

**REQUEST FOR PROPOSALS FOR**

**DIGITAL FINGERPRINTING**  
**AND**  
**ELECTRONIC FEDERAL CRIMINAL**  
**BACKGROUND CHECK SERVICES**

**ISSUING OFFICE**

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

**RFP NUMBER**

**6100019123**

**DATE OF ISSUANCE**

**July 1, 2011**

**REQUEST FOR PROPOSALS FOR  
DIGITAL FINGERPRINTING  
AND  
ELECTRONIC FEDERAL CRIMINAL  
BACKGROUND CHECK SERVICES**

**TABLE OF CONTENTS**

**CALENDAR OF EVENTS .....iii**

**Part I—GENERAL INFORMATION .....1**

**Part II—PROPOSAL REQUIREMENTS .....10**

**Part III—CRITERIA FOR SELECTION .....18**

**Part IV—WORK STATEMENT .....21**

**INDIVIDUAL AGENCY REQUIREMENTS**

**PA Department of Education.....28-30**

**PA Department of Banking.....31-32**

**PA Department of Public Welfare.....32-41**

**PA Department of Transportation .....41-42**

**PA Department of Aging.....42-43**

**Part V—STANDARD CONTRACT TERMS AND CONDITIONS .....56**

**APPENDIX A, DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

**APPENDIX B, PROPOSAL COVER SHEET**

**APPENDIX C, COST SUBMITTAL FORM**

**APPENDIX D, PSP TECHNICAL SPECIFICATIONS FOR APPLICANT PROCESSING**

**APPENDIX E, PRINT SPECIFICATIONS**

## CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to <b>Syline Shingara</b> at <a href="mailto:sshingara@state.pa.us">sshingara@state.pa.us</a>	Potential Offerors	<b>7/15/2011</b>
Pre-proposal Conference — <b>(optional)</b> Forum Place, 6 <sup>th</sup> Floor, Conference Room 1 555 Walnut Street, Harrisburg, PA 17101 1:00 PM	Issuing Office/Potential Offerors	<b>7/21/2011</b>
Answers to Potential Offeror questions posted to the DGS website ( <a href="http://www.dgsweb.state.pa.us/RTA/Search.aspx">http://www.dgsweb.state.pa.us/RTA/Search.aspx</a> ) no later than this date.	Issuing Office	<b>7/30/2011</b>
Please monitor website for all communications regarding the RFP.	Potential Offerors	<b>Ongoing</b>
Sealed proposal must be received by the Issuing Office at: <b>PA Department of General Services</b> <b>Bureau of Procurement</b> <b>Attn: Syline Shingara/RFP 6100019123</b> <b>555 Walnut Street</b> <b>Forum Place, 6<sup>th</sup> Floor</b> <b>Harrisburg, PA 17101</b>	Offerors	<b>8/15/2011</b> <b>1:30 PM</b>

## PART I

### GENERAL INFORMATION

**I-1. Purpose.** This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the **Department of General Service’s (“DGS”)** consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for **Digital Fingerprint and Electronic Federal Criminal Background Check Services** for various Commonwealth agencies, as mandated by Federal Legislation and the PA State Legislature (“Project”).

**I-2. Issuing Office.** The **Department of General Services** (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be **Syline Shingara**, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer at **717-346-3833** or via email at [sshingara@state.pa.us](mailto:sshingara@state.pa.us).

**I-3. Scope.** This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

**I-4. Problem Statement.** The Department of General Services is requesting proposals from certified FBI Channelers which have the ability and expertise to provide digital fingerprinting and electronic federal criminal background check services across the Commonwealth. Additional detail is provided in **Part IV** of this RFP.

**I-5. Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a **firm, fixed price** contract containing the Standard Contract Terms and Conditions as shown in **Part V** of this RFP. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

**I-6. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

**I-7. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-8. Pre-proposal Conference.** The Issuing Office will hold a Pre-proposal conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with **Part I, Section I-9** to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions at the conference. In view of the limited facilities available for the conference, Offerors should limit their representation to **three (3)** individuals per Offeror. The Pre-proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the Department of General Services’ (DGS) website as an addendum to, and shall become part of, this RFP. Attendance at the Pre-proposal Conference is **optional**.

**I-9. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line “RFP 6100019123 Question”**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror shall be responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website.

**I-10. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the DGS website at <http://www.dgsweb.state.pa.us/RTA/Search.aspx>. It is the Offeror’s responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

**I-11. Response Date.** To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

**I-12. Proposals.** To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Part II**, providing **10 paper copies of the Technical Submittal and one (1) paper copy of the Cost Submittal and two (2) paper copies of the Disadvantaged Business Submittal**. In addition to the paper copies of the proposal, Offerors shall submit two **complete and exact** copies of the entire proposal (Technical, Cost and Disadvantaged Business Submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. Offerors should ensure that there is no costing information in the technical submittal. Offerors

should not reiterate technical information in the cost submittal. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (Appendix B to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

**I-13. Disadvantaged Business Information.** The Issuing Office encourages participation by small disadvantaged businesses as prime contractors, joint ventures and subcontractors/suppliers and by socially disadvantaged businesses as prime contractors.

Small Disadvantaged Businesses are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

- A. Department of General Services Bureau of Minority and Women Business Opportunities (BMWBO)-certified minority business enterprises (MBEs) and women business enterprises (WBEs) that qualify as small businesses; and
- B. United States Small Business Administration certified 8(a) small disadvantaged business concerns.
- C. Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.

Small businesses are businesses in the United States which are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees, and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

Socially disadvantaged businesses are businesses in the United States that BMWBO determines are owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial or ethnic prejudice or cultural bias, but which do not qualify as small businesses. In order for a business to qualify as "socially disadvantaged," the offeror must include in its proposal clear

and convincing evidence to establish that the business has personally suffered racial or ethnic prejudice or cultural bias stemming from the business person's color, ethnic origin or gender.

Questions regarding this Program can be directed to:

Department of General Services  
Bureau of Minority and Women Business Opportunities  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [gs-bmwbo@state.pa.us](mailto:gs-bmwbo@state.pa.us)  
Website: [www.dgs.state.pa.us](http://www.dgs.state.pa.us)

A database of BMWBO-certified minority- and women-owned businesses can be accessed at <http://www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx>. The federal vendor database can be accessed at <http://www.ccr.gov> by clicking on *Dynamic Small Business Search* (certified companies are so indicated).

**I-14. Information Concerning Small Businesses in Enterprise Zones.** The Issuing Office encourages participation by small businesses, whose primary or headquarters facility is physically located in areas the Commonwealth has identified as *Designated Enterprise Zones*, as prime contractors, joint ventures and subcontractors/suppliers.

The definition of headquarters includes, but is not limited to, an office or location that is the administrative center of a business or enterprise where most of the important functions of the business are conducted or concentrated and location where employees are conducting the business of the company on a regular and routine basis so as to contribute to the economic development of the geographical area in which the office or business is geographically located.

Small businesses are businesses in the United States which are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees, and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

There is no database or directory of small businesses located in Designated Enterprise Zones. Information on the location of *Designated Enterprise Zones* can be obtained by contacting:

Aldona M. Kartorie  
Center for Community Building  
PA Department of Community and Economic Development  
4<sup>th</sup> Floor, Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120-0225  
Phone: (717) 720-7409  
Fax: (717) 787-4088  
Email: [akartorie@state.pa.us](mailto:akartorie@state.pa.us)

**I-15. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

**I-16. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

**I-17. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

**I-18. Prime Contractor Responsibilities.** The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Offeror to be the sole point of contact with regard to contractual matters.

**I-19. Proposal Contents.**

- A. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Financial capability information submitted in response to Part II, Section II-7 of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).



**I-20. Best and Final Offers.**

A. While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

- 1) Schedule oral presentations;
- 2) Request revised proposals;
- 3) Conduct a reverse online auction; and
- 4) Enter into pre-selection negotiations.

B. The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:

- 1) Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
- 2) Those Offerors which the Issuing Office has determined in accordance with **Part III, Section III-5**, from the submitted and gathered financial and other information do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
- 3) Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

C. The Evaluation Criteria found in **Part III, Section III-4**, shall also be used to evaluate the Best and Final offers.

D. Price reductions offered through any reverse online auction shall have no effect upon the Offeror’s Technical Submittal. Dollar commitments to Disadvantaged Businesses and Enterprise Zone Small Businesses can be reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

**I-21. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

**I-22. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror’s proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror’s proposal or rescind its contract award. Offerors must agree

not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

**I-23. Commonwealth Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work.

**I-24. Term of Contract.** The initial term of the contract will commence on the Effective Date and will end three (3) years after the effective date. The Commonwealth shall have the option to renew the contract for two (2) one-year renewal terms. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-25. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E. The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.

- G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

**I-26. Notification of Selection.**

- A. **Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. **Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

**I-27. Debriefing Conferences.** Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See Section I-28 of this RFP).

**I-28. RFP Protest Procedure.** The RFP Protest Procedure is on the DGS website at <http://www.dgsweb.state.pa.us/comod/ProtestProcedures.doc>. A protest by a party not submitting a proposal must be filed within **seven** days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office.

**I-29. Use of Electronic Versions of this RFP.** This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

## PART II

### PROPOSAL REQUIREMENTS

Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Disadvantaged Business cost data should be kept separate from and not included in the Technical Submittal. Each Proposal shall consist of the following **three** (3) separately sealed submittals:

- A. Technical Submittal, which shall be a response to RFP **Part II, Sections II-1 through II-8**;
- B. Disadvantaged Business Submittal, in response to RFP **Part II, Section II-9**; and
- C. Cost Submittal, in response to RFP **Part II, Section II-10**.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

**II-1. Statement of the Problem.** State in succinct terms your understanding of the problem presented or the service required by this RFP.

**II-2. Management Summary.** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

**II-3. Work Plan.** Describe in narrative form your technical plan for accomplishing the work. Use the task descriptions in **Part IV, Section IV-5** of this RFP as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

**II-4. Prior Experience.** Include experience in Digital Fingerprinting and Electronic Federal Criminal Background Check Services that demonstrates evidence of successful implementation of similar statewide processes of a comparable size. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted. Submit a list of at least three (3) references (clients) including the name, title, telephone number and e-mail address for three individuals who may be used as references for whom you have performed similar services to those being sought by the Commonwealth within the past three (3) years.

**II-5. Personnel.** Identify the Project Manager who will serve as a liaison with DGS and who has demonstrated project management experience for a project of this size. Identify sufficient backup staff by title to serve as a contact for problems/issues. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Show where these personnel will be physically headquartered during the time they are engaged in the Project. For the Project Manager, include the employee's name and, through a resume or similar document, the Project Manager's education and experience in administering a statewide data collection and electronic fingerprint transmission project. Identify by name any subcontractors you intend to use and the services they will perform.

**II-6. Training.** If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be used, number and frequency of sessions, and number and level of instructors.

