

**COSTARS INVITATION FOR BIDS
SUMMARY SHEET**

Contract No.: COSTARS-10
Description of Supply: Voting Systems
Solicitation Start Date: 08/04/2010
Bid Opening Date: Bids will be accepted at the address below on any given Commonwealth business day. Any bid received after the Bid Opening Time will be opened on the next Commonwealth business day.
Bid Opening Time: 1:30 PM Eastern
Bid Opening Location: DGS BUREAU OF PROCUREMENT – BID ROOM
 555 WALNUT STREET, 6TH FLOOR
 HARRISBURG, PA 17101-1914

Dear Supplier:

The Department of General Services (DGS) invites you to submit a response to the attached INVITATION FOR BIDS (IFB). DGS will award contracts to all responsive and responsible bidders to provide **Voting Systems** as described in the IFB (see Section 2 of the *Special Terms and Conditions* for details) to local public procurement units and state-affiliated entities (together, "Purchasers") registered as members with the COSTARS Program. A complete list of currently registered COSTARS members, as well as more information about the program, can be found on the Suppliers' area of the DGS COSTARS web-pages at www.costars.state.pa.us.

This IFB is designed to provide purchase options and competitive pricing to COSTARS members throughout the Commonwealth who may wish to purchase **Voting Systems** under the Contract. Although pricing will not be a factor in contract award, pricing may be a consideration when Purchasers select a Supplier and place their orders. Consequently, each bidder should present their very best response to this IFB. Suppliers may offer pricing using any of the options stated in the Pricing Section of the *Special Terms and Conditions*. ONLY COSTARS member local public procurement units and state affiliated entities may purchase from any COSTARS contract resulting from this IFB. Commonwealth executive and independent agencies do not make purchases through COSTARS-exclusive contracts.

The following documents comprise this Invitation For Bids package:

1. Instructions To Bidders for COSTARS Contracts (COSTARS ITB REV. 01/17/2017)	6. GSPUR-89 Reciprocal Limitations Act Requirements
2. Attachment A Doing Business with the Commonwealth	7. Addendum(s) (if applicable)
3. COSTARS Bid/Contract (GSPUR-15COSTARS REV 12/19/2013)	8. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 12/10/2009)
4. Corporate Certification (if applicable)	9. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 01/17/2017)
5. Bid Item Workbook and Checklist	

These documents are available on the DGS COSTARS web-pages at www.costars.state.pa.us, COSTARS Bidding Opportunities.

The bidder shall ensure that it is registered to do business with the Commonwealth of Pennsylvania and that its business information is accurate (refer to Attachment A, *Doing Business with the Commonwealth*, for guidance).

In addition to complying with the bid submission requirements of Section 1 of the *Instructions to Bidders*, each bidder must submit one hard (printed) copy of its bid in its bid package as stated in this IFB. Also, the bidder is encouraged to include in its bid package an electronic submission of all offered items and pricing on a compact disc or USB flash drive and in an unprotected format (Microsoft Word or Excel).

Please note that all contractors are required to pay the appropriate Administrative Fee in each contract period as more fully described in Section 9 of the *Instructions to Bidders*.

DGS will accept written questions and comments concerning this procurement via email to emwilliams@pa.gov.

Sincerely,

Emanuel Williams, Commodity Specialist
Bureau of Procurement

INSTRUCTIONS TO BIDDERS FOR COSTARS CONTRACTS

1. **BID SUBMISSION:**

The Department of General Services (DGS) requests bids for the services or item(s) described in the Invitation for Bids. The Invitation for Bids Summary Sheet, the COSTARS Bid/Contract form, these Instructions To Bidders For COSTARS Contracts, the COSTARS Contract Standard Terms and Conditions ("Standard Terms and Conditions"), the COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions") and all the documents referenced on these forms will be referred to collectively as the IFB, and the COSTARS Contract that may be awarded as a result of this IFB will be referred to as the "Contract" in this document.

a. The Bidder must complete the COSTARS Bid/Contract form with the information relevant to the bid, including the Bidder's name and address; federal identification number or social security number; contact person name, telephone and fax numbers, and e-mail and web addresses; prompt payment discount (if any); and number of days required for delivery following receipt of any purchase order ("PO") issued under the Contract.

b. The individual(s) signing the Bid must be authorized to sign for and to bind the Bidder to provide the item(s) at the price(s) and in accordance with the terms and conditions set forth in the Bidder's Bid and in the IFB.

c. The Bidder must sign the Bid in ink. DGS will reject any bid priced or signed in pencil.

d. The Bidder shall submit its Bid, consisting of the completed and signed COSTARS Bid/Contract form and all other documents required by the IFB, in a sealed envelope clearly marked "Bid" on the front near the submission address. The front of the Bid envelope must also include the assigned Contract number.

e. Each Bidder is responsible to ensure that DGS receives the Bid in the DGS bid room, located off the Bureau of Procurement lobby on the sixth floor of Forum Place ("Bid Room") identified on the Invitation for Bids summary sheet, for bid opening. Any bid received after the time set for the opening of Bids ("Bid Opening Time") will be opened on the next Commonwealth business day. In the event that, due to inclement weather, natural disaster, or other cause, the DGS office where the Bid Room is located is officially closed, the Bid opening shall be automatically postponed until the next Commonwealth business day at that location, unless DGS otherwise notifies the Bidders. The Bid Opening Time shall remain the same for any opening automatically occurring on the next Commonwealth business day.

Bidders should address their bid packages to the DGS Bureau of Procurement, Bid Room, 555 Walnut Street, 6th Floor, Harrisburg, PA 17101-1914, regardless of their chosen method of delivery. A "Mailed Bid" (the term connotes any bid submitted through the United States Postal Service or any other third party carrier) will be routed through the Commonwealth's central mail processing location ("Central Processing") before arriving at the DGS Bid Room. The US Postal Service and other delivery carriers are familiar with the Commonwealth's mail processing requirements.

f. DGS will open all Bids timely received in the Bid Room publicly, in the presence of one or more witnesses, at the Bid Opening Time and in the Bid Opening Room.

g. Bids must be firm, with no qualifications. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB, DGS will reject the Bid. If the items the Bidder offers are not in conformance with the Contract specifications, as determined in the DGS's sole discretion, DGS will reject the Bid.

h. DGS strongly encourages the Bidder to submit its bids in electronic form, on CD or diskette, in addition to submitting the printed copy required in Subsection 7.e. Electronic submission will ensure that the widest range of bid information is available from the DGS COSTARS contract website. The Bidder shall ensure that any electronic bid documents it may transmit in response to this Invitation For Bids is virus-free and in a format (e.g. Microsoft Word, Excel, Adobe Acrobat) accessible by DGS.

2. BIDDER'S REPRESENTATION AND AUTHORIZATION:

a. Each Bidder, by making its Bid, understands, represents, and acknowledges all of the following terms:

1. The Bidder has read and understands the terms and conditions of the IFB and makes its Bid in accordance with those terms and conditions.

2. The items offered in the Bid will conform to the specifications in the IFB, without exceptions or qualifications.

3. The Bidder has determined its Bid prices and amounts independently, without consultation, communication, or agreement with any other contractor, bidder, or potential bidder, excepting contacts with potential subcontractors or suppliers for this Contract.

4. The Bidder has not disclosed the Bid prices or amounts to any other firm or person who is a bidder or potential bidder, nor will the Bidder disclose the Bid prices or amount to such persons before Bid Opening Time.

5. The Bidder has not attempted, and agrees it will not attempt, to induce any firm or person to refrain from bidding on the Contract, to submit a bid higher than the Bidder's price(s) or amount, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

6. The Bidder submits its Bid 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 bid.

7. To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, 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 on any public contract, except as disclosed by the Bidder in its Bid.

8. Neither the Bidder, nor any of its subcontractors or suppliers included in this Bid, is under suspension or debarment by the Commonwealth, or any governmental entity, instrumentality, or authority, and if the Bidder cannot so certify, then it shall submit with its Bid a written explanation of why it cannot make such certification.

9. To the best of the knowledge of the person signing the Bid for the Bidder, except as the Bidder has otherwise disclosed in its Bid, the Bidder 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 Bidder that is owed to the Commonwealth.

10. All of the Bidder's information and representations in the Bid are material and important and will be relied upon by the Commonwealth in awarding the Contract and by any Purchaser issuing a PO under the Contract. DGS will treat, and any Purchaser may treat, any Bidder misstatement as fraudulent concealment of the true facts relating to the Bid submission, as a punishable offense under Section 4904 of the Pennsylvania Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes.

11. In accordance with Section 6 of the Standard Terms and Conditions, the Bidder understands that it has no expectation or guarantee of any specific quantity or number of POs from prospective Purchasers.

12. Neither DGS nor any Commonwealth agency will make purchases under the Contract. Only third-party Purchasers as defined in Section 2 of the Standard Terms and Conditions may issue Contract POs.

b. Each Bidder, by making its Bid, authorizes all Commonwealth agencies to release to DGS information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

c. If DGS awards a Contract to the Bidder, the Bidder agrees that it intends to be legally bound to the Contract, which is formed between DGS and the Bidder, and to any PO from a Purchaser under the Contract.

3. PRICES:

DGS will require each Contractor to provide the awarded items to Purchasers issuing POs under this Contract at the prices quoted in the Bid for the duration of this Contract. The Contractor may offer voluntary price reductions and provide the awarded items at prices that are lower than its Contract prices.

4. CONTRACT DELIVERABLES:

Unless otherwise specified in the Special Terms and Conditions, all products offered by Bidders must be new or remanufactured. A "new" product is one for which the Purchaser will be the first user after the product is manufactured or produced. A "remanufactured" product is one that:

- has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item;
- does not, in DGS's sole discretion, differ in appearance from a new item; and
- has the same warranty as a new product.

Unless otherwise specified in the Special Terms and Conditions, a Bidder may propose only new and remanufactured products in its Bid. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product itself is new or remanufactured.

5. MODIFICATION OR WITHDRAWAL OF BID:

A Bidder may withdraw or modify its Bid only in accordance with the following requirements:

a. A Bidder may modify its Bid prior to the Bid Opening Time as follows:

1. If a Bidder intends to modify its Bid by written notice, the Bidder must deliver the Bid modification in a sealed envelope with a notation on the cover identifying the assigned Contract Number, marked with the words "Bid modification" on the face of the envelope. The notice contained in the sealed envelope must identify the particular Bid to be modified, including the specific modification being made, and the Bidder must sign the notice in ink, including evidence of authorization for the individual signing to modify the Bid on the Bidder's behalf. DGS will reject any Bid modification received after the Bid Opening Time.

2. If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Room prior to the Bid Opening Time, show a photo identification, and provide evidence of his/her authorization by the Bidder to modify the Bid. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of a DGS employee, who will observe the Bidder representative's actions to modify the Bid without reading either the original Bid or the modification.

b. A Bidder may withdraw its bid prior to the exact Bid Opening Time as follows:

1. If a Bidder intends to withdraw its Bid by written notice, the Bidder must deliver a written withdrawal that specifically identifies the Contract number for the Bid being withdrawn. The Bidder must sign the notice in ink, including evidence of authorization for the individual signing to withdraw the bid on the Bidder's behalf. Except as provided in Subsection 5.c. of these General Conditions, DGS will reject any Bid withdrawal received after the Bid Opening Time.

2. If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Room prior to the Bid Opening Time, show a picture

identification, and provide evidence of his/her authorization by the Bidder to withdraw the Bid.

c. A Bidder is permitted to withdraw a Bid after the Bid Opening Time only under the following conditions:

1. The Bidder submits a written request for withdrawal.

2. The Bidder presents credible evidence in its written request that the reason for a lower Bid price was a clerical or mathematical mistake as opposed to a mistake in judgment and was due to an unintentional arithmetical error/omission of a substantial quantity of work, labor, material, or services in the direct computation of the Bid amount.

3. The Bidder's request for relief with supporting documentation of the error must reach the Issuing Office within three business days after the Bid opening, and before the Contract award.

4. The Bid withdrawal cannot result in the award of the Contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the Bidder has a substantial interest.

5. The Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.

d. Except as provided in subsection c. of this Section 5., a Bidder may not modify, withdraw, or cancel its Bid for a minimum period of 90 days following the date of Bid opening. This award period may be extended by mutual agreement. If the Bidder withdraws its Bid (except as permitted in subsection c.) prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB, including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to DGS for costs and damages associated with any re-award or re-bid.

e. After the receipt of Bids, the Issuing Office shall have the right to contact any Bidder to:

1. clarify the Bid to confirm the Issuing Office's understanding of statements or information in the Bid, or

2. obtain additional information on the items offered, provided the IFB does not require the rejection of the Bid for failure to include such information.

6. REJECTION OF BIDS:

DGS reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid in the best interests of the Commonwealth, as determined in DGS's sole discretion. An unsigned Bid is not a waivable technical defect or informality.

7. AWARDS:

DGS is using the multiple award method of contract award as set forth in Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. § 517, to contract for the items covered by this IFB. Unless DGS rejects all Bids, and except as otherwise provided by law, DGS will award a COSTARS contract by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive Bidders.

a. To be eligible for Contract award, a Bidder must be a manufacturer, wholesaler, dealer, distributor, or reseller of the offered goods. A Bidder need not offer the full spectrum of goods encompassed in this procurement, but DGS encourages the Bidder to offer the widest possible selection of goods possible within the scope of this Invitation For Bids.

b. If the Bidder is not a manufacturer, it must submit written proof from the manufacturer of the Bidder's authorization to sell the manufacturer's goods and materials, as required by this Contract (the proof need not be specific to this procurement). If the manufacturer defines the area in which

the Bidder is authorized to sell its products, the Bidder shall include the manufacturer's description of the Bidder's authorized sales territory. If the Bidder sells through a manufacturer's authorized distributor, DGS will accept the distributor's written authorization to the Bidder permitting the Bidder to sell the manufacturer's goods and materials. The manufacturer's written authorization should state that the distributor has the authority to pass the manufacturer's sales authorization through to the reseller.

c. DGS will award COSTARS contracts by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive Bidders. Because DGS will award a contract to every responsive and responsible Bidder, pricing is not a determinative factor for this procurement. However, the Bidder should understand that its pricing may be a key consideration in a Purchaser's selection of a Contractor.

d. A Bidder will not be excluded from the bidding process if it is unable to provide a dedicated website for Purchasers ("COSTARS Website"). While DGS strongly encourages the Contractor to provide a COSTARS Website (see Section 9 of the Standard Terms and Conditions), it is not required and will NOT be a factor in contract award.

e. The Bidder shall include one hard (printed) copy of its bid in its bid package. In addition, the Bidder is encouraged to include in its bid package an electronic submission of all offered items and pricing, and to submit the Bid Item Workbook in an unprotected, electronic format (e.g. Microsoft Word, Excel, Adobe Acrobat) on a diskette or CD along with the hard copy.

8. APPLICABILITY:

COSTARS Contracts are solely for the use of local public procurement units and state affiliated entities, as defined in Section 2 of the COSTARS Contract Standard Terms and Conditions. Commonwealth executive and independent agencies are prohibited from procuring items through COSTARS contracts.

9. ADMINISTRATIVE FEES:

DGS will award COSTARS Contracts to Bidders for the sole benefit of the third party Purchasers. Contractors are required to pay the appropriate Administrative Fee in each contract period, including a nonexclusive license to use the COSTARS Brand as more fully described in Section 35 of the COSTARS Contract Standard Terms and Conditions, and according to the following criteria:

Bidder Classification	Required Administrative Fee
Department of General Services Verified Small Diverse Business	\$166
Department of General Services Self-Certified Small Business	\$500
All Other Bidders	\$1,500

If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, the bidder must submit a copy of its active Small Business Contracting Program certificate with its bid.

a. The Bidder must pay the appropriate fee upon request to receive a Contract award. DGS may reject as nonresponsive any Bid where the fee is not submitted within 15 calendar days of request. For any Bidder whose Bid is rejected for other reasons, where the Bidder has paid the fee, DGS will refund the payment.

b. Unless terminated in accordance with the provisions of Subsection 3.c. of the COSTARS Contract Standard Terms and Conditions, the Contract will renew automatically on the anniversary of the Effective Date, (1) provided that the Contractor has submitted a check for the renewal fee made payable to "Commonwealth of PA" for the appropriate amount prior to the renewal date; (2) either party provides the other party with written notice that it does not intend to renew; or (3) the Contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

10. CONTRACT SECURITY:

No performance security is required for this bid.

11. ESTIMATED QUANTITIES:

As there are multiple awards and no requirement for buyers to purchase from any particular awarded vendor, there is no reliable method to predict with any level of certainty any expected Contract volume.

12. DEPARTMENT OF STATE REGISTRATION:

If the bidder is using a fictitious name on its bid documents, or if the bidder is a foreign corporation (incorporated outside of Pennsylvania), the bidder certifies that its name is recorded accurately on the bid form and that it has complied with the Department of State's registration requirements under Pennsylvania law. See Attachment A for instructions on how to confirm registration on the Department of State's website.

13. BID PROTEST PROCEDURE:

DGS's bid protest procedures are set forth on the DGS website at www.dgs.state.pa.us, and DGS will disregard any protest that is not filed in compliance with these procedures. The Bidder acknowledges that a Contractor may not file any protest, claim, or other action against DGS or the Commonwealth when such action is based upon a PO, and that it shall file any such action directly with the Purchaser.

14. QUESTIONS:

Interested parties shall direct any questions concerning Contract conditions and specifications to the attention of the DGS Commodity Specialist identified in the IFB. DGS will accept written questions and comments concerning this procurement via email to emwilliams@pa.gov. DGS posts the written questions and official answers on its website to give all prospective bidders equal access to the information. DGS will post all questions and official answers as addenda to the bid documents on the DGS website in the order that questions are received.

Direct all questions concerning this IFB to: Emanuel Williams
emwilliams@pa.gov
c/o DGS Bureau of Procurement
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

Doing Business with the Commonwealth

a. Department of State Registration

Any person or entity doing business under a fictitious name in Pennsylvania must register that name with the Pennsylvania Department of State and any corporation that is not incorporated in Pennsylvania must register with the Department of State if it wants to do business in the Commonwealth (for more specific information on this requirement, see <http://www.dos.pa.gov/BusinessCharities/Business/Pages/default.aspx>). **If your firm is not incorporated or registered in Pennsylvania, you must take action to register prior to being approved for a COSTARS-exclusive contract.**

DGS is asking all bidders *other than individuals using their given names* to supply evidence with the bids to show compliance with these requirements. Specifically, DGS requests that each bidder does the following prior to submitting its bid:

1. Go to the [Searchable Corporations Database](#) link on the DOS website.
2. In the blank space, enter the first words of your business name. *Note: if the business name begins with the word “the” use the next word.* Hit “enter”.
3. All businesses beginning with the words you entered are displayed on the next page(s). Find your business and click on its name.
4. Print out a copy of the page with your business information, and attach it to your bid package.

Registration information, forms, and instructions for those entities not already registered are available online from the Pennsylvania Department of State. The following links will assist you in your filing:

- ◆ [General Information](#)
- ◆ [Filing Guidelines](#)
- ◆ [Foreign Business Corporation](#)
- ◆ [Fictitious Names](#)
- ◆ [Forms](#)
- ◆ [Fees & Payment](#)

b. Department of General Services – SRM Supplier Registration

Supplier Relationship Management (SRM) is a secure, web-based system that allows suppliers to view and respond to current Commonwealth bids, manage account information and access other collaborative functions. Suppliers wishing to take advantage of the features and benefits of this Commonwealth procurement tool are required to complete the electronic registration process. The Pennsylvania (PA) Supplier Portal is your gateway to electronic business with the Commonwealth.

All **Procurement Suppliers** are required to register via the PA Supplier Portal. You are considered a “Procurement Supplier” if one of the following conditions exists:

- ◆ Your company will receive payments from the Commonwealth of Pennsylvania under a contract or purchase order.

Doing Business with the Commonwealth

- ◆ **Your company will receive Request for Quotations, Purchase Orders, or other Procurement documents.**
- ◆ Your company is a construction contractor.

If you already have a six-digit vendor number issued by the Commonwealth, you may already be registered. Even though you may have registered before, it is IMPORTANT that the Commonwealth has the most current information for your company to ensure that you will continue to be notified of bidding opportunities, able to respond to electronic bids, and manage your company's profile. By registering as an existing supplier, you are actually validating the information we currently have on file for your company and modifying any outdated or incorrect information, if necessary.

For more information and to register, please visit the [Supplier Service Center](#) at:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Supplier%20Service%20Center/Pages/default.aspx>

Registering and receiving a vendor number does not mean that you are an awarded supplier and able to sell your products to COSTARS members. To become a COSTARS supplier, you will need to respond to bidding opportunities that are published on the DGS [COSTARS](#) or PA [eMarketplace](#) web-pages. A supplier that successfully responds to a contract solicitation may be awarded a contract.

c. **Department of General Services Small and Small Diverse Business Programs**

The Commonwealth, through the Small and Small Diverse Business Programs, maintains a strong commitment to providing training, technical assistance, and support for small and small diverse business owners to compete for prime and sub-contracting opportunities with the goal of promoting the economic growth and success of these businesses. The Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO) assists SDBs and SBs on "How to do Business with the Commonwealth" and with contracting opportunities. Working in concert with the COSTARS team, BDISBO's goal is to continue to promote access in governmental contracting.

For information or assistance on BDISBO's programs, or becoming a DGS self-certified small business or a verified small diverse business contact 717-783-3199 or access the link below:
<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx#.WG9-K6Mo6tE>.

If you are a DGS Self-Certified Small Business or DGS-verified Small Diverse Business, you must provide a printed copy of your active Small Business Contracting Program certificate with your bid response.

COSTARS BID/CONTRACT

ISSUING AGENCY	CONTRACTOR NAME AND ADDRESS	SHOW THIS CONTRACT NUMBER ON BID ENVELOPE
Commonwealth of Pennsylvania Department of General Services Bureau of Procurement COSTARS Program 555 Walnut Street, 6 th Floor Harrisburg, PA 17101-1914 COMMODITY SPECIALIST: Emanuel Williams PHONE NO.: 717-703-2946 FAX NO.: 717-783-6241 CONTRACTING OFFICER: Dawn Eshenour, Chief Supplier Development & Support Division	CONTACT PERSON:	CONTRACT NO. COSTARS-10
	PHONE NO.:	BID OPENING DATE:
	FAX NO.:	BID OPENING TIME: 1:30 PM EST
	BIDDER/CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.	EFFECTIVE DATE:
	BIDDER/CONTRACTOR'S VENDOR NUMBER	EXPIRATION DATE:
	BIDDER/CONTRACTOR'S E-MAIL	
BIDDER/CONTRACTOR'S WEB ADDRESS		

ITEM NO.	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL LINE ITEM PRICE
N/A	Voting Systems Refer to attached <i>Special Terms and Conditions</i> Click here to download and complete Bid Item Workbook.	N/A	N/A	N/A	REFER TO BID ITEM SHEET (S)

CHECK HERE IF CONTINUED ON PAGE 2 <input type="checkbox"/>	ALL PRICES ARE F.O.B. DESTINATION	TOTAL BID ▶	REFER TO BID ITEM SHEET (S)
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In addition to this document, the following contract terms, conditions, and specifications are a part of the contract: 1. Instructions to Bidders for COSTARS Contracts (COSTARS ITB REV 01/17/2017) 2. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 01/17/2017) 3. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 12/10/2009) 4. Bid Item Workbook and Checklist	The Bidder must pay the appropriate Administrative Fee upon request to receive a Contract award, as more fully described in Section 9 of the <i>Instructions to Bidders for COSTARS Contracts</i> .
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The Commonwealth of Pennsylvania, through the Department of General Services, accepts the Bid of the Bidder/Contractor for the awarded item(s) and agrees to be legally bound hereby. <p style="text-align: center;">▼ COMMONWEALTH SIGNATURE ▼</p>	In compliance with the bid and contract terms, conditions, and specifications, the undersigned, on behalf of the Bidder/Contractor, intending to be legally bound hereby, offers and agrees, if the Bid is accepted, to provide the specified item(s) at the price(s) set forth above at the time(s) and point(s) specified. <p style="text-align: center;">▼ BIDDER/CONTRACTOR'S SIGNATURE (IN INK) ▼</p>
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PURCHASING AGENCY HEAD OR DESIGNEE _____ DATE _____ <p style="text-align: center;">▼ APPROVED ▼</p> TREASURER _____ DATE _____	PRESIDENT/VICE PRESIDENT/MANAGER OF LLC/PARTNER/OWNER* _____ DATE _____ (SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE) SECRETARY/ASSISTANT SECRETARY/TREASURER/ASSISTANT TREASURER* _____ DATE _____ (SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)
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*If someone other than one of these officers signs for the Bidder/Contractor, a copy of a corporate resolution or other appropriate signature authorization must be included with the bid. Failure to include a copy of the appropriate signature authorization, if required, may result in the rejection of the bid unless the Department's Bureau of Procurement has a copy on file.

COMMONWEALTH ATTORNEY APPROVALS APPROVED AS TO FORM AND LEGALITY					
PURCHASING AGENCY ATTORNEY	DATE	OFFICE OF GENERAL COUNSEL (IF REQUIRED)	DATE	OFFICE OF ATTORNEY GENERAL (IF REQUIRED)	DATE
		Pre-approval numbers: 8-K-1520; 8-K-1503; 8-K-1512; 8-K-1541; 8-K-1600		Pre-approval numbers: 8-K-1520; 8-K-1503; 8-K-1512; 8-K-1541; 8-K-1600	

THIS FORM MUST BE PROPERLY COMPLETED, SIGNED AND RECEIVED PRIOR TO BID OPENING TIME AND DATE

CORPORATE CERTIFICATION

As Corporate Secretary of _____ (“Corporation”),
I certify that (please check the appropriate line below):

___ (1) at a meeting held on _____, the Corporation’s Board of Directors approved a resolution authorizing the individuals named below to execute, or

___ (2) the bylaws of the Corporation authorize the following individuals to execute,

in the name of and on behalf of the Corporation, any contract- or bid-related documents required to supply goods or services to the Commonwealth of Pennsylvania, its agencies, boards, commissions, and instrumentalities (collectively, the “Commonwealth”), including, without limitation, bonds, certifications submitted with bid proposals, and receipts in connection with any contract between the Corporation and the Commonwealth:

Name:	Corporate Title:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I also certify that, as of the date I make this certification,

___ (1) the authorizing resolution has not been rescinded by the Board of Directors, or

___ (2) the Corporate bylaws have not been amended to rescind the execution authority of these individuals.

Signature:

_____ Corporate Secretary

_____ Date

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

Please Complete Applicable Portion of Pages 3 & 4 and Return with Bid.

NOTE: These Requirements Do Not Apply To Bids Under \$10,000.00

I. REQUIREMENTS

- A.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering supplies produced, manufactured, mined or grown in Pennsylvania as against those bidders offering supplies produced, manufactured, mined or grown in any state that gives or requires a preference to supplies produced, manufactured, mined or grown in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular supply.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state supplies and the amount of the preference:

	STATE	PREFERENCE
1.	Alaska	7% (applies only to timber, lumber, and manufactured lumber products originating in the state)
2.	Arizona	5% (construction materials produced or manufactured in the state only)
3.	Hawaii	10%
4.	Illinois	10% for coal only
5.	Iowa	5% for coal only
6.	Louisiana	4% meat and meat products 4% catfish 10% milk & dairy products 10% steel rolled in Louisiana 7% all other products
7.	Montana	5% for residents * 3% for non-residents* *offering in-state goods, supplies, equipment and materials
8.	New Mexico	5%
9.	New York	3% for purchase of food only
10.	Oklahoma	5%
11.	Virginia	4% for coal only
12.	Washington	5% (fuels mined or produced in the state only)
13.	Wyoming	5%

- B.** The Reciprocal Limitations Act requires the Commonwealth to give preference to those bidders offering printing performed in Pennsylvania as against those bidders offering printing performed in any state that gives or requires a preference to printing performed in that state. The amount of the preference shall be equal to the amount of the preference applied by the other state for that particular category of printing.

The following is a list of states which have been found by the Department of General Services to have applied a preference for in-state printing and the amount of the preference:

	STATE	PREFERENCE
1.	Hawaii	15%
2.	Idaho	10%
3.	Louisiana	3%
4.	Montana	8%
5.	New Mexico	5%
6.	Wyoming	10%

- C.** The Reciprocal Limitations Act, also requires the Commonwealth to give resident bidders a preference against a nonresident bidder from any state that gives or requires a preference to bidders from that state or exclude bidders from states that exclude nonresident bidders. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident bidder. The following is a list of the states which have been found by the Department of General Services to have applied a preference for in-state bidders and the amount of the preference:

STATE	PREFERENCE
1. Alaska	5% (supplies only)
2. Arizona	5% (construction materials from Arizona resident dealers only)
3. California	5% (for supply contracts only in excess of \$100,000.00)
4. Connecticut	10% (for supplies only)
5. Montana	3%
6. New Mexico	5% (for supplies only)
7. South Carolina	2% (under \$2,500,000.00) 1% (over \$2,500,000.00)
	This preference does not apply to construction contracts nor where the price of a single unit exceeds \$10,000.
8. West Virginia	2.5% (for the construction, repair or improvement of any buildings)
9. Wyoming	5%

STATE	PROHIBITION
1. New Jersey	For supply procurements or construction projects restricted to Department of General Services Certified Small Businesses, New Jersey bidders shall be excluded from award even if they themselves are Department of General Services Certified Small Businesses.

D. The Reciprocal Limitations Act also requires the Commonwealth not to specify, use or purchase supplies which are produced, manufactured, mined or grown in any state that prohibits the specification for, use, or purchase of such items in or on its public buildings or other works, when such items are not produced, manufactured, mined or grown in such state. The following is a list of the states which have been found by the Department of General Services to have prohibited the use of out-of-state supplies:

STATE	PROHIBITION
1. Alabama	Only for printing and binding involving "messages of the Governor to the Legislature", all bills, documents and reports ordered by and for the use of the Legislature or either house thereof while in session; all blanks, circulars, notices and forms used in the office of or ordered by the Governor, or by any state official, board, commission, bureau or department, or by the clerks of the supreme court . . . /and other appellate courts/; and all blanks and forms ordered by and for the use of the Senate and Clerk or the House of Representatives, and binding the original records and opinions of the Supreme Court . . . /and other appellate courts/
2. Georgia	Forest products only
3. Indiana	Coal
4. Michigan	Printing
5. New Mexico	Construction
6. Ohio	Only for House and Senate bills, general and local laws, and joint resolutions; the journals and bulletins of the Senate and house of Representatives and reports, communications, and other documents which form part of the journals; reports, communications, and other documents ordered by the General Assembly, or either House, or by the executive department or elective state officers; blanks, circulars, and other work for the use of the executive departments, and elective state officers; and opinions of the Attorney General.
7. Rhode Island	Only for food for state institutions.

*If the bid discloses that the bidder is offering to supply one of the above-listed products that is manufactured, mined, or grown in the listed state, it shall be rejected. Contractors are prohibited from supplying these items from these states.

II. CALCULATION OF PREFERENCE

In calculating the preference, the amount of a bid submitted by a Pennsylvania bidder shall be reduced by the percentage preference which would be given to a nonresident bidder by its state of residency (as found by the Department of General Services in Paragraph C_{above}). Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment or materials shall be reduced by the percentage preference which would be given to another bidder by the state where the goods, supplies, equipment or materials are produced, manufactured, mined or grown (as found by the Department of General Services in Paragraphs A and B above).

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

All bidders must complete the following chart by listing the name of the manufacturer and the state (or foreign country) of manufacture for each item. If the item is domestically produced, the bidder must indicate the state in the United States where the item will be manufactured. **This chart must be completed and submitted with the bid or no later than two (2) business days after notification from the Issuing Office to furnish the information. Failure to complete this chart and provide the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid.**

ITEM NUMBER	NAME OF MANUFACTURER	STATE (OR FOREIGN COUNTRY) OF MANUFACTURE

IV. BIDDER'S RESIDENCY

A. In determining whether the bidder is a nonresident bidder from a state that gives or requires a preference to bidders from that state, the address given on the first page of this invitation to bid shall be used by the Commonwealth. If that address is incorrect, or if no address is given, the correct address should be provided in the space below:

Correct Address: _____

- B.** In order to claim the preference provided under Section I.B., Pennsylvania resident bidders must complete the following or have such information on file with the Issuing Office:
1. Address of bidder's bona fide establishment in Pennsylvania at which it was transacting business on the date when bids for this contract/requisition were first solicited: _____
 2. **a.** If the bidder is a corporation:
 - (1) The corporation is or is not incorporated under the laws of the Commonwealth of Pennsylvania.
 - (a) If the bidder is incorporated under the laws of the Commonwealth of Pennsylvania, provide date of incorporation: _____
 - (b) If the bidder is not incorporated under the laws of the Commonwealth of Pennsylvania, it must have a certificate of authority to do business in the Commonwealth of Pennsylvania from the Pennsylvania Department of State as required by the Pennsylvania Business Corporation Law (15 P.S. §2001). Provide date of issuance of certificate of authority: _____
 - (2) The corporation is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must register the fictitious name with the Secretary of the Commonwealth and the office of the prothonotary of the county wherein the registered office of such corporation is located as required by the Fictitious Corporate Name Act, as amended 15 P.S. §51 et seq. Corporate bidders conducting business under an assumed or fictitious name must provide date of registry of the assumed or fictitious name: _____
 - b.** If the bidder is a partnership:
 - (1) The partnership is or is not conducting business in Pennsylvania under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, it must file with the Secretary of the Commonwealth and the office of the prothonotary the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended 54 P.S. §28.1. Partnerships conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____
 - (2) The partnership is or is not a limited partnership formed under the laws of any jurisdiction other than the Commonwealth of Pennsylvania. If the bidder is an Out-of-state limited partnership, it must register with the Pennsylvania Department of State as required by the Act of July 10, 1981, P.L. 237, as amended, 59 Pa. C.S.A. §503. Out-of-state limited partnerships must provide the date of registry with the Pennsylvania Department of State: _____
 - c.** If the bidder is an individual:

He or she is or is not conducting business under an assumed or fictitious name. If the bidder is conducting business under an assumed or fictitious name, he or she must file with the Secretary of the Commonwealth and the office of the prothonotary in the county wherein the principal place of business is located as required by the Fictitious Name Act of May 24, 1945, P.L. 967, as amended, 54 P.S. §28.1. Individuals conducting business under an assumed or fictitious name must provide the date of filing of the assumed or fictitious name with the Secretary of the Commonwealth: _____



Commonwealth of Pennsylvania

Date: 04/13/2017
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 7

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth has revised and replaced the "Instructions to Bidders for COSTARS Contracts" and "COSTARS Contract Standard Terms and Conditions" to reduce the Administrative Fee for DGS-verified Small Diverse Businesses as well as incorporate current, standard contract provisions.

These changes shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

DGS Bureau of Procurement
Bid Room
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

When you submit a bid for this procurement, **please attach a copy of this addendum, and a copy of each previous COSTARS-10 addendum, to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** Please indicate the contract number (COSTARS-10) on the outside of the envelope. **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,
Name: Emanuel Williams
Title: Commodity Specialist
Phone: 717-703-2946
Email: emwilliams@pa.gov

Acknowledged by _____
for _____
(Name of bidding firm)



Commonwealth of Pennsylvania

Date: 05/07/2014
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 6

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth has revised and replaced the following Invitation for Bids/Contract documents to incorporate recent changes to standard contract provisions:

- COSTARS Invitation for Bids Summary Sheet
- Instructions to Bidders for COSTARS Contracts
- COSTARS Bid/Contract
- Bid Item Workbook and Checklist
- COSTARS Contract Standard Terms and Conditions

In addition, Attachment B Contract Provisions – Right to Know Law is removed. Section 36 of the COSTARS Contract Standard Terms and Conditions replaces Attachment B.

These changes shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

DGS Bureau of Procurement
Bid Room
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

When you submit a bid for this procurement, **please attach a copy of this addendum, and a copy of each previous COSTARS-10 addendum, to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** Please indicate the contract number (COSTARS-10) on the outside of the envelope. **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Date: 05/07/2014
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 6

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,

Name: Emanuel Williams
Title: Commodity Specialist
Phone: 717-703-2946
Email: emwilliams@pa.gov

Acknowledged by _____

for _____

(Name of bidding firm)



Commonwealth of Pennsylvania

Date: 12/14/2012
 Subject: Voting Systems
 Solicitation/Bid Number: COSTARS-10
 Solicitation Date: 08/04/2010
 Addendum Number: 5

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth has revised and replaced the following Invitation for Bids/Contract documents in accordance with the new Department of General Services (DGS) Small Business Procurement Initiative requirements:

- COSTARS Invitation for Bids Summary Sheet
- Attachment A Doing Business with the Commonwealth
- Instructions to Bidders for COSTARS Contracts
- Bid Item Workbook

In addition, Reciprocal Limitations Act provisions are revised. Form GSPUR-89 entitled Reciprocal Limitations Act Requirements are replaced in entirety.

These changes shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

**DGS BUREAU OF PROCUREMENT
 BID ROOM
 555 WALNUT STREET, 6TH FLOOR
 HARRISBURG, PA 17101-1914**

When you submit a bid for this procurement, **please attach a copy of this addendum, and a copy of each previous COSTARS-10 addendum, to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** On the outside of the envelope, please indicate the contract number (COSTARS-10). **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,
 Name: Emanuel L Williams
 Title: Commodity Specialist
 Phone: 717-703-2946
 Email: emwilliams@pa.gov

Acknowledged by _____
 for _____
 (Name of bidding firm)



Commonwealth of Pennsylvania

Date: 10/20/2011
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 4

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth is including Reciprocal Limitations Act provisions in this COSTARS contract in response to certain reciprocal preferences and or actions by other states. Please refer to form GSPUR-89 entitled Reciprocal Limitations Act Requirements specifically incorporated and attached hereto for further details.

This change shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

**DGS BUREAU OF PROCUREMENT
BID ROOM
555 WALNUT STREET, 6TH FLOOR
HARRISBURG, PA 17101-1914**

When you submit a bid for this procurement, **please attach a copy of this addendum, and a copy of each previous COSTARS-10 addendum, to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** On the outside of the envelope, please indicate the contract number (COSTARS-10). **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,

Name: Emanuel L Williams
Title: Commodity Specialist
Phone: 717-703-2946
Email: emwilliams@pa.gov

Acknowledged by _____
for _____
(Name of bidding firm)



Commonwealth of Pennsylvania

Date: 08/20/2011
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 3

To All Suppliers:

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

Commodity Specialist changed from Kathy Lewis to:

Emanuel L Williams
Commodity Specialist
717-703-2946
emwilliams@pa.gov

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

DGS Bureau of Procurement
Bid Room
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

When you submit a bid for this procurement, **please attach a copy of this addendum, and a copy of each previous COSTARS-10 addendum, to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** On the outside of the envelope, please indicate the contract number (COSTARS-10) and bid opening date and time (August 4, 2010 at 1:30 PM Eastern). **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,

Name: Emanuel Williams
Title: Commodity Specialist
Phone: 717-703-2946
Email: emwilliams@pa.gov



Commonwealth of Pennsylvania

Date: 05/09/2011
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 2

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth has revised Section 29 (Contractor Responsibility Provisions) of the COSTARS Contract Standard Terms and Conditions. The COSTARS Contract Standard Terms and Conditions are replaced to include these revisions (COSTARS STD REV 04/27/2011).

In addition, the COSTARS BID/CONTRACT form is replaced (GSPUR – 15COSTARS, Rev. 04/27/2011) to reference the new COSTARS Contract Standard Terms and Conditions.

This change shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

**DGS BUREAU OF PROCUREMENT
BID ROOM
555 WALNUT STREET, 6TH FLOOR
HARRISBURG, PA 17101-1914**

When you submit a bid for this procurement, **please attach a copy of this addendum to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** On the outside of the envelope, please indicate the contract number (COSTARS-10). **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,

Name: Roxann MacAvoy
Title: Commodity Specialist

Acknowledged by _____
for _____
(Name of bidding firm)



Commonwealth of Pennsylvania

Date: 11/10/2010
Subject: Voting Systems
Solicitation/Bid Number: COSTARS-10
Solicitation Date: 08/04/2010
Addendum Number: 1

To All Suppliers:

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

In accordance with Section 34 (Changes) of the COSTARS Contract Standard Term and Conditions, the Commonwealth has revised Section 27 (Nondiscrimination/Sexual Harassment Clause) and Section 28 (Contractor Integrity Provisions) of the COSTARS Contract Standard Terms and Conditions. The COSTARS Contract Standard Terms and Conditions are replaced to include these revisions (REV 8/19/2010).

In addition, the COSTARS BID/CONTRACT form is replaced (GSPUR – 15COSTARS, Rev. 8/19/2010) to reference the new COSTARS Contract Standard Terms and Conditions.

This change shall be effective immediately. If a Contractor does not wish to abide by the changed terms, it may opt out of the contract by providing written notice to the Commonwealth.

The bid opening date and time shall remain the same.

Please submit any response to this Invitation for Bids to the following address.

**DGS BUREAU OF PROCUREMENT
BID ROOM
555 WALNUT STREET, 6TH FLOOR
HARRISBURG, PA 17101-1914**

When you submit a bid for this procurement, **please attach a copy of this addendum to the original copy of your bid proposal.** If you fail to do so, DGS may reject your bid as non-responsive.

If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date. You must also acknowledge any previous addendum not attached to your earlier-submitted bid in writing, to the address listed above, noting your acknowledgement and acceptance of each addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** On the outside of the envelope, please indicate the contract number (**COSTARS-10**). **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Except as clarified and amended by this addendum, the instructions, terms, and conditions of the Invitation for Bids, including any previous addendums, remain as originally written.

Very truly yours,

Name: Roxann MacAvoy
Title: Commodity Specialist

Acknowledged by _____
for _____
(Name of bidding firm)

COSTARS CONTRACT SPECIAL TERMS AND CONDITIONS

These COSTARS Contract Special Terms and Conditions (“Special Terms and Conditions”) shall be part of the contract for the supply and delivery of Voting Systems between the Commonwealth of Pennsylvania, acting through the Department of General Services (“DGS”), and the successful bidder (“Contractor”).

1. Order of Precedence. These Special Terms and Conditions supplement the COSTARS Contract Standard Terms and Conditions (“Standard Terms and Conditions”) for this procurement. Should any discrepancy occur, the order of precedence shall be that these Special Terms and Conditions shall prevail over all other Contract documents, the Standard Terms and Conditions shall prevail over the Instructions to Bidders for COSTARS Contracts (“ITB”) and the bidder’s bid submission, and the ITB shall prevail over the bidder’s bid submission.

2. Contract Scope. For purposes of this Contract, Voting Systems may include: Direct Recording Electronic (DRE) Machines (both full face and touch screen), Central Count Optical Scanners, Precinct Count Optical Scanners, Ballot Marking Devices, Electronic Poll Books and all related Software as required for system functionality in accordance with the terms of this Contract.

COSTAR Members (“Members”) may elect to purchase complete Voting Machine Systems and EMS Software (collectively, the “Systems”). These complete Systems purchases will include all necessary hardware and software components; training and training materials; equipment installation, set up and acceptance testing; programming; administrative and technical support; onsite support during all elections occurring within one year of the date the System is fully operational, but in no event fewer than two regular (May and November) elections; standard manufacturer’s warranty; and standard maintenance agreement.

Members may also elect to purchase individual system Components, as well as Optional Items the Contractor may choose to offer in its bid proposal.

Members and Contractors may supplement the terms of the Contract to provide for additional EMS software programming, additional Systems warranty and maintenance (including negotiation of specific maintenance terms), and additional service requirements at mutually agreed upon pricing.

This contract will include Voting Systems that meet the requirements specified in Exhibit A, as well as all other equipment and services necessary to support the Voting Systems. This may include but not limited to: Help Desk Services, Printing, Machine Maintenance, Relocation Services, and well as Server/Storage equipment.

Services available should include: Training, Help Desk Support, On-Site Support, Rover Support, Software Verification, Machine Maintenance, Approved Software and Firmware Upgrades and Approved Hardware Upgrades.

All equipment must be approved and certified by the Secretary of the Commonwealth.

3. Contract Award. This is a multiple award contract in accordance with Section 7 of the ITB. Because DGS deems it to be in the best interest of the Purchasers to procure additional Contractors on a continuous basis, DGS will accept bid proposals in response to this procurement on any given Commonwealth business day.

4. Contract Period. DGS will establish the Contract effective date as specified in Subsection 3.a. of the Standard Terms and Conditions. The Contract will renew automatically in accordance with Subsection 3.c. of the Standard Terms and Conditions, unless it is terminated in accordance with Section 24 of the Standard Terms and Conditions, as supplemented by this section.

5. Mandatory Requirements. Bid responses will be accepted from all bidders who have completed, or are in the process of completing, the requirements outlined in the documents listed below in Subparagraphs a, b and c. **By submitting a bid for this procurement, the bidder certifies that it is diligently pursuing a request for certification of the offered equipment in accordance with the requirements of the Pennsylvania Department of State.** In addition, Exhibit D lists all mandatory training and associated documentation Contractors are required to provide to Purchasers for each System offered in response to this Invitation For Bids ("IFB"). As a condition of Contract award, the bidder agrees to comply with the requirements contained in each of the following documents:

- a. Commonwealth of Pennsylvania Requirements of Electronic Voting Systems, Exhibit A.
- b. Title III of HAVA – Uniform and Non-Discriminatory Election Technology and Administration Requirements, Exhibit B.
- c. Directive concerning the conduct of Electronic Voting System Examinations by the Commonwealth of Pennsylvania issued by the Secretary of the Commonwealth, Exhibit C, with Attachments I, II and III.
- d. Training Requirements for County Election Officials and Staff, Exhibit D.

6. Service Area. The bidder may offer to supply and deliver Voting Systems:

- i. Statewide, or
- ii. To any one county specifically identified in the bidder's bid by its corresponding name and number, as listed on the Service Area Sheet of the Bid Item Workbook, or
- iii. To any number of counties specifically identified in the bidder's bid by their corresponding names and numbers, as listed on the Service Area Sheet of the Bid Item Workbook

7. Pricing. The bidder shall complete the Bid Item Workbook. In Part I of the Bid Item Sheet Tab of the Bid Item Workbook, the bidder shall provide firm prices for each complete System package being offered. In Part II of the Bid Item Sheet, the bidder shall state firm prices for the system Components listed. In Part III of the Bid Item Sheet, the bidder shall list any Optional Items or services being offered that are not listed in Parts I and II. The bidder shall return the completed Bid Item Workbook and all specified attachments in a sealed envelope. Failure to do so may result in DGS' rejection of the bid.

a. The bidder must identify the offered System on the Bid Item Sheet of the Bid Item Workbook, specifying the System name (model/version), System type (Optical Scan, Direct Record Electronic Touch Screen or Direct Record Electronic Full Face, etc.), included features (Precinct Tabulation, Central Count Tabulation, Paper Audit Trail), and EMS Software. Omission of this information from the Bid Item Sheet may be cause for DGS to reject the bid. A complete description of each System, including System specifications, Manufacturer's Warranty and Maintenance Agreement, shall be submitted with the Bid Item Workbook.

b. It is suggested, but not required, that the bidder offer volume pricing, provided in a format similar to the example provided on the Bid Item Sheet of the Bid Item Workbook.

c. A Contractor may update its Contract pricing annually at the time of contract renewal. Such pricing changes shall only be applicable to Purchase Orders issued after the pricing update.

d. Notwithstanding the language in Subsection c. of this Section, if, as a result of legislation, rulemaking, rate-making, or any related act of a legislative or regulatory body subsequent to bid opening which requires modifications to the Contractor's Systems package, Components or

Optional Items to remain compliant, or due to unusual market conditions, the Contractor's cost of supplying Systems increases more than ten percent, the Contractor may adjust its prices more frequently. The Contractor shall submit a letter to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the adjustment(s). It is the responsibility of the Contractor to adequately justify the change(s). A letter of verification from the manufacturer must accompany all price adjustment requests showing the manufacturer has increased its prices to all suppliers. The Commodity Specialist will notify the Contractor in writing stating approval/disapproval of the request. Upon approval, the Contractor may issue new price and/or product list(s).

e. After Contract award, a Contractor may offer, either on its own initiative or at a Purchaser's request discounted prices for any purchase within the scope of the Contract, even if such discounted prices were not included in the bid prices.

f. The Contractor may supplement its Bid Item Workbook at any time to provide pricing for additional Contract items within the scope of the Contract that become available after submission of the Contractor's bid or to remove items or services it no longer wishes to offer. The Contractor shall submit a written request accompanied by a revised Bid Item Workbook to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the revision(s). Any additions to manufacturer lines shall be in accordance with paragraph 7.b. of the Instructions to Bidders pertaining to manufacturer's authorization. Approval of the change is automatic within five business days upon DGS' receipt unless notified otherwise in writing by DGS.

8. Leasing and Lease-Purchase Arrangements. Suppliers may offer leasing or Lease-Purchase under this contract. The length of the lease or lease-purchase may be twelve (12), twenty-four (24), thirty-six (36), forty-eight (48) or sixty (60) months. COSTARS members are encouraged to negotiate the price of the item, in accordance with the pricing submitted by the supplier. Only after pricing has been negotiated should leasing or an lease-purchase be considered as both options will increase the price of the item. When requesting lease or lease-purchase pricing, suppliers may provide commercially reasonable terms and conditions pertaining solely to the lease or lease-purchase. COSTARS members review and negotiate the lease terms and conditions, lease annual percentage rate, residual and after lease provisions in accordance with good business practice. All lease or lease-purchase terms shall be subject to the standard approval processes established for the COSTARS member, either by policy or statute, and shall become part of the purchase order.

9. Delivery. All items covered under this Contract shall be delivered FOB destination within 90 days of the Contractor's receipt of a purchase order unless otherwise agreed to in writing by the party issuing the purchase order. The Contractor agrees to deliver Contract items to multiple sites within the county as specified in the Purchase Order.

10. Acceptable Forms of Payment. Contractor must accept payment for hardware and services associated with this contract by check or by purchasing / credit card.

11. Warranty and Maintenance. The Contractor warrants that all Systems, system Components and Optional Items provided by the Contractor pursuant to this Contract shall be free and clear of any defects in workmanship or materials for one year following each purchase. The Contractor shall pass through to the Commonwealth and Purchasers the manufacturer's standard warranty for all Systems, system Components and Optional Items provided under the Contract. The Contractor shall correct any problem or replace any defective part or software with one of equivalent or superior quality without any additional cost to the Commonwealth or Purchasers during the warranty period. The Contractor shall provide all manufacturer-recommended maintenance to the Systems, system Components and Optional Items at no additional cost to the Commonwealth or Purchasers during the term of the warranty period.

In addition to the requirements of the Warranty section (Section 13) of the Standard Terms and Conditions, the Contractor warrants that it has the capability, either directly or through the manufacturer or a manufacturer's representative, to perform warranty service for the warranty period.

12. Ancillary Services. Awarded Suppliers may offer to provide additional related services in conjunction with the equipment items they are offering to supply the Member under this contract. Services include, but are not limited to: maintenance, training, relocation of equipment and installation. For such services, the awarded Supplier and the Member shall negotiate the applicable services and prices and the Member will request one written and signed offer from the awarded Supplier. These services are over and above the services already built into the bid prices. These services and their associated prices will not be a factor in bid evaluation and award of the contract; however, bidders may submit a list of services they wish to provide and their costs. If it is not possible to submit pricing, as may be the case with certain installation services, bidders may simply note which services they will provide and the actual price will be negotiated between the Awarded Supplier and the Member. The Commonwealth does however, reserve the right to restrict the services which can be procured under a contract and not to include any services if either the price(s) is (are) unacceptable or services are outside of the acceptable scope of additional services. Any price update for these services is subject to the "Update Option" clause.

a. Other ancillary services may include:

- Customization – any modification to a Contract item to meet Member-specific requirements.
- Special Delivery Arrangements – these may include, without limitation, fuel surcharges, added charges for multiple delivery locations, or staged deliveries (multiple dates). Such terms shall not alter the requirements of Subsection 10.b. of the COSTARS Contract Standard Terms and Conditions, requiring in pertinent part that the pricing include standard FOB destination delivery.
- Extended Warranty
- Post Warranty Support and Maintenance Service
- Analysis – Planning and Pre-Design, Feasibility Studies and Project Cost Budgeting, Risk Assessment
- Design & Engineering – Architectural / Engineering Layout Services, Communications and Data Cabling Layout / Configuration Services
- Project Management – Contractor Management, Delivery Coordination, Equipment Installation Services, Warranty Services Beyond Normal Manufacturer's Warranty
- Service Desk / Technical Support
- Equipment Maintenance

b. Any ancillary services provided will be entirely at the Contractor's option.

c. If a Contractor chooses to offer ancillary services in conjunction with the Contract items it provides to the Member, the Contractor and Member shall negotiate the applicable services to be provided and notate the details of the required service and prices on the purchase order at time of order.

d. The bidder may submit the list of ancillary services and prices it proposes to offer in any format. If it is not possible to submit pricing, as may be the case with certain installation services, the Contractor shall simply note that it is offering the service and that the actual price will be negotiated between the Contractor and the COSTARS participant and annotated on the purchase order at time of order.

e. Though all potential ancillary services with their associated prices should be included in the Bid proposal, such services and their associated prices are not a factor in bid evaluation. However, COSTARS reserves the right to restrict the types of services to be offered on any contract resulting from this IFB.

13. Modifications.

a. During the contract period, the Contractor shall make any modifications to System components required by changes to the Federal Voting System Standards or Pennsylvania State law as determined by the Secretary of the Commonwealth, but in no event less than thirty (30) days before an election. If the Contractor makes *any* changes to the system subsequent to the date of its examination, it must *immediately* notify both the Pennsylvania Department of State and the relevant independent testing authorities (ITAs). Failure to do so can result in the decertification of this voting system in the Commonwealth of Pennsylvania. The Secretary of the Commonwealth will determine whether re-certification of the system is necessary.

b. Price changes for any required modifications may be submitted to DGS upon successful completion of the recertification process or at the time of annual contract renewal. Pricing changes shall only be applicable to Purchase Orders issued after the pricing update. The Contractor shall not accept Purchase Orders pending the completion of required modifications and recertification of its Systems package, Components or Optional Items that are not in compliance with Federal Voting Systems Standards then in effect.

14. Training Materials. The Commonwealth and any Purchaser shall have the right to copy, use, and distribute to voters, political candidates, political committees, civic organizations, news organizations, and elections staff and volunteers, the materials the Contractor furnishes to the Purchaser for training or instruction of any nature for the use and operation of the System. Such materials may include, without limitation audio and video instructional materials, printed manuals, and any other information supplied pursuant to the requirements of Exhibit D to this procurement. The Commonwealth and any Purchaser may make as many copies of any or all of these materials as deemed necessary for election-related purposes, and they may distribute these materials to any individual or organization to provide election-related information. The Commonwealth and any Purchaser shall ensure that all such materials are copied and distributed in their complete original state and display all original copyright notices.

15. On-Site Support and Help Desk. The Contractor shall provide on-site support during all elections occurring within one year of the date the System becomes fully operational, but in no event less than two regular (May and November) elections, at each Purchaser's county election office commencing one hour before and ending one hour after poll hours for all elections occurring within one year following each purchase. Additionally, the Contractor shall make a Help Desk available during normal business hours commencing four days prior to the election through the day after election day. Additionally, the Help Desk shall be available from 6:00 a.m. on election day through 6:00 a.m. the following day. The Contractor shall respond to site-specific issues within the Purchaser counties within one hour of notification.

16. Compliance. The Contractor agrees that it will not accept or fulfill any Purchase Orders under this Contract unless and until it has received Pennsylvania Department of State certification for the Systems or System components contained in the Purchase Order. The Contractor also agrees that it will diligently pursue all requirements the Pennsylvania Department of State may impose on the Contractor to complete the certification process.

In the event that, at any time during the Contract term, the Secretary of the Commonwealth decertifies the Contractor's Systems, the Commonwealth or Purchasers may procure, upon such terms and in such manner as it determines, sufficient certified Systems similar or identical to those decertified, and/or utilize alternative certified voting methods, necessary for the proper conduct of elections until the Contractor's Systems are re-certified. In addition to its obligations to make modifications required for re-certification, the Contractor shall be liable to the Commonwealth or Purchasers for any and all reasonable costs incurred to obtain and utilize such replacement Systems and alternative voting methods for all elections occurring during the term of this Contract.

Liquidated damages may be imposed in the amount of \$100 per hour per call in the event that the Contractor responds to Help Desk service calls beyond one hour as provided by Paragraph 14 above.

The Contractor shall indemnify and save harmless the Commonwealth and Purchasers from any and all Federal and civil suit fines, penalties, judgments and costs due to Systems failures during the term of this Contract.

17. Court Orders. If a court of competent jurisdiction issues a subpoena or other order directing either the Purchaser or the Contractor to produce any proprietary or confidential data under this Contract, including without limitation software source code and object code, software and hardware documentation, training materials, and component pricing information, in any form whatsoever, the party served with the order shall promptly notify the party whose information is subject to the order to provide said party with sufficient opportunity to contest the order. Such notice shall not be required in the event the information subject to the subpoena or order is public information under the Right to Know Law, 66 P.S. §§ 65.1-66.9, or any other law which may require disclosure, or the data subject to the order is already lawfully within the public domain.

18. License Agreements. If any license is required for software for the systems, the Purchaser and the Contractor shall negotiate and execute the license, without DGS involvement. Contractors may license Software products either by the number of named users or by the number of processors running the Software. In no event shall the terms of any license agreement supplant or supersede any terms of the COSTARS contract. In the event of any conflict between the COSTARS contract and a license agreement, the COSTARS contract shall be controlling.

19. Ownership Rights. In connection with Voting Systems software, Section 17 of the *COSTARS Contract Standard Terms and Conditions*, which provides:

"Each Purchaser issuing a PO under this Contract 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 Purchaser as part of the performance of the PO.**" (emphasis added)

This section shall be interpreted to permit the Purchaser to reproduce, distribute, and use in its discretion only software specifically developed for the particular PO under which such special software development or modifications may be ordered. It shall not apply to the Contractor's standard voting systems software, the use of which shall be governed by the Contractor's standard licensing terms and conditions, to the extent that they do not conflict with any other terms in the COSTARS Contract.

Exhibit A

Commonwealth of Pennsylvania Requirements of Electronic Voting Systems

To be used in Pennsylvania, an electronic voting system must meet three requirements as established by Section 1105-A of the Election Code. Each system must a) be approved by a federally recognized independent testing authority, b) meet any voting system performance and test standards established by the Federal Government (Pennsylvania requires the 2002 FEC standards adopted by the EAC pursuant to HAVA) and c) must have been examined and approved by the Secretary of the Commonwealth. The Secretary examines each electronic voting system for the 17 requirements contained in section 1107-A of the Election Code as listed below.

All electronic voting systems must:

(1) Provide for voting in absolute secrecy and prevent any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.

(2) Provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted.

(3) Permit each voter, at other than primary elections, to vote a straight political party ticket by one mark or act and, by one mark or act, to vote for all the candidates of one political party for presidential electors and, by one mark or act, to vote for all the candidates of one political party for every office to be voted for, and every such mark or act shall be equivalent to and shall be counted as a vote for every candidate of the political party so marked including its candidates for presidential electors, except with respect to those offices as to which the voter has registered a vote for individual candidates of the same or another political party or political body, in which case the automatic tabulating equipment shall credit the vote for that office only for the candidate individually so selected, notwithstanding the fact that the voter may not have individually voted for the full number of candidates for that office for which he was entitled to vote.

(4) Permit each voter, at other than primary elections, to vote a ticket selected from the nominees of any and all political parties, from the nominees of any and all political bodies, and from any persons whose names are not in nomination and do not appear upon the official ballot.

(5) Permit each voter to vote for any person and any office for whom and for which he is lawfully entitled to vote, whether or not the name of such person appears upon the ballot as a candidate for nomination or election.

(6) Permit each voter to vote for as many persons for any office as he is entitled to vote for and to vote for or against any question upon which he is entitled to vote and precludes each voter from voting or from having his vote tabulated for any candidate, or upon any question, for whom or upon which he is not entitled to vote.

(7) If it is of a type that registers the vote electronically, the voting system shall preclude each voter from voting for more persons for any office than he is entitled to vote for or upon any question more than once.

(8) Preclude each voter from voting or from having his vote tabulated more than once for any candidate for the same office or upon any question, except in districts and for offices where cumulative voting is authorized by law.

(9) Permit each voter at a primary election to vote only for the candidates seeking nomination by a political party in which such voter is registered and enrolled, and for any candidate for nonpartisan nomination, and for any question upon which he is entitled to vote.

(10) If it is of a type that registers the vote electronically, the voting system shall permit each voter to change his vote for any candidate or upon any question appearing on the official ballot up to the time that he takes the final step to register his vote and to have his vote computed. If it is of a type that uses paper ballots or ballot cards to register the vote and automatic tabulating equipment to compute such votes, the system shall provide that a voter who spoils his ballot may obtain another ballot; any ballot thus returned shall be immediately cancelled and at the close of the polls shall be enclosed in an envelope marked "spoiled" which shall be sealed and returned to the county board.

(11) Is suitably designed for the purpose used, is constructed in a neat and workmanlike manner of durable material of good quality, is safely and efficiently useable in the conduct of elections and, with respect to the counting of ballots cast at each district, is suitably designed and equipped to be capable of absolute accuracy, which accuracy shall be demonstrated to the Secretary of the Commonwealth.

(12) Provide acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards.

(13) When properly operated, record correctly and compute and tabulate accurately every valid vote registered.

(14) Is safely transportable.

(15) Is so constructed that a voter may readily learn the method of operating it.

(16) If the voting system is of a type which provides for the computation and tabulation of votes at the district level, the district component of the automatic tabulating equipment shall include the following mechanisms or capabilities:

(i) A public counter, the register of which is visible from the outside of the automatic tabulating equipment component into which the ballots are entered, which shall show during any period of operation the total number of ballots entered for computation and tabulation.

(ii) A lock, or locks, by the use of which all operation of the tabulation element of the automatic tabulating equipment is absolutely prevented immediately after the polls are closed or where the tabulation of votes is completed

(iii) It shall be so constructed and controlled that, during the progress of voting, it shall preclude every person from seeing or knowing the number of votes theretofore registered for any candidate or question; and it shall preclude every person from tampering with the tabulating element.

(iv) If the number of choices recorded for any office or on any question exceeds the number for which the voter is entitled to vote, it shall reject all choices recorded on the ballot for that office or question, provided, that if used during the period of voting it may also have the capacity to indicate to a voter that he has improperly voted for more candidates for any office than he is entitled to vote for, and in such case it shall have the capacity to permit the voter to mark a new ballot or to forego his opportunity to make such correction.

(v) It shall be equipped with an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set to zero and with an element which generates a printed record at the finish of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate whose name appears on the ballot, and the total number of votes cast for, or against, any question appearing on the ballot.

(17) If the voting system is of a type which provides for the computation and tabulation of all votes at a central counting center or if it provides for the tabulation of district totals at such a central counting center, the central automatic tabulating equipment shall include the following mechanisms or capabilities:

(i) It shall be constructed so that every person is precluded from tampering with the tabulating element during the course of its operation.

(ii) If the number of choices for any office or on any question exceeds the number for which the voter is entitled to vote, it shall reject all choices recorded on the ballot for that office or question.

(iii) It shall have a means by which to verify that the counters for each candidate position and for each question are all set to zero and shall be able to generate a printed record of each election district showing the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate whose name appears on the ballot, and the total number of votes cast for, or against, any question appearing on the ballot. It may also be capable of generating cumulative election reports.

Exhibit B

TITLE III--UNIFORM AND NONDISCRIMINATORY ELECTION
TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

<< 42 USCA prec. § 15481 >>

Subtitle A--Requirements

<< 42 USCA § 15481 >>

SEC. 301. VOTING SYSTEMS STANDARDS.

(a) REQUIREMENTS.--Each voting system used in an election for Federal office shall meet the following requirements:

(1) IN GENERAL.--

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) AUDIT CAPACITY.--

(A) IN GENERAL.--The voting system shall produce a record with an audit capacity for such system.

(B) MANUAL AUDIT CAPACITY.--

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.--The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for

access and participation (including privacy and independence) as for other voters;
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) ALTERNATIVE LANGUAGE ACCESSIBILITY.--The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

(5) ERROR RATES.--The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE.--Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) VOTING SYSTEM DEFINED.--In this section, the term "voting system" means--

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) CONSTRUCTION.--

(1) IN GENERAL.--Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) PROTECTION OF PAPER BALLOT VOTING SYSTEMS.--For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) EFFECTIVE DATE.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

<< 42 USCA § 15482 >>

SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.

(a) PROVISIONAL VOTING REQUIREMENTS.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall

be permitted to cast a provisional ballot as follows:

- (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.
- (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--
 - (A) a registered voter in the jurisdiction in which the individual desires to vote; and
 - (B) eligible to vote in that election.
- (3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).
- (4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.
- (5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system

established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted. States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) VOTING INFORMATION REQUIREMENTS.--

(1) PUBLIC POSTING ON ELECTION DAY.--The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) VOTING INFORMATION DEFINED.--In this section, the term "voting information" means--

- (A) a sample version of the ballot that will be used for that election;
- (B) information regarding the date of the election and the hours during which polling places will be open;
- (C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- (D) instructions for mail-in registrants and first-time voters under section 303(b);
- (E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and
- (F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE.--Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other

order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) EFFECTIVE DATE FOR PROVISIONAL VOTING AND VOTING INFORMATION.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

<< 42 USCA § 15483 >>

SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.

(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.--

(1) IMPLEMENTATION.--

(A) IN GENERAL.--Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) EXCEPTION.--The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) COMPUTERIZED LIST MAINTENANCE.--

(A) IN GENERAL.--The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of

eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) CONDUCT.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST.--The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS.--The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) VERIFICATION OF VOTER REGISTRATION INFORMATION.--

(A) REQUIRING PROVISION OF CERTAIN INFORMATION BY APPLICANTS.--

(i) IN GENERAL.--Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER.--If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) DETERMINATION OF VALIDITY OF NUMBERS PROVIDED.--The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) REQUIREMENTS FOR STATE OFFICIALS.--

(i) SHARING INFORMATION IN DATABASES.--The chief State election official

and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY.--The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).

<< 42 USCA § 405 >>

(C) ACCESS TO FEDERAL INFORMATION.--Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

"(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002--

"(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

"(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

"(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

"(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

"(D) For purposes of this paragraph--

"(i) the term 'applicable information' means information regarding whether--

"(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

"(II) such individual is shown on the records of the Commissioner as being deceased; and

"(ii) the term 'State driver's license agency' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

"(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

"(F) Applicable information provided by the Commission pursuant to an agreement under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 208."

(D) SPECIAL RULE FOR CERTAIN STATES.--In the case of a State which is permitted to use social security numbers, and provides for the use of social security

numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.--

(1) IN GENERAL.--Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) REQUIREMENTS.--

(A) IN GENERAL.--An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) FAIL-SAFE VOTING.--

(i) IN PERSON.--An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).

(ii) BY MAIL.--An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).

(3) INAPPLICABILITY.--Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);

(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) CONTENTS OF MAIL-IN REGISTRATION FORM.--

(A) IN GENERAL.--The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) INCOMPLETE FORMS.--If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) CONSTRUCTION.--Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before the date of the enactment of this Act to comply with such a provision after such date.

(c) PERMITTED USE OF LAST 4 DIGITS OF SOCIAL SECURITY NUMBERS.--The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) EFFECTIVE DATE.--

(1) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.--

(A) IN GENERAL.--Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) WAIVER.--If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) REQUIREMENT FOR VOTERS WHO REGISTER BY MAIL.--

(A) IN GENERAL.--Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) APPLICABILITY WITH RESPECT TO INDIVIDUALS.--The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

<< 42 USCA § 15484 >>

SEC. 304. MINIMUM REQUIREMENTS.

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

<< 42 USCA § 15485 >>

SEC. 305. METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

Exhibit C

DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE SECRETARY OF THE COMMONWEALTH

Pursuant to Section 1105-A of the Pennsylvania Election Code, at 25 P. S. § 3031.5, and revised as required by Act 150 of 2002, the following Directive is issued by the Secretary of the Commonwealth for all electronic voting system examinations conducted in the Commonwealth of Pennsylvania.

1. Vendors interested in having an electronic voting system (system) examined in the Commonwealth of Pennsylvania must submit a written request to the Secretary of the Commonwealth. Each request shall be accompanied by an examination fee of \$ 3,000.00, established by the Secretary and payable to the Commonwealth of Pennsylvania, for each system to be examined. Any stand-alone equipment, which can be sold separately, constitutes a system for the purposes of examination and requires a separate fee.
2. The Department will review a system(s) **if** the system(s) either:
 - (a) Has been qualified by a federally recognized independent testing authority (ITA) or authorities (including laboratories accredited by the U.S. Election Assistance Commission (EAC) under Section 231(b) of the Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15371(b), and those laboratories described by Section 231(d) of HAVA, 42 U.S.C. § 15371(d)) for compliance with voluntary voting system guidelines adopted by the EAC under Section 222(d) of HAVA, 42 U.S.C. § 15362(e), or the 2002 Federal Election Commission Voting Systems Performance and Test Standards that were deemed adopted by the EAC under Section 222(e) of HAVA, 42 U.S.C. § 15362(e). (If so, each request for a system examination shall also include a copy of the most recent ITA testing report(s) qualifying the system.);
 - or
 - (b) Has been submitted for examination by a federally recognized ITA(s) using the most recent applicable testing standards. (If so, the vendor must submit a copy of its request for examination to the federally recognized ITA(s) for the most recent testing standards.).
3. Upon application for an examination, the vendor must submit to the Secretary of the Commonwealth and his designated representative(s), *i.e.*, examiner or examiners, a detailed Representation Affidavit, including (a) a list of all components (including hardware and software, as well as the software version and number, if any); (b) a copy of the most recent ITA testing report(s) qualifying the system or evidence indicating submission of the system to a federally recognized ITA; (c) a statement that the system is available in sufficient quantity to meet the needs of voters in the various counties in the Commonwealth; and (d) complete documentation for each system to be examined, including source codes, the technical data package (TDP), operating manuals, training manuals, setup manuals, repair manuals, procedures manuals and programming instructions. (A copy of the Outline of the Content and Format for a Representation Affidavit is enclosed as Attachment A.) The Commonwealth will retain the examination fee, without conducting an examination, if any false statement is provided in the Representation Affidavit. The Secretary will schedule the examination upon receipt of the

examination fee, the Representation Affidavit, and the ITA approvals or evidence indicating submission of the system to recognized ITAs, pursuant to paragraph 2.

4. Upon receipt of the application for examination, the examination fee, and the documentation referred to in paragraphs 2 and 3 above, the Secretary will forward to the vendor a copy of Article XI-A of the Pennsylvania Election Code, 25 P.S. § 3031.1 *et seq.* and other relevant information.
5. The Secretary will forward the ballot simulation to be used at the examination and any further instructions to the vendor no later than twenty (20) days prior to the scheduled examination.
6. The Secretary may schedule examinations at his discretion. The vendor shall supply to the Department the examination fee, the Representation Affidavit and all system documentation referenced in paragraphs 2 and 3 above at least thirty (30) days before the examination, unless otherwise authorized by the Secretary.
7. The examination fee will be returned to the vendor when a vendor cancels a scheduled examination more than 20 days prior to the scheduled examination. The examination fee will not be returned to the vendor when a vendor cancels an examination less than 20 days before the scheduled examination or if any false statement is provided in the Representation Affidavit or documentation, as specified in paragraphs 2 and 3 above.
8. The examination will be conducted in accordance with Article XI-A of the Pennsylvania Election Code. A demonstration may be videotaped at the sole discretion of the Secretary. Any feature that the vendor wants to have approved for use in the Commonwealth must be presented for examination. The vendor must present the system to the Secretary and his designated representative(s) in a condition that enables them to manipulate and examine the system including election definition and ballot setup, if appropriate. The vendor must also provide to the Secretary and his designated representative(s) the ability to program and set up an election of their own design should it be deemed necessary. The Pennsylvania Standardized Test will be used to verify that the system complies with the criteria established in section 1107-B of the Pennsylvania Election Code, at 25 P.S. § 3031.7, including the "Pennsylvania method" at section 1107-B(3), at 25 P.S. § 3031.7(3). (See the Explanation of the Pennsylvania Method at Attachment B.) Based on prior experience, the Department strongly recommends that each vendor bring a skilled technician who can answer technical questions regarding the system to be examined.
9. The system under review must meet all of the criteria set forth in the Pennsylvania Election Code at the scheduled examination. If the Secretary does not approve the system, and another examination or demonstration of the same system is required, the Secretary of the Commonwealth shall determine the fee.
10. Either at the time of the examination or as soon thereafter as is practicable, the vendor, by its duly authorized officer, shall execute an indemnification and warranty in the form provided by the Secretary. See Attachment C. Thereafter, if the vendor's system has been approved by the Secretary, the vendor or its successor shall re-execute the prescribed indemnification every three (3) years or within ninety (90) days of (a) any change in ownership of the vendor, the vendor's assets, or the structure of the vendor's organization; (b) the filing for bankruptcy protection by the vendor; or (c) an assignment for the benefit of the vendor's creditors.

11. Each designated representative(s) of the Secretary will submit a written report to the Secretary no later than 30 days after the date of the examination, unless otherwise directed by the Secretary. The report shall describe whether the system examined can be safely used by voters at elections as provided in the Pennsylvania Election Code and whether it meets all of the requirements specified in the Election Code.
12. The Secretary will issue an official examination report after all of the reports of the designated representative(s) have been received. For those systems reviewed under Item 2(b), the Secretary must receive a copy of the ITA approval letter or report(s) confirming compliance with the most recent standards before the Secretary issues a certification report. The Secretary will forward to the vendor a copy of the official examination report as soon as it is issued.
13. The Secretary's report will specify (a) the capacity of the components of the system; (b) the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment that comprise the system; and (c) the number of clerks and machine inspectors required, if any, based on the number of registered electors in any election district in which the system is to be used.
14. Any change that affects the accuracy, efficiency or capacity of an approved system must be presented to the Secretary. At his discretion, the Secretary may request a demonstration or an examination of the system with any changes. In addition, the Secretary may, at any time and at his discretion, reexamine any system previously examined and approved by him.
15. Subject to the terms and conditions below, this Directive shall be binding upon any vendor and its respective successors and assigns.
 - a. The vendor may not assign, in whole or in part, its rights, duties, obligations, or responsibilities with respect to development, service and maintenance of a system approved by the Secretary without written notification to the Secretary. For the purposes of this Directive, 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 system approved by the Secretary.
 - b. Any assignment shall be evidenced by a written agreement executed between the vendor and its assignee, in which the assignee agrees to be legally bound by all of the terms and conditions of this Directive, as well as the requirements for systems contained in the Pennsylvania Election Code, and to assume the duties, obligations and responsibilities being assigned.
16. Failure by a vendor to adhere to any of the terms and conditions contained in this Directive may result in delay or termination of the certification process if the Secretary has not yet approved the system. Failure by a vendor or its assignee to adhere to any of the terms and conditions contained in this Directive may result in the revocation of the certification of the system if the Secretary has already approved the system of the vendor. If the Secretary revokes the certification of the system when a vendor or its assignee fails to adhere to any of the terms and conditions contained in this Directive and the vendor or its assignee has sold the system to a county within the Commonwealth of Pennsylvania or to the Commonwealth of Pennsylvania, then the vendor or its assignee must reapply for certification with the Secretary.

17. In the event that a system previously approved by an ITA is later found by the ITA or its successor not to be in compliance with the federal standards and the system has been certified by the Secretary of the Commonwealth, the Secretary of the Commonwealth reserves the right to reexamine the system.

Attachments:

Attachment A: A copy of the Outline of the Content and Format for a Representation Affidavit, referenced in paragraph 4.

Attachment B: Explanation of the Pennsylvania Method, referenced in paragraph 9.

Attachment C: Indemnification and Warranty, referenced in paragraph 11.

Attachment I to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT A TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

**OUTLINE OF THE CONTENT AND FORMAT FOR A REPRESENTATION
AFFIDAVIT**

Pursuant to the DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE SECRETARY OF THE COMMONWEALTH (Directive), a Representation Affidavit (Affidavit) must be submitted by all vendors that apply for an electronic voting system examination. The Affidavit must be submitted in the format outlined below containing all relevant information.

The Affidavit will become public record and will be available to the public upon request as well as to state, county and municipal officials.

After reviewing the Affidavit, an electronic voting system examination will be scheduled for the next regularly scheduled examination occurring more than 30 days after receiving the Affidavit.

State of _____
County of _____

_____, _____, of _____
(Name of Affiant) (Title or Position) (Name of Corporation)

Corporation, having been duly sworn, deposes and states the following:

I. Vendor Identification:

- A. Full name of company
- B. Address of principal office
- C. Agent for this examination
- D. Telephone number of agent
- E. Date and state of incorporation
- F. Number of full time employees
- G. Annual gross sales
- H. Other product lines

II. Electronic Voting System Identification:

- A. List all components involved in recording and/or tabulating votes; and for each give:
 - 1. Function
 - 2. Unit cost

- B. If more than one configuration is possible, briefly describe the components and application of each
- C. Briefly describe any available discounts
- D. Describe support policies for:
 - 1. Equipment installation
 - 2. Training and instructional materials for voters and election officials
 - 3. Providing supplies and associated equipment

III. Provide the following information for each vote recording or tabulating device:

- A. Describe the general type (DRE, touch screen, optical scan, punch card, etc.)
- B. Extent of use:
 - 1. First year in use
 - 2. States authorizing use
 - 3. Number of jurisdictions in use
- C. Describe the physical characteristics of each vote recording/tabulating device(s):
 - 1. Construction materials
 - 2. Dimensions
 - 3. Storage requirements:
 - a. Space
 - b. Stacking capacity
 - c. Temperature and humidity restrictions
 - 4. Operating requirements:
 - a. Space
 - b. Secrecy provisions
 - c. Lighting
 - d. Power requirements, tolerances
 - e. Temperature and humidity restrictions
- D. Ballot form and use (vote recording devices):
 - 1. Type (paper, card, DRE, etc.)
 - 2. Size:
 - a. Minimum voting positions
 - b. Maximum voting positions
 - c. Provisions for oversize ballots
 - 3. Capacity:
 - a. Voter speed
 - b. Recommended ration of devices per number of voters
 - 4. Method of voting:
 - a. Description
 - b. Write-in procedure
 - c. Absentee ballot compatibility
 - d. Spoiled ballot/voter correction provisions
 - e. Overvote detection/warning
 - f. No-vote capability
 - 5. Recount procedure/auditability
- E. Processing characteristics (vote tabulating devices):
 - 1. Tabulating method (precinct, central, combined)

2. Ballot security and control:
 - a. Handling
 - b. Transportation
 - c. Storage
 3. Tabulation speed/device capacity
 4. Exception handling (misfeeds, mutilated ballots, etc.)
 5. Write-in processing
 6. Absentee ballot processing, if compatible ballot
 7. Overvote/undervote detection and processing
 8. Recount processing/Auditability
- F. Set-up, maintenance and repair:
1. Recording devices and tabulating devices:
 - a. Set-up times
 - b. Training and level of expertise required
 2. Preventive maintenance requirements:
 - a. Performed by whom
 - b. Training and level of expertise required
 3. Corrective maintenance:
 - a. Performed by whom
 - b. Training and level of expertise required
- G. Additional or optional equipment associated with this device:
1. Description
 2. Cost
- H. Data processing support required:
1. Equipment
 2. Programming
 3. Personnel
 4. Supplies

CERTIFICATION

I, the undersigned, certify that I am an authorized representative of the below listed vendor and I have read and hereby agree to the terms and conditions contained in the Directive and this Representation Affidavit on behalf of the vendor. I further certify that the system referred to in this affidavit is being tested, or has been tested and deemed qualified by the independent testing authority or authorities for compliance with the most recent Federal standards, known as the 2002 Federal Election Commission Voting Systems Performance and Test Standards as adopted by the Election Assistance Commission in compliance with Section 222(e) of the Help America Vote Act, 42 U.S.C. § 15362(e). I understand that failure to abide by the terms and conditions of the Directive and this Representation Affidavit could result in the proposed voting system not being certified by the Secretary or revocation of an existing voting system certification.

Signature

Date

Name (Printed)

Vendor Name

Vendor Address

On this, the _____ day of _____,
20____, before me _____,
the undersigned officer, personally appeared
_____, who acknowledged
himself/herself to be the _____
of _____, a
corporation, and that he/she as such
_____, being authorized to do so,
executed the foregoing instrument for the purpose
therein contained by signing the name of the
corporation by himself/herself
as_____. In witness
whereunto, I hereunto set my hand and official seals.

(Title of Officer)

Attachment II to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT B TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

AN EXPLANATION AND SELECTED EXAMPLES OF “THE PENNSYLVANIA METHOD”

The Pennsylvania requirements for electronic voting systems are found in the Pennsylvania Election Code at 25 P.S. § 3031.7. The third requirement, at § 3031.7(3), is unique to Pennsylvania, and is often referred to as “the Pennsylvania method.”

To change a vote for a straight political party ticket in an election where more than one candidate is elected, the Election Code, at § 3031.7(3), requires the voter to make one mark for a candidate in the other party for whom the voter would like to vote. In doing so, this action requires that the votes previously made by the voter for all candidates for that office be erased. Then the voter must be able to select candidates of either party for that office up to the number allowed or write in an individual’s name, as provided at 25 P.S. § 3031.7(5) & (6).

As an example, assume that there are 3 Democratic candidates (Jones, Smith and Roberts) and 3 Republican candidates (Perry, James and O’Donnell) for school director, where voters may select up to 3 candidates in a general election. The voter initially selects a straight party ticket for all Democratic candidates. In this school director race, however, the voter then desires to vote for Mr. Perry, a Republican. The Pennsylvania Election Code requires that the voter be required to make one mark to vote for Mr. Perry. When the voter makes his mark for Mr. Perry, all of the Democratic candidates for the office of school director are deselected at the same time. Once the Democratic candidates are deselected, the voter must be able to reenter or mark the ballot for not more than 2 additional candidates from either party or write in not more than two additional names.

For a different example, assume that there are 3 Democratic candidates (Jones, Smith and Roberts) and 3 Republican candidates (Perry, James and O’Donnell) for school director, where voters may select up to 3 candidates in a general election. The voter initially selects a straight party ticket for all Democratic candidates. In this school director race only, however, the voter desires to vote only for one Democratic candidate, Jones. The Pennsylvania Election Code requires that the voter be required to make one mark to vote for Mr. Jones. When the voter makes his mark for Mr. Jones, all of the other Democratic candidates for the office of school director are deselected at the same time. Once the other two Democratic candidates are deselected, the voter must be able to reenter or mark the ballot for not more than 2 additional candidates from either party or write in not more than two additional names.

Once a voter has voted a straight party and voted for a candidate of the same or another party in the same office using the “Pennsylvania Method,” as explained above, the requirements of the Pennsylvania Election Code at § 3031.7(3) no longer apply. For example, the next time that the voter votes for another candidate in the same office after voting a straight party and then voting for a candidate of the same or another party, then he must deselect a candidate in that office before voting another time for another candidate for that same office.

NOTE: This document is intended to assist vendors in preparation for an examination of an electronic voting system. However, it is not meant to be an exhaustive analysis of all of the possibilities that § 3031.7(3) of the Pennsylvania Election Code may present.

Attachment III to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT C TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

INDEMNIFICATION AND WARRANTY

For valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, the undersigned, (Corporate Name), a corporation of (State), having a mailing address of (Address), "(Corporate Name)", for itself and its agents, successors and assigns, states the following with respect to election-related products manufactured and/or sold by (Corporate Name) that have been certified according to statute by the Secretary of the Commonwealth of Pennsylvania ("The Products"):

I. INDEMNIFICATION

- A. (Corporate Name) hereby indemnifies and agrees to hold harmless the Commonwealth of Pennsylvania and any election jurisdiction therein (collectively referred to as "Pennsylvania") from and against any and all claims of third parties arising out of or in connection with the use by Pennsylvania of The Products and based upon allegations that any of The Products infringe one or more patents or copyrights owned by, or under which rights are held by, such third parties, provided Pennsylvania notifies (Corporate Name) in writing of any such claims within sixty (60) days after receipt thereof by Pennsylvania; (Corporate Name) will respond to Pennsylvania within thirty (30) days after receipt of such notification. All fees, costs and damages related to such third party claims and defense or settlement thereof, including, without limitation, attorney fees, court costs, expenses and damages resulting from any injunction prohibiting Pennsylvania's use of The Products, shall be borne by (Corporate Name), provided, however, that (Corporate Name) shall have the right to select its own counsel for defense of any such claim.

II. WARRANTIES

(Corporate Name) hereby warrants and represents as follows:

- A. That The Products conform to all applicable requirements of 25 P.S. §3031.7.
- B. That neither The Products nor any separable component thereof will be sold or otherwise transferred to Pennsylvania by (Corporate Name) unless such Product or component has been duly certified by Pennsylvania for election use.
- C. That it has the right to manufacture and/or sell The Products free of any known patent or copyright claim of any third party.
- D. That it will notify the Secretary of the Commonwealth of Pennsylvania and any existing or prospective purchasing jurisdictions within said Commonwealth of any claim or pending legal action relating to The Products, including but not limited to claims or actions arising under the United States Intellectual Property Laws; that such

notification will be made within ten days of the earlier of 1) the receipt of the claim by (Corporate Name), 2) filing of the action against (Corporate Name), or 3) the time of the examination; in any such case (Corporate Name) agrees to give such security, including but not limited to suitable bond, as shall be deemed appropriate by the Secretary of the Commonwealth under the circumstances.

III. RELIANCE BY PENNSYLVANIA

(Corporate Name) acknowledges that Pennsylvania is relying on the foregoing indemnification and warranties as a condition of certification of The Products for use in Pennsylvania, and that failure of (Corporate Name) to abide by the terms herein may result in decertification of The Products.

IV. PENNSYLVANIA LAW TO APPLY

(Corporate Name) agrees that this indemnification shall be interpreted and enforceable under and in accordance with the laws of Pennsylvania or the United States of America, as applicable, and that (Corporate Name) will accept jurisdiction of the federal and state courts of Pennsylvania for the purposes of resolving any disputes hereunder.

IN WITNESS WHEREOF, _____, by its duly authorized officer, has executed this Indemnification on the date set forth below.

(Corporate Name)

By: _____
(Name and Title)

(Date)

Attest: _____
(Name and Title)

STATE OF _____)

) ss:

COUNTY OF _____)

On this, the _____ day of _____, 20____, before me, the undersigned officer, a Notary Public in and for said State and County, personally appeared _____, who acknowledged h__self to be the _____ of (Corporate Name), and that _____ he/she, as such _____ being authorized to do so, executed the foregoing Indemnification for the purposes therein contained by signing the name of said Corporation by h__self as _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public My Commission Expires: _____

Exhibit D

Training Requirements for County Election Officials and Staff **(to be included in complete system price)**

The vendor shall provide training and associated manuals that will include but not be limited to providing comprehensive classroom training with a workstation for hands-on experience for each trainee. At a minimum each trainee should be able to perform and understand the following concepts for the system upon the completion of training to the extent that these apply:

- Step by step processes to understand the definition and relationships to create an election database including offices, candidates, legislative districts, ballot questions for a Primary, General and Special Election
- Develop and process an election database including data collection, audio recording, linkage, and reports
- Programming of tabulators including preparation, setup, pre-election testing, and reports
- Complete all ballot layout and configuration tasks including lockout associations, sample ballots, and reports
- Produce all election materials including proof sheets, ballot face sheets, and memory cartridges
- System security and anti-tampering features including audit features, and reports
- Pre-election system testing, and reports
- Election Day setup and configuration, and reports (same training provided to district election officials)
- Election Day operations for the use of voting systems in polling places from the opening to the closing of the polls and all associated procedures (same training provided to district election officials)
- Breakdown of materials and equipment, and reports (same training provided to district election officials)
- Election Day operations for jurisdictions that require regional vote reading, transmission, central computation functions, unofficial election reports
- Election Day operations for jurisdictions that require central computation functions and unofficial election reports
- Troubleshooting to solve temporary problems
- Official canvass of vote returns and tabulation, and reports
- Backup procedures
- Post-election system testing, and reports
- Procedures for conducting a recount, and reports
- System and database backup procedures
- Service procedures and error codes
- Complete machine disassembly and reassembly
- Disaster recovery procedures
- A description of the procedures for placing service calls to the vendor

COSTARS CONTRACT STANDARD TERMS AND CONDITIONS

1. PURPOSE OF CONTRACT

The Department of General Services ("DGS") is establishing this COSTARS Contract ("Contract") for the exclusive use of local public procurement units and state affiliated entities in accordance with the requirements of Act 77 of 2004, amending Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902.

2. PURCHASERS UNDER THE CONTRACT

a. The Contractor understands that it will not be providing any services or items (Collectively referred to as "Contract items") directly to DGS or any other Commonwealth agency under the Contract. DGS is acting as a facilitator for local public procurement units and state-affiliated entities (together, "Purchasers") who may wish to purchase supplies under the Contract. A "local public procurement unit" is:

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.

A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.

b. DGS requires Purchasers to register as COSTARS Members, and only those entities registered with DGS may purchase from the Contract. Therefore, the Contractor agrees to make Contract sales **only** to DGS-registered COSTARS members. Currently, there are several thousand potential Purchasers registered with DGS. A list of the registered entities, updated frequently, is available on the DGS COSTARS Website at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

Should the Contractor become aware of, or be contacted by, any potential purchaser not currently registered as a COSTARS member, where the potential purchaser believes it may qualify for, and wishes to participate in, the COSTARS Program, the Contractor may refer the potential purchaser to www.costars.state.pa.us to complete the DGS COSTARS member online application.

c. Purchasers have the option to purchase from a Contract awarded under this Invitation For Bids (IFB), from a DGS Statewide contract with awarded contractor(s) for Commonwealth agencies' use (where the Statewide contract permits Purchasers to make use of that contract), from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements.

d. Purchasers who participate in this Contract and issue purchase orders ("POs") to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.

3. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date (as defined in this Section 3) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

a. The Effective Date shall be the date the contract is fully executed and all approvals have been obtained as required by Commonwealth contracting procedures. The Contract shall not be legally binding until after DGS sends the fully-executed Contract to the Contractor.

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred

under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

c. The Contract will renew automatically on the anniversary of the Effective Date unless:

1. The Contractor has failed to submit payment for the appropriate amount prior to the anniversary date for payment of the contract renewal fee, made payable to "Commonwealth of PA" according to the following criteria:

Contractor Classification	Required Administrative Renewal Fee
Department of General Services Verified Small Diverse Business Bidder	\$166
Department of General Services Self-Certified Small Business Bidder	\$500
All Other Bidders-Contractors	\$1,500

2. Either party provides the other party with written notice that it does not intend to renew; or

3. The contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

4. PURCHASE ORDERS

Purchasers may issue POs against the Contract either directly using the Contractor's dedicated website ("online orders") or any other means the Contractor may provide. Each PO will incorporate the Contract terms and conditions. The Contractor may provide a form PO for Purchaser use, or the Purchaser may use its own PO form. The Contractor shall verify the Purchaser's membership via the "List of COSTARS Members" on the COSTARS website at www.costars.state.pa.us.

Any PO delivered or transmitted to the Contractor after 4:00 p.m. may be considered as received the following business day.

For electronically-issued POs, the following terms apply:

a. Upon receipt of a PO, the Contractor shall promptly deliver or transmit an acknowledgement of the PO to the Purchaser. Both the Contractor's obligation to deliver, and the Purchaser's obligation to receive and pay for, delivered items, shall attach only when the Purchaser has received the Contractor's acknowledgement of the PO.

b. The parties agree that no writing other than the PO and Contractor's acknowledgement shall be required to make the PO legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of an electronic PO or acknowledgement under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are required to be in writing signed by the parties. A printed record of any electronic PO or acknowledgement will be admissible as evidence in any judicial, arbitration, mediation, or administrative proceedings 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 POs or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the PO or acknowledgement were not in writing or signed by the parties. A PO or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated in these Terms and Conditions for such documents.

c. Each party shall take immediate steps to verify any document that appears to be garbled in transmission or improperly formatted, including retransmission of any such document.

5. INDEPENDENT CONTRACTOR

In performing the required Contract obligations, the Contractor agrees that it will act as an independent contractor and not as an employee or agent of the Commonwealth, DGS, or any Purchaser.

6. THIRD PARTY BENEFICIARIES

The Contractor understands and acknowledges that there is no guarantee that any prospective Purchaser will place a PO under this Contract, and that it is within the sole discretion of the Purchaser whether to procure from the Contract or to use another procurement vehicle.

a. The selection of a particular contractor to provide a Contract item to a particular Purchaser will be based upon best value or return on investment, within the sole discretion of the Purchaser. The Contractor shall have no right to protest Purchaser's selection of another contractor under this procurement or any other contract.

b. The Contractor agrees that any dispute concerning a particular PO shall be resolved between the Contractor and the Purchaser, without DGS participation.

7. COMPLIANCE WITH LAW

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

8. ENVIRONMENTAL PROVISIONS

In the performance of this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

9. CONTRACTOR DEDICATED WEBSITE

DGS strongly encourages the Contractor to provide a dedicated website for Purchasers ("COSTARS Website"), including a complete listing with Contract pricing for all items required under the Contract, product and customer support information, and the capability for COSTARS purchasers to place online orders for Contract items. If the Contractor provides a COSTARS Website, the Contractor agrees to permit DGS to provide a link from the DGS website to the COSTARS Website to facilitate access by prospective Purchasers.

10. PRICING, COMPENSATION, AND INVOICES

The Contractor shall furnish the awarded item(s) to Purchasers issuing POs under this Contract at the price(s) quoted in the Contractor's bid for the term and any and all renewals of this Contract, as further specified in this Section. After delivering the Contract item(s) to the Purchaser, the Contractor shall promptly send an invoice, including the PO number and itemized by line item, to the Purchaser's address specified in the PO. The invoice should include only those amounts due under the PO for items timely and satisfactorily delivered to the Purchaser.

a. The Contractor may offer voluntary price reductions and provide Contract items at prices lower than the Contractor's Contract prices for the items. The Contractor shall be compensated only for item(s) delivered to and accepted by the Purchaser.

b. The pricing for each Contract item shall include the cost of delivery to any destination within the Commonwealth of Pennsylvania as may be further limited by the Special Terms and Conditions, and there shall be no minimum order for shipments qualifying for F.O.B. delivered prices.

c. Because some smaller Purchasers may not have readily available Internet access, awarded Suppliers will also be required to provide hard copies of pricing information via fax or mail to any Purchaser requesting such information within five (5) working days after receipt of the Purchaser's request.

d. The Contractor's price shall include the warranty specified in Section 13 below.

11. PAYMENT

Purchasers electing to participate in the Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor. DGS shall require the Purchaser to put forth reasonable efforts to make payment by the Required Payment Date, defined as (a) the date on which payment is due under the PO terms, (b) 30 days after a Purchaser receives a completed invoice for items the Purchaser has accepted at its "Bill To" address on the PO if no payment date is specified in the PO, or (c) any later payment date specified on the invoice.

a. The Purchaser may delay payment if the invoice amount is greater than the Contract price(s).

b. The Contractor shall not construe any payment as the Purchaser's acceptance of any Contract item(s).

c. DGS, on behalf of the Purchasers, reserves the right for any Purchaser to conduct testing and inspection after payment within a reasonable time after delivery, and for that Purchaser to reject any or all Contract item(s) if such post payment testing or inspection discloses any defect or failure to meet Contract specifications.

d. The Contractor shall specify in the Bid Item Workbook whether it will accept any Purchaser credit card(s) as a method of payment and if so, the particular type(s) of credit card(s) accepted.

12. TAXES

Certain Purchasers may be exempt from excise taxes imposed by the Internal Revenue Service, Pennsylvania state sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental taxes. A Purchaser may be registered with the Internal Revenue Service to make tax-free purchases. DGS will require each Purchaser claiming any tax exemption to complete the appropriate areas on the PO form to notify the Contractor of the applicable tax exemptions. The Pennsylvania Department of Revenue's regulations provide that exemption certificates are not required for sales made to governmental entities and no such certificates are issued.

13. WARRANTY

The Contractor warrants that all Contract item(s) it may furnish, either itself or through its agents and subcontractors, shall be free and clear of any defects in workmanship or materials.

a. The Contractor shall pass through to the Purchaser the manufacturer's warranty for all Contract Items. The Contractor shall correct any problem with the Contract Item(s) and/or replace any defective part with a part of equivalent or superior quality, without additional cost to the Purchaser.

b. The Contractor warrants that all items to be provided under the Contract meet the requirements of Section 4 of the Instructions to Bidders ("Contract Deliverables").

c. The warranty period for a Contract Item shall commence upon delivery of the Contract Item to the Purchaser at the Purchaser's specified address.

14. DELIVERY

The Contractor shall deliver all item(s) F.O.B. Destination to the address specified on the PO.

a. The Contractor shall deliver all items ordered from this Contract within time period specified in the Contract, and, if no time period is specified, within a reasonable time, not to exceed 30 calendar days after receipt of any order, unless the Contractor and the Purchaser shall otherwise agree in writing. Time is of the essence in the performance of this Contract and, in addition to any other remedies, the Purchaser may terminate any PO for failure to make delivery as specified in this Contract and the PO.

b. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to the Purchaser's receipt of the items. The Contractor also agrees that such loss, injury, or destruction shall not release the Contractor from any of its contractual obligations to the Purchaser or DGS.

15. SALES REPORTS

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

a. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

b. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the product category, sales date, and dollar volume of sales to the specific Purchaser for the reporting period.

c. Failure to provide the quarterly sales report in the specified time and format constitutes a default under Section 22 of these Standard Terms and Conditions and may result in termination of the contract.

16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any item(s) or process 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 or used in the performance of this Contract or any PO issued under this Contract. The Contractor shall defend any suit or proceeding brought against DGS or any Purchaser on account of any alleged patent, copyright, or trademark infringement in the United States of the item(s) provided or used in the performance of this Contract or any PO, upon condition that DGS or the Purchaser shall provide prompt notification to the Contractor in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense; and all reasonable information and cooperation required for the defense. As principles of governmental or public law may be involved, DGS or any Purchaser may participate in or choose to conduct, in its sole discretion, the defense of any such action. If DGS or any Purchaser furnishes information and assistance at the Contractor's written request, it shall be furnished 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 DGS and any Purchaser harmless from all damages, costs, and expenses, including attorney's fees that the Contractor, DGS, or the Purchaser 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 item(s) provided or used in the performance of the Contract or any PO. If any of the item(s) provided by the Contractor are held in such suit or proceeding 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 item(s), replace them with noninfringing equal performance item(s), 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 is obtained contemporaneously with the infringing item(s), or, at the option of the Purchaser, only those items of equipment or software which are held to be infringing, and to pay the Purchaser 1) any amounts the Purchaser paid towards the item(s) of the product, less straight line depreciation; 2) any license fee the Purchaser paid for the use of any software, less a reasonable 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 the Purchaser paid to the Contractor. The Contractor's obligations under this Section continue without time limit. No costs or expenses shall be incurred for the Contractor's account without its written consent.

17. OWNERSHIP RIGHTS

Each Purchaser issuing a PO under this Contract 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 Purchaser as part of the performance of the PO.

18. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and DGS 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 Purchaser under each Contract PO. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to each Purchaser issuing a Contract PO 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 supplies and services which are the subject of the Contract PO.

19. HOLD HARMLESS PROVISION

The Contractor shall hold the Commonwealth and each Purchaser harmless from, and indemnify them against, any and all claims, demands, and actions based upon or arising out of any activities the Contractor and its employees and agents may perform under this Contract and any PO. At the request of DGS or any Purchaser, the Contractor shall defend any and all actions brought against DGS or any Purchaser based upon any such claims or demands. The Contractor shall hold the Commