or other matters that require Department approval. After the Program Manager receives the Department's approvals, the Program Manager shall ensure that the implementation(s) take place in a timely manner, consistent with this Agreement.

#### **XV. DISPUTES**

PIBH may dispute the following determinations: fair market price, Appreciable Contribution, price adjustments, Carve-Out, the reasonableness of contract requirements in a particular Commonwealth procurement, and any other Commonwealth determination that PIBH asserts was improper. The procedure in this Disputes clause shall be PIBH's sole and exclusive venue and procedure for seeking resolution of any Department determination. For any dispute, PIBH agrees to proceed in the following manner:

- A. PIBH shall submit a written dispute to the Department's Chief Procurement Officer, and the Department's Program Manager, within seven days of the date of the determination under dispute. PIBH's submission shall include the grounds for PIBH's position.
  1. The Chief Procurement Officer shall, where applicable, provide written notice of the dispute to the Commonwealth Purchasing Agency.

2. Except when an emergency contract can be justified under Section 516 of the Code, the Commonwealth Purchasing Agency shall not enter into a contract for the Goods or Services prior to the issuance of a determination by the Chief Procurement Officer.
- B. The Chief Procurement Officer shall, within 15 days of receipt of PIBH's written dispute unless both parties agree to an extension, make a written determination responding to the dispute and provide a copy of the determination to PIBH, the Department's Program Manager and, where applicable, the Commonwealth Purchasing Agency.
  - C. PIBH shall have no right to file a protest until the Chief Procurement Officer has issued a written determination in any dispute under this Agreement. The date of the Chief Procurement Officer's determination shall be the starting date for the seven-day period specified in Commonwealth Procurement Code Section 1711.1(b), 62 Pa.C.S. § 1711.1(b), for protests.

## **XVI. CONTRACT COMPLIANCE REVIEWS**

- A. The Department, in cooperation with the Commonwealth Purchasing Agency, or their designated representatives, will annually review all Commonwealth Purchasing Agency contracts with PIBH that exceed \$300,000 to confirm compliance with the Code and this Agreement.
- B. In addition to the annual review, the Department or its designated representatives, at its discretion, may perform random reviews of any contracts, regardless of the contract amount.
- C. The Department or its designated representatives shall have the right, at any reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of PIBH, including without limitation examination of PIBH's financial statements (income, expense, and balance sheets and similar records related to PIBH's overall financial position).
- D. Any audit or other review under this Section XVI. may include a review of the books, documents, and records of PIBH and its affiliated Agencies For Persons With Disabilities related to costs or pricing data for any contract or purchase order with the Commonwealth.
- E. Any review may include a review of the Disability Determination Documentation and the Documentation of Preclusion from Competitive Employment.
- F. PIBH and Agencies For Persons With Disabilities shall preserve books, documents, and records that relate to costs or pricing data for all Commonwealth contracts and purchase order(s) for a period of three (3) years from date of final payment.
- G. PIBH and Agencies For Persons With Disabilities shall preserve books, documents, and records that relate to Disability Determination Documentation and Documentation of Preclusion from Competitive Employment for three (3) years after the date of the termination of employment of the person with disability.
- H. PIBH and Agencies For Persons With Disabilities shall give full and free access to all records pertaining to this agreement or any other related agreement to the Commonwealth and/or its authorized representatives.

- I. The Department and PIBH have established contract compliance review guidelines, found in Exhibit B. These guidelines may be changed if both parties agree in writing.

## **XVII. NON-COMPLIANCE**

- A. If a review of a Commonwealth contract or purchase order with PIBH determines that Persons With Disabilities are not making an Appreciable Contribution to the manufacture of Goods or the performance of Services, or that PIBH and/or an Agency For Persons With Disabilities is not in compliance with other requirements of the Code, the Department's Program Manager shall notify PIBH and the Agency For Persons With Disabilities in writing. PIBH and the Agency For Persons With Disabilities shall take immediate steps to correct the deficiency. If the deficiency is not corrected within 45 calendar days, the Commonwealth Purchasing Agency may enter into a contract with, or issue a purchase order to, another contractor to provide comparable goods or services without PIBH or Agency For Persons With Disabilities participation. Nothing in this section shall be construed to waive PIBH's rights to dispute the termination.
- B. If a Commonwealth Purchasing Agency determines that PIBH and/or an Agency For Persons With Disabilities are not in compliance with the requirements of the contract or purchase order, the Commonwealth Purchasing Agency shall notify PIBH and the Agency For Persons With Disabilities in writing. PIBH and the Agency For Persons With Disabilities shall take immediate steps to correct the noncompliance. If the noncompliance is not corrected within 45 calendar days, the Commonwealth Purchasing Agency may terminate the purchase order and procure comparable goods or services from another contractor. Nothing in this section shall be construed to waive PIBH's right to dispute the termination, nor shall this section be construed to preclude a Commonwealth Purchasing Agency from procuring comparable goods or services through an emergency purchase order when PIBH or an Agency For Persons With Disabilities is deemed to be in noncompliance.

## **XVIII. ASSIGNABILITY AND SUBCONTRACTING**

- A. PIBH may not assign this Agreement to another party without the Department's written consent.
- B. PIBH shall not subcontract with any person or entity, except with an Agency For Persons With Disabilities, to perform all or any part of the work to be performed under any Commonwealth contract or purchase order without the prior written consent of the Commonwealth Purchasing Agency, which consent may be withheld at the sole and absolute discretion of the Commonwealth Purchasing Agency.

## **XIX. ENTIRE AGREEMENT & MODIFICATIONS**

- A. This Agreement constitutes the entire agreement between the Commonwealth and PIBH and supersedes all prior negotiations, representations, or agreements, whether written or oral.
- B. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the regulations promulgated by the Commonwealth of Pennsylvania. The parties recognize that it is not their intent to impair, reduce, modify, change, or violate any existing statutory requirements. Any laws or regulations promulgated after execution of this Agreement which conflict with a provision in this Agreement, shall automatically preempt such provision and becomes a part of the Agreement, fully binding on the parties.