**II-7. Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements for the past three fiscal years. If your company is a publicly traded company, please provide a link to your financial records on your company website; otherwise, provide three (3) years of your company's financial documents such as audited financial statements or recent tax returns. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report if available. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

**II-8. Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in **Part V**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part V**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

**Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in Part V. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in Part V or to other provisions of the RFP as specifically identified above.**

Due to the nature of the contract resulting from this RFP, the following sections of Part V, Standard Contract Terms and Conditions, are inapplicable: V.7 CONTRACT-005.1a Agency Purchase Orders (Feb 2007); V.22 CONTRACT-015.2 Billing Requirements (Dec 5 2006); V.23 CONTRACT-016.1 Payment (Oct 2006); and V.24 CONTRACT-016.2 ACH Payments (Aug 2007).

## **II-9. Disadvantaged Business Submittal.**

### **A. Disadvantaged Business Information.**

- 1) To receive credit for being a Small Disadvantaged Business or a Socially Disadvantaged Business or for entering into a joint venture agreement with a Small Disadvantaged Business or for subcontracting with a Small Disadvantaged Business (including purchasing supplies and/or services through a purchase agreement), a Offeror must include proof of Disadvantaged Business qualification in the Disadvantaged Business Submittal of the proposal, as indicated below:
  - a) A Small Disadvantaged Businesses certified by BMWBO as an MBE/WBE must provide a photocopy of their BMWBO certificate.
  - b) Businesses certified by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act (15 U.S.C. § 636(a)) as an 8(a) Small Disadvantaged Businesses must submit proof of U.S. Small Business Administration certification. The owners of such businesses must also submit proof of United States citizenship.
  - c) Businesses, which assert that they meet the U.S. Small Business Administration criteria for designation as a small disadvantaged business, must submit: a) self-certification that the business meets the Small Business Administration criteria and b) documentary proof to support the self-certification. The owners of such businesses must also submit proof of United States citizenship, and provide any relevant small disadvantaged business certifications by other certifying entities.
  - d) All businesses claiming Small Disadvantaged Business status, whether as a result of BMWBO certification, or U.S. Small Business Administration certification as an 8(a) or self-certification as a U.S. Small Business Administration small disadvantaged business, must attest to the fact that the business has no more than 100 full-time or full-time equivalent employees.
  - e) All businesses claiming Small Disadvantaged Business status, whether as a result of BMWBO certification, or U.S. Small Business Administration certification as an 8(a) or self-certification as a U.S. Small Business Administration small disadvantaged business, must submit proof that their gross annual revenues are less than \$20,000,000 (\$25,000,000 for those businesses in the information technology sales or service business). This can be accomplished by including a recent tax return or audited financial statement.
- 2) All businesses claiming status as a Socially Disadvantaged Business must include in the Disadvantaged Business Submittal of the proposal clear and convincing evidence to establish that the business has personally suffered racial or ethnic prejudice or cultural bias stemming from the business person's color, ethnic origin or gender. The submitted evidence of prejudice or bias must:

- a) Be rooted in treatment that the business person has experienced in American society, not in other countries.
- b) Show prejudice or bias that is chronic and substantial, not fleeting or insignificant.
- c) Indicate that the business person's experience with the racial or ethnic prejudice or cultural bias has negatively impacted his or her entry into and/or advancement in the business world.

BMWBO shall determine whether the Offeror has established that a business is socially disadvantaged by clear and convincing evidence.

- 3) In addition to the above verifications, the Offeror must include in the Disadvantaged Business Submittal of the proposal the following information:
  - a) Those Small Disadvantaged Businesses submitting a proposal as the Offeror, must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
  - b) Those Small Disadvantaged Businesses submitting a proposal as a part of a joint venture partnership, must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Small Disadvantaged Business joint venture partner and not by subcontractors and suppliers or by joint venture partners who are not Small Disadvantaged Businesses. Offeror must also provide:
    - i. The amount of capital, if any, each Small Disadvantaged Business joint venture partner will be expected to provide.
    - ii. A copy of the joint venture agreement signed by all parties.
    - iii. The business name, address, name and telephone number of the primary contact person for the Small Disadvantaged Business joint venture partner.
  - c) *All* Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Disadvantaged Businesses as subcontractors. To support its total percentage DB subcontractor commitment, Offeror must also include:
    - i. The dollar amount of each subcontract commitment to a Small Disadvantaged Business;



- ii. The name of each Small Disadvantaged Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Disadvantaged Business.
  - iii. The services or supplies each Small Disadvantaged Business will provide, including the timeframe for providing the services or supplies.
  - iv. The location where each Small Disadvantaged Business will perform services.
  - v. The timeframe for each Small Disadvantaged Business to provide or deliver the goods or services.
  - vi. A signed subcontract or letter of intent for each Small Disadvantaged Business. The subcontract or letter of intent must identify the specific work, goods or services the Small Disadvantaged Business will perform and how the work, goods or services relates to the project.
  - vii. The name, address and telephone number of the primary contact person for each Small Disadvantaged Business.
- d) The total percentages and each subcontractor commitment will become contractual obligations once the contract is fully executed.
  - e) The name and telephone number of the Offeror's project (contact) person for the Small Disadvantaged Business information.
- 4) The Offeror is required to submit **two** copies of its Disadvantaged Business Submittal. The submittal shall be clearly identified as Disadvantaged Business information and sealed in its own envelope, separate from the remainder of the proposal.
  - 5) A Small Disadvantaged Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.
  - 6) An Offeror that qualifies as a Small Disadvantaged Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

**B. Enterprise Zone Small Business Participation.**

- 1) To receive credit for being an enterprise zone small business or entering into a joint venture agreement with an enterprise zone small business or subcontracting with an enterprise zone small business, an Offeror must include the following information in the Disadvantaged Business Submittal of the proposal:
  - a) Proof of the location of the business' headquarters (such as a lease or deed or Department of State corporate registration), including a description of

those activities that occur at the site to support the other businesses in the enterprise zone.

- b) Confirmation of the enterprise zone in which it is located (obtained from the local enterprise zone office).
  - c) Proof of United States citizenship of the owners of the business.
  - d) Certification that the business employs no more than 100 full-time or full-time equivalent employees.
  - e) Proof that the business' gross annual revenues are less than \$20,000,000 (\$25,000,000 for those businesses in the information technology sales or service business). This can be accomplished by including a recent tax return or audited financial statement.
  - f) Documentation of business organization, if applicable, such as articles of incorporation, partnership agreement or other documents of organization.
- 2) In addition to the above verifications, the Offeror must include in the Disadvantaged Business Submittal of the proposal the following information:
- a) The name and telephone number of the Offeror's project (contact) person for the Enterprise Zone Small Business.
  - b) The business name, address, name and telephone number of the primary contact person for each Enterprise Zone Small Business included in the proposal. The Offeror must specify each Enterprise Zone Small Business to which it is making commitments. The Offeror will not receive credit for stating that it will find an Enterprise Zone Small Business after the contract is awarded or for listing several businesses and stating that one will be selected later.
  - c) The specific work, goods or services each Enterprise Zone Small Business will perform or provide.
  - d) The total cost amount submitted in the Offeror's cost proposal and the estimated dollar value of the contract to each Enterprise Zone Small Business.
  - e) Of the estimated dollar value of the contract to each Enterprise Zone Small Business, the percent of the total value of services or products purchased or subcontracted that each Enterprise Zone Small Business will provide.
  - f) The location where each Enterprise Zone Small Business will perform these services.
  - g) The timeframe for each Enterprise Zone Small Business to provide or deliver the goods or services.

- h) The amount of capital, if any, each Enterprise Zone Small Business will be expected to provide.
  - i) The form and amount of compensation each Enterprise Zone Small Business will receive.
  - j) For a joint venture agreement, a copy of the agreement, signed by all parties.
  - k) For a subcontract, a signed subcontract or letter of intent.
- 3) **The dollar value of the commitment to each Enterprise Zone Small Business must be included in the same sealed envelope with the Disadvantaged Business Submittal of the proposal. The following will become a contractual obligation once the contract is fully executed:**
- a) The amount of the selected Offeror’s Enterprise Zone Small Business commitment;
  - b) The name of each Enterprise Zone Small Business; and
  - c) The services each Enterprise Zone Small Business will provide, including the timeframe for performing the services.

**II-10. Cost Submittal.** The information submitted in response to this **Part II, Section II-10** shall constitute the Cost Submittal. **Complete and submit Appendix C, Cost Submittal Form, as your cost submittal.** The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal.

The Commonwealth expects the program services to be provided at no direct cost to the Commonwealth. The successful Offeror will collect from each Agency’s applicants the Contractor’s Fee for the Services, the specified PSP and Agency fees, the associated FBI fees for electronic or paper background check results, plus as applicable, fees for providing the applicant a copy of their CHRI results and for performing a manual card scan background check, broken down as follows:

<b>Contractor fee</b>	<b>\$ TBD</b>
FBI fee	\$ 17.25 (electronic) / \$28.25 (manual)
PSP fee	\$ 2.00
Agency fee	\$ 3.00
<b>CHRI copy fee (as applicable)</b>	<b>\$ TBD</b>
 <b>Manual Card Scan fee</b>	 <b>\$ TBD</b>

On Appendix C, please indicate the fees the Offeror will charge the applicant for the described services only (shown in **bold** above as “**TBD**”). The Contractor Fee must incorporate all costs incurred by the Offeror in performing the Services. Specify any additional fee required from the applicant for providing a copy of the CHRI report. (DGS estimates the annual volume of paper CHRI’s sent to applicants is between 200,000–300,000.) Specify any additional fee required for manually processing fingerprint

cards received from certain applicants. These fees must be expressed as a flat fee per applicant and shall remain fixed for the initial three year contract term. (Do not include the FBI, PSP or Agency fees in your total.)

Offerors should **not** include any assumptions in their cost submittals. If the Offeror includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office pursuant to **Part I, Section I-9**, of this RFP any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

**II-11. Domestic Workforce Utilization Certification.** Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix A** of this RFP. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal.

## PART III

### CRITERIA FOR SELECTION

**III-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must be:

- A. Timely received from an Offeror;
- B. Properly signed by the Offeror; and
- C. Submitted by an Offeror which is a current approved and certified Channeler through the Federal Bureau of Investigation (“FBI”).

**III-2. Technical Nonconforming Proposals.** The three (3) Mandatory Responsiveness Requirements set forth in **Section III-1** above (A-C) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror’s proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror’s proposal.

**III-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BMWBO will evaluate the Disadvantaged Business Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

**III-4. Evaluation Criteria.** The following criteria will be used in evaluating each proposal:

- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **60%** of the total points.
- B. **Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **20%** of the total points. For this RFP, Offerors’ costs will be evaluated using the total of their Contractor Fee plus CHRI Fee as submitted on Appendix C.
- C. **Disadvantaged Business Participation:** BMWBO has established the weight for the Disadvantaged Business (DB) Participation criterion for this RFP as **20 %** of the total points. Evaluation will be based upon the following in order of priority:

**Priority Rank 1**      Proposals submitted by Small Disadvantaged Businesses.

**Priority Rank 2**      Proposals submitted from a joint venture with a Small Disadvantaged Business as a joint venture partner.

