



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

Bureau of Procurement
Forum Place, 6th Floor
555 Walnut Street
Harrisburg, Pennsylvania 17101

TO ALL INTERESTED CONTRACTORS:

You are invited by the Commonwealth of Pennsylvania, Department of General Services (Department), to submit a proposal in response to the attached Invitation to Qualify (ITQ) for the procurement of Bituminous Materials, Plant Mix to the Commonwealth of Pennsylvania (Commonwealth). Those contractors that respond to this ITQ, if found qualified by the Department and receive an awarded contract, will be eligible to provide quotes for the procurement of Bituminous Materials, Plant Mix to the Commonwealth by submitting prices in response to Requests for Quotes (RFQ's).

The Department will qualify contractors for the provision of Bituminous Materials, Plant Mix in this document. Those contractors who qualify through this ITQ process will receive a copy of the signed Contract.

Sincerely,

Patrick Rosenella
Commodity Specialist
Department of General Services
Bureau of Procurement

Initial Enrollment Period, Proposals Due: 1:30 PM October 15, 2010
Open Enrollment Period, Proposals Accepted: December 1, 2010 – September 1, 2015

INVITATION TO QUALIFY (ITQ)

Commonwealth of Pennsylvania
Department of General Services

PROCUREMENT OF BITUMINOUS MATERIALS

Contract Enrollment Period:

This contract is to become effective on or after **December 1, 2010** and expire on **November 30, 2015**.

The initial enrollment period will close **1:30 PM October 15, 2010**.

Enrollment for the remainder of the contract period will be accepted again starting **December 1, 2010** and will continue to be accepted at the address below through **September 1, 2015**.

Contact Person:

Patrick Rosenella, Commodity Specialist, Bureau of Procurement, (717) 346-8178
Al Scott, Associate Commodity Manager, Bureau of Procurement (717) 703-2932
Joel Shiffler, Commodity Manager, Bureau of Procurement, (717) 346-8179

Response Mailing Address:

Department of General Services
Bureau of Procurement
Bid Room
Attn: Patrick Rosenella
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
E-mail Address: prosenella@state.pa.us

WHEN MAILING YOUR RESPONSE, PLEASE ALLOW FOR SUFFICIENT TIME TO PROCESS YOUR APPLICATION.

Table of Contents

	Page
Part I	Instructions for Completion of the Pre-Qualification Application4
Part II	Information Required From Contractors6
Part III	Criteria for Qualification.....7
Part IV	Special Terms, Conditions, and Procedures9
	COSTARS Response.....17
Part V	Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies, GSPUR-12E19
	Contract Signature Page.....20

PART I**INSTRUCTIONS FOR COMPLETION OF PROPOSAL SUBMISSION**

1. **Application Submission:** Your submitted response **must** be completed on the documents provided and **must** include the completed Contract Signature Page. **All ITQ contract documentation must be returned to the Issuing Office.** A copy of all documents should be made for your records.
2. **Completion of the Signature Page:** The contractor's signature shall be in ink. If any information is handwritten or changed in any manner, it must be referenced as shown on the Contract Signature Page, (page 20) and the contractor's authorized signatory must initial and date immediately following the statement.

Except for signatures, please print legibly or type all required information.

The contractor must initial and date any error made while completing information. **Do not alter the form.** Adding anything other than information specifically required by the Department may be interpreted as a contractor "conditioning" the ITQ (which may cause the ITQ to be rejected by the Department).

All contractors must be registered on the Pennsylvania Supplier Portal. Contractors not currently register can register at the following website:

<https://www.pasupplierportal.state.pa.us/irj/portal/anonymous/>.

- a. **For Corporations:** Only the signature of a senior officer is required. Senior officers include Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer and Chief Operating Officer.
- b. **For Limited Liability Company (LLC):** The signature of the Manager or Member is required. No other titles will be accepted unless the contractor provides proof that the signatory has been delegated signature authority.
- c. **For Sole Proprietorships:** The signature of the Owner is required. A sole proprietorship doing business as (d/b/a) or trading as (t/a) another name—should indicate such. For example: John Brown d/b/a or t/a
Brown's Janitorial Service
- d. **For Partnerships:** The signature of the General Partner is required.