C. This Agreement shall be binding upon the parties and their respective successors and assigns.

SIGNATURE PAGE

Operational Agreement for the Procurement of Goods Manufactured and Services Performed by Persons with Disabilities

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

PENNSYLVANIA INDUSTRIES FOR THE BLIND AND HANDICAPPED

By: [Signature]
Name: Alfred W. Baker
Title: President & CEO
Date: 9/29/05

Approved as to Form and Legality:

[Signature] 10/6/05
for Chief Counsel, DGS Date
[Signature]
Deputy General Counsel Date

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF GENERAL SERVICES

By: [Signature] 9/30/05
Deputy Secretary for Procurement Date

Approved By:

[Signature]
Deputy Attorney General Date
[Signature]
Secretary of Public Welfare Date

**EXHIBIT A (REV. 01/03/2023)**  
**UNIQUESOURCE PRODUCTS & SERVICES**  
**CARVE-OUT LIST OF GOODS AND SERVICES**

For all Goods and Services listed below, Section XIII of the Operational Agreement between UniqueSource Products & Services (formerly PIBH) and the Department of General Services (Department) governs and requires Commonwealth Purchasing Agencies (Commonwealth) to consult the UniqueSource eCommerce site (<http://www.costore.com/UniqueSourcePA/usercustom/splash.asp>). If the UniqueSource eCommerce site does not include pricing for a particular Good or Service, the Commonwealth shall contact the Department's Program Manager to request the establishment of a fair market price for the desired Good or Service. If/when it is determined that UniqueSource has the capability and capacity to provide the Good or Service, the Commonwealth shall offer these Goods or Services to UniqueSource at a Department-established fair market price. If UniqueSource declines the opportunity to provide the Goods or Services through any of their member agencies, the Commonwealth may then proceed to purchase the Goods or Services through another procurement method.

The UniqueSource eCommerce site includes both Department-approved contracted goods and services, and noncontracted goods and services. The Department-approved contracted goods and services are mandatory purchases, and are identified with a "**CWOPA Contract**" logo. The Commonwealth is not mandated to purchase any noncontracted goods and services from UniqueSource. Commonwealth procurement policies, regulations and thresholds apply to the non-contract goods and services.

**Goods:**

eCommerce Site includes, but is not limited to:

- **Chemical Cleaners:** asphalt release agent, disinfectants, degreasers, emulsifiers, tar/grease removers, vehicle cleaner
- **Clothing:** baseball caps, bibs, pajamas, patient gowns, sweatpants, sweatshirts
- **Décor:** draperies, mini-blinds, shades, vertical blinds
- **Domestics:** apron, bath towels, bath mats, bed linens, dish towel, kitchen dish cloth, shower curtains, washcloths
- **Food:** decaffeinated coffee, food service kits
- **Hand Tools:** construction, impact, landscape, tree shelters
- **Housekeeping:** brooms, mops, laundry bags/liners, scrub cloths, toilet tissue, bathroom supplies
- **HVAC Air Filters**
- **Office Supplies:** writing instruments, picture frames, remanufactured toner cartridges, dry erase/bulletin/cork boards
- **Roadside Traffic Devices:** roll-up safety signs, overlay patches, specialty folding aluminum signs, delineation devices, LED warning lights
- **Safety Gear:** T-shirts, sweatshirts, sweatpants, leggings, chaps, vests, hard hats, emergency blankets, poly bags
- **Logo Items:** silk-screening clothing

**Services:**

- **Assembly:** Where the Commonwealth has component parts requiring assembly, assemble the parts to Commonwealth specifications.
- **Call Center/Contact Center/Help Desk/Service Desk/Support Center:** Any procurement that includes a call center, contact center, help desk, service desk, or support center as a contract deliverable that is to be developed or operated for the Commonwealth must be submitted to the Department's Program Manager who will work with UniqueSource to determine if the service requirements fall within the carve-out for UniqueSource. UniqueSource may be required to provide an executive summary to demonstrate it can meet both the contract and appreciable contribution requirement.
- **Rolled Carpet and Carpet Tile Installation:** Carve-out is for installation services only; however, UniqueSource is also an authorized dealer for flooring material on the DGS Statewide Multiple Award Contract for Commercial Carpet and Carpet Installation.
- **Carpet Cleaning:** Includes recurring and one-time services within York, Cumberland, Dauphin, Lancaster, Lebanon & Perry counties
- **Catering:** Only in the service areas of UniqueSource member agencies listed below, assemble and deliver **basic boxed lunches and/or cold buffets** to purchasing agency specifications:

- **Member Agency:**  
CPARC - "**The Sassy Gourmet**"  
(boxed lunches and cold buffets)

- **Service area:**  
Cumberland and Dauphin Counties within a 15-mile radius of Mechanicsburg

**EXHIBIT A (REV. 01/03/2023)**  
**UNIQUESOURCE PRODUCTS & SERVICES**  
**CARVE-OUT LIST OF GOODS AND SERVICES**

- **Custodial/Janitorial:** Includes a variety of cleaning and maintenance duties on customized schedules; as well as enhanced cleanings, sanitizing, misting and electrostatic misting disinfecting services.
- **Digital Document and Electronic Content Management:** Includes, but not limited to, digitization project consultation including development of a Statement of Work, secure transport of source materials, preparation and scanning and imaging of source materials, indexing of imaged data, redaction, physical data storage, electronic data storage and retrieval and other related services the Commonwealth may desire to comply with mandated record retention policies.
  - The Commonwealth shall first offer Digital Document and Electronic Content Management Services to Department of Revenue, Bureau of Imaging & Document Management. If Department of Revenue is not capable of, and/or not interested in, providing the services, the Commonwealth is statutorily required to offer the service to UniqueSource at a Department-established fair market price.
- **Document Shredding (Off-Site):** Ongoing or one-time purge of confidential and non-confidential documents.
  - Any Commonwealth agency located within the Harrisburg Capitol Complex and surrounding area shall first refer to the DGS Statewide Requirements Contract for Document Shredding Services. If services are not available at a specific location within the Harrisburg Capitol Complex, then the Commonwealth is statutorily required to offer the service to UniqueSource at a Department established fair market price.
- **Grounds Maintenance:** Includes, but not limited to, mowing, edging, trimming, fertilizing, weed control and leaf removal.
- **Mail Preparation:** All aspects of mailing services, including but not limited to, copying, collating, folding, inserting, bulk-rate mailing.
  - The Commonwealth shall first offer mail preparation services to the Department's Bureau of Publications. If Bureau of Publications is not capable of, or not interested in, providing the services, then the Commonwealth purchasing agency is statutorily required to offer the service to UniqueSource at a Department-established fair market price.
- **Packaging/Repackaging:** Where the Commonwealth has goods on hand, package or repack the goods according to purchasing agency specifications.
- **PennDOT Driver License and Identification Card Program**
- **PennDOT Rest Area/Welcome Center Sites:** Provide 24/7 day-to-day custodial, janitorial, and grounds maintenance services; and optional ancillary services, which may include, but not limited to, snow removal, landscaping, electrical, plumbing, painting, carpentry, building and site equipment maintenance, water and wastewater treatment.
- **Vending Services:** The Commonwealth is statutorily required to offer vending services to the Department of Labor & Industry, Bureau of Blindness and Visual Services (BBVS). If BBVS does not have any clients interested in providing vending services at a specific location, then the service must be offered to UniqueSource at a Department-established fair market price.

