



FULLY EXECUTED
Contract Number: 4400026719
Original Contract Effective Date: 08/10/2022
Valid From: 09/01/2022 To: 08/31/2025

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

Purchasing Agent

Name: Arbogast Anita
Phone: 717-728-0345
Fax: 717-728-4181

Your SAP Vendor Number with us: 393457

Supplier Name/Address:
KLEMENTS SAUSAGE COMPANY INC
1036 W JUNEAU AVE STE 400
MILWAUKEE WI 53233-1413 US

Please Deliver To:

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

Supplier Phone Number: 920-246-2931

Contract Name:
Commissary ITQ Klements

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	340485 SAUSAGE,BEEF,SUMMER,HOT N SPICY,5OZ	0.000	Case	112.00	1	0.00
2	340486 SAUSAGE,BEEF,SUMMER,REGULAR BEEF,5OZ	0.000	Case	112.00	1	0.00

General Requirements for all Items:

Information:

Total Amount:
SEE LAST PAGE FOR TOTAL OF
ALL ITEMS

Currency: USD

Supplier's Signature _____

Title _____

Printed Name _____

Date _____



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Supplier Name:
KLEMENTS SAUSAGE COMPANY INC

Header Text

Commissary Contract for Klements Sausage against Parent Contract 4400025435

RFQ was issued in Jaggaer for a 3-year contract

POs will be issued against this contract

No further information for this Contract

Information:

Total Amount:

20,000,000.00

Currency: USD

PART V - CONTRACT TERMS and CONDITIONS

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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-002.3 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.4 CONTRACT-003.1a Signatures – Contract (July 2015)

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

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

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

The Commonwealth and the Contractor specifically agree as follows:

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

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

V.5 CONTRACT-004.1a Definitions (Oct 2013)

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.6 CONTRACT-005.1b Agency Purchase Orders (July 2015)

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

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

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

The Commonwealth and the Contractor specifically agree as follows:

a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

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

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

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

V.7 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.8 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

V.9 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.10 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.11 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

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.12 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.13 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.14 CONTRACT-010.2 Product Conformance (March 2012)

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

1. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location.

V.15 CONTRACT-010.3 Rejected Material Not Considered Abandoned (March 2012)

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

V.16 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.17 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.18 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> .

V.19 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.20 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.21 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.22 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.23 CONTRACT-016.2 Payment – Electronic Funds Transfer (February 2014)

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.24 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.25 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.26 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.27 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.28 CONTRACT-021.1 Default (Oct 2013)

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 ensure 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.29 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.30 CONTRACT-023.1a Termination Provisions (Oct 2013)

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

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.31 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.32 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

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.33 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.34 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (August 2018)

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 discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.

4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and

sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.

6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

8. 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.

9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

10. 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.35 CONTRACT-028.1 Contractor Integrity Provisions (January 2015)

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

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers,

Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.

g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or

investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

g. When contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that is has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

V.36 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.37 CONTRACT-030.1 Americans with Disabilities Act (April 1, 2010)

- 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.38 CONTRACT-031.1 Hazardous Substances (April 2017)

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 - 323.6.

a. Labeling. The Contractor shall ensure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (1) through (4):

1) Hazardous substances:

- a) The chemical name or common name,
- b) A hazard warning, and
- c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

- a) The common name, but if none exists, then the trade name,
- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
- d) A hazard warning, and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

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

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

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

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

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

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

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

V.39 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.40 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.41 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.42 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.43 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.44 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.45 CONTRACT-037.1a Confidentiality (Oct 2013)

(a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any 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, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). 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 pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

(b) Insofar as information is not otherwise protected by law or regulation, 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 by 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 law, regulation, court order, or other legal process.

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.

(c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

(1) Prepare an un-redacted version of the appropriate document, and

(2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and

(3) Prepare a signed written statement that states:

(i) the attached document contains confidential or proprietary information or trade secrets;

(ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and

(iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

(4) Submit the two documents along with the signed written statement to the Commonwealth.

V.46 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)

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

V.47 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.48 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.

**REQUEST FOR QUOTE
DEPARTMENT OF CORRECTIONS
COMMISSARY ITEMS ITQ 4400025055**

1. BACKGROUND

Through this Request for Quote (RFQ), qualified Vendors are given the opportunity to compete to provide items to Correctional Industries for the Department of Corrections (DOC) Commissary. The Vendor(s) who receive a Letter of Award, through this RFQ process ("Selected Vendors") will make deliveries to meet the requirements of DOC for the time period commencing on the Selected Vendor's receipt of a Letter of Award, and expiring three (3) years from the effective date. The DOC reserves the right to extend the end date of the RFQ by three (3) months, if desired. Once a Letter of Award is issued, the selected Vendor will receive purchase orders to replenish DOC inventory as necessary during the awarded period.

2. PURPOSE

Through this RFQ process, the DOC is announcing the date and time for the receipt of quotes and is providing further instructions to the qualified Vendors in regard to the submission of those quotes.

3. ISSUING OFFICE

This RFQ is issued by the Pennsylvania Department of Corrections (DOC). Please refer all inquiries in writing through the Jaggaer system: <https://solutions.sciquest.com/apps/Router/SupplierLogin?CustOrg=CommonwealthPA>.

4. SUBMISSIONS OF QUOTES

Quotes are requested for the items described on the quote form, in accordance with Commissary Items ITQ 4400025055 and the terms and conditions.

Cost submittal sheet must be submitted as an Excel Spreadsheet as provided, no other format will be accepted. Document(s) must be received electronically and be editable (no PDF format).

- a. It is the responsibility of each Vendor to ensure that the DOC receives the price quotes prior to the Date and Time of Submission of Quotes, noted under Section 4. No quote shall be considered if it is sent or received after the Date and Time of Submission of Quotes. All quotes shall be submitted in the Jaggaer system.
- b. Quotes must be firm. If a quote is submitted with conditions or exceptions, or is not in conformance with the terms and conditions referenced in Commissary Items ITQ 4400025055, it shall be rejected. The quote shall also be rejected if the items offered by the Vendor are not in conformance with the specifications as determined by the DOC.
- c. Vendors shall quote a price per item at **two (2) decimals (hundredth cents) ONLY** for each of the listed items on the attached Cost Submittal Sheet. Pricing on the RFQ shall be submitted at the lowest unit of measure. All quoted prices are to be FOB destination and all-inclusive of item cost and shipping. Upon approval by the DOC, prices may be adjusted for imported products if tariffs are established for contracted items after bids are accepted by the PA DOC. Vendors requesting the increase must provide a copy of the tariff certificate documenting the increase with proof of payment.
- d. The price per lowest unit of measure, multiplied by ounce/count, must equal price per each item at two decimals only. Accordingly, the price per item, multiplied by case count, must equal the total case price. **If any item's lowest unit price has been formatted beyond two decimals, the bid line will be disqualified.**

- e. The case counts submitted on the quote will be considered final. There will be no separate submission for revised case counts. The case counts on the bid must be “actual” case counts. **Any revised case counts after final acceptance of bid case counts will *not* be approved and will result in the loss of bid line item.**
- f. Quotes must contain specific item descriptions including the name of the item, description, ounce or count in the manufacturer/brand name column. **Failure to complete this section results in disqualification of bid line item.**
- g. Quotes must adhere to the specified special conditions, i.e. clear case, no metal, etc.
- h. Quotes must adhere to the unit of measure specified on the RFQ. Any changes outside the scope of a manufacturer-based change will not be accepted without justification and prior authorization by the DOC.
- i. Vendors must notify the DOC of any model changes between the timeframe of the award to issue of Purchase Orders.

5. **PRODUCT REVIEW**

After review of submitted bids, vendors will be notified of samples to be submitted for final approval by DOC Commissary. Samples must be submitted within 2 weeks of notification. Products must meet security and packaging requirements outlined in section 22 of this RFQ, and food products must meet requirements outlined in the attached Taste Test Guidelines. If products are rejected due to not meeting these requirements, the award will go to the next lowest bidder who meets the requirements.

6. **QUANTITIES**

All quantities are estimated based on previous sales history of similar or same items ordered by the offender population for a period of twelve (12) months plus ten (10%) to twenty percent (20%). Items not sold previously by PCI are estimated quantities to the best of our ability. Vendors are to be held accountable for anticipating the growth in sales after initial quantities. For example, the Vendor should adjust inventory projections for a highly successful item.

The DOC will be held harmless for fluctuations in sales due to changes in offender populations, item quality or inconsistent item supply by the Vendor. These figures should not be considered concrete. The Vendor assumes full responsibility in meeting the required contract fill rate and stocking inventory to meet the demand. The Vendor should allow leeway for sales trends, seasonal items and the transition of new items when anticipating stock levels. The DOC is not responsible for buying the Vendor’s unpurchased inventory of awarded bid line items at the end of the contract.

7. **RECIPROCAL LIMITATIONS ACT**

The quotes submitted by the Vendor shall be adjusted by the DOC to consider any bidding preference for items with recycled post-consumer material and the bidding preferences under the Reciprocal Limitations Act.

8. **CONTRACT AWARD**

The DOC intends to award this RFQ based on the pricing for all items (either by line item, predetermined lot or entire list of requested items by Vendor) to the lowest responsive and responsible bidder. If such pricing is more advantageous to award by line item, the DOC will make the determination based on the evaluation of final submitted pricing or by best value to the DOC. The pricing will be calculated only to the one-hundredth decimal point. Ties will be determined by an independent third party. Upon award, the Vendor **must** supply the layer count by cases and case count per pallet for each awarded item within thirty (30) days of award.

9. **RFQ EXPIRATION DATE**

Letter of Award issued through this RFQ process will be effective for three (3) years from the date of issue.

10. DELIVERY

The DOC requires that deliveries be made to each Distribution Center during normal working hours Monday thru Friday, 8:00 a.m. till 1:00 p.m. EST, excluding state holidays. Deliveries scheduled on state holidays are to be rescheduled with each Distribution Center. Fully loaded deliveries are to be delivered inside the secure perimeter of the institution with a security clearance approved driver to the CDC loading dock area. After delivery, the trailer must depart the secure perimeter completely empty. Partial shipments, smaller loads, or LTL loads should be directed to the outside warehouse to be unloaded. Partial shipments are considered (6) six pallets or less. Initial delivery on a new Purchase Order shall be made within thirty (30) days of order receipt date. Any deliveries thereafter for that same Purchase Order shall be made within five (5) business days of the replenishment order date unless otherwise specified on the PO.

- All Purchase Orders are to be shipped complete. No back orders will be accepted.
- All drivers must receive an annual security clearance through the Central Office. It is the responsibility of the Vendor to ensure the drivers are current with their security clearances.
- No Sleeper Cab is permitted on Institutional property.
- Note: PA Correctional Industries Distribution Center has no control over the timely access for delivery to the commissary operations within the Institution.

SCI-Albion
PCI Commissary
10745 Route 18
Albion, PA 16475-0001

Dock Hrs: 8:00am–2:00pm EST
Last Delivery by 1:30pm EST

SCI-Houtzdale
PCI Commissary
209 Institution Drive
Houtzdale, PA 16698-1000

Dock Hrs: 8:00am–2:00pm EST
Last Delivery by 1:30pm EST

SCI-Mahanoy
PCI Commissary
301 Morea Road
Frackville, PA 17932

Dock Hrs: 8:00am–2:00pm EST
Last Delivery by 1:30pm EST

11. NEW ITEM TRIAL PERIOD

New Item shall have a trial period of no more than forty-five (45) days from date of SALE in order to see if the item is selling and accepted by the offender population. If the item is not selling or the offenders are unhappy with the item, the DOC will have the option to return any item still in inventory and require the Vendor to replace it with a comparable item at the same cost. A sample replacement item must be submitted within seven (7) days. If the Vendor cannot provide a replacement item at the same cost, then the DOC reserves the right to cancel that specific item line item on the Purchase Order.

In the event an item has been modified and is no longer selling, or an item has resulted in offender complaints, the DOC will have the option to return any item still in inventory and require the Vendor to replace it with a comparable item at the same cost. A sample replacement item must be submitted within seven (7) days. If the Vendor cannot provide a replacement item at the same cost, then the DOC reserves the right to cancel that specific item line item on the Purchase Order.

12. ADDITIONS/DELETIONS OF PRODUCTS AND DISCONTINUED PRODUCTS

The Vendor must notify the DOC/Correctional Industries of any discontinued products and package size change for items on an existing Purchase Order. Any replacement products and package size changes must be authorized and approved by the DOC/Correctional Industries prior to execution of any changes. A justification letter from the manufacturer indicating the product change/discontinuance must be received by DOC/Correctional Industries at a minimum of thirty (30) business days prior to the vendor's desired date of transition of the product. The new product shall be offered at the same or lower price as the discontinued product. DOC at its sole discretion shall determine the appropriateness of the product and its price.

13. ROTATIONAL ITEMS (applicable only to Food, Commodity Code 50000000-ITQ-344)

The DOC reserves the right to request rotational items of similar food items through a Request for Quote approximately four (4) times annually during the term of this Letter of Award. The estimated award term for the rotational food items will be every three (3) months. In addition, the DOC may opt to add holiday rotational items.

Any new rotational product(s) must meet the security and packaging requirements. DOC, at its sole discretion, shall determine the appropriateness of the product and its price. However; the DOC at its sole discretion, shall determine if it shall issue a Request for Quote.

14. SHELF LIFE

All perishable products must have, at a minimum, a shelf-life of **twenty-one (21) days** upon delivery to the Warehouse Facility/Distribution Centers. Freshness date is to be legible on each individual unit, where applicable. Any products that fail to meet this requirement will be rejected by the Warehouse Facility/Distribution Centers at the vendor's expense. The vendor must replace all rejected products with products not conforming to the Shelf Life requirement within five (5) calendar days or the next delivery date not to exceed fifteen (15) calendar days upon notification of rejection as documented on the packing list/invoice.

15. JULIAN DATES

Vendor shall maintain records of Julian Dates use by/sell by dates, and production dates for products when coded shelf life dates are used. This information shall be readily available and provided to the agency upon request.

Repeated shipments of product with less than the maximum shelf life may result in a formal complaint (Contractor Responsibility) being filed and could be used as justification for cancellation of contract for poor performance. Any documentation on poor performance will be taken into consideration when conducting a performance review.

16. OUTDATED INVENTORY

The vendor will not quote outdated or nearly outdated products on the RFQ submission. The DOC is to be protected from an award of a vendor's depleting inventory. The vendor must be able to produce long-term inventory of the current model. Product model changes are permissible; however, provision of long-term inventory upon the opening of the bid is expected.

17. OUT OF STOCK ITEMS

If the vendor is out of stock on any product, the ordering location must be notified within 24 hours upon receipt and acknowledgement of an order. If the 24-hour period ends on a weekend or holiday, the vendor must notify the ordering location no later than 3:00 PM EST the next normal business day.

18. PRODUCT RECALL

The vendor shall immediately (within 24 hours) notify Correctional Industries as well as the issuing officer by e-mail and via telephone indicating:

1. The reason for the product recall;
2. Product lot number and/or model number; and
3. The interim action or antidote to be taken to remedy any emergency situation arising from product ingredients or malfunction.

The vendor shall make provisions to have all recalled product(s) (which will be contained, inventoried, etc. as applicable) removed consistent with the return procedures set forth in paragraph 12. The vendor must provide the appropriate product(s) by replacing/substitute the product stock with approved equivalent value product and/or crediting the account.

The vendor must include lot codes on all case lots and provide a list of those codes to the DOC/CI warehouses. In the event of a recall, the DOC/CI warehouses should be able to easily identify where the products are at the time of recall, i.e. within the production process, or in the inmate population. The vendor is responsible to pick-up all recalled products within thirty (30) days.

19. RETURNS

Any products delivered in poor condition, in excess of the amount ordered, not included in the purchase order or recalled may, at the discretion of the DOC/CI warehouse ordering entity, be returned to the awarded vendor at

the awarded vendor's expense within thirty (30) days. Credit for the returned goods shall be made immediately after the vendor receives the returned products.

There shall be no restocking fees assessed to the DOC/CI warehouse or eligible contract users.

In the event that the DOC/CI warehouse ordering entity orders the wrong product, the product will be returned to the awarded vendor at the expense of the ordering entity.

20. FILL RATE

The vendor shall maintain a minimum 95% fill rate for all PO items unless there is a valid reason this rate cannot be met.

21. WARRANTY

Contractor shall be responsible for manufacturer warranty of products. Any warranty issues shall be addressed and resolved by the contractor.

22. SECURITY AND PACKAGING

All products must meet security requirements of the DOC. Before a product can be accepted into the institution the product must be reviewed by the Central Office Security Division and the DOC Commissary Committee in order for the product to be determined secure for institutional use.

Prior to purchase order (PO) issuance, the vendor will have to provide a sample of each new product ordered (not previously approved) to the DOC/Central Office Security Division and DOC/Correctional Industries for a security review. For security purposes, certain products call for unique packaging features that may not be consistent with how the product is made available commercially. The DOC reserves the right to allow companies to adapt their packaging to meet the DOC's security requirements before a PO is generated. Product approval may be made contingent upon packaging changes.

If, after award of a PO, DOC determines that a product poses a security threat, DOC will either cancel the award of that product, upon written notification, to the vendor detailing the nature of the security threat or allow the vendor to replace the product with a compliant product at the same price.

Listed below are general security requirements that must be adhered to for all products. This is not a complete list of requirements/restrictions and additional security requirements with regard to packaging or products may be added as deemed necessary by the Central Office Security Division, and DOC Commissary Committee:

- a. Containers/bags are to be clear, resealable when appropriate, and plastic when available. Glass will not be accepted;
- b. No foil packaging, hard canisters or cans, no squirt-type bottles for liquid products, and no metal of any kind will be permitted;
- c. Apparel should be white, natural and cocoa brown unless specified - no mesh; and
- d. Footwear should be shankless and injected molded, when applicable. Colors allowed are white, black, gray or a combination of the three colors.

The Vendor will have seven (7) business days from the date of notification of rejection to correct the packaging/security requirement or provide a new sample. Item approval may be made contingent upon packaging changes.

23. PACKING SLIPS

A separate packing slip must be included with item delivery and follow the standards provided by the Department of General Services.

1. Purchase Order Number
2. Commonwealth material number (SAP #)
3. Item description
4. Number of units/each ordered/shipped
5. Number of cartons
6. Price Each Unit
7. Total Price

24. PAYMENT

Vendors must adhere to a fifteen (15) day turnaround for submitting invoices to the Comptroller's Office to insure timely processing of payment.

25. PRICE ADJUSTMENTS

All items will have awarded pricing fixed for one (1) year. Please note if the manufacturer changes item size (ex., ounce reduction), the Vendor is expected to adjust the price per item accordingly, even if the manufacturer has not reduced the Vendor's price.

Increases: On the one (1) year anniversary of the Purchase Order, the Vendor is permitted to increase prices limited to those requested by the manufacturer of the item. The increase will not exceed 8% on any given product. To be granted the price increase, the Vendor must include documentation verifying proof of the price adjustment from the manufacturer to include:

1. Company letterhead
2. Company contact name
3. Phone number
4. Name of the item
5. Effective date of the price increase
6. Signature

Vendors that manufacturer their own item(s) will be required to provide the same documentation. The increase will not exceed 8% on any given product. The Vendor is required to provide a forty-five (45) day notice to the DOC prior to implementation of the price adjustments. The increases are subject to review and approval by Correctional Industries.

26. REPORTING

The awarded vendor shall provide monthly usage report to DOC/Correctional Industries within fifteen (15) business days from the last day of each month for the prior month. Reports shall include: a history of all orders placed by the three (3) warehouses/distribution centers; purchase order number; manufacturers number; product name; quantity ordered; quantity shipped; shipping date; backorders (if applicable); fill rate; and sale price.

27. ATTACHMENTS

- Commissary Items ITQ 4400025055
- Reciprocal Limitations Act
- Cost Submittal Sheet
- Taste Test Guidelines
- Taste Test Survey

Thank you for your participation.



SOLICITATION ADDENDUM

Date: **Tuesday, March 1, 2022**
Subject: **Commissary-Food RFQ**
Solicitation Number: **DOC-RFQ002792**
Due Date/Time: **Wednesday, March 9, 2022**
Addendum Number: **1**

To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation “Addendum” as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

List any and all changes:

1. If you are unable to provide a specific item listed on the RFQ bid sheet, you must submit a letter from the manufacturer stating the item is proprietary in nature and they are unable to sell it to your company. Upon verification of the proprietary nature of a particular item, at its sole discretion, the Department may allow for an acceptable substitution.

Please submit written letter no later than close of business on **Friday, March 4, 2022**, to Anita Arbogast at aniarbogas@pa.gov. Any letters received after this date will not be considered.

2. Bid end date has been extended to Wednesday, March 9th, at 10:00 a.m.

Type of Solicitation: Electronic Bid (JAGGAER) - Review your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Respectfully,

Name: Anita Arbogast
Title: Procurement Specialist 2
Phone: 717-728-0345
Email: aniarbogas@pa.gov

PCI Taste Test Guidelines for Commissary Food Items

- The taste test will be conducted by Pennsylvania Correctional Industries.
- The taste test panel will consist of DOC PCI Commissary Staff; including, but not limited to, select Security, Commissary Management, Commissary Stock Clerks, Administrative staff and select Offenders.
- The taste test for the RFQ 2022 is tentatively scheduled for week of April 11, 2022.
- The taste test will pertain to awarded items that meet the following criteria:
 - 1) All private label items;
 - 2) Instant rice and brown rice;
 - 3) Food items which were not purchased by offenders the previous bid year.
 - 4) Any item that seems questionable.
- PCI reserves the right to taste test any item wherein the quality of the item is in question.
- Item approval will be quantified by the questions on the Taste Test Survey related to visual appeal, aroma, taste and texture. If these criteria are not met by a majority of three or more “acceptable” ratings the item will be considered “disapproved.” This survey will be completed by each attendee during the taste test process.
- The awarded Vendor will be notified of any rejected items. The Vendor will be provided with the completed Taste Test Survey to explain why the item was rejected (ex. too salty, less than three “acceptable” majority ratings out of four categories). Descriptive feedback comments will also be included on the survey.
- If, after review of product, the item is also rejected for poor quality, the Vendor will be considered non-responsive for that item. The Commonwealth will move to the next lowest responsive and responsible Vendor and require samples for testing for that item.

Arbogast, Anita

From: Darhower, Cherese M (CI)
Sent: Wednesday, July 6, 2022 3:42 PM
To: Mark Warden
Cc: Arbogast, Anita
Subject: Food Lot - Klements
Attachments: Commissary Food - Klements Sausage Bid Sheet - Awards.xlsx

Importance: High

Good afternoon,

Thank you for your participation in the RFQ process. It is my pleasure to inform you that Correctional Industries is awarding Klements the attached highlighted line items in the Food Lot pursuant to ITQ# 4400025055.

The samples for the highlighted line items have been reviewed and approved by CI.

Please confirm all of the highlighted data is correct and prices are valid by replying to all on this email by Friday, July 8th. Now is the time to forfeit an item if necessary.

If you have any questions, please contact Cher Darhower at cdarhower@pa.gov or 717-221-6963.

Thank you,

Cher Darhower | Administrative Officer 2
Pennsylvania Correctional Industries PO Box 47 | Camp Hill PA 17001-0047
Phone: 717.221.6963 | Fax: 717.425.7290
www.cor.pa.gov/PCI
"Teaching Inmates to Work in Pennsylvania"

VENDORS NEED TO FILL OUT THE SECTIONS HIGHLIGHTED IN YELLOW																COST EACH / UNITS		(Sales x Cost)		(Cost Ea. x Case Ct)				FOOD ITEMS ONLY	
LINE NUM	GENERIC ITEM DESCRIPTION	BRAND NAME	RANGE	SPECIAL CONDITIONS	REQUEST CASE AMT	EST ANNUAL SALES PLUS 10 %	OUNCES OR COUNT PER ITEM	VENDOR PRICE PER Lowest unit of measure (Ounce/Count) F.O.B. (2 DECIMALS ONLY)	VENDOR PRICE PER ITEM F.O.B. (2 DECIMALS ONLY)	ANNUAL PRICE F.O.B. DELIVERED (Item Price X Total Estimated Sales)	FINAL CASE COUNT	FINAL CASE COST	WFG STATE (NOT "USA")	VENDOR PART NUMBER	BRAND NAME & PRODUCT DESCRIPTION	UPC NUMBER - EACH (NOT CASE)	KOSHER, HALAL, CERTIFIED, GLUTEN FREE, SUGAR FREE ITEMS (K, H, G OR SF) OR ANY COMBINATION								
EXAMPLE		ND	30 - 100 CT		12	25,000	50	0.50	1,000	25,000.00	12	6,000	WI	12345	BRUNNEN, 200MG	23456789									
							LOWEST UNIT OF MEASURE PRICE	(Oz/Ct x Vendor UOM Price)	(Annual Sales x Item Price)		(Item Price x Case Count)														
63	SAUSAGE BEEF SUMMER HOT N SPICY	NO	3 - 5 OZ	NO REFRIGERATION NEEDED	80	771,999	5	0.28	1.40	1,080,798.00	80	112.00	WI	3689	Klemets Sausage Brand - 5 oz Hot N Spicy Beef Summer Sausage	73608-03689	G								
64	SAUSAGE BEEF SUMMER REGULAR BEEF	NO	3 - 5 OZ	NO REFRIGERATION NEEDED	80	455,999	5	0.29	1.40	638,398.00	80	112.00	WI	3687	Klemets Sausage Brand - 5 oz Beef Summer Sausage	73608-03687	G								