



FULLY EXECUTED - CHANGE 1
Contract Number: 4400015608
Original Contract Effective Date: 04/15/2016
Contract Change Date: 11/15/2016
Valid From: 04/12/2016 To: 08/31/2018

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

Your SAP Vendor Number with us: 120505

Purchasing Agent

Name: Schurtz Sonya
Phone: 717-783-0761
Fax: 717-214-9505

Supplier Name/Address:

B & W INC
B & W INC
8100 ADAMS DR
HUMMELSTOWN PA 17036-8623 US

Please Deliver To:

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

Supplier Phone Number: 717-566-4022

Supplier Fax Number: 717-566-4028

Contract Name:

Facilities Maintenance Service ITQ

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
1	Facility Repair Services	0.000		0.00	1	0.00

General Requirements for all Items:

Header Text

Facilities Maintenance Services ITQ

Approved Categories:

- HVAC Services
- Electrical Services
- Steam Maintenance Services
- Pumps and Controls Services

Please contact Commodity Specialist Sonya Schurtz at 717-783-0761 or sschurtz@pa.gov with any questions concerning this contract.

Information:

Total Amount:

Currency: USD

Supplier's Signature _____

Title _____

Printed Name _____

Date _____



FULLY EXECUTED - CHANGE 1

Contract Number: 4400015608

Original Contract Effective Date: 04/15/2016

Contract Change Date: 11/15/2016

Valid From: 04/12/2016 To: 08/31/2018

Supplier Name:

B & W INC

No further information for this Contract

Information:

Total Amount:

Currency: USD



FULLY EXECUTED
Contract Number: 4400015608
Contract Effective Date: 04/15/2016
Valid From: 04/12/2016 To: 08/31/2018

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

Your SAP Vendor Number with us: 120505

Purchasing Agent
Name: Peek Lilly
Phone: 717-346-3846
Fax: 717-783-6241

Supplier Name/Address:
B & W INC
B & W INC
8100 ADAMS DR
HUMMELSTOWN PA 17036-8623 US

Please Deliver To:

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

Supplier Phone Number: 717-566-4022
Supplier Fax Number: 717-566-4028

Contract Name:
ITQ Services, DGS

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
1	Facility Repair Services	0.000		0.00	1	0.00

General Requirements for all Items:

Header Text

Please contact Lilly Peek at 717-346-3846 or kpeek@pa.gov with any questions on this contract.
No further information for this Contract

Information:

Total Amount:

Currency: USD

Supplier's Signature _____
Printed Name _____

Title _____
Date _____

Table of Contents

PART V - CONTRACT TERMS and CONDITIONS.....	2
V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006).....	2
V.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)	2
V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006).....	2
V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)	2
V.5 CONTRACT-003.1a Signatures – Contract (March 2007)	2
V.6 CONTRACT-004.1a Definitions (Dec 12 2006).....	3
V.7 CONTRACT-005.1d Purchase Orders (April 2013)	4
V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006).....	4
V.9 CONTRACT-007.01b Delivery of Services (Nov 30 2006)	5
V.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006).....	5
V.11 CONTRACT-008.1a Warranty. (Oct 2006)	5
V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006).....	5
V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)	6
V.14 CONTRACT-010.1a Acceptance (Oct 2006).....	6
V.15 CONTRACT-011.1a Compliance With Law (Oct 2006)	6
V.16 CONTRACT-013.1 Environmental Provisions (Oct 2006).....	7
V.17 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006)	7
V.18 CONTRACT-014.3 Recycled Content Enforcement (February 2012)	7
V.19 CONTRACT-015.1 Compensation (Oct 2006)	7
V.20 CONTRACT-015.2 Billing Requirements (February 2012)	7
V.21 CONTRACT-016.1 Payment (Oct 2006)	8
V.22 CONTRACT-016.2 ACH Payments (Aug 2007)	8
V.23 CONTRACT-017.1 Taxes (Dec 5 2006)	9
V.24 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)	9
V.25 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006).....	9
V.26 CONTRACT-020.1 Audit Provisions (Oct 2006)	9
V.27 CONTRACT-021.1 Default (Dec 12 2006)	10
V.28 CONTRACT-022.1 Force Majeure (Oct 2006).....	11
V.29 CONTRACT-023.1a Termination Provisions (Dec 2012)	12
V.30 CONTRACT-024.1 Contract Controversies (Oct 2011)	12
V.31 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006).....	13
V.32 CONTRACT-026.1 Other Contractors (Oct 2006)	13
V.33 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (July 2012).....	14
V.34 CONTRACT-028.1 Contractor Integrity Provisions (March 2011).....	14
V.35 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)	19
V.36 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006).....	20
V.37 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)	20
V.38 CONTRACT-033.1 Applicable Law (Oct 2006).....	20
V.39 CONTRACT-034.1b Integration (Nov 30 2006).....	20
V.40 CONTRACT-034.2b Order of Precedence -IFB (Dec 6 2006)	21
V.41 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)	21
V.42 CONTRACT-035.1a Changes (Oct 2006).....	21
V.43 CONTRACT-036.1 Background Checks (Feb 2008).....	21
V.44 CONTRACT-037.1a Confidentiality (February 2012).....	22
V.45 CONTRACT-045.1 Insurance -General (Dec 12 2006)	22
V.46 CONTRACT-051.1 Notice (Dec 2006).....	23
V.47 CONTRACT-052.1 Right to Know Law (Feb 2010)	23