**Exhibit B**



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES  
HARRISBURG**

**CONTRACT COMPLIANCE REVIEW GUIDELINES  
FOR GOODS MANUFACTURED  
AND SERVICES PERFORMED BY  
AGENCIES FOR PERSONS WITH DISABILITIES**

**September 23, 2005**

**Department of General Services  
Bureau of Procurement**

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## TABLE OF CONTENTS

Section 1.0 – General Introduction.....	1
Section 2.0 – Background.....	1
Section 3.0 – Definitions.....	3
Section 4.0 – Initial Contract Compliance Review.....	4
Section 5.0 – Applicable Provisions.....	5
Section 6.0 – Standards of Review.....	5
Section 7.0 – Contract Compliance.....	6
Section 8.0 – Reporting.....	8
Section 9.0 – Notification of Compliance or Non-Compliance.....	8

## **1.0 General Introduction**

- 1.1 The Chief Procurement Officer for the Department of General Services (“Department”), Bureau of Procurement, is issuing these contract compliance review guidelines.
- 1.2 These guidelines provide technical assistance and guidance necessary to facilitate program-specific review requirements to permit the Commonwealth to track the compliance of PIBH and/or other agencies for persons with disabilities with applicable law on an ongoing basis.
- 1.3 The Department will conduct the reviews in accordance with the Standards established by the American Institute of Certified Public Accountants, Section 520 of the Commonwealth Procurement Code, Department policy, and these guidelines. Where applicable, the Department’s review will comply with Generally Accepted Government Auditing Standards (GAGAS).

## **2.0 Background**

- 2.1 Section 520 of the Commonwealth Procurement Code (62 Pa.C.S. § 520) known as the Supplies Manufactured and Services Performed by Persons with Disabilities law (“Code”), provides for Commonwealth agencies to procure goods manufactured and services performed by persons with disabilities.
- 2.2 The purpose of the Code is to encourage and assist persons with disabilities in achieving maximum personal independence by creating jobs and training for persons with disabilities, thereby minimizing their dependence on public assistance and need for costly institutionalization, while at the same time, increasing tax revenues.
- 2.3 The Code appoints the Department to carry out duties that facilitate the state’s policy as set forth in the Code.
- 2.4 PIBH is the central non-profit agency that markets and sells goods manufactured and services performed by persons with disabilities through agencies for persons with disabilities. PIBH is awarded various contracts throughout the Commonwealth pursuant to the Operational Agreement, and in accordance with Section 520 of the Commonwealth Procurement Code, 62 Pa.C.S. § 520 (“Section 520”), which gives agencies for persons with disabilities preferential treatment in securing certain Commonwealth contracts.
- 2.5 In accordance with the requirements established in Section 520, the Commonwealth is required to enter into contracts for goods manufactured and services performed by persons with disabilities without the requirement for competitive bidding.
- 2.6 Section 520 also requires the Department to determine the fair market price of any goods manufactured or services performed by persons with disabilities and offered for sale to any Commonwealth agency by an agency for persons with disabilities (“Agencies For Persons With Disabilities”). The Department is also required to revise the prices in accordance with changing market conditions.
- 2.7 For an Agency for Persons With Disabilities to be awarded a contract under Section 520 of the Code, persons with disabilities must make an appreciable contribution in manufacturing goods or performing services. To meet the “Appreciable Contribution” standard, the Code requires:
  - a. At least 75% of the personnel either engaged in the direct labor of manufacturing goods or engaged in the direct labor in performing

services in this Commonwealth must be visually impaired, mentally retarded or physically disabled. In addition, at least 75% of the amount paid by the Commonwealth agency for the goods or the services shall be remitted to the Agency For Persons With Disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs incurred by the Agency For Persons With Disabilities in manufacturing goods.

- b. When the Commonwealth enters into a contract under the Code for the operation of the Commonwealth's driver's license photo centers, at least 70% of the amount paid by the Commonwealth shall be used to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs, real estate lease costs, property insurance and other costs which are specifically required by contract.
- c. The Department must determine whether the Agency For Persons With Disabilities meets these standards before awarding any no-bid contract.

2.8 When the Commonwealth enters into a contract under the Code with a cost exceeding \$300,000 per year, the Code requires that the Department, in cooperation with the purchasing agency, conduct an annual review to confirm compliance with the contract and, at minimum, an assessment of the "appreciable contribution" requirements.

- a. If this review determines that the persons with disabilities are not making an appreciable contribution in manufacturing goods or performing services, or that an Agency For Persons With Disabilities is not in compliance with other requirements of the Code, the Department shall give the noncompliant Agency For Persons With Disabilities 45 days to remedy the deficiency. If the Agency For Persons With Disabilities fails to remedy the deficiency within 45 days, the Department must find the Agency For Persons With Disabilities noncompliant with its contract, and the purchasing agency may then terminate the contract and seek to procure the goods or services through a competitive bidding process.
- b. Nothing in the Code precludes a purchasing agency from procuring goods or services through an emergency contract when an Agency For Persons With Disabilities is deemed to be noncompliant.

2.9 Commonwealth contract purchase orders are issued directly to PIBH; therefore, PIBH is responsible for submitting any invoices to the Commonwealth. After the Commonwealth receives the invoice(s) from PIBH, the Commonwealth pays the total amount due to PIBH, and PIBH pays its member agencies (less the PIBH commission).

2.10 The Department, at its discretion, may perform random reviews on any or all Commonwealth contracts entered into under the Code, regardless of the contract amount. The Department, at its discretion, may also perform random reviews on PIBH and any of its member agencies, to determine overall compliance with the Code. For purposes of these Guidelines, the term "review" includes any level of financial and documentary review, from informal examinations through formal audits.