**Priority Rank 3**      Proposals submitted with subcontracting commitments to Small Disadvantaged Businesses.

**Priority Rank 4**      Proposals submitted by Socially Disadvantaged Businesses.

Each DB Participation Submittal will be rated for its approach to enhancing the utilization of Small Disadvantaged Businesses and/or Socially Disadvantaged Businesses. Each approach will be evaluated, with Priority Rank 1 receiving the highest score and the succeeding options receiving scores in accordance with the above-listed priority ranking. To the extent that there are multiple DB Participation submittals that offer subcontracting commitments to Small Disadvantaged Businesses, the proposal offering the highest total percentage commitment shall receive the highest score in the Priority Rank 3 category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage commitment offered.

To qualify as a Small Disadvantaged Business or a Socially Disadvantaged Business, the Small Disadvantaged Business or Socially Disadvantaged Business cannot enter into subcontract arrangements for more than **40%** of the total estimated dollar amount of the contract. If a Small Disadvantaged Business or a Socially Disadvantaged Business subcontracts more than **40%** of the total estimated dollar amount of the contract to other contractors, the Disadvantaged Business Participation scoring shall be proportionally lower for that proposal.

**D. Enterprise Zone Small Business Participation:** In accordance with the priority ranks listed below, bonus points in addition to the total points for this RFP, will be given for the Enterprise Zone Small Business Participation criterion. The maximum bonus points for this criterion is 3% of the total points for this RFP. The following options will be considered as part of the final criteria for selection:

- |                        |   |
|------------------------|---|
| <b>Priority Rank 1</b> | Proposals submitted by an Enterprise Zone Small Business will receive three percent bonus for this criterion.   |
| <b>Priority Rank 2</b> | Proposals submitted by a joint venture with an Enterprise Zone Small Business as a joint venture partner will receive two percent bonus for this criterion. |
| <b>Priority Rank 3</b> | Proposals submitted with a subcontracting commitment to an Enterprise Zone Small Business will receive the one percent bonus for this criterion.            |
| <b>Priority Rank 4</b> | Proposals with no Enterprise Zone Small Business Utilization shall receive no points under this criterion.  |

To the extent that an Offeror is an Enterprise Zone Small Business, the Offeror cannot enter into contract or subcontract arrangements for more than **40%** of the total estimated dollar amount of the contract in order to qualify as an Enterprise Zone Small Business for purposes of this RFP.

- E. **Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum bonus points for this criterion is 3% of the total points for this RFP. To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal. The certification will be included as a contractual obligation when the contract is executed.

**III-5. Offeror Responsibility.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**; and
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

## PART IV

### WORK STATEMENT

#### IV-1. Objectives.

A. **General.** The Commonwealth is seeking to partner with a qualified company who can provide Digital Fingerprinting and Electronic Federal Criminal Background Check Services for all participating state agencies throughout the Commonwealth of Pennsylvania (“Commonwealth”). A qualified company must have the capability to provide exceptional performance and expertise, process efficiencies through high levels of customer service, and perform and complete the services in all respects in accordance with the solicitation documents.

#### B. Specific.

- 1) **Channeling.** The successful Offeror will, on behalf of Pennsylvania State Police (“PSP”), secure demographic information, and collect fees and electronic fingerprints from the applicant. The applicant’s fingerprints will be channeled to the Federal Bureau of Investigation (“FBI”) and to PSP simultaneously, unless otherwise specified herein. The Offeror will receive Criminal History Record Information (“CHRI”) Reports from the FBI.
- 2) **Dissemination.** The successful Offeror will disseminate the CHRI Reports received from the FBI in a manner prescribed by each participating Agency. See individual Agency requirements as specified in **Part IV, Section IV-4** of this RFP.

IV-2. **Nature and Scope of the Project.** The successful Offeror will provide applicant background intake at the fingerprint collection site, collect and forward fees to the Commonwealth, forward intake information to the appropriate Agency, and submit electronic fingerprints to the FBI and PSP for processing. All information must be treated as confidential.

The Department of General Services (“DGS”) anticipates approximately 400,000–500,000 potential applicants will require these services each year. The participating Agencies’ approximate volume breakdown of applicants is as follows: Department of Public Welfare (“DPW”) – 172,000, Department of Education (“PDE”) – 180,000, Department of Banking – 2300, Department of Transportation (“PENNDOT”) – 1000, and Department of Aging – 7000.

Additionally, about 5,000 fingerprint cards are manually processed for employment/licensing by several agencies, mostly by the Department of Banking and Department of Public Welfare for out-of-state and out-of-country applicants. The fingerprint cards are completed and mailed to the successful Offeror by the applicant, along with the application fee, if not already paid through an online application process. The successful Offeror scans the fingerprint card and forwards it to the FBI and PSP for processing. The FBI forwards the CHRI back to the Offeror for dissemination to the requesting Agency.

Additional applicant groups and agencies may be added to the Contract by preparation of a Change Notice which may be attached to this Contract without the necessity of execution of a further contract instrument.



**The volumes of applicants stated herein are estimates based on past history only and are provided for Offerors' information in preparing their proposals. The number of applicants may increase as additional agencies implement this process or due to changes in law that may expand the number of potential applicants. However, the volume of applicants is not guaranteed and no fee adjustment will be made in the event that the stated volumes are not realized or exceeded.**

#### **IV-3. General Requirements for Services.**

In providing the Digital Fingerprinting and Electronic Federal Criminal Background Check Services ("Services") under the Contract awarded from this RFP, the successful Offeror (denoted as "Contractor" in this Section) must:

- 1) Provide a complete process whereby applicants will be able to complete an on-line application registration or complete an application on the telephone by calling a toll-free telephone number, pay a fee on-line or at the fingerprinting location, go to a designated site and have their digital fingerprints scanned. Offerors may not require appointment scheduling, and must be able to handle "walk-up" services.
- 2) Provide fixed-site, public-fingerprinting locations across the Commonwealth.
  - a) There is no requirement for Government office space for site locations; they can be privately owned or leased.
  - b) These sites must be located such that no applicant will have to travel more than 25 miles to provide their fingerprints. Additionally, multiple site locations have to be established in high-usage areas in and around the large metropolitan areas in the Commonwealth. DGS estimates that a minimum of 80 sites is necessary to meet these requirements. The Commonwealth will determine whether the number and location of proposed sites is sufficient.
  - c) All sites must be compliant with the federal Americans with Disabilities Act requirements.
  - d) It is recommended that an area be available or blocked off for privacy and/or for personal information not to be viewed by the public.
  - e) Provide mobile fingerprinting equipment for large-group fingerprinting services as requested.
  - f) Fingerprint site locations will be subject to random and unannounced inspection and site visits by the Commonwealth.
  - g) Contractor shall conduct and report to DGS the results of a monthly quality control audit of five percent (5%) of its sites.
- 3) Provide each fingerprinting location with all of the equipment required to secure and transmit applicants' fingerprints.

- a) Livescan equipment certified by the Commonwealth and the FBI must be used to capture and transmit all fingerprint images and demographic data. This equipment must interface to PSP's automated fingerprint identification system ("AFIS"). The Interface document will be provided by the PSP to the successful Offeror.
- b) Equipment threshold calibration and sensitivity must be set to ensure FBI rejection rates are in compliance with the Service Level Agreements set forth in Section IV-8 of this RFP.
- c) Site personnel must physically take the applicants' fingerprints or visually oversee the taking of the applicants' fingerprints. Each Livescan Operator must be provided single user login credentials (identification and password).
- d) The fingerprint images and demographic data must be submitted in the form (i.e. National Institute of Standards and Technology, "NIST") and manner required by PSP/FBI, including the electronic transfer of fingerprint and demographic data to the PSP Advanced Fingerprint Identification Technology ("AFIS") system via a network connection as defined by PSP/OA/FBI (Refer to Part IV-3, #17).
- e) All fingerprint and demographic data transmitted must be encrypted at all times using FBI encryption standards.
- f) The Contractor is responsible for checking the quality and completeness of the fingerprint images and demographic data prior to transmission. This responsibility for checking the quality of all submissions applies to card scanned submissions made from inked fingerprint cards. If the quality and completeness of the applicant submitted inked fingerprinted cards fails to meet the threshold quality settings established by the Contractor, then the inked fingerprint cards shall be returned to the applicant with a notification for the reason of return and requirement for a new fingerprint card. Contractor is responsible for fees incurred with all fingerprint submissions, including fingerprints submitted as undocumented duplicate submissions, fingerprints submitted in error, unannounced test records, etc.
- g) The Contractor will retransmit the Livescan transmission as necessary if the initial submission was unsuccessful.
- h) Transmission of fingerprints:
  - a. **For Electronic Transmission of results.** The Contractor must be able to electronically transmit the applicant's fingerprints to the FBI and to PSP simultaneously. The Federal Criminal History Record Information CHRI Report will then be electronically transmitted back to the Contractor from the FBI.
  - b. **For Paper Transmission of results.** For Commonwealth Agencies that are restricted by CHRIA, the Contractor must transmit electronic prints to the PA State Police ("PSP") within 24 hours as per PSP defined requirements for submission of Agency-related fingerprints. PSP will subsequently submit the prints to the FBI and paper results will be returned to the Agency directly from the FBI. (*Reference the SLA's in Part IV, Section IV-8*)

- i) An applicant's fingerprints may be rejected by the FBI and/or the PSP due to poor quality or invalid demographic data. The applicant should not be recharged for corrected print submissions within one (1) year. After one year the process must be fully repeated and is considered a new chargeable transaction.
- j) In circumstances where a classifiable fingerprint record cannot be obtained, the Contractor shall take immediate steps to re-print the applicant at no additional charge to the applicant or the Commonwealth. The Contractor will contact the applicant directly if re-printing is needed.
- k) If fingerprinting fails two consecutive times, a name-based check will be required. The process is as follows:

For electronic transmission and manual transmission of results, Contractor shall request a name-based check only to the FBI via an established e-mail process. Contractor will receive the CHRI Report from the FBI and disseminate the CHRI Report to the requesting Agency unless otherwise specified in the Individual Agency requirements.

The following documents the steps:

- (1) First Fingerprint Submittal – Contractor collects a set of fingerprints and electronically submits the fingerprint record to PSP and the FBI.
- (2) In the event that the FBI rejects the transmitted transaction due to quality, the FBI electronically transmits a Rejection Message to PSP. PSP then relays the message to Contractor and the Agency. The FBI rejection message contains an IAFIS Control Number (“ICN”). Using the ICN entitles the applicant to a second transmission at no additional charge.
- (3) Contractor generates and mails a letter to the applicant as notification that they must be re-fingerprinted. The letter contains sufficient details to enable the Contractor's Livescan Operator to process the applicant a second time without having to enter demographic data or process a second payment.
- (4) When the applicant returns to the fingerprinting site for the second fingerprinting, the applicant does not have to pay for the second fingerprinting.
- (5) At the completion of the second fingerprinting, Contractor electronically transmits the fingerprint record to PSP. PSP then electronically relays the record to FBI for a second processing.
- (6) In the event that the FBI rejects the second transmission, an electronic message is transmitted to PSP. PSP then relays the message electronically to the Agency.
- (7) Contractor generates name search request and faxes form to FBI.
- (8) FBI forwards name search response/results to the Agency.