PART V - CONTRACT TERMS and CONDITIONS

PART V - CONTRACT TERMS and CONDITIONS

V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

The Contract with the awarded bidder (who shall become the "Contractor") shall include the following terms and conditions:

V.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)

The initial term of the Contract shall be 05 year(s) and 00 month(s).

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 Commonwealth (signed and approved as required by the Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006)

The Contract may be mutually renewed for a maximum of 1 additional 5 year term(s), so long as the Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter dated not less than 060 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 030 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)

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

V.5 CONTRACT-003.1a Signatures – Contract (March 2007)

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor.

No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

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

box, the Contract has not been fully executed.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of a purchase order 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.

V.6 CONTRACT-004.1a Definitions (Dec 12 2006)

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.

V.7 CONTRACT-005.1d Purchase Orders (April 2013)

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

Purchase Orders will not include an "ink" signature by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

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

- 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.

V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

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.

V.9 CONTRACT-007.01b Delivery of Services (Nov 30 2006)

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.

V.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)

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.

V.11 CONTRACT-008.1a Warranty. (Oct 2006)

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.

V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006)

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.

V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

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.

V.14 CONTRACT-010.1a Acceptance (Oct 2006)

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.

V.15 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

V.16 CONTRACT-013.1 Environmental Provisions (Oct 2006)

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. Section 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. Section 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. Section 693.1.

V.17 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006)

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

V.18 CONTRACT-014.3 Recycled Content Enforcement (February 2012)

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.

V.19 CONTRACT-015.1 Compensation (Oct 2006)

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.

V.20 CONTRACT-015.2 Billing Requirements (February 2012)

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:

- Vendor name and "Remit to" address, including SAP Vendor number;
- Bank routing information, if ACH;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;

- Price extension;
- Total price; and
- 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.

V.21 CONTRACT-016.1 Payment (Oct 2006)

- 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.

V.22 CONTRACT-016.2 ACH Payments (Aug 2007)

- a. The Commonwealth will make contract payments through the 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.

V.23 CONTRACT-017.1 Taxes (Dec 5 2006)

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. 23-23740001-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.

V.24 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

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.

V.25 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)

- 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.

V.26 CONTRACT-020.1 Audit Provisions (Oct 2006)

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.

V.27 CONTRACT-021.1 Default (Dec 12 2006)

- 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.

V.28 CONTRACT-022.1 Force Majeure (Oct 2006)

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.

V.29 CONTRACT-023.1a Termination Provisions (Dec 2012)

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 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 the Subparagraph a.

V.30 CONTRACT-024.1 Contract Controversies (Oct 2011)

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.

V.31 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)

- 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.

V.32 CONTRACT-026.1 Other Contractors (Oct 2006)

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.

V.33 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (July 2012)

The Contractor agrees:

1. 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, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. 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.
7. 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.

V.34 CONTRACT-028.1 Contractor Integrity Provisions (March 2011)

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 procurement process.

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

1. 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 with the Commonwealth.

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.

4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, 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.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires

prior Commonwealth approval; or

c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

d. Necessary for purposes of Contractor's internal assessment and review; or

e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or

f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or

g. Otherwise required by law.

10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:

(1) obtaining;

(2) attempting to obtain; or

(3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

c. Violation of federal or state antitrust statutes.

d. Violation of any federal or state law regulating campaign contributions.

e. Violation of any federal or state environmental law.

f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

- g.** Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h.** Violation of any federal or state law prohibiting discrimination in employment.
- i.** Debarment by any agency or department of the federal government or by any other state.
- j.** Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a.** Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b.** Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these 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 Commonwealth Inspector General in writing.

14. 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.

15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of 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 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 refers to or concern this contract.

16. 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.

17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.

c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

d. "Financial interest" means:

(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.

e. "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.

f. "Immediate family" means a spouse and any unemancipated child.

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.

h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

V.35 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)

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.

- 1.** 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.
- 2.** 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.
- 3.** 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.
- 4.** 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.
- 5.** 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.
- 6.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

V.36 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. Section 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Section 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of Subparagraph a. above.

V.37 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

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.

V.38 CONTRACT-033.1 Applicable Law (Oct 2006)

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.

V.39 CONTRACT- 034.1b Integration (Nov 30 2006)

This Contract, including the Invitation for Bids, the Contractor's bid, 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.

V.40 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006)

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 IFB; and the Contractor's Bid in Response to the IFB.

V.41 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)

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.

V.42 CONTRACT-035.1a Changes (Oct 2006)

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.

V.43 CONTRACT-036.1 Background Checks (Feb 2008)

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

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

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

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

V.44 CONTRACT-037.1a Confidentiality (February 2012)

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.

V.45 CONTRACT-045.1 Insurance - General (Dec 12 2006)

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 thirty (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.

V.46 CONTRACT-051.1 Notice (Dec 2006)

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

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

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

V.47 CONTRACT-052.1 Right to Know Law (Feb 2010)

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.

PART I

STATEMENT OF WORK

1. **Purpose:** The purpose of this Invitation to Qualify (ITQ) is to qualify responsible and responsive contractors for the procurement of Facilities Maintenance Repair Services for the Department of General Services for various facilities managed by the Department and located in Dauphin County. The scope of the ITQ is limited to the repair or preventative maintenance of facility equipment or systems and those parts required for repair or preventative maintenance.

This ITQ will result in a contract that is the first step in a two-step procurement process. Only those contractors that respond to this ITQ and that the Department of General Services (“Department”) determines to be qualified (“Qualified Contractors”) will be eligible to participate in the second step.

The second step involves the issuance of Requests for Quotes (“RFQ”) to the Qualified Contractors. Through this two-step process, the Department will offer Qualified Contractors the opportunity to submit prices for specific requirements for Facilities Maintenance Repair Services to Commonwealth locations. The Department may issue RFQs either by fax, mail or email to ITQ approved Vendors within the category of the service being procured. Services for the Department must be provided in conformance of all applicable OEM specifications, UCC, National Electric Code, American Welding Society Specification, other requirements as identified in the ITQ, and RFQ.

The Qualified Contractors selected through the RFQ process (“Selected Contractors”) for procurements that exceed the Commonwealth of Pennsylvania VISA purchasing card threshold will receive a Purchase Order and will supply services if necessary to meet specific requirements of the Commonwealth as indicated in the RFQ.

The Department of General Services will issue change notices providing updated threshold amounts referenced within the ITQ.

This ITQ is required on procurements of Facilities Maintenance Repair Services exceeding the threshold established by the Department of General Service for Small No Bid Procurements. Procurements less than the threshold of the Commonwealth of Pennsylvania VISA purchasing card be made using said Commonwealth Purchasing Card or via SAP Purchase Orders. The Departments may issue blanket orders covering a services used over a period of time.

The following definitions for repair and preventative maintenance apply to this ITQ and any RFQs issued hereunder:

- a. **Repair** – Work performed on existing equipment or system for the purpose of a break/fix nature and includes the replacement of like parts/components in order to return the equipment or system to working order. This work cannot include replacement of the entire equipment/system or change or alter the equipment/system as it relates to its size, type or capability.
- b. **Preventative Maintenance** – Work performed on a routine basis, such as the cleaning and testing of equipment or systems and component parts for the purpose of allowing the equipment or system to continue operating in the expected manner.

NOTE: This contract is NOT intended for Construction purposes. Services provided under the awarded contract(s) are solely for the purpose of preventative maintenance and/or repair services as deemed necessary by the Department.

Additional preventative maintenance or repair categories, agencies, and counties that are reasonably construed to be within the scope of this ITQ may be added to the ITQ by the Department of General Services Commodity Specialist.

Vendors may add categories for which they are qualified and counties they chose to service through the ITQ portal.

2. **Facility Repair Service Categories:** The various types of services that may be provided under this Contract are divided into a series of defined Service Categories. The Service Categories are:
 - a. **HVAC SERVICES** The Contractor will provide preventative maintenance, testing and/or inspection services to the HVAC equipment managed by the Department. Any repair services performed must be as a direct result of, and be required to complete the, specific preventative maintenance and/or inspection activities. HVAC equipment and services includes but is not limited to Inspections, Boilers/Chillers/Roof top units/Split Systems, Controls, and Exhaust Systems and other electrical equipment related to the heating and air conditioning. All work shall be performed in accordance with the National Electrical Code using UL approved materials.
 - b. **ELECTRICAL SERVICES** The Contractor will provide preventative maintenance, testing and/or inspection services to the electrical equipment managed by the Department. Any repair services performed must be as a direct result of, and be required to complete the, specific preventative maintenance and/or inspection activities. Electrical equipment and services to be included but not limited to switches, switch gear, compressors, equipment controls, equipment calibration, electric lines, electrical motors and other electrical equipment.
 - c. **STEAM MAINTENANCE SERVICES** The Contractor will provide preventative maintenance, testing and/or inspection services to the Steam service equipment managed by the Department. Any repair services performed must be as a direct result of, and be required to complete the, specific preventative maintenance and/or inspection activities. Steam services and equipment to be included but not limited to heat exchanger, calibration, pressure reducing valves, pilot valves, sensing lines, Spence valves diaphragms steam traps, and/or strainers.
 - d. **PUMPS & CONTROLS SERVICES** The Contractor will provide preventative maintenance, testing and/or inspection services to the pumps and controls within the facilities managed by the Department. Any repair services performed must be as a direct result of, and be required to complete the, specific preventative maintenance and/or inspection activities. Pumps, and controls services shall consist of, but not be limited to, vibration /thermal analysis, periodic balancing, lubrication, laser alignment, periodic replacement of seals and/or gaskets. All repairs shall be performed in accordance with the Original Equipment Manufacturers (OEM) Specifications.

All work shall be performed in accordance with the National Electric Code and Uniform Construction Code (UCC), Original Equipment Manufacturers (OEM) Specifications and all materials utilized must be Underwriters Laboratories (UL) approved.

Failure to maintain all of the eligibility requirements for the category of service they are supplying will result in suspension of the Vendor from the ITQ for that service category until such time as the eligibility requirements have been re-secured. Vendors will be provided 90 days to restore approval after which time the Vendor's contract may be terminated upon written notification.

Those additional services that are reasonably construed to be within the scope of ITQ may be added to the ITQ by the Department of General Services' Commodity Specialist.

Bidders must provide all repairs as defined in the Request for Quote (RFQ) and in accordance with the Original Equipment Manufacturer (OEM), universal construction code UCC, level of experience as defined in the ITQ/RFQ, certifications, licensing, and permits if applicable.

3. **Issuing Office:** This ITQ is issued for Department of General Services by the Department's Bureau of Procurement. The Issuing Office is the sole point of contact in the Department for this ITQ. Please refer all inquiries to:

Lilly Mangan
Bureau of Procurement
555 Walnut Street, 6th Floor
Harrisburg, Pennsylvania 17101
Telephone No. (717) 346-3846
E-Mail: lmangan@pa.gov

4. **Bid Security:** Contractors are not required to submit bid security with their proposals. However, performance security may be required from the Selected Contractor. When performance security is required, the requirements will be set forth in the RFQ.

5. **Addenda to the ITQ:** If it becomes necessary to revise any part of this ITQ, addenda will be posted to the Department's website <http://www.emarketplace.state.pa.us> for viewing by all contractors who downloaded the original ITQ.

6. **Alternate Proposals:** The Department will not accept alternate proposals. Alternate proposals are those that are provided in a form other than that specified by the Department. The Department will not accept proposals wherein a contractor alters any of the forms provided in the application.

7. **Rejection of Proposals:** The Department reserves the right to reject any and all proposals received as a result of this ITQ.

8. **Incurring Costs:** The Department is not liable for any costs or expenses incurred in the preparation and submission of the proposals.

9. **Definitions:** The following definitions apply to the words and phrases used in this Part, unless the text or usage clearly indicates otherwise:

- a. **Request For Quotes (RFQs):** A document that describes the required materials, and operators, if applicable, and provides interested Qualified Contractors with sufficient

information to enable them to prepare and submit quotes. At the Commonwealth's discretion, RFQs may be issued through mail or facsimile or electronic mail.

- b. **Contract:** The contract executed as a result of this ITQ.
- c. **Contractor:** The Qualified Contractor(s) selected as a result of the RFQ to furnish Facilities Maintenance Repair Services to meet the requirements of Commonwealth locations.

10. **Contractor Duties:** Each Contractor, subject to the terms and conditions set forth in the Contract, the RFQ, and the Purchase Order, shall furnish Facilities Maintenance Repair Services.

The Contractor shall be paid only for the services as specified in the RFQ and then awarded on the Purchase Order issued by the Commonwealth.

It is understood that prices quoted for repair and/or maintenance are at FOB Destination terms to include all delivery, shipping and handling costs, unless otherwise specified in the RFQ.

Services must pass on-site receiving inspections to ensure compliance with minimum specification requirements. If service is rejected in an inspection, the contractor shall receive no reimbursement.

11. **Term:** The Contract shall begin on or about September 1, 2013, or the date of the Contractor's receipt of the fully executed contract if later, and expire on August 1, 2018. The Contract or any part of the Contract may be renewed for one additional five-year term by mutual agreement of the Department and the contractor(s).

12. **Contractor Selection:** Qualified Contractors will be selected for receipt of an RFQ from the list of Qualified Contractors on the Invitation to Qualify. Contractors who can provide the services will be invited to submit a quote. See: **Request for Quote** criteria for determining number of quotes required to be issued. The Commonwealth may issue RFQs either by fax, mail or email. It is the sole responsibility of the vendor to insure that they maintain a valid e-mail address for the ITQ on file with the Department of General Services. The Vendor must notify the Department of General Services' Commodity Specialist in writing of any changes to that e-mail address. Failure to maintain a current and valid e-mail address on the ITQ will impact the Vendor's ability to receive RFQs.

13. **Option for Separate Competitive Bidding Procedure:** The Department of General Services reserves the right to purchase services covered under this Contract through a separate competitive bidding procedure, whenever the Department deems it to be in the best interest of the Commonwealth. Additionally, in furtherance of the Department of General Services' Small Business Procurement Initiative (SBPI), the Department reserves the right to use SBPI for a particular RFQ to be issued to Vendors who are Department of General Services Certified Small Businesses. Under these circumstances, the Department will follow Part IV, Chapters 8 and/or 9 of the Procurement Handbook. Additional information on the Small Business Procurement Initiative and the certification process can be found at www.smallbusiness.pa.gov.

14. **Request For Quote (RFQ):** When the services estimated costs are less than the small no bid threshold: The Department will solicit quotes from at least one (1) Vendor on the List of Awarded Vendors for the applicable service category when services are needed.

When the services estimated costs are over the small no bid threshold: The Department will solicit quotes from all Vendors on the List of Awarded Vendors for the services that are needed from the applicable service category.

Requests for quotes may be issued on an as-needed basis through mail or facsimile or electronic mail.

Contractors must respond to each RFQ even with only a "NO BID." Contractors that fail to respond to five (5) successive RFQs may be removed from the ITQ.

15. RFQ Format. The Department will solicit quotes through the RFQ process on an as-needed basis via E-mail, Standard Mail or Facsimile, which must include detailed quote requirements, scope of service and specifications.

- a. The scope of service and specification should clearly define (but not be limited to) the following information:
 - i. The required category of service(s)
 - ii. Description of services to be rendered
- b. The Department will specify in the RFQ whether prevailing wage rates will apply and will specify the prevailing minimum wage rates to be paid by the Vendor.
- c. The Department will specify in the RFQ whether the Public Works Employment Verification Act will apply and will provide instructions if applicable.
- d. The Department will specify any additional insurance or bonding requirements in the RFQ.

16. RFQ Pricing Format. The RFQ must include cost line items to be filled in by interested Vendors responding to the RFQ.

17. Quote: Interested Vendors receiving an RFQ from the Department under this Contract must adhere to the following:

Completed quote must be returned by the method specified on the Request for Quote. It is the responsibility of each Vendor to ensure that its quote is received at the location specified on the RFQ prior to the date and time set for the opening of quotes, regardless of medium used. If a Vendor is permitted to and decides to mail in its quote, it is advised to allow adequate time for delivery. No quote shall be considered if it arrives at the location specified on the Request for Quote after the date and time set for quote opening.

Quotes submitted in response to the Request for Quote must be completed in ink or other permanent marking, except in the case of RFQs that permit receipt of quote via email or facsimile. Quotes submitted in hardcopy must be signed by an authorized signatory of the company or the quote will be rejected. Quotes submitted electronically must be submitted by an authorized signatory of the company or the quote will be rejected.

Quotes must be firm. If a quote is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the Contract and the RFQ, it shall be rejected. The quote

shall also be rejected if the services offered by the Vendor are not in conformance with the scope of service and specifications contained in the RFQ.

18. **Award:** Awards shall be made to the lowest responsible and responsive bidder. The Department reserves the right to re-issue the RFQ if, in its sole discretion, it deems re-issuing of the RFQ to be in the best interest of the Commonwealth. For awards that exceed the threshold of the Commonwealth of Pennsylvania VISA purchasing card, the Commonwealth will issue a Purchase Order against the Contract to obtain the materials. This order will constitute authority to furnish the services and must be used when invoicing, if applicable, the county for service provided. Each RFQ and/or Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract.

For awards under the threshold of the Commonwealth of Pennsylvania VISA purchasing card, the Commonwealth may issue a purchase order or may elect to pay via Commonwealth Purchasing Card.

19. **Purchase Order:** After an RFQ is solicited, and quotes are received and evaluated, the Department will issue a Purchase Order to the Vendor offering the lowest price in response to the RFQ. If only one response is received to an RFQ, the Department is under no obligation to re-issue an RFQ and may proceed to issue a Purchase Order to the single respondent to the RFQ. Vendors may not proceed to provide services under this Contract until receipt of a Fully Executed Purchase Order from the Department. Each RFQ and Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract.

20. **Contact Person:** The Contractor must designate a dedicated Customer Service Representative that will serve as the main point of contact for this Contract. The Customer Service Representative must be available, at a minimum, Monday through Friday from 8:00 a.m. to 5:00 p.m. The Customer Service Representative will play an important role in overseeing the Contract and will be responsible for ensuring high-quality service and resolving problems.

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

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.

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

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

22. **Work Location Security:** The Contractors shall follow all required Security procedures at each worksite for signing in and out, obtaining and displaying vendor badges or other necessary identification or other requirements as deemed necessary by the Agency. Particularly sensitive areas may require Commonwealth staff to accompany vendor representatives.

23. **Permits, Fees, Notices And Ordinances:** The Contractor shall obtain and pay for all permits, licenses, and certifications required by law for proper execution and completion of its work. The Contractor shall furnish proof of payment for permits, licenses or certificates, or proof that no permits, licenses or certificates are required. This proof must be furnished prior to starting work.

The Contractor shall give all notices and comply with all applicable laws, ordinances, regulations, rules and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the contract documents are at variance therewith in any respect, it shall promptly notify DGS, Bureau of Procurement, in writing. Any necessary modifications will be made by DGS, Bureau of Procurement.

If the Contractor performs any work knowing it to be contrary to such applicable laws, ordinances, regulations, rule of orders, and without such written notice to the Bureau of Procurement, it assumes full responsibility therefore and shall bear all costs attributable thereto.

24. **Protest Procedures:** The protest procedures are set forth on the Department's website at <http://www.dgs.state.pa.us/procurement>. Any protest arising from the award or non-award of a Contract by DGS as a result of this ITQ must be filed with the DGS Director for Procurement. Any protest arising from an RFQ or an award as a result of an RFQ issued by an Agency must be filed with the Secretary of that Agency.

25. **Claims:** Any claims against the Commonwealth must be filed in accordance with Paragraph V.30 Contract – 024.1 Contract Controversies of the Contract Terms and Conditions contained in this document. If a claim results from a Purchase Order based upon an RFQ issued by a using agency, the claim must be filed with the using agency. If such a claim is filed with DGS, it will be referred to the using agency for resolution.

26. **Steel and Aluminum Products:** To the extent that parts or components being used in preventative maintenance or repair services under this ITQ contain steel or aluminum products, the following two provisions apply:

27. **Steel Products Procurement Act "A":** In the performance of any contract awarded pursuant to this invitation to bid, the contractor, subcontractors, material men, or suppliers shall use

only Steel Products, rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. Steel Products include not only Cast Iron Products but also Machinery and Equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from, or containing steel components. If a product contains both foreign and United States steel, such products shall be determined to be a United States Steel product only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United States steel product only if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).

When unidentified steel products are supplied under a contract, before any payment will be made, the contractor must provide documentation including, but not limited to, invoices, bills of lading and mill certification that the steel was melted and manufactured in the United States. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the using agency that the contractor has fully complied with this provision. The Department shall not provide for or make any payment to any person who has not complied with the Act. Any such payments made to any person by the Department which should not have been made as a result of the Act shall be recoverable directly from the contractor, subcontractor, manufacturer or supplier who did not comply with the Act.

In addition to the withholding of payments, any person who willfully violates any of the provisions of the Act shall be prohibited from submitting any bids to any public agency for a period of five (5) years from the date of the determination that a violation has occurred. In the event the person who violates the provisions of the Act is a subcontractor, manufacturer or supplier, such person shall be prohibited from performing any work or supplying any materials to a public agency for a period of five (5) years from the date of the determination that a violation has occurred.

The contractor shall include the provisions of the Steel Products Procurement Act in any subcontract and supply contract, so that the provisions of the Act shall be binding upon each subcontractor and supplier.

28. Prohibition Against The Use Of Certain Steel And Aluminum Products: In accordance with the Trade Practices Act of July 23, 1968 P.L. 686 (71 P.S. Section 773.101 et seq.), the contractor cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted.

- a. BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.
- b. SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel

plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.

- c. SOUTH KOREA: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.
- d. ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

Penalties for violations of this paragraph may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

NOTE: THIS PROVISION IN NO WAY RELIEVES THE CONTRACTOR OF ITS RESPONSIBILITY TO COMPLY WITH THOSE PROVISIONS OF THIS INVITATION TO BID WHICH PROHIBIT THE USE OF FOREIGN-MADE STEEL AND CAST IRON PRODUCTS.

**APPENDIX A
SUPPLIER CERTIFICATION FORM**

Vendor Name	B & W Inc.
Vendor #	120505
Date:	4/8/2016

List CERTIFICATIONS for each service categories you are qualifying for.

HVAC SERVICES	PUMPS & CONTROLS SERVICES
Liebert	Siemens LMV5/3
York	Honeywell VFD drives
Trane	ABB Drives
Fujitsu	Pump Replacement
ELECTRICAL SERVICES	STEAM MAINTENANCE SERVICES
Electric and Electronic Temperature Controls	Boiler Cleaning
Lov Voltage control wiring	Combustion Efficiency
	Poiping Repair
	Boiler Installation
OTHER CERTIFICATIONS	OTHER CERTIFICATIONS
Power Flame Burners	NFPA 70E Certification
Universal Refrigerant Certification	Webster Burner Certification
Masters Plumbing License	
OSHA 30 Certification	