### **3.0 Definitions**

In addition to the definitions outlined in the Code, the Department has included the following definitions for convenience and/or has expanded on the definitions to include the Department's interpretation of the statutory definition:

- 3.1 Direct Labor – All labor or work identified specifically with manufacturing specific goods or performing particular services. The term does not include supervision, administration, inspection, overhead, or shipping.
- 3.2 Direct Labor Requirement – The requirement that at least 75% of the personnel either engaged in the direct labor of manufacturing goods or engaged in the direct labor in performing services in this Commonwealth must be visually impaired, mentally retarded, or physically disabled.
- 3.3 Manufacturing – The transformation of raw materials or the assembly of essential component parts, or a combination of both, in the production of goods different in form, composition, or character from the raw materials or the essential component parts. This definition applies only to the assembly of goods.
- 3.4 Mentally Retarded – Sub-average general intellectual functioning which originates during the developmental period and is associated with the impairment of maturation, learning or social adjustment.
- 3.5 Overhead – Operating expenses not readily identified with a particular contract, but necessary for the general operation of the contract, exclusive of labor and materials. "Expenses" as used in this definition include rent, utilities, accounting, training, transportation, uniforms, clerical support, licenses, office expenses and such other expenses as approved by the Department in its sole discretion.
- 3.6 Payment Requirement – The requirement that at least 75% (or, for operation of the Commonwealth's photo driver license centers, 70%) of the amount the purchasing agency pays for the goods or services be remitted to the Agency For Persons With Disabilities to cover payment of wages and salaries to persons with disabilities and to cover other actual manufacturing costs the Agency For Persons With Disabilities incurs in manufacturing goods. Wages and salaries to persons with disabilities, and all costs associated with manufacturing goods and/or performing services, may be considered as "manufacturing costs" to be included in this requirement. Wages and salaries for Direct Labor to non-disabled persons and non-allowable costs such as sub-contracting the prime scope of work under the main contract are excluded.
- 3.7 Person With a Disability – A person who is visually impaired, mentally retarded, or physically disabled within the definitions of those terms in these Guidelines.
- 3.8 Physically Disabled – A limitation of most activities and functioning by virtue of a severe impairment of any of the various bodily systems that precludes competitive employment and cannot be eliminated, modified, or substantially reduced by standard rehabilitation services. The term shall include the inability to engage in competitive employment by reason of any physical disability or mental illness that can be expected to last for a continuous period of not less than 12 months.
- 3.9 Subcontractor – An individual or company that performs part of the contract on behalf of PIBH and/or the Agency For Persons With Disabilities.



- 3.10 Visually Impaired – A condition in which central visual acuity does not exceed 20/200 in the better eye with correcting lenses or in which the widest diameter of the visual field subtends an angle no greater than 20 degrees.

#### **4.0 Initial Contract Compliance Review**

- 4.1 The Department will send an Engagement Letter, specifying the entrance conference date to discuss the planned review, to PIBH and also to the Agency For Persons With Disabilities. The Engagement Letter is a formal document that defines the Compliance Officer's responsibility, authority and accountability for a specific assignment. The letter will include a list of the contracts and the timeframe that will be reviewed.
- 4.2 PIBH and/or the Agency For Persons With Disabilities shall have a minimum of one-week to prepare for the review.
- 4.3 On the specified date, the Department will conduct an entrance conference to obtain preliminary documents and an overview of PIBH and/or the Agency For Persons With Disabilities. PIBH and/or the Agency For Persons With Disabilities shall provide a contact personnel list of individuals responsible for certain PIBH and/or Agency For Persons With Disabilities activities, such as accounting records, human resource records, time cards, and payroll sheets. Interview each person to gain an understanding of policies and procedures.
- 4.4 To assist the Department with the review, PIBH and/or the Agency For Persons With Disabilities shall be prepared to provide the following items for the contract(s) and contract term(s) that are being reviewed:
- a. By-Laws
  - b. Performance Bond (if applicable)
  - c. Agency For Persons With Disabilities Membership application
  - d. List of all visually impaired, mentally retarded and/or physically disabled Agency For Persons With Disabilities employees who provided Direct Labor required for the manufacture of goods or the performance of services during the contract term that is the subject of the compliance review. The list shall include each employee's name, unique employee identification number, job description, and disability status
  - e. List of all non-disabled Agency For Persons With Disabilities employees who provided Direct Labor required for the manufacture of goods or the performance of services during the contract term that is the subject of the compliance review. The list shall include each employee's name, unique employee identification number, and job description
  - f. The Agency For Persons With Disabilities must have Employee personnel/medical records on file for each employee who is, or is claimed to be, a person with disabilities. The file must include the documentation listed on the PIBH-210 Form
  - g. Employee payroll records including, without limitation:
    - Employee timesheets
    - Payroll registers/reports

- h. Accounts Payable Records, including, without limitation:
  - Invoices paid to suppliers and subcontractors, for any direct labor, materials, repairs, etc.
  - Check registers
- i. Accounts Receivable Record, including, without limitation:
  - Invoices the Agency For Persons With Disabilities submitted to PIBH for services rendered
  - Invoices PIBH submitted to the Commonwealth
- j. PIBH Agency Certification (PIBH-210)
- k. Appreciable Contribution Worksheet for Services (PIBH-220 Form) or Goods (PIBH-230 Form)
- l. Any other documentation applicable to the compliance review.

## **5.0 Applicable Provisions**

The following laws and contracts are applicable to the compliance review:

- 5.1 The Commonwealth Procurement Code, Title 62 Pa.C.S., Section 520
- 5.2 The Operational Agreement for the Procurement of Goods Manufactured and Services Performed by Persons With Disabilities
- 5.3 The Department of General Services Statewide Requirements Contract For The Procurement Of Goods Manufactured And Services Performed By Persons With Disabilities, including any purchase order or other contract document.

## **6.0 Standards Of Review**

The Compliance Officer will perform the following functions:

- 6.1 Review the contract to verify the following criteria have been met:
  - a. Both parties have signed the contract.
  - b. Any supplements added or modifications have been properly approved.
  - c. No work was started before the notice to proceed date.
  - d. The contract remains valid (for reviews performed within the contract period).
- 6.2 Review the Department-established fair market price(s).
- 6.3 Review list of Agency For Persons With Disabilities employees.
- 6.4 Review the PIBH Agency Certification Form (PIBH-210 Form) for each person with disabilities to confirm initial determination of compliance with 75% Direct Labor and Payment Requirements.
- 6.5 Review the Appreciable Contribution Worksheet for Services (PIBH-220 Form) or Goods (PIBH-230 Form) to confirm initial determination of compliance with the Direct Labor and Payment Requirements.

- 6.6 Review all subcontracts to determine whether the subcontract is to perform part of the prime scope of work under the main contract or whether the subcontract covers ancillary or support services to the main contract. Only the costs of ancillary or support services subcontracts are allowable costs; the review shall disallow costs of subcontracting the prime scope of work under the main contract.

## 7.0 Contract Compliance

- 7.1 For each contract, determine if the Agency For Persons With Disabilities meets the Direct Labor Requirement.

- a. Identify all employees, including supervisors, working on the contract during the reviewed timeframe.
- b. Review PIBH-210, PIBH-220 and/or PIBH-230 Forms.
- c. Document the Agency For Persons With Disabilities classification of each employee as disabled or not disabled.

- 7.2 Verify medical certifications supporting the status of each employee listed as a person with disabilities. If no written report or record complying with the criteria of the following subsections is available, the employee cannot be counted toward the Direct Labor Requirement:

- a. Mentally Retarded – Does the Agency For Persons With Disabilities have a written report on file, signed by a physician and/or psychologist licensed to practice in the Commonwealth, which clearly indicates that the individual meets the definition in Section 3.4 of these Guidelines?
- b. Visually Impaired – Does the Agency For Persons With Disabilities have a record on file, signed by an optometrist or ophthalmologist, or another Department-accepted medical record, which clearly indicates that the individual meets the definition in Section 3.10 of these Guidelines?
- c. Physically Disabled – Does the Agency For Persons With Disabilities have medical documentation on file, signed by a physician and/or qualified psychologist licensed to practice in the Commonwealth, which discloses that the employee has a physical disability?

1. If yes, review the medical documentation to determine whether the employee meets the definition of a Physically Disabled person in Section 3.8 of these Guidelines. Medical professionals should be encouraged to use the Health Professional Certification form attached to these Guidelines. The medical documentation must:

- i. Identify the physical disability
- ii. Indicate the severity of the impairment, and
- iii. Include a prognosis concerning the impairment stating that it cannot be eliminated, modified or substantially reduced by standard rehabilitation services in fewer than 12 months

2. If the documentation does not meet the requirements of subparagraph 7.2.c.1.ii and iii, the Agency For Persons With

Disabilities may substitute for this information required by 7.2.c.1.ii and iii:

- i. A Disability Determination Worksheet on file that has been completed and signed by a rehabilitation specialist, or
      - ii. A referral from OVR/BBVS, SSI/SSDI, MH/MR, VA, or a Pennsylvania Board of Education-Certified School Psychologist referring the employee to the Agency For Persons With Disabilities.
    3. If no medical documentation of a physical disability is available, and there is no OVR/BBVS, SSI/SSDI, MH/MR, VA, or a Pennsylvania Board of Education-Certified School Psychologist referral documentation nor a completed and signed Disability Determination Worksheet on file, the employee cannot be counted towards the Direct Labor Requirement.
  - d. Conduct all inquiries in full compliance with HIPAA.
  - e. Compute the percentage of persons with disabilities working on the contract, both before and after any review exclusions.
  - f. Compute the percentage of documented persons with disabilities working on the contract for each pay period, and compute the average percentage of documented persons with disabilities working on the contract for all pay periods.
- 7.3 For each contract, determine if the Agency For Persons With Disabilities meets the Payment Requirement.
- a. Review PIBH-210, PIBH-220 and/or PIBH-230 Forms.
  - b. Determine, using both the documentation in the PIBH/Agency For Persons With Disabilities files and FMIS payment documents, the amount the Commonwealth paid for goods manufactured or services performed within the timeframe being reviewed. Reconcile the PIBH/Agency For Persons With Disabilities invoices with the FMIS records.
  - c. Determine the amount the Agency For Persons With Disabilities paid as direct wages to persons with disabilities after deducting non-allowable costs.
    1. Identify, by pay period, the direct wages the Agency For Persons With Disabilities paid to employees, including employer taxes, workers' compensation insurance, and fringe benefits.
    2. Verify hours billed to original timesheets.
    3. Verify employees' labor rates billed to payroll register.

- d. Identify and compute the total allowable costs used at each contract site from documentation including, but not limited to, general ledger entries, vendor invoices, and internal shipping documents.
- e. Calculate the appreciable contribution (as defined in Section 2.7 of these Guidelines) for the amounts paid to determine whether it meets the Payment Requirement.

## **8.0 Reporting**

- 8.1 Complete the Form – Section 520 Inspection Checklist
- 8.2 The Chief Procurement Officer for the Department's Bureau of Procurement, with the assistance of the Program Manager, will prepare and provide a signed report to the Department's Deputy Secretary for Procurement certifying, at a minimum, the Department's findings and conclusions on the following:
  - a. Whether the time, billing, and payroll records were sufficiently complete and reliable for the Department to determine compliance with the Direct Labor Requirement as defined in Section 3.2 of these Guidelines and the Payment Requirement as defined in Section 3.6 of these Guidelines. If the records are not sufficiently complete and reliable, list the deficiencies and make recommendations.
  - b. A breakdown of the portion of Direct Labor hours, for the overall contract term, that were worked by review-verified persons with disabilities.
  - c. A breakdown of the portion of the total number of sampled review-verified employees who performed Direct Labor as defined in Section 3.1 of these Guidelines during the contract term.
  - d. The steps being taken to resolve any findings and recommendations from previous Department reviews.
- 8.3 The Chief Procurement Officer is required to submit the signed report to the Department's Deputy Secretary for Procurement within 120 calendar days after the review's official start date.
- 8.4 All records identifying PIBH and/or Agency For Persons With Disabilities employees are to be treated as confidential records and protected from review by unauthorized persons both within and outside of the Department.
- 8.5 The Deputy Secretary for Procurement reserves the right to verify any and all information contained in the reviewed PIBH and/or Agency For Persons With Disabilities files, maintaining confidentiality during any such verification review.