- 4) Electronically or manually transmit or post the CHRI Report according to each Agency's requirements.
- 5) Contractor must be able to resend the CHRI response(s) within an agreed upon time frame if the Agency requests it (i.e., lost message, system failure, etc.); be able to queue the responses for each Agency within a specified number of days; be able to queue the requests for the FBI and PSP within a specified number of days.
- 6) Furnish paper copies of the CHRI to any applicant requesting a copy via the application process or per individual Agency requirements (refer to Individual Agency Requirement). DGS estimates the annual volume of paper CHRI's sent to applicants is between 200,000–300,000. Unless otherwise provided in Individual Agency Requirements, Contractor will print the CHRI onto shadowed, watermarked paper containing the following message: NOT AN OFFICIAL COPY – FOR APPLICANT USE ONLY. The Contractor will mail the paper copy to the applicant's address listed on the application or as directed by the authorizing Agency.
- 7) The Contractor will collect from each Agency's applicants the contracted charges for the Services, broken down as follows:

Contractor fee	\$ TBD
FBI fee	\$ 17.25 (electronic) / \$28.25 (manual)
PSP fee	\$ 2.00
Agency fee	\$ 3.00
CHRIA copy (as applicable)	\$ TBD
 Manual Card Scan Fee	 \$ TBD

- 8) Process credit cards, debit cards, money orders and cashier's checks for payments from applicants. Cash cannot be accepted as a means of payment from the applicant. The Contractor must be bonded for handling money.
- 9) The Contractor will forward monthly via an Electronic Funds Transfer protocol to the appropriate Commonwealth Budget Office or Agency the FBI, PSP and Agency portions of the entire applicant fees collected during the previous month from each Agency's applicants.

PSP will invoice each Agency monthly for the FBI and PSP charges associated with each Agency's applicants for which the Contractor provided Services during the previous month, unless stated otherwise in Individual Agency Requirements.

- 10) Staff a live help desk at the Contractor's location to assist Agency staff and applicants with questions and inquiries concerning the application/registration, payment, Livescan site location and the overall fingerprinting process. When necessary, Contractor will contact PSP directly with questions relative to the status of an applicant's background check. Contractor will not direct applicants to contact PSP or the FBI directly. Timely

assistance will also be provided for Agency staff to deal with questions relating to reports, invoicing, etc.

- 11) Provide help desk services Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for federal holidays. Provide bilingual services with the Spanish language at the Help Desk, as necessary.
- 12) Ensure a single, reliable point of contact for PSP is available Monday through Friday, between the hours of 8:00 AM and 5:00 PM, excluding federal holidays.
- 13) Provide a process for reporting system issues during regular business hours and for after hours, including resolution within 24 business hours.
- 14) Establish a separate, secure website for each Agency which shall include web-based instructions for all applicants. Each Agency shall have a different website address.
- 15) Adhere to and comply with the Individual Agency Requirements specified in Section IV-4 of this RFP.
- 16) Comply with all Service Level Agreements (“SLA”) as described in Part IV-8 of this RFP.
- 17) Connect to the Commonwealth via the Business Partner Co-Location. The Contractor must provision and manage the Contractor’s carrier circuit and provide and configure their own router, and any data communication hardware required to support the proposed design and contract requirements. The Contractor will be responsible for paying the following monthly charge to the Commonwealth, as well as any additional monthly transmission charges billed by the carrier:

BP Co-Location Charge - \$390.00 (per month/per circuit)

Business Partner Co-Location facilities, infrastructure, and services are included in the Business Partner Co-Location Charge: Secure rack space, raised Data Center flooring (CTC only), climate control, dedicated power backed-up by UPS and generator, fire suppression, 24-hour escorted access, security, extended Demarcs, and transport via ATM Port/PVC (DS-3) connectivity from the Business Partner Co-Location Routers/Switches to the Business Partner DMZ Routers.

The Business Partner Co-Location is the Commonwealth’s preferred connection method; however, the Contractor may have the option to connect to the Commonwealth via a Secure Virtual Private Network (“VPN”) connection over the Internet. Any proposal for VPN connectivity will require approval by the Issuing Office and the Office of Administration, Office for Information Technology (“OA/OIT”) prior to implementation. In the event that any approved Secure VPN connectivity would prove to be insufficient, the Contractor agrees to establish a Business Partner Co-Location connection.

- 18) Comply with the Information Technology Standards and Policies issued by the Governor's Office of Administration, Office for Information Technology ("OA/OIT"), for the Commonwealth enterprise.  
<http://www.portal.state.pa.us/portal/server.pt?open=512&objID=416&PageID=210791&mode=2>.
- 19) Comply with the Emergency Preparedness Requirements specified in Section IV-6 of this RFP.
- 20) Comply with the Security Requirements specified in Section IV-7 of this RFP.
- 21) Conduct national criminal history records checks of all Contractor and subcontractor personnel having access to CHRI, and the website, prior to performing work. The Contractor is to maintain a record of the individual's eligibility to access CHRI.
- 22) Contractor personnel must provide in-person training to all Livescan operators at the Contractor's fingerprinting sites and maintain documentation of such training. The Livescan operators shall also be provided a user manual, which documents the process and procedures for fingerprinting.
- 23) Produce statistical, transmittal, and accountability reports as required by PSP and each participating Agency. Refer to Part IV, Section IV-9 Reports and Project Control, as well as Part IV-4, Individual Agency Requirements.
- 24) Participate in periodic audits, as prescribed in the provisions of the National Crime Prevention and Privacy Compact Council's Outsourcing Standard that PSP or other authorities may deem necessary to ensure they are complying with all laws, rules, and regulations regarding the processing of CHRI furnished by PSP/FBI to them.

Examples of records that may be subject to audit are: criminal history records, notification that an individual has no criminal history, Agency policies and procedures articulating the provisions for physical security, records of all disseminations of criminal history record information, and a current executed contract with the Commonwealth.

- 25) Maintain and provide electronic access to CHRI Reports to the required individual agencies (and approved school entities, in the case of PDE) so that each CHRI Report remains available to the agencies (and approved school entities, in the case of PDE) for one (1) year from the date the applicant is fingerprinted or as specified by individual agency requirements, including following the end of the Contract.

IV-4. **Individual Agency Requirements.** The participating Commonwealth Agencies identified below have the following additional requirements with respect to Services provided to their applicants. Services for participating Agencies not identified below shall be performed in accordance with Section IV-3 of this RFP. Current and future participating Agencies may specify additional requirements as may be determined necessary.

A. **PA DEPARTMENT OF EDUCATION.**

- 1) **Background – PA Department of Education.** On December 1, 2008, the Pennsylvania Department of Education (“PDE”) initiated a new system for certain approved school entities to access CHRI Reports online. Approved school entities have received log-in information and passwords and are currently able to retrieve CHRI Reports online for each of its applicants without any further action of PDE. PDE specific requirements include a system to provide similar online access to CHRI Reports to approved school entities; systems for management of information related to applicants; and a seamless transition for all school entities to the successful Offeror’s system that will not disrupt school entities’ current ability to retrieve CHRI Reports. Potential applicants may consist of employees of Public/Private Schools, intermediate units and area vocational-technical schools and independent contractors of such entities, including, but not limited to, teachers, school administrators, substitutes, janitors, cafeteria staff, independent contractors, bus drivers and student teachers, coaches, as well as Nurse Aide Training to include, but not limited to, persons enrolling as a nurse aide student in a state-approved nurse aide training program.
- 2) **Scope – PA Department of Education.** The Contractor will provide fingerprinting services with **electronic** background check results for PDE applicants.
  - a) **Online System.** The Contractor shall:
    - i. Provide web-based online access for review of CHRI Reports by all school entities which are identified and approved by PDE;
    - ii. Provide a seamless transition for school entities using the current online system, including a system for log-in and passwords for school entities that does not disrupt school entities’ current ability to retrieve CHRI Reports. (By way of example, ideally school entities login\passwords will remain the same);
    - iii. Provide web-based instructions for all school entities to use the online system and have posted on Contractor’s web-site and linked to the PDE website;
    - iv. Provide online access to CHRI Reports for specific and assigned PDE staff;
    - v. Provide web-based instructions for PDE assigned staff to use the online system;

- vi. Ensure that the coding of the database of school users is differentiated by “public school”; “private school”; and “higher education;”
  - vii. Ensure that all CHRI Reports shall include for each applicant, the applicant’s Registration ID – PAE (thirteen characters), the applicant’s last 4 digits of Social Security Number, together with any other information as PDE shall specify; and
  - viii. Provide CHRI Reports online to PDE and all approved school entities for one year from the date the applicant is fingerprinted. Contractor shall delete the report from the secure database after one year.
- b) **Reports.** The Contractor shall provide to PDE:
- i. Quarterly reports that include the number of current users, deleted users, types of applicants, and fingerprint location of applicants.
  - ii. Monthly reports that include the number of applicants who were fingerprinted and number for whom name checks were performed.
- c) **Paper Copies of Reports to Applicants.** The Contractor shall provide each PDE applicant with an unofficial paper copy of the CHRI report (the CHRI Copy) in accordance with the following guidelines:
- i. All PDE applicants shall not be given the option of whether or not they shall receive the CHRI Copy.
  - ii. All PDE applicants shall pay the CHRI Copy fee, if any, set forth in Contractor’s proposal.
  - iii. The Contractor shall mail the CHRI Copy to applicant via first class US Mail within two weeks of the date the applicant was fingerprinted.
  - iv. The CHRI Copy will be attached to a cover letter in a form to be approved by PDE.
  - v. PDE shall specify the content of the CHRI Copy and cover letter.
  - vi. The Contractor shall make up to three changes per year in the contents of the form cover letter, if requested by PDE.
  - vii. The Contractor shall include a statement in a prominent place on Contractor’s website which states: applicant will receive one paper copy of the report with a cover letter; and the timeframe for an applicant to contact the Contractor if the applicant has not received the paper copy.