If signature authority has been delegated by any required principal (as cited above) to another official, (i.e., the Office Manager, the Comptroller, the Sales Manager, etc.), a copy of the resolution (for corporations) or power of attorney (for Partnerships and Sole Proprietorships) signed by the required principal delegating that signature authority to that specific individual must be provided prior to execution of the Contract. For a municipality or an authority, the delegation document must be either a resolution of the governing body or delegation provided by the organization's by-laws.

The ITQ may be rejected if not signed by an individual authorized to contractually bind the organization.

3. **Areas to be covered by the contract:** This is a contract for use by the Commonwealth to obtain Bituminous Materials, Plant Mix for any of its statewide requirements. The Commonwealth will issue Requests for Quotes (RFQ) for Specific Jobs and/or Groups of Jobs (referred to in previous Bituminous Materials, Plant Mix contracts as Parts 1 and 2) as it determines necessary for statewide needs (**all Districts/Counties will participate in this portion of the ITQ**).

Pilot Program for F.O.B. Source and F.O.B. Paver/Destination (referred to in previous Bituminous Materials, Plant Mix contracts as Part 3 Multi-Award): Agencies will issue RFQ's as they determines necessary for counties covered by The Department of Transportation's District 2 (Centre, Clearfield, Clinton, Cameron, McKean, Potter, Mifflin, Elk, and Juniata) and District 8 (Adams, Cumberland, Franklin, York, Dauphin, Lancaster, Lebanon, and Perry).

The ITQ and subsequent Pilot Program can be declared successful or a failure in part or whole by the Commonwealth at any point during the initial five-year term of the contract. Additional Districts may elect to participate in this Pilot Program; in that event a change order will be issued to the ITQ identifying the District and subsequent counties.

Suppliers during the contract may add counties and sources for which they are qualified by submitting an updated Bituminous Materials Counties of Interest Form to the Department of General Services' Commodity Specialist for their review and approval.

4. **Completion of the Bituminous Materials Counties of Interest Form:** By placing the source supplier code in the boxes on the Bituminous Material Counties of Interest Form, suppliers indicate which counties they wish to supply Bituminous Materials from each specific source. The Bituminous Materials, Counties of Interest Form must identify the plant location and supplier code of each source as listed in the Department of Transportation's Bulletin 41 (current edition).

The Bituminous Materials Counties of Interest Form identifies suppliers that can provide Bituminous Materials, Plant Mix to specific counties in accordance with the Department of Transportation's PUB 408 (current edition). In the event additional Bituminous Categories are added to the ITQ, the Bituminous Materials Counties of Interest Form will be modified to meet those requirements.

PART II**INFORMATION REQUIRED FROM CONTRACTORS**

1. **Statement of Qualifications:** Contractors must submit a properly executed Contract Signature Page, the COSTARS clause, and the Bituminous Materials Counties of Interests Form.
2. **Mandatory Requirements:** By executing this Contract, the contractor acknowledges the following:
 - a. You have submitted a complete response to this ITQ.
 - b. Your proposal contains the Contract Signature Page with an **ORIGINAL SIGNATURE** of an official of your company authorized to bind your company to its provisions and the provisions of this ITQ.
 - c. You agree that the contents of your proposal will become part of any Bituminous Materials contract that may be entered into as a result of this ITQ and any subsequent RFQ's.
 - d. You agree that your proposal will remain valid during the entire contract period.
 - e. You agree that, unless your proposal arrives by 1:30 PM on the October 15, 2010, it may not be considered for the full contract period beginning on or about December 1, 2010.
 - f. If your firm is selected for receipt of the Request for Quote(s), you agree to comply with the contract terms and conditions of this ITQ and to furnish the required materials and equipment as specified in the RFQ.
 - g. You agree that you must maintain your status as an approved contractor in order to remain eligible to receive an RFQ.
 - h. You agree that it is the sole responsibility of the supplier to insure that they maintain a valid e-mail address for the ITQ on file with the Department of General Services.

PART III

CRITERIA FOR QUALIFICATION

1. **Mandatory Requirements:** The Department will review proposals to determine if each contractor complies with the Mandatory Requirements found in Part II, Paragraph 2. A contractor's non-acceptance of, or noncompliance with any of these mandatory requirements shall result in the disqualification of the proposal.
2. **Responsible and Responsive:** The Department will then evaluate proposals to determine contractor responsibility and responsiveness.
3. **Award of Contracts:** All responsible and responsive contractors that have met the Mandatory Requirements found in Part II, Paragraph 2, and which meet the above qualifications, will receive a signed Contract and are eligible to receive RFQ's.
4. **Prequalification:** Suppliers must be approved by the Department of Transportation, Materials and Testing Division, 82 Dogwood Avenue, Harrisburg, PA 17110, prior to time of enrollment and identified as it is listed in the Department of Transportation's Bulletin #41 (current edition).

Failure to maintain approval in the Department of Transportation Bulletin # 41 (current edition) will result in suspension of the Supplier from the ITQ until such time as when approval has been re-secured. Suppliers will be provided 90 days to restore approval after which time the supplier's contract may be terminated upon written notification.

Information on Department of Transportation's Bulletin 41 can be located at :
<http://www.dot.state.pa.us/Internet/ConstrBulletins.nsf/frmBulletin41?openframeset>

Suppliers during the contract may add counties and sources for which they are qualified by submitting an updated Bituminous Materials Counties of Interest Form to the Department of General Services' Commodity Specialist for their review and approval.

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

5. **Qualifications of Bidders:** Bidders are not required to list their source of aggregates when submitting their ITQ. Awarded suppliers must provide aggregates for their plant-mix, as required, in accordance with specifications and furnished from a pre-qualified source as listed in the Department of Transportation, Bulletin 14 "Aggregate Producers" (current edition). The acceptability of aggregates is verified by the Department of Transportation's inspectors. (Stone, Slag, or Gravel).

Failure to maintain aggregate approval in the Department of Transportation Bulletin # 14 (current edition) will result in suspension of the source from the ITQ until such time as when approval has been re-secured. Suppliers will be provided 90 days to restore approval after which time the supplier's contract may be terminated upon written notification.

All bituminous materials must be furnished from a source approved by the Department of Transportation, Materials and Testing Division, 82 Dogwood Avenue, Harrisburg, PA 17110.

Identify on the Bituminous Materials Counties of Interest Form the plant location and supplier code of each source as listed in the Department of Transportation's Bulletin 41 (current edition), producers of bituminous mixtures, or the ITQ may be rejected. The supplier shall have a qualified (NICET Plant Inspection Certification) plant technician for each source. (Example: When identifying three sources on the Bituminous Materials Counties of Interest Form, the supplier shall have a plant technician at each source).

PART IV**SPECIAL TERMS AND CONDITIONS**

1. **Purpose:** The purpose of this Invitation to Qualify (ITQ) is to qualify responsible and responsive contractors for the procurement of Bituminous Materials, Plant Mix for the Commonwealth of Pennsylvania for various locations throughout the Commonwealth of Pennsylvania.

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

The second step involves the issuance of Requests for Quotes (“RFQ”) to the Qualified Contractors. Through this two-step process, the Commonwealth will offer Qualified Contractors the opportunity to submit prices for specific needs for Bituminous Materials, Plant Mix to be supplied to Commonwealth locations. The Commonwealth may issue RFQ’s, but not limited to, fax, mail or email to all ITQ approved suppliers within the category of the materials being procured. Materials for the Department of Transportation must be provided in conformance with the Department of Transportation, Publication 408 current edition and all supplements thereto.

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

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

This ITQ is required on procurements of Bituminous Materials; Plant Mix from Pennsylvania Department of Transportation’s Bulletin 41 (current edition) approved producers of bituminous mixtures. Procurements less than the threshold of the Commonwealth of Pennsylvania VISA purchasing card may be made using either Commonwealth Purchasing Card or via SAP Purchase Orders.

Suppliers may add counties and sources for which they are qualified by submitting an updated Bituminous Materials Counties Form to the Department of General Services Commodity Specialist for their review and approval.

2. **Issuing Office:** This ITQ is issued for Commonwealth using agencies by the Department’s Bureau of Procurement. The Issuing Office is the sole point of contact in the Department for this ITQ. Please refer all inquiries to:

Patrick Rosenella
Bureau of Procurement
555 Walnut Street, 6th Floor
Harrisburg, Pennsylvania 17101
Telephone No. (717) 346-8178
E-Mail: Prosenella@state.pa.us

3. **Scope:** This ITQ contains instructions for preparing and submitting a proposal, mandatory requirements to be eligible for consideration, contract terms and conditions, COSTARS Response, Contract Signature page, and a Bituminous Materials Counties of Interest Form.
4. **Proposals:** To be considered, a proposal must consist of a complete response using the format provided in Part II of this ITQ. The Contract Signature Page must be included with the proposal and have an original signature of an official authorized to bind the bidder to the provisions of the proposal and ITQ. The contents of the proposal of a Qualified Contractor and this ITQ will become contractual obligations when the contract is executed. For this ITQ, the proposal, as submitted, must remain valid during the entire execution process.
5. **Bid Security:** Contractors are not required to submit a bid security with their proposals. However, performance security may be required from the Selected Contractor. When performance security is required, the requirements will be set forth in the RFQ. Failure to furnish the required performance security within the required time frame shall be considered a failure to perform a contractual obligation which may result in termination of the purchase order and award to another bidder. In the event of termination and re-award for failure to provide payment and performance security, the contractor shall be responsible for any increase in cost to the Commonwealth. Where the contractor does not comply with the requirements of the purchase order, the amount of the performance security shall be paid to the Commonwealth as liquidated damages for the contractor's failure to comply, or the Commonwealth may, at its sole option, sue the contractor or its surety for the damages it has suffered for any breach of contract.
6. **Addenda to the ITQ:** If it becomes necessary to revise any part of this ITQ, addenda will be posted to the Department's website <http://www.emarketplace.state.pa.us> for viewing by all contractors who downloaded the original ITQ.
7. **Alternate Proposals:** The Department will not accept alternate proposals. Alternate proposals are those that are provided in a form other than that specified by the Department. The Department will not accept proposals wherein a contractor alters any of the forms provided in the application.
8. **Rejection of Proposals:** The Department reserves the right to reject any and all proposals received as a result of this ITQ.
9. **Incurring Costs:** The Department is not liable for any costs or expenses incurred in the preparation and submission of the proposals.
10. **Submission Due Date:** The initial submission deadline for this ITQ is 1:30 PM on October 15, 2010. It is in the best interest of all contractors to submit the required information by the initial submission date in order to qualify for the full contract period.

Enrollment for the remainder of the contract period will be accepted again starting December 1, 2010.

To be considered for RFQ's during the initial enrollment period, all required documentation must be received at the address below no later than 1:30 PM, October 15, 2010. Responses **MUST** be delivered or mailed to the address below:

Department of General Services
Bureau of Procurement
Forum Place,
Attn: Patrick Rosenella
555 Walnut Street 6th Floor
Harrisburg PA 17101-1914

It is the responsibility of each contractor to ensure that its proposal is received at the Proposal Receipt Location prior to the Response Date and Time regardless of medium used. If a contractor decides to mail its proposal, the contractor should allow adequate time for delivery.

The Department may solicit additional contractors to be qualified for this ITQ. In no event will a contractor be permitted to submit quotes until the contractor has been qualified through the ITQ process and has received a fully executed contract.

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

Request For Quotes (RFQ's): A document that describes the required materials, time frame, and operators, if applicable, and provides interested Qualified Contractors with sufficient information to enable them to prepare and submit quotes. At the Commonwealth's discretion, RFQs may be issued and/or received, but not limited to, mail or facsimile or electronic mail.

Contract: The contract executed as a result of this ITQ.

Contractor: The Qualified Contractor(s) selected as a result of the RFQ to furnish Bituminous Materials, Plant Mix to meet the requirements of Commonwealth locations.

12. **Contractor Duties:** Each Contractor, subject to the terms and conditions set forth in the Contract, the RFQ, and the Purchase Order, shall furnish Bituminous Materials, Plant Mix.

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

b. It is understood that RFQ's may be for materials delivered or being picked by the Commonwealth, all RFQ's for materials delivered are FOB destination.

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

13. **Term:** The Contract shall begin on or after December 1, 2010, or the date of the Contractor's receipt of the fully executed contract if later, and expire on November 30, 2015. In addition, the Contract or any part of the Contract may be renewed for one additional five-year term by mutual agreement of the Department and the contractor(s).

14. **Contractor Selection:** Qualified Contractors will be selected for receipt of an RFQ from the list of Qualified Contractors on the Invitation to Qualify (See PART IV, Paragraph 16). The Commonwealth may issue RFQ's, but not limited to, fax, mail or email. It is the sole responsibility of the supplier to insure that they maintain a valid e-mail address for the ITQ on file with the Department of General Services. The supplier must notify the Department of General Services' Commodity Specialist in writing of any changes to that e-mail address. Failure to maintain a current and valid e-mail address on the ITQ will impact the supplier's ability to receive RFQ's.

15. **Option for Separate Competitive Bidding Procedure:** The Department of General Services reserves the right to purchase materials covered under this Contract through a separate competitive bidding procedure, whenever the department deems it to be in the best interest of the Commonwealth.

16. **Request For Quote (RFQ):** The RFQ may include, but not be limited to, the type of material, quantity, delivery location or source pickup, end date of the purchase order, other special terms, conditions and specifications, and bid response requirements. Requests for quotes may be issued on an as-needed basis using a method that the Commonwealth identifies but limited to, mail or facsimile or electronic mail.

For requirements under the threshold established by the Department of General Services for Small No Bid procurements the Commonwealth will issue a Request for Quote to **at least one supplier** on the ITQ who can provide the materials in accordance with the Department of Transportation's PUB 408 (current edition) and further identified in the Bituminous Materials Counties of Interest Form.

For requirements over the threshold established by the Department of General Services for Small No Bid procurements the Commonwealth will issue a Request for Quote to **all approved suppliers** who can provide the materials in accordance with the Department of Transportation's PUB 408 (current edition) and have identified that county in the Bituminous Materials Counties of Interest Form.

For requirements under \$20,000, FOB SOURCE of supply/loaded on Commonwealth trucks ONLY, the Commonwealth will **contact at least one supplier on the ITQ** who can provide the materials in accordance with the Department of Transportation's PUB 408 (current edition) and further identified in the Bituminous Materials Counties of Interest Form.

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

17. **Quote/Bid:** Contractors must submit quotes by method, date, and time specified in each RFQ to be considered for award. All prices are firm for the period of time identified within the RFQ, unless a price adjustment has been identified within the RFQ, and must be prepared and submitted in accordance with the special terms and conditions of the request for quote.

18. **Award:** For awards that exceed the threshold of the Commonwealth of Pennsylvania VISA purchasing card, the Commonwealth will issue a Purchase Order against the Contract to obtain the materials. This order will constitute authority to furnish the materials and equipment and must be used when invoicing, if applicable, the county for service provided. Each RFQ and/or Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract.

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

The using agency shall evaluate each RFQ and make a determination of best value from those quotes received. If the using agency makes a best value determination based on any other factor than low cost, such determination must be documented for the contract file. Considerations which may impact the best value award are, but not limit to:

- a. If more than one type of material is used on the same jobsite, total costs of all combined bituminous materials may be a factor in determining which contract supplier receives the award for a given job. Details of such transactions are the responsibility of the county maintenance manager, are on file in the county, and are subject to review by any awarded supplier.
- b. The Department of Transportation will normally haul material from the source that represents the lowest responsible cost to the department after taking into consideration length of haul and dead haul. However, in some instances, the department may select the most economic source based upon other considerations such as, but not limited to, differences in haul time due to terrain or urban congestion; length of wait at the source; cooling due to length of haul; crew productivity based on truck availability and haul distance. Details of such transactions are the responsibility of the county maintenance manager, are on file in the county, and are subject to review by any awarded supplier.

Supplier(s) awarded a purchase order for source pickup of material shall ensure availability of materials for loading into the Commonwealth's vehicles within 24 hours after receipt of award from the Commonwealth (for 50 tons or less) and within the timeframe identified in the RFQ for orders which exceed 50 tons. When the supplier commits to provide material, the supplier will provide it no later than one (1) hour after the mutually agreed upon time.

Source award is the cost per ton is the price the Commonwealth will pay for bituminous materials purchased "FOB source of supply/loaded on Commonwealth trucks".

The Commonwealth may issue an award for tonnage, to take on an uninterrupted basis to completion of the order or an order is issued for tonnages to take over a period of time as a "blanket" purchase order.

If a supplier is having difficulty furnishing materials against a Department of Transportation Purchase Order from the selected contract source(s), the supplier may request permission from the District Executive to supplement shipments from another bituminous source in order to honor a Purchase Order. It does not matter if it is a competitor's source. The condition is that regardless of change of source, the Department of Transportation will pay the lowest delivered cost per ton; i.e. if the supplemental source is closer than the original source mileage is charged from the supplemental source but the mileage rate is the lower of the original source and supplemental source. If a supplier wishes to implement this clause, they must provide material from a source approved prior to the bid opening.

FOB Delivered, if a supplier cannot or does not commence delivery at the Delivery Time, the Commonwealth can terminate the award and issue the award to the next most economically feasible supplier available who responded to the applicable RFQ or seek liquidated damages. If award is made to another supplier, immediate availability is a factor in the selection process, and the delinquent supplier is responsible for any excess cost to the Commonwealth.

When an SRL and/or ESAL is provided as part of an item's bid specification or as identified within the purchase order, it is understood that the SRL and/or ESAL supplied is as specified or better and will be invoiced at the same price as the ordered material even if the material received is a higher priced material. An explanation of SRL designations are found in the Department of Transportation's Bulletin 27 (current edition).

19. **Debriefing Conference:** Contractors that are not qualified by the Department to participate will be notified and will be given an opportunity to be debriefed. The purpose of the debriefing is to provide information that may assist the individual contractors in preparing better quotes in the future. The Issuing Office will schedule the date, time and location of any and all debriefing conferences.

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

21. **Claims:** Any claims against the Commonwealth must be filed in accordance with Paragraph 21 (Contract Controversies) of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies – SAP*, GSPUR-12E (SAP), Rev. 012/17/07. If a claim results from a Purchase Order based upon an RFQ issued by a using agency, the claim must be filed with the using agency. If such a claim is filed with DGS, it will be referred to the using agency for resolution.

22. **Insurance** - Contractor shall purchase and maintain at its expense the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

A. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project in accordance with the Worker's Compensation Act of 1915 and any supplements or amendments thereof.

B. Public liability and property damage insurance to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property, including loss of use resulting from any property damage, which may arise from operations under this contract whether such operation be by the Contractor, by any subcontractor or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to the work performed for the Commonwealth.

C. Prior to commencement of work under this contract, the Contractor shall provide the Department with current certificates of insurance. These certificates shall contain a provision that coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days' written notice has been given to the Department.

D. Paragraph C. to be added to above when the purchase requisition calls for a complete in place where the contractor is using motor vehicles on Commonwealth Highways/property to apply the product.

E. Comprehensive Automobile Liability Insurance to protect the Commonwealth and the Contractor from claims for damages for personal injury (including bodily injury or death) and damage to property, including loss of use resulting from any property damage, which may arise from the use of Contractor owned or leased vehicles in the performance of this contract whether such operation be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 dollars each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured.

23. **Liquidated Damages-** If any item is not delivered or performed within the contract specified time limits, the delay will interfere with the proper implementation of the Commonwealth's programs and utilizing the item, to the loss and damage of the Commonwealth. From the nature of the case it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such action. The Commonwealth and the Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be **\$500.00** per day per item, and they agree that in the event of any such delay, the Contractor shall pay such amount as liquidated damages and not as a penalty. The Commonwealth, as its option, for amounts due the Commonwealth as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item. The Commonwealth shall notify the Contractor in writing of any claims for liquidated damages pursuant to this paragraph before the date the Commonwealth deducts such sums from money payable to the Contractor. Delivery of any item, which is rejected by the Commonwealth, shall not toll the running of the days for purposes of determining the amount of the liquidated damages.

24. **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.

COSTARS

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

A. Only those COSTARS Purchasers registered with DGS may participate as COSTARS Purchasers in a Commonwealth contract. Several thousand COSTARS Purchasers are currently registered with DGS; therefore, the Contractor agrees to permit only to DGS-registered COSTARS members to make COSTARS purchases from this Contract.

1. A “local public procurement unit” is:
 - Any political subdivision;
 - Any public authority;
 - Any tax exempt, nonprofit educational or public health institution or organization;
 - Any nonprofit fire, rescue, or ambulance company; and
 - To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.
2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.

B. COSTARS Purchasers have the option to purchase from a Contract awarded under this procurement, from any DGS contract established exclusively for COSTARS Purchasers in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that any prospective COSTARS Purchaser will place an order under this Contract, and that it is within the sole discretion of the registered COSTARS Purchaser whether to procure from this Contract or to use another procurement vehicle.

C. DGS is acting as a facilitator for COSTARS Purchasers who may wish to purchase under this Contract. Registered COSTARS Purchasers who participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.

D. Registered COSTARS Purchasers electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter’s Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.

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

F. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.dgs.state.pa.us/costars.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.dgs.state.pa.us/costars, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:
 Department of General Services, COSTARS Program
 555 Walnut Street, 6th Floor
 Harrisburg, PA 17101
 Telephone: 1-866-768-7827
 E-mail GS-PACostars@state.pa.us

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

Please Answer: YES _____ NO _____

PART V

**STANDARD CONTRACT TERMS AND CONDITIONS
FOR DEPARTMENT OF GENERAL SERVICES
STATEWIDE CONTRACTS FOR SUPPLIES – SAP**

Any contract resulting from this ITQ shall be governed by the Terms and Conditions contained in *Standard Contract Terms And Conditions For Department Of General Services Statewide Contracts For Supplies – SAP, GSPUR-12E (rev 12-17-2007)*

http://www.dgsweb.state.pa.us/comod/CurrentForms/GSPUR12E_SAP.doc

ITQ SIGNATURE PAGE

COMMONWEALTH OF PENNSYLVANIA

Invitation to Qualify: BITUMINOUS MATERIALS

(Complete in INK or TYPE only – DO NOT use pencil)

READ ALL Directions/Instructions in Part I Before Completing This Page.

CONTRACTOR MUST COMPLETE ALL APPLICABLE AREAS

VENDOR NUMBER All vendors must register with the Commonwealth at https://www.pasupplierportal.state.pa.us/irj/portal/anonymous/ :	
CONTRACTOR NAME & ADDRESS: If SOLE PROPRIETOR is doing business as (d/b/a) another name, see instructions in Part II, attached:	
CONTRACTOR CONTACT PERSON:	
PHONE NUMBER:	()
FAX NUMBER:	()
E-MAIL ADDRESS:	

CONTRACTOR’S SIGNATURE(S), DATE AND TITLE REQUIRED (IN INK)		
CORPORATION: One Signature of a Senior Officer and Title Designation is Required. - Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer, Chief Operating Officer. Any other signature must be accompanied by a resolution authorizing the individual to contractually bid the organization.		
_____	_____	_____
SIGNATURE	DATE	TITLE
LIMITED LIABILITY COMPANY – Manager or Member		
_____	_____	_____
SIGNATURE	DATE	TITLE
SOLE PROPRIETORSHIP – Owner Only		
_____	_____	OWNER
SIGNATURE	DATE	TITLE
PARTNERSHIP – One General Partner Only		
_____	_____	GENERAL PARTNER
SIGNATURE	DATE	TITLE