## **9.0 Notification of Compliance or Non-Compliance**

- 9.1 If the Deputy Secretary for Procurement concurs with the review findings, the Chief Procurement Officer shall notify PIBH and the Agency For Persons With Disabilities and the Commonwealth purchasing agency of the review findings.
- 9.2 If the review determines that persons with disabilities are not making an Appreciable Contribution in manufacturing goods or performing services, or that PIBH and/or an Agency For Persons With Disabilities is not in compliance with other

requirements of the Code, the Chief Procurement Officer shall give PIBH and/or the Agency For Persons With Disabilities 45 calendar days in which to remedy the deficiency.

- 9.3 PIBH and/or the Agency For Persons With Disabilities must respond to the Department in writing within 45 calendar days after receipt of the Chief Procurement Officer's notice. The response should:
- a. If PIBH and/or the Agency For Persons With Disabilities believes that it is in compliance with the Code and these Guidelines, state the reasons, with supporting documentation, why PIBH and/or the Agency For Persons With Disabilities is in compliance with the requirements; or,
  - b. Report that PIBH and/or the Agency For Persons With Disabilities have achieved compliance and state the actions that PIBH and/or the Agency For Persons With Disabilities has taken to achieve compliance.
- 9.4 If PIBH and/or the Agency For Persons With Disabilities do not submit a written response within the 45 calendar days, the Chief Procurement Officer may notify PIBH and/or the Agency For Persons With Disabilities in writing that the Department has proposed termination of the contract and/or removal of the goods and/or services from the contract.
- 9.5 If PIBH and/or the Agency For Persons With Disabilities fail to remedy the deficiency within 45 calendar days, PIBH and/or the Agency For Persons With Disabilities shall be deemed not to comply with the contract, and the Chief Procurement Officer shall notify the purchasing agency that it may terminate the contract and seek to procure the goods or services through a competitive bidding process.

Nothing in the Code shall preclude a purchasing agency from procuring goods or services through an emergency contract when PIBH and/or an Agency For Persons With Disabilities is deemed not to comply with the Code or these Guidelines.

## **Pennsylvania Industries for the Blind and Handicapped**

### **HEALTH PROFESSIONAL CERTIFICATION FORM – Instructions:**

The Pennsylvania Industries for the Blind and Handicapped, in cooperation with the Commonwealth of Pennsylvania Department of General Services, provides this form to assist medical professionals in making the certifications required to qualify a person with disabilities for employment related to contracts between Commonwealth of Pennsylvania state government agencies and agencies for persons with disabilities. The information appearing below the solid line on this page gives more detailed information about this Commonwealth purchasing program.

Your cooperation in completing this form will assist the Commonwealth and Pennsylvania Industries for the Blind and Handicapped in making a determination which may result in paid employment for your patient. The Commonwealth of Pennsylvania contracts with agencies for persons with disabilities for the provision of goods manufactured and services performed by persons with disabilities.

Please complete the appropriate items on the attached checklist regarding your patient. If you determine that any answer requires further explanation, space is provided at the end of the form on which you may include any information you believe will be relevant to this determination.

Thank you for your cooperation. Should you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_ (phone) or \_\_\_\_\_ (e-mail).

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### **Commonwealth Purchasing through PIBH**

To provide persons with severe disabilities with meaningful employment and training, the Commonwealth Procurement Code (Code) establishes a method for contracting for products manufactured by and services performed by persons with disabilities. Under this contracting method, Commonwealth agencies may contract with non-profit agencies for persons with disabilities for these products and services if they are available at a price the Department of General Services (DGS) determines to be a fair market price. There is no requirement for Commonwealth agencies to use competitive bidding to procure these products and services.

To be eligible to participate in this program, non-profit agencies for persons with disabilities must certify to DGS that persons with designated disabilities – visual impairment, mental retardation, or physical disability – will make an appreciable contribution to the manufacturing of the product or the performance of the service. In each case, DGS makes the final determination of eligibility. The non-profit agencies must also be capable of manufacturing the product or performing the service in accordance with the Commonwealth's contract requirements.

DGS has designated Pennsylvania Industries for the Blind and Handicapped, commonly known as PIBH, as the central non-profit agency to coordinate the marketing of all products and services available to Commonwealth agencies through the various non-profit agencies for persons with disabilities. PIBH creates and provides an annual updated catalog of available products and services to Commonwealth agencies.

DGS monitors PIBH and the participating non-profit agencies for compliance with the statutory requirements that agencies for persons with disabilities must fulfill in manufacturing products and performing services for Commonwealth agencies. DGS, in cooperation with the purchasing Commonwealth agency, is required to conduct annual compliance reviews of all Commonwealth contracts with agencies for persons with disabilities where the cost exceeds \$300,000 per year.

**Pennsylvania Industries for the Blind and Handicapped  
HEALTH PROFESSIONAL CERTIFICATION FORM**

**Part A – Professional’s Information:**

1. Treating professional: \_\_\_\_\_

2. Professional’s address: \_\_\_\_\_

\_\_\_\_\_

Professional’s phone number: \_\_\_\_\_ fax number: \_\_\_\_\_

Professional’s e-mail address: \_\_\_\_\_

PA Department of State Licensing Board: \_\_\_\_\_

License or certification level (i.e. M.D., D.O., O.D., Professional Psychologist, Occupational Therapist, Audiologist): \_\_\_\_\_

**Part B – Patient Information:**

1. Patient name: \_\_\_\_\_

2. Patient address: \_\_\_\_\_

\_\_\_\_\_

3. Nature of disability (check all applicable, providing additional information where indicated):

\_\_\_ mentally retarded (an individual with sub-average general intellectual functioning which originates during the developmental period and is associated with the impairment of maturation, learning or social adjustment)

\_\_\_ visually impaired (central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees) – record the applicable visual impairment level:

\_\_\_ visual acuity in better eye of \_\_\_\_/\_\_\_\_ with correcting lenses, and/or

\_\_\_ diameter of visual field is \_\_\_\_\_ at its widest point

\_\_\_ physically disabled (most activities and functioning are limited by virtue of a severe impairment of any of the various bodily systems to the extent that competitive employment is precluded, and the condition cannot be eliminated, modified, or substantially reduced by standard rehabilitation services)

Brief description of impairment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_ mentally impaired (most activities and functioning are limited by virtue of a severe mental impairment to the extent that competitive employment is precluded)

Brief description of impairment: \_\_\_\_\_

\_\_\_\_\_



**Pennsylvania Industries for the Blind and Handicapped  
HEALTH PROFESSIONAL CERTIFICATION FORM**

**Part B – Patient Information (continued):**

4. Professional evaluation:

a. In my best professional judgment, the patient named on this form is unable to engage in competitive employment by reason of the disability or impairment specified in number 3 of this Part B (check one):

\_\_\_\_\_ yes    \_\_\_\_\_ no    If the answer checked is “yes” go on to letter “b” below. If the answer checked is “no” sign the form in the space indicated at the bottom of this page.

b. In my best professional judgment, the patient’s disability or impairment specified in number 3 of this Part B (check one):

\_\_\_\_\_ can be expected to last for a continuous period of not less than 12 months.

\_\_\_\_\_ will be resolved in less than 12 months’ time.

I certify that the information I have provided on this form is true and accurate to the best of my professional knowledge:

Signed: \_\_\_\_\_

\*Witness: \_\_\_\_\_

Date: \_\_\_\_\_

\*NOTE: the witness to the professional’s signature on this form may NOT be the disabled individual or any family member of that person.

**CONTRACT**  
**TERMS AND CONDITIONS – ELECTRONIC CONTRACT**

**1. TERM OF CONTRACT**

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective Date shall be: a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

**2. EXTENSION OF CONTRACT TERM**

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

**3. SIGNATURES**

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

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

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative

proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

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

#### **4. DEFINITIONS**

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

- a. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean calendar days.
- d. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- f. Services: All Contractor activity necessary to satisfy the Contract.

#### **5. PURCHASE ORDERS**

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

Purchase Orders may be electronically signed by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

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

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

## **6. INDEPENDENT PRIME CONTRACTOR**

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

## **7. DELIVERY**

- a. **Supplies Delivery:** All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the

essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

- b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

## **8. ESTIMATED QUANTITIES**

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

## **9. WARRANTY**

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

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

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option,

either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

## **11. OWNERSHIP RIGHTS**

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

## **12. ACCEPTANCE**

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

## **13. PRODUCT CONFORMANCE**

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

- a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- b. Supply published manufacturer product documentation.
- c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.

- e. Provide customer references.
- f. Provide a product demonstration at a location near Harrisburg or the using agency location.

#### **14. REJECTED MATERIAL NOT CONSIDERED ABANDONED**

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

#### **15. COMPLIANCE WITH LAW**

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

#### **16. ENVIRONMENTAL PROVISIONS**

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

#### **17. POST-CONSUMER RECYCLED CONTENT**

- a. Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guidelines-cpg-program>.
- b. **Recycled Content Enforcement:** The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

#### **18. COMPENSATION**

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

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

## **19. BILLING REQUIREMENTS**

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- a. Vendor name and "Remit to" address, including SAP Vendor number;
- b. Bank routing information, if ACH;
- c. SAP Purchase Order number;
- d. Delivery Address, including name of Commonwealth agency;
- e. Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- f. Quantity provided;
- g. Unit price;
- h. Price extension;
- i. Total price; and
- j. Delivery date of supplies or services.

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

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

## **20. PAYMENT**

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the



dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.
- c. The Commonwealth will make contract payments through Automated Clearing House (ACH).
  - 1) Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
  - 2) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.
  - 3) It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

## **21. PAYMENT – ELECTRONIC FUNDS TRANSFER**

- A. The Commonwealth will make Contract payments through Automated Clearing House (ACH). Within 10 days of award of the Contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
- B. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.
- C. It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

## **22. TAXES**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued.

Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

## **23. ASSIGNMENT OF ANTITRUST CLAIMS**

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

## **24. COMMONWEALTH HELD HARMLESS**

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, *et seq.*), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

## **25. AUDIT PROVISIONS**

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

## **26. DEFAULT**

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - 3) Unsatisfactory performance of the work;
  - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 5) Improper delivery;
  - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - 7) Delivery of a defective item;
  - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - 9) Discontinuance of work without approval;
  - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - 11) Insolvency or bankruptcy;
  - 12) Assignment made for the benefit of creditors;
  - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
  - 14) Failure to protect, to repair, or to make good any damage or injury to property;
  - 15) Breach of any provision of the Contract;
  - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
  - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure,

upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **27. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

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

## **28. TERMINATION PROVISIONS**

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

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

## **29. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting

officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

### **30. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

### **31. OTHER CONTRACTORS**

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

### **32. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA

and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- j. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

### **33. CONTRACTOR INTEGRITY PROVISIONS**

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

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



- b. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - c. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.
  - d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - e. **“Financial Interest”** means either:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - f. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [\*Governor’s Code of Conduct, Executive Order 1980-18\*](#), the *4 Pa. Code §7.153(b)*, shall apply.
  - g. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:
- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
  - c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
  - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
  - (3) had any business license or professional license suspended or revoked;
  - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
  - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

- h.** Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i.** Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

### **34. CONTRACTOR RESPONSIBILITY PROVISIONS**

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

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may search the current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment List tab.

### **35. AMERICANS WITH DISABILITIES ACT**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee who will furnish or perform or seeks to furnish or perform, good, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth.

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are

applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

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

### **36. HAZARDOUS SUBSTANCES**

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 et seq.

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
  - 1) Hazardous substances:
    - a) The chemical name or common name,
    - b) A hazard warning, and
    - c) The name, address, and telephone number of the manufacturer.
  - 2) Hazardous mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
    - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
    - d) A hazard warning, and
    - e) The name, address, and telephone number of the manufacturer.
  - 3) Single chemicals:
    - a) The chemical name or the common name,
    - b) A hazard warning, if appropriate, and
    - c) The name, address, and telephone number of the manufacturer.

- 4) Chemical Mixtures:
  - a) The common name, but if none exists, then the trade name,
  - b) A hazard warning, if appropriate,
  - c) The name, address, and telephone number of the manufacturer, and
  - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

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

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

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

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

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

### **37. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or

violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### **38. APPLICABLE LAW**

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

### **39. INTEGRATION**

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

### **40. ORDER OF PRECEDENCE**

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

### **41. CONTROLLING TERMS AND CONDITIONS**

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

### **42. CHANGES**

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective

date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Contract Controversies Provision.

#### **43. BACKGROUND CHECKS**

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and every five (5) years thereafter.
- b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
- d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.



#### **44. INSURANCE**

The Contractor is required to have in place during the term of the Contract and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

- A. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.
- B. Public Liability and Property Damage Insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Contract or the failure to perform under the Contract, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Contract and at each insurance renewal date during the term of the Contract, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least 30 days written notice has been given to the Commonwealth. The Commonwealth shall be under no obligation to obtain such certificates from the Contractor(s). Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

#### **45. CONFIDENTIALITY**

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

cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.

- b. The obligations stated in this Section do not apply to information:
  - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

#### **46. MANUFACTURER'S PRICE REDUCTION**

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

#### **47. NOTICE**

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, teletype, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

#### **48. RIGHT TO KNOW LAW**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact

information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
  - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested

Information pursuant to the RTKL.

- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

#### **49. ENHANCED MINIMUM WAGE PROVISIONS**

- a. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
  1. exempt from the minimum wage under the Minimum Wage Act of 1968;
  2. covered by a collective bargaining agreement;
  3. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
  4. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- e. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

## **Procurement of Apparel or Apparel Laundering Services**

1. **Eligibility.** To be eligible for award, a bidder [or offeror] must submit the following items with its bid [or proposal], or no later than two (2) business days after notification from the Department of General Services [or other purchasing agency]:
  - a. A certification, in the form included with this invitation for bids [or request for proposals] signed by an individual authorized to make the certifications on behalf of the bidder [or offeror].
  - b. A list of each proposed facility to be utilized in the manufacture of the apparel or the laundering of the apparel, including subcontractors, with business name, address, contact person, and telephone number where such work will be conducted.

**Failure to provide this required information prior to the expiration of the second business day after notification shall result in the rejection of the bid [or proposal].**

2. **Applicable Law.**
  - a. Pennsylvania Employers. Employers in Pennsylvania must comply with Pennsylvania and applicable federal laws.
  - b. Other U.S. Employers. Employers in other states in the United States must comply with the employer's state law and appropriate federal law.
  - c. Outside of U.S. Employers. For employers whose manufacturing/assembly facilities are outside the United States, those employers must comply with the country's laws where the facilities are located.
3. **Responsibility Determination.** The Department of General Services [or other purchasing agency] shall not enter into a contract for the procurement of apparel or apparel laundering services unless and until the Department [or other purchasing agency] determines, in its sole discretion, that the apparel will not be manufactured or laundered in a facility that utilizes sweatshop conditions. In making the determination, the Department of General Services [or other purchasing agency] may:
  - a. Consider the certification provided by the bidder [or offeror] in a.1. above.
  - b. Request further information and documentation from the bidder [or offeror] or the manufacturing or laundering facility.
  - c. Seek and receive information from workers, labor unions, manufacturers, consumer groups, international organizations and groups and other parties.

The bidder [or offeror] understands and agrees that the Department of General Services [or other purchasing agency] may make available the information provided by bidders [or offerors] in a and c above to the public (excluding other offerors and their representatives and agents).

4. **Notice of Changes During Contract Term.** The Contractor shall be required to provide written notice to the Department of General Services [or other purchasing agency] of any changes during the term of the contract to the certification or the list of manufacturing/laundrying facilities provided by the bidder [or offeror] with its bid [or proposal].
5. **Remedies and Sanctions.** The Department of General Services [or other purchasing agency] shall pursue appropriate remedies and sanctions against a bidder [or offeror], contractor, manufacturer or other party for:
  - a. Failure to comply with the requirements of its bid [or proposal] or the contract;
  - b. False certifications;
  - c. Any retaliation or attempt to retaliate against employees who report alleged violations of these requirements; and/or
  - d. Other violations of these requirements.

Remedies and sanctions include:

- a. Rejection of a bid [or proposal];
- b. Termination of award or contract;
- c. Collection of damages;
- d. Suspension and/or debarment from the privilege of contracting with any Commonwealth agency; and
- e. Possible criminal prosecution.

A bidder [or offeror] may escape sanctions if, prior to submission of its bid [or proposal], it obtains signed certifications from its subcontractors, meeting all the requirements stated in the certification. This will not, however, limit the Department of General Services' [or other agency's] ability to terminate the award or the contract upon thirty (30) days notice of violation of these requirements, after giving the contractor reasonable right to cure.

CERTIFICATION  
Required By  
Executive Order 2004-4  
Anti-Sweatshop Procurement Policy

I, Alfred W. Baker, being the President/CEO [title] of  
PIBH [Contractor], a Pennsylvania [State or  
Country of incorporation] corporation, or other legal entity. ("Contractor") located at 1007  
North Front Street Harrisburg, PA 17110  
[address], having a Social Security or Federal Identification Number  
of 23-1523064, do hereby certify and represent to the Commonwealth of Pennsylvania  
("Commonwealth"):

1. In connection with the manufacturing of the apparel or the laundering of apparel that the Contractor is offering to provide as a part of its bid [or proposal]/the contract, Contractor certifies and agrees (**Contractor MUST check either the "a." box or the "b." box below, whichever is applicable:**

- a. 1. Each and every employee used in connection with the manufacturing or laundering of apparel will be paid an hourly rate at least equivalent to the Poverty Threshold, as defined in Paragraph 7 below; and
2. Each and every employee used in connection with the manufacturing or laundering of apparel will be provided with working conditions that meet or exceed the International Labor Organization Convention's ("ILO") standards governing forced labor, child labor, payment of wages, hours of work, occupational health and safety and nondiscrimination, and Contractor is in compliance with all federal, state and local laws of the locality of manufacturing/laundrying of the apparel, except where preempted by federal/state law; and
3. The representations in a.1. and b.1. above are also true in regard to any of Contractor's subcontractors, and subsidiary, affiliated, or associated corporations that are being or will be used in the manufacturing or laundrying of apparel in connection with this bid [or proposal] or contract.

**OR**

- b. A collective bargaining agreement is in effect between the operator of the manufacturing facility(ies) and its employees and will remain in effect for the duration of the contract for the manufacturing/laundrying of the apparel. The union representing the manufacturing facility's employees is \_\_\_\_\_

**[Contractor must identify union in the space provided].** The union is a responsible organization that is not influenced or controlled by management.

10. The information and certifications provided by Contractor are material and important and will be relied upon by the Commonwealth in awarding the contract. The Department [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the Pennsylvania Crimes Code, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Brenda N. Bewafair  
Signature/Date

Brenda N. Bewafair, V.P.  
Printed Name/Title

PIBH  
Corporate or Legal Entity's Name

[Signature]  
Signature/Date

Alfred W. Baker, President/CEO  
Printed Name/Title



UNIQUESOURCE PRICE LISTS  
ARE MAINTAINED ON THE  
CONTRACT OVERVIEW