- viii. Contractor shall return undelivered mail to PDE.
  - vii. CHRI Reprinting – Contractor shall reprint and send a replacement copy of the CHRI Copy to applicant if applicant informs Contractor (within 30 days of initial mailing of CHRI Copy) that applicant did not receive the CHRI Copy at no additional cost to applicant.
  - ix. The Contractor shall provide a process for applicants who (having actually received the original or replacement CHRI Copy) then request additional copies and/or request expedited delivery of copies, with applicant to bear the cost of the additional copy and / or expedited service. All replacement or additional copies of the CHRI Copy shall include the PDE approved cover letter.
  - x. The Contractor shall provide at its own cost, paper with a PDE approved Commonwealth seal to be used for the CHRI Copy. PDE will approve the paper to be used for the paper copy; Contractor will supply a sample that PDE can use for training and informational purposes.
- d) **Applicant Calls.** Contractor will respond to applicant phone calls. (i.e. – report is not available 72 hours after fingerprinting or paper copy was not received within two weeks.)
- e) **Name Checks.** (*Fingerprints that are rejected twice that require name checks*)
- i. Contractor will notify applicants when their fingerprints are rejected once, and provide PDE with a notification if the fingerprints are rejected a second time.
  - ii. Contractor will notify PDE on a daily basis of the names of applicants who require the name check process, and keep the listing available to PDE in a web-based format.
  - iii. Contractor will provide such assistance and information to PDE as PDE requires to submit name checks to the FBI via fax on a daily basis and to issue name check letters to applicants.

## **B. PA DEPARTMENT OF BANKING.**

- 1) **Background – PA Department of Banking.** The Pennsylvania Department of Banking, hereafter referred to as the Department, regulates the financial service industry in Pennsylvania and requires license applicant(s) to be fingerprinted when applying for licensure. Potential applicants may consist of positions to include, but not limited to, check cashiers, installment sales, mortgage brokers, consumer discount companies, money transmitters, pawn brokers, sales finance, and collector-repossessors.
- 2) **Scope – PA Department of Banking.** The Contractor will provide fingerprinting services with **electronic** background check results for Banking applicants. The Department requests the following information to be provided from the Contractor in a timely manner concerning the submission, retrieval and posting of criminal record information by the Contractor from fingerprint submissions made by the Contractor to the FBI.
  - a) Provide to the Department in spreadsheet format in a timely manner, and on-line, the following fields of information concerning fingerprint/arrest submissions:
    - i. Date of Submission by Applicant to the Contractor.
    - ii. Date of Results received from the FBI by the Contractor.
    - iii. Date of First Rejection if applicable.
    - iv. Date of Second Rejection if applicable.
    - v. Identification information to include name, date of birth and Social Security Number of the individual.
    - vi. If rejected for a second time date name check requested to the FBI by the Contractor.
    - vii. Reports of no-response (applied but have not taken prints).
  - b) The Department will define the default search values in the parameters within the display and will have the option to:
    - i. Filter all fields of information.
    - ii. Filter by whether or not results have been printed.
    - iii. Input search dates or time periods for the results.
    - iv. Input names or Social Security Numbers for the results.
    - v. Have option of changing how the CHRI results are displayed online.
  - c) A result of “Record” will be available for a period of 90 days for review with the ability to print by the Department.
  - d) A result of “No Record” will be available indefinitely online for review with the ability to print by the Department.
  - e) The Contractor will provide, accept and process hard copy fingerprint cards, as well as receive payments from the applicant.

- f) Complete results of all requests, “Record” as well as “No Record” made by the Contractor to the FBI. These results will be made available to the Department on-line.
- g) **Name Checks.** (*Fingerprints requiring name checks that are rejected twice*)
  - i. Contractor will notify applicants when their fingerprints are rejected once, and if rejected a second time.
  - ii. Contractor will notify the Department on a daily basis of the names of applicants who are being sent through the name check process, and keep the listing available to the Department in a web-based format.
  - iii. Contractor will send all registration information, and other required information to the FBI to request the name check and provide results to the requesting agency after a second rejection of fingerprints is received.

**C. PA DEPARTMENT OF PUBLIC WELFARE.**

- 1) **Background – PA Department of Public Welfare.** The Pennsylvania Department of Public Welfare (“DPW”) requires any individual seeking to engage in an occupation which puts them in contact with children to be fingerprinted prior to employment. These occupations would NOT include those already identified as needing to be printed through the Pennsylvania Department of Education. Potential applicants may consist include, but not limited to, adoption, foster care/kinship care, adult household member in a resource home, daycare centers, group and family daycare homes, babysitters, hospital personnel, including nursing students (these individuals may also require a clearance under the Older Adults Protective Services Act), behavioral health professionals, members of clergy, counselors, librarians, doctors, medical/dental clinical studies, private children and youth social service agencies, county children and youth social service agencies, residential programs, juvenile detention services, early intervention services, drug and alcohol services, and programs for dependent/delinquent youth.
- 2) **Scope – PA Department of Public Welfare.** The Contractor will provide fingerprinting services with **electronic** background check results for public welfare applicants.
  - a) The system must include a backend database that will allow the DPW Staff to review, track, store, process and maintain the results of requests for FBI fingerprint clearances via the secure website.
    - i. The Contractor must provide a process for requesting database changes, such as changes to letter templates, drop-down list and

possible processing changes due to changing requirements imposed by State and Federal Laws.

- ii. The Contractor must provide a detailed data dictionary and documentation outlining their application.
- b) Office of Children and Youth Families (“OCYF”) staff must have the ability to access the system (via the secure website) daily.
- c) **Applicant Registration.** All Applicant Registration information is applicable to all Commonwealth Agencies with the following exception:
- i. The applicant must not be required to input their SSN to complete the registration process.
  - ii. Applicant Registration screen must contain a field titled Reason Fingerprinted to record and capture the applicants’ reason for being fingerprinted. This field must be modified to match DPW’s reasons fingerprinted.
- d) **Agency Enrollment.** The system must provide a module for registering Agencies and collecting Agency billing information.
- i. The Agency must have the ability to register multiple satellite offices and obtain a Unique ID for each of the offices.
  - ii. The Agency must have the ability to set up direct pay billing for applicants registering for an FBI clearance at the Agency’s request.
- e) **System Requirements.** Requirements related to reviewing, tracking, storage, processing and maintenance of the applicants’ results of requests for FBI fingerprint clearances via the secure website.

The system must include the following modules: System Login, Security, Audit, Password Management, Transaction, Result, Disposition, Report and User Accounts. All modules except password management must have search capabilities.

- f) **System Login.** The system must provide an extra layer of access security to the website. This extra layer of security must be in the form of a digital certificate that the login screen will require each user to select before accessing the site. The certificate will reside on the users’ desktop; the user must select their certificate before gaining access to the Contractor’s website. The system must require the user to login. The Contractor must provide the Agency a list of individuals whose certificate is to expire two weeks prior to their expiration.

- g) **Security Module.** The system must include a security module.
- i. Access to the security module must be limited to the administrator(s) account type.
  - ii. System security must be role based and include the following roles: Administrator, Supervisor, Viewer and Determiner.
  - iii. Administrator(s) role must have the ability to add, change, reset or delete users/staff accounts.
  - iv. Administrator needs the ability to view demographic information related to registered Agencies. (The administration needs the ability to select an Agency from the grid and view detailed information related to that Agency)
- h) **Audit Module.** The system must contain a module that tracks all users' activity upon the user's login to the system. The administrator(s) and supervisor(s) must have the ability to view all user activity related to a specific user, applicant and date range.
- i) **Password Management Module.** The system must contain a password management module that will allow users to change their password.
- j) **Transaction Module.** The system must have the ability to track registered applicants and track, store, modify and maintain the results of requests for FBI fingerprint clearances.
- i. The Adam Walsh Unit within DPW's Division of Operations must have the ability to access the Application and Results data daily.
    - a. Storage of electronic rap sheets CHRI must follow the FBI rules and regulations regarding the electronic retention of rap sheet information.
  - ii. The system must allow the user to select a specific applicant and view detailed information related to that applicant.
    - a. The system must contain a Transaction Detail screen which contains applicant, Agency information and results of the FBI Response.
      - (1) Transaction detail screen must contain a section which lists OCYF staff determination on the FBI returned response titled "Disposition Information".
      - (2) Transaction detail screen must have a section that lists the comments/narratives recorded during the review process titled "General Comment".

- The user must have the ability to add additional comments.
      - The administrator and supervisor must have the ability to modify or delete a comment.
    - iii. The system must provide a print function.
  - k) **Results Module.** The user needs the ability to find, view, modify or print an applicant's clearance results.
    - i. Data must be maintained on-line for 18 months from the date DPW qualified or disqualified the Applicant.
      - a. System must contain a process to track and automatically purge the applicant's record once the 18 month time frame has expired.
      - b. Applicant's whose final disposition is "applicant exceeded year response time" must also be purged following the guidance above.
    - ii. The system must contain a module to track the results of clearances.
      - a. The system must allow the user to select a specific applicant from the grid and view detailed information related to that applicant or the applicant's disposition history.
      - b. The system must have the ability to reprint result letters.
      - c. The system must allow user assigned to the administrator or supervisor account type to modify the disposition. The system must not overwrite previously recorded results but should keep a running list of all disposition results associated with the applicant including the date and time of the change and the user that modified the record.
      - d. User needs the ability to add a comment related to the applicant. System must allow the administrator and supervisor to edit or delete comments once the user confirms the transaction.

- 1) **Disposition Module.** The user must have the ability to view and make determinations based on the results returned by the FBI.
  - i. The system must provide the user a working queue that will contain all applicants whose FBI response contains a rap sheet except any applicant that has an FBI result of “no record” and any applicant whose fingerprints were rejected the first time and/or second time, if any.
    - a. Any applicant that has an FBI result of “No Record” must be processed by the system.
    - b. The system must automatically generate “No Record exists” certification letter(s) for all applicants that have “No Record” results.
    - c. The system must provide a batch file following DPW OCYF’s specifications which contains all “No Record Exists” certification letters to our print shop electronically on a daily basis.
  - ii. If the applicant’s fingerprints were rejected by the FBI for the first time, the system must notify the applicant by letter to visit the Livescan site to be reprinted. The system must move the applicant’s record to the results menu if their fingerprints were rejected the first time.
    - (1) The system must record the date of the Response.
    - (2) The system must mark the response type “First Rejected”.
  - iii. If an applicant’s fingerprints were rejected twice by the FBI and the applicant’s disposition must be name-based searched, the system must process the record by adding the disposition “Named-Based Search Initiated”, produced and forward the letter to the FBI to initiate the name search and move the record to the results mode.
    - a. The system must move the applicant’s record to the results menu if their fingerprints were rejected the second time around.
      - (1) The system must record the date of the Response.
      - (2) The system must mark the Response type “Second Reject”.
      - (3) The system must add the disposition “Name Based Search Initiated.

- (4) The system must produce and send the Name Based Search Initiated Letter and forward to the FBI.
  - b. Upon receipt of the FBI response to the name based searches any applicant that has an FBI result of “No Record” must be processed by the system.
    - (1) The system must automatically generate “The Name Based Search No Record Exists” certification letter(s) for all applicants that have No Record” results.
    - (2) The system must provide a batch file following DPW OCYF’s specifications which contains all “No Record Exists” certification letters to our print shop electronically on a daily basis.
  - c. The system must provide the user the ability to add the final disposition for all applicants whose results were other than “No Record” and print the Name Based Search letter at the local printer maintained by the Adam Walsh Unit within DPW’s Division of Operations.
    - (1) The system must print the date the result was received from the FBI as the response date when the user prints the name based search letter.
    - (2) The system must move this record to the results module. When the results are received from the FBI the user must have the ability to add the final disposition. This process must be completed through the results module.
- iv. The system must contain a module titled Disposition.
  - a. The disposition process working queue must contain a filter function which must allow the user to filter the queue by single or multiple criteria including the comment field.
  - b. The disposition process working queue must provide a count of the records in the queue.
  - c. The system must allow the user to print the (listing) results of the filtered queue.
  - d. The system must allow the user to select a specific applicant from the grid and view detailed information related to that applicant.



- e. The system must provide the user a mechanism for processing and storing DPW's review of the applicants FBI results and to make a determination on the results.
  - f. The user must have the ability to select the Disposition Type from the Disposition drop-down list. Listing of disposition types will be provided upon request.
  - g. The user must have the ability to change the disposition as long as the user did not click on the confirm command button.
  - h. The user must have the ability to select a Crime code from the Crime Code drop-down list and link it to the applicant. The current crime codes listed in the Child Protective Services Law §6344. The system must make "Crime Code" a mandatory field if the user selects "Disqualified" from the disposition drop-down list.
  - i. The system must auto-populate the Date Shown on Letter defaulting the date to the current date. The system must allow the Date Shown on Letter to be overwritten if the applicant takes longer than 30 days to send the information requested, in that instance the date would be manually overwritten by the user.
- v. The system must give the user the ability to request additional information if the user is unable to make a determination with the information/results returned from the FBI.
    - a. All applicant(s) must remain in the working queue for 12 months, unless the information is received and the final results are issued.
    - b. The system must track the 12 month timeframe and automatically purge this applicant from working queue once the 12 months have expired if the additional information was not received. System must assign this disposition to the record "Applicant exceeded year response time" and move the applicant to the results module.
  - vi. The system must allow the user the capability to add a comment related to the applicant. System must allow the administrator and supervisor to edit or delete comments once the user confirms the transaction.
  - vii. The system must allow the user the ability to print certification letters to the applicant and/or Agency.

- viii. The system must provide a mechanism for processing name based FBI searches if an applicant's fingerprints have been rejected twice by the FBI the system must mark the response type "Second Reject" and place the applicant in the working queue.
  - a. The system must move the applicant to the results module upon clicking the confirm command button and printing the Name Search Initiated Letter.
  - b. The user must have the ability to add a final disposition once the name based results have been returned from the FBI. Results must be modified utilizing the results module.
- m) **Reports Module.** The administrator(s) and supervisor(s) must have the ability to produce reports on an as needed basis.
  - i. Each report must provide the user the ability to view and print summary report or detailed applicant information related to that report criteria or export the results to excel or html.
  - ii. System must contain the following reports:
    - a. The purpose of the Clearance and a separate report broken down by Agency. This report must capture the applicant's purpose of the clearance recorded by the applicants during registration.
    - b. The Fingerprints Sent to the FBI and a separate report broken down by Agency. This Report must provide a listing of all applicants whose fingerprints have been scanned and sent to the FBI.
    - c. The Number of applicants that had an FBI hit and a separate report broken down by Agency. This Report must provide a listing of all applicants whose results were received back from the FBI that contained criminal background information.
    - d. The FBI Fingerprint Based Record Check by Disposition and a separate report broken down by Agency. This Report must provide a listing of all applicants whose results were received back from the FBI and a disposition was assigned.
    - e. The FBI Fingerprint Based Record Check Results and a separate report broken down by Agency. This Report must provide a listing of all applicants whose prints were sent to the FBI and the results may or may not have been received back from the FBI. The user must have the ability to filter

the results of the report for only those applicants whose results are outstanding from the FBI during that timeframe.

- f. The Number of Applicants that have been Disqualified and a separate report broken down by Agency. This Report must provide a listing of all applicants whose prints were sent to the FBI and the disposition is disqualified.
- g. The Number of Name Check Searches Processed and a separate report broken down by Agency. This Report must provide a listing of all applicants whose prints were sent to the FBI and rejected twice and the disposition is Name Search Initiated.
- h. The Number of Name Based Check Search Results by Disposition and a separate report broken down by Agency. This Report must provide a listing of all name based search results that were received back from the FBI and a disposition was assigned.
- i. The Number of Name Check Search Applicants broken down by the purpose of the Clearance and a separate report broken down by Agency. This report must capture the applicant's purpose of the clearance recorded by the applicants during registration.
- j. The Number of Days between Live Scan Date and Date Final Results Were Issued and a separate report broken down by Agency. This Report must provide a listing of all applicants and their associated Agency (if applicable) whose fingerprints were captured and the date their final disposition was issued.
- k. The Number of Clearances Processed by Employee ID. This report must capture all applicants' clearances processed by employee ID.
- l. The Number of Applicants Who Have a Rap Sheet and Their Associated Crime Codes and a separate report broken down by Agency.
- m. The Number of Days that Elapsed Between the Date the FBI Results were received and the Date Final Results were issued. This Report must provide a listing of all applicants whose FBI results were received and the date the final results were issued by and provide the difference between the two dates by their associated Agency (if applicable).

- n. The Number of Applicants with Outstanding Final Dispositions. This Report must provide a listing of all applicants whose final dispositions have not been issued by Agency. In addition provide a listing of all applicants whose total clearance time exceeded four weeks.

The system must have the ability to produce a detailed report listing each applicant whose final results were not issued within a 4-week time span and sort the applicants by agency.

- o. The Number of Ink Based Card Process. This Report must provide a summary count of all applicants who were process Utilizing an Ink Based Card; in addition provide a detailed listing of all applicants if requested by user.

The system must have the ability to produce a detailed report listing each applicant who used the Ink Based Card process.

#### **D. PA DEPARTMENT OF TRANSPORTATION.**

- 1) **Background – PA Department of Transportation.** PENNDOT requires any current and prospective employees whose position includes, as a job duty, possible involvement in the manufacture or production or ability to affect the issuance of a driver’s license or photo identification card, to be fingerprinted.
- 2) **Scope – PA Department of Transportation.** The Contractor will provide fingerprinting services with **paper** background check results for PENNDOT applicants. PENNDOT has elected to pay for the cost associated with the services for its current and prospective employees (paid-for applicants) the following provisions apply:
  - a) The Contractor will create an Agency account for PENNDOT and assign a single unique identifier code (Agency ID) to a designated PENNDOT representative to identify paid-for applicants when scheduling and submitting prints.
  - b) The designated PENNDOT representative will register online using the Agency ID, for any paid-for applicants, provided, however, that in the event it is determined the volume becomes too large the Contractor and PENNDOT may make arrangements to register those applicants via telephone.
  - c) Any applicants, for which fingerprint services will NOT be paid for by PENNDOT, such as business partners, must register online and pay using standard online payment methods.

- 3) **Invoicing & Payment.** To enable PENNDOT to pay for services performed for specific employees and prospective employees, PENNDOT will issue a Purchase Order to the Contractor, soft reference the Contract and complete a one-time application for Contractor's Agency pay agreement.

a) **Paid-For Applicant(s):**

- i. The Contractor will provide a secure website on which PENNDOT will be able to view each paid-for applicant whose fingerprint set was submitted to the PA State Police ("PSP").
- ii. The Contractor will invoice PENNDOT monthly for the Contractor fee associated with PENNDOT's paid-for applicants. The invoice will contain the paid-for applicant names and dates of fingerprint submissions by the Contractor during the previous month.
- iii. PENNDOT will print the invoice from the Contractor website each month. This invoice will be submitted to the Comptroller for payment after verification.
- iv. PSP will invoice PENNDOT monthly for the FBI and PSP charges associated with PENNDOT's paid-for applicants for which the Contractor provided services during the previous month.

- b) **Not-Paid-For Applicant(s):** Collection, invoicing and payment of fees associated with applicants for which services will not be paid for by PENNDOT will follow the procedures set forth in the General Requirements for Services, Section IV-3 of this RFP.

**E. PA DEPARTMENT OF AGING.**

- 1) **Background – PA Department of Aging.** The Department of Aging ("AGING") is the intermediary as mandated by the Older Adults Protective Services Act ("OAPSA") which requires an applicant (an individual who submits an application, which is being considered for employment, to an OAPSA facility), and where the applicant is not and, for the two years immediately preceding the date of application, has not been a resident of the commonwealth to be fingerprinted and to submit to a federal criminal history record check. This includes applicants and/or employees who have direct contact with residents or unsupervised access to their personal living quarters. The term includes any person who is employed or who enters into a contractual relationship to provide care to a care-dependent individual for monetary consideration in the individual's place of resident.

In accordance with OAPSA and the Departments of Health and Public Welfare policies and regulations facilities include: domiciliary care home, home health care agency, long-term nursing facility, adult daily living center/day care, personal care home, assisted living, nursing facilities, long term structured residences, community residential rehabilitation services, community homes for individuals with mental

retardation, family living homes, ICF/MR's (private & state), state mental hospitals, South Mountain Restoration Center, sexual responsibility treatment programs, hospices, birth centers, home care agencies and registries and any other future mandated and/or regulated entities.

- 2) **Scope – PA Department of Aging.** The Contractor will provide fingerprinting services with **paper** background check results for AGING applicants. At this time, the Department of Aging has no specific requirements in addition to the general requirements for services as set forth in Part IV, Section IV-3.

IV-5. **Tasks.** The following identified Tasks should be addressed by the Offeror in its Technical Submittal:

**A. Start-up/Implementation.**

- 1) **Transition Plan.** Describe your plan to ensure a smooth transition of service from the incumbent contractor. Include a Program Evaluation and Review Technique (“PERT”) or similar type display, time related, showing each event.
  - a) Contractor shall be afforded up to a three (3) month period [**November 2011–January 2012**] to develop and ramp-up services. A pilot test must be conducted in cooperation with DGS and successfully completed prior to commencing services.
  - b) Full implementation is required by **February 1, 2012**.
- 2) **Fingerprinting Locations.**
  - a) Include a map identifying Pennsylvania locations of current or proposed sites; and indicate whether the site is fixed, mobile, or both. Offeror's map should illustrate multiple site locations in high-usage areas in and around the large metropolitan areas in the Commonwealth and also illustrate compliance with the 25 mile radius requirement. **The Commonwealth will determine whether the number and location of proposed sites is sufficient.**
  - b) Identify the name and contractual or other relationship for entities providing the fingerprint locations.
  - c) Describe your plan and methodology for staffing the site locations.
  - d) Describe the equipment to be used at fingerprinting locations.
  - e) Submit the written policy, procedures, and practices that will be used by each location providing fingerprint services. The Offeror may refer to the Identity Verification Program Guide for guidance. The guide can be found at: <http://www.fbi.gov/about-us/cjis/cc/current-initiatives/identity-verification-program-guide/view>

- f) Provide a copy of the training/user manual, which documents the fingerprinting process and procedures for Livescan operators.
- g) Describe the process for providing Services to out-of-state applicants. Indicate whether out-of-state applicants can go to Offeror's out-of-state locations for fingerprinting and transmitting of fingerprints to PSP and the FBI.
- h) Describe your plan for site security. Supply demonstrated evidence of site security and describe how you plan to ensure the applicant's confidentiality of information is protected and is a priority both at each fingerprint site and at the Offeror's central business location(s).
- i) Describe your plan to accommodate ADA requirements, bilingual services, and special needs of applicants.

**B. Application Process.**

- 1) Describe your plan for the online registration application process.
- 2) Describe your plan for establishing and maintaining each agency's website as specified in the Individual Agency Requirements, Section IV-4 of this RFP.
- 3) Provide evidence that your company is bonded for handling money.

**C. Transmission Process (Fingerprints & Application Data).**

- 1) Describe your ability to interface and transmit fingerprints through the AFIS system.
- 2) Describe your plan for connectivity to the Commonwealth via the Business Partner Co-Location (see Section IV-3, General Requirements for Services).

If the Offeror prefers to connect via secure VPN, the Offeror must submit their VPN solution to include full implementation details, project design plan, and configurations. The Offeror must be able to provide geographically diverse, redundant connections. Any proposal for VPN connectivity will require approval by the Issuing Office and the Office of Administration, Office for Information Technology ("OA/OIT") prior to implementation. In the event that any approved secure VPN connectivity would prove to be insufficient, the Contractor agrees to establish a Business Partner Co-Location connection.

- 3) Develop and describe your plan to reduce the amount of rejected scans.
- 4) Develop and describe the process for scheduled system maintenance.

**D. Customer Support.**

- 1) Describe how you will provide the required Call Center/Helpdesk services specified in the General Requirements. Indicate if bilingual staff fluent in Spanish will be available at the Help Desk and on site, as necessary, and how many staff meet this requirement.
- 2) Describe the process for reporting system issues.
- 3) Describe how you will perform system data back-ups and recovery.

**E. General Requirements for Services.** Please describe how you will meet the General Requirements for Services specified in Section IV-3 of this RFP which are not addressed in response to subsections A-D above.

**F. Individual Agency Requirements.** Please describe how you will meet the Individual Agency Requirements specified in Section IV-4 of this RFP which are not addressed in response to subsections A-E above.

**G. Emergency Preparedness.** Please describe how you will meet the Emergency Preparedness requirements specified in Section IV-6 of this RFP which are not addressed in response to subsections A-F above.

**H. Security Requirements.** Please describe how you will meet the Security Requirements specified in Section IV-7 of this RFP which are not addressed in response to subsections A-G above.

**I. Service Level Agreements.** Please describe how you will meet the Service Level Agreements specified in Section IV-8 of this RFP which are not addressed in response to subsections A-H above.

**J. Reports and Project Control.** Please describe how you will meet the Report and Project Control requirements specified in Section IV-9 of this RFP which are not addressed in response to subsections A-I above.

**IV-6. Emergency Preparedness.** To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

A. Describe how you anticipate such a crisis will impact your operations.

B. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:



- 1) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees).
- 2) Identified essential business functions and key employees (within your organization) necessary to carry them out.
- 3) Contingency plans for:
  - a) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
  - b) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- 4) How your organization will communicate with staff and Contractors when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including Contractors), etc.
- 5) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

#### **IV-7. Security Requirements.**

##### **A. Data Breach.**

- 1) Contractor shall comply with all state and federal data breach notification laws, including but not limited to the Commonwealth Breach of Personal Information Notification Act (73 P.S. § §2301 *et seq.*), and provide timely notification and credit monitoring services to individuals that may be impacted by a breach or unauthorized access, use, release, or disclosure of Personal Information. In addition to the notification requirements of the Breach of Personal Information Notification Act, Contractor shall report any security incidents or data breaches to the Issuing Officer, the Agency Project Manager, and the Commonwealth's Chief Information Security Officer within one (1) hour of first suspecting or confirming any incidents or occurrences of unauthorized access, use, release, or disclosure of Personal Information. Contractor shall be solely responsible for any costs, losses or damages incurred by the Commonwealth due to Personal Information being accessed, used, released, disclosed and/or acquired in an unauthorized manner while in the possession and control of the Contractor or its employees, agents, and/or subcontractors.

Personal Information – Defined as set forth in the Commonwealth Breach of Personal Information Notification Act at 73 P.S. § 2302.

## B. Security Compliance.

- 1) The Contractor will be bound by the most current Criminal Justice Information Services (“CJIS”) Security Policy and Security and Management Control Outsourcing Standard at the time of award for this contract. The Contractor agrees to comply with future revisions of the CJIS Security Policy and Security and Management Control Outsourcing Standard as they are published.
- 2) By providing the Services under this Contract, the Contractor may create, receive, or have access to credit card records or record systems containing cardholder data including credit card numbers (collectively the "Cardholder Data"). Contractor shall comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements for Cardholder Data that are prescribed by the payment brands (including but not limited to Visa, MasterCard, American Express, and Discover), as they may be amended from time to time. Contractor acknowledges and agrees that Cardholder Data may only be used for assisting in completing a card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by the payment brands, for purposes of this Contract or as required by applicable law.
- 3) Contractor shall conform to and comply with the PCI DSS standards as defined by The PCI Security Standards Council at:  
[https://www.pcisecuritystandards.org/security\\_standards/index.php](https://www.pcisecuritystandards.org/security_standards/index.php).  
Contractor shall monitor these PCI DSS standards and will promptly notify the Commonwealth if its practices should not conform to such standards. Contractor shall provide a letter of certification to attest to meeting this requirement within one week of Contractor’s receipt of the annual PCI DSS compliance report.

IV-8. **Service Level Agreements.** The successful Offeror must comply with the following Service Level Agreements in providing the Digital Fingerprinting and Electronic Federal Criminal Background Check Services (“Services”) under the Contract awarded from this RFP:

STANDARD	PERFORMANCE	ENFORCEMENT/ LIQUIDATED DAMAGES
Fingerprint Submission	Fingerprints must be submitted within 24 hours of capture by any mobile unit and in real time from a permanent office.	Subject to contract enforcement measures.
Fingerprint Legibility/Rejection	The fingerprint capture software must maintain no less than a 98% legibility rate and no more than a 2% rejection rate for all fingerprint submissions. (Includes Card Scanned Fingerprints.)	Subject to contract enforcement measures.
Site Rejection Rate	Each Contractor fingerprinting site must maintain no more than a 2% rejection rate for all fingerprint submissions. (Includes Card Scanned Fingerprints.)	1) Contractor must reimburse PSP in an amount equal to the PSP Fee for the monthly transactions processed at the site(s) for each month such site(s) are out of compliance.  2) If rejection rate for a particular Contractor site is greater than 2% for two quarters, Contractor must shut down the site until all Livescan operators are re-trained. (Contractor must otherwise still meet the adequate number of locations requirement.)
Data Security	The Contractor shall utilize industry best practices to prevent breaches of security that result in Personal Information of customers being shared with any entity other than the Commonwealth, those approved by the Commonwealth, or as otherwise permitted by the terms of this Contract and/or applicable law.	The Contractor will provide timely notification and credit monitoring services to individuals that may be impacted by the unauthorized access, use, release, or disclosure of Personal Information.
Unauthorized access, use, release, or disclosure of Personal Information	Contractor shall notify the Commonwealth within one (1) hour of when the Contractor knows or suspects an incident or occurrence of unauthorized access, use, release, or disclosure of Personal Information specifically related to the Commonwealth.	The Contractor will credit the Commonwealth \$10,000 if timely notification is not provided and \$5,000 per day thereafter until notification is provided.
PCI DSS Letter of Certification	A PCI DSS letter of certification must be provided on an annual basis at Contractor's expense.	If notified of failure to renew certificate, the Contractor will have 90 days to remediate any outstanding issues, at which point, Contractor will credit the Commonwealth \$10,000 per month until the certification is delivered to the Commonwealth.

**IV-9. Reports and Project Control.** The Contractor will make data available in reports as noted. Separate items listed may be combined for reporting purposes as recommended by the Contractor and agreed to by the Agency.

A. Monthly and Quarterly reports to be made available online by the Contractor include:

- 1) Identification information to include name, date of birth and Transaction Control Number (“TCN”) of individual applicants.
- 2) Date of fingerprint submission and/or resubmission/reprinting.
- 3) Reports of no-response (registered but have not submitted prints).
- 4) Current Users and Deleted Users with access to reports.

B. Daily inquiry access to be made available online by the Contractor include:

- 1) Identification information to include name, date of birth and Social Security Number of individual applicants.
- 2) Date of registration by applicant.
- 3) Date of fingerprint submission.

C. **Monthly, Quarterly and Annual Activity Summaries.** These will be activity summaries to include but not limited to statistical data on applicant locations and numbers in a format to be established by the DGS. It should also include a summary of the total fees collected each month.

D. **Monthly Quality Control Report.** Contractor shall conduct and report to DGS the results of a monthly quality control audit of five percent (5%) of its fingerprinting sites.

E. **Agency Quarterly Rejection Rate Report.** This report should include the number and percentage of rejections in a format to be established by the using Agency. This report shall be submitted to the respective agency with a copy to DGS.

F. **DGS Quarterly Rejection Rate Report.** This report should include, but not limited to, data for all Agencies, the number and percentage of rejections by fingerprinting site and the Livescan operator collecting the fingerprints, in a format to be established by DGS. The report should be sent to the attention of the contract Issuing Officer.

G. **Voucher Transmittal Report.** This report must accompany the electronic transmission of funds to the Commonwealth’s designated Budget Office, on a monthly basis. This form should identify test date, applicant and amount paid at a minimum. The final format will be established by DGS and the designated Budget Office.

H. **Other reports as required.**

**IV-10. Contract Requirements—Disadvantaged Business Participation and Enterprise Zone Small Business Participation.** All contracts containing Disadvantaged Business participation and/or Enterprise Zone Small Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Disadvantaged Businesses and/or Enterprise Zone Small Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BMWBO. All contracts containing Disadvantaged Business participation and/or Enterprise Zone Small Business participation must include a provision requiring Small Disadvantaged Business subcontractors, Enterprise Zone Small Business subcontractors and Small Disadvantaged Businesses or Enterprise Zone Small Businesses in a joint venture to perform at least **50%** of the subcontract or Small Disadvantaged Business/Enterprise Zone Small Business participation portion of the joint venture.

The selected contractor's commitments to Disadvantaged Businesses and/or Enterprise Zone Small Businesses made at the time of proposal submittal or contract negotiation shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BMWBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Disadvantaged Business participation and/or Enterprise Zone Small Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BMWBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Disadvantaged Business and/or Enterprise Zone Small Business subcontractors and suppliers, and Small Disadvantaged Business and/or Enterprise Zone Small Business participants involved in joint ventures. Also, this information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Disadvantaged Business and Enterprise Zone Small Business points. If there was no activity during the quarter then the form must be completed by stating "No activity in this quarter."

**NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF DISADVANTAGED BUSINESSES STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR DISADVANTAGED BUSINESSES UTILIZATION.**

PART V  
STANDARD TERMS AND CONDITIONS

Table of Contents

V.1 CONTRACT-001.1a Contract Terms and Conditions (Nov 30 2006)	1
V.2 CONTRACT-002.1d Term of Contract – Contract (May 2008)	1
V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006)	1
V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)	1
V.5 CONTRACT-003.1b Signatures – Contract (March 2007)	2
V.6 CONTRACT-004.1a Definitions (Dec 12 2006)	2
V.7 CONTRACT-005.1a Purchase Orders (Feb 2007)	2
V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)	3
V.9 CONTRACT-007.01b Delivery of Services (Nov 30 2006)	3
V.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)	4
V.11 CONTRACT-008.1a Warranty (Oct 2006)	4
V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006)	4
V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)	5
V.14 CONTRACT-010.1a Acceptance (Oct 2006)	5
V.15 CONTRACT-010.2 Product Conformance (Oct 2006)	5
V.16 CONTRACT-010.3 Rejected material not considered abandoned (Oct 2006)	6
V.17 CONTRACT-011.1a Compliance With Law (Oct 2006)	6
V.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)	6
V.19 CONTRACT-014.1 Post-Consumer Recycled Content (Dec 5 2006)	6
V.20 CONTRACT-014.3 Recycled Content Enforcement (Feb 2009)	6
V.21 CONTRACT-015.1a Compensation/Expenses (May 2008)	6
V.22 CONTRACT-015.2 Billing Requirements (Dec 5 2006)	7
V.23 CONTRACT-016.1 Payment (Oct 2006)	7
V.24 CONTRACT-016.2 ACH Payments (Aug 2007)	8
V.25 CONTRACT-017.1 Taxes (Dec 5 2006)	8
V.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)	8
V.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)	8
V.28 CONTRACT-020.1 Audit Provisions (Oct 2006)	9
V.29 CONTRACT-021.1 Default (Dec 12 2006)	9
V.30 CONTRACT-022.1 Force Majeure (Oct 2006)	10
V.31 CONTRACT-023.1a Termination Provisions (Oct 2006)	11
V.32 CONTRACT-024.1 Contract Controversies (Oct 2006)	11
V.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)	12
V.34 CONTRACT-026.1 Other Contractors (Oct 2006)	12
V.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Aug 2010)	13
V.36 CONTRACT-028.1 Contractor Integrity Provisions (March 2011)	13
V.37 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)	18
V.38 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)	19
V.39 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)	19
V.40 CONTRACT-033.1 Applicable Law (Oct 2006)	19
V.41 CONTRACT-034.1a Integration – RFP (Dec 12 2006)	19
V.42 CONTRACT-034.2a Order of Precedence – RFP (Dec 12 2006)	20
V.43 CONTRACT-035.1a Changes (Oct 2006)	20
V.44 CONTRACT-036.1 Background Checks (Feb 2008)	20
V.45 CONTRACT-037.1a Confidentiality (Oct 2006)	21
V.46 CONTRACT-041.1 Disadvantaged Business Participation and Enterprise Zone Small Business Participation (Feb 2009)	21
V.47 CONTRACT-051.1 Notice (Dec 2006)	22
V.48 CONTRACT-052.1 Right to Know Law (Feb 2010)	22

## **PART V -CONTRACT TERMS and CONDITIONS**

### **V.1 CONTRACT-001.1a Contract Terms and Conditions (Nov 30 2006)**

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

### **V.2 CONTRACT-002.1d Term of Contract – Contract (May 2008)**

The initial term of the Contract shall be 3 year(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 Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

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

The Contract may be mutually renewed for a maximum of 2 additional 1 year term(s), so long as the Commonwealth provides written notice to the Contractor of its intention to extend the Contract by letter dated not less than 090 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 060 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

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

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

#### **V.5 CONTRACT-003.1b Signatures – Contract (March 2007)**

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

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

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

#### **V.7 CONTRACT-005.1a Purchase Orders (Feb 2007)**

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

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



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

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

b. The parties agree that no writing shall be required in order to make the 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 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 five thousand dollars (\$5,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

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

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

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

The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

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

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

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

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

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

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

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

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

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

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

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

#### **V.15 CONTRACT-010.2 Product Conformance (Oct 2006)**

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.16 CONTRACT-010.3 Rejected material not considered abandoned (Oct 2006)**

The Commonwealth will 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 Commonwealth shall have the right to demand, and upon demand, the Contractor shall be responsible for proper clean-up at all locations upon demand by the Commonwealth, the Commonwealth may set-off the costs for removal and clean-up from any payments due to the Contractor under this or any other Contract with the Commonwealth. This is in addition to all other rights to recover costs incurred by the Commonwealth.

**V.17 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.18 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.19 CONTRACT-014.1 Post-Consumer Recycled Content (Dec 5 2006)**

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

**V.20 CONTRACT-014.3 Recycled Content Enforcement (Feb 2009)**

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.21 CONTRACT-015.1A Compensation/Expenses (May 2008)**

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

## **V.22 CONTRACT-015.2 Billing Requirements (Dec 5 2006)**

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.23 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.24 CONTRACT-016.2 ACH Payments (Aug 2007)**

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

#### **V.25 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.26 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.27 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.28 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.29 CONTRACT-021.1 Default (Dec 12 2006)**

a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:

- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
- 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
- 3) Unsatisfactory performance of the work;
- 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
- 5) Improper delivery;
- 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
- 7) Delivery of a defective item;
- 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
- 9) Discontinuance of work without approval;
- 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
- 11) Insolvency or bankruptcy;
- 12) Assignment made for the benefit of creditors;
- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or

performed, for equipment rentals, or for utility services rendered;

14) Failure to protect, to repair, or to make good any damage or injury to property;

15) Breach of any provision of the Contract;

16) Failure to comply with representations made in the Contractor's bid/proposal; or

17) Failure to comply with applicable industry standards, customs, and practice.

b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.

d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

### **V.30 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 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.31 CONTRACT-023.1a Termination Provisions (Oct 2006)**

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 for any appropriations available for that purpose

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

#### **V.32 CONTRACT-024.1 Contract Controversies (Oct 2006)**

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.

b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the 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.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)**

a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.

d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.

g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

### **V.34 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.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Aug 2010)**

The Contractor agrees:

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

**V.36 CONTRACT-028.1 Contractor Integrity Provisions (March 2011)**

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

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

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other

applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires

prior Commonwealth approval; or

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

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

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

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

**g.** Otherwise required by law.

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

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

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

(1) obtaining;

(2) ) attempting to obtain; or

(3) performing a public contract or subcontract.

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

**c.** Violation of federal or state antitrust statutes.

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

**e.** Violation of any federal or state environmental law.

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

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

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

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

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

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

- 12.** Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
- 13.** When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- 14.** Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
16. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
- a.** “ Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
- b.** “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
- c.** “Contractor” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
- d.** “Financial interest” means:
- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- e.** “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor's Code of Conduct, Executive Order 1980-18*, the *4 Pa. Code §7.153(b)*, shall apply.
- f.** “Immediate family” means a spouse and any unemancipated child.

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

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

#### **V.37 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, offer or, 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.38 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)**

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

**V.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-034.1a Integration – RFP (Dec 12 2006)**

This Contract, including the Request for Proposals, Contractor's Proposal, Contractor's Best and Final Offer, if any, 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-034.2a Order of Precedence -RFP (Dec 12 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 RFP, the Best and Final Offer, if any; the Contractor's Proposal in Response to the RFP.

#### **V.43 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.44 CONTRACT-036.1 Background Checks (Feb 2008)**

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf> . The background check must be conducted prior to initial access and on an annual basis thereafter.
- b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
- d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 Amended (January 30, 2008) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

**V.45 CONTRACT-037.1a Confidentiality (Oct 2006)**

- a. The Contractor agrees to guard the confidentiality of the Commonwealth with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
  
- b. The obligations stated in this Section do not apply to information:
  - (1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  
  - (2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  
  - (3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  
  - (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  
  - (5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
  
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

**V.46 CONTRACT-041.1 Disadvantaged Business Participation and Enterprise Zone Small Business Participation (Feb 2009)**

The selected Contractor's commitments to Disadvantaged Businesses and/or Enterprise Zone Small Businesses made at the time of proposal submittal or contract negotiation shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BMWBO, which will make a recommendation to the Contracting Officer regarding a course of action.

Small Disadvantaged Business subcontractors, Enterprise Zone Small Business subcontractors and Small Disadvantaged Businesses or Enterprise Zone Small Businesses in a joint venture must perform at least 50% of the subcontract or Small Disadvantaged Business/Enterprise Zone Small Business participation portion of the joint venture.

If a contract is assigned to another contractor, the new contractor must maintain the Disadvantaged Business participation and/or Enterprise Zone Small Business participation of the original contract.

The Contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BMWBO within 10 workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Disadvantaged Business and/or Enterprise Zone Small Business subcontractors and suppliers, and Small Disadvantaged Business and/or Enterprise Zone Small Business participants involved in joint ventures. Also, this information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Disadvantaged Business and Enterprise Zone Small Business points. If there was no activity during the quarter then the form must be completed by stating "No activity in this quarter."

NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF DISADVANTAGED BUSINESSES STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR DISADVANTAGED BUSINESSES UTILIZATION.

**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.

**APPENDIX A**  
**DOMESTIC WORKFORCE UTILIZATION CERTIFICATION**

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, Offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, \_\_\_\_\_ **[title]** of \_\_\_\_\_ **[name of Contractor]** a  
\_\_\_\_\_ **[place of incorporation]** corporation or other legal entity, ("Contractor") located at  
\_\_\_\_\_  
**[address]**, having a Social Security or Federal Identification Number of \_\_\_\_\_, do hereby  
certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

\_\_\_\_\_ **percent** (\_\_\_\_%) **[Contractor must specify the percentage]** of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

\_\_\_\_\_

[Use additional sheets if necessary]

The Department of General Services **[or other purchasing agency]** shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

\_\_\_\_\_  
Corporate or Legal Entity's Name

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_  
Printed Name/Title

**APPENDIX B - PROPOSAL COVER SHEET  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES  
RFP# 6100019123**

Enclosed in three separately sealed submittals is the proposal of the Offeror identified below for the above-referenced RFP:

<b>Offeror Information:</b>	
Offeror Name	
Offeror Mailing Address	
Offeror Website	
Offeror Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-Mail Address	
Offeror Federal ID Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
<input type="checkbox"/>	<b>Technical Submittal</b> (10 paper copies)
<input type="checkbox"/>	<b>Disadvantaged Business Submittal</b> (2 paper copies)
<input type="checkbox"/>	<b>Cost Submittal</b> (1 paper copy)
<input type="checkbox"/>	Complete Electronic Proposal (CD-ROM or Flash Drive) (2 copies)

<b>Signature</b>	
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:	
Printed Name:	
Title:	

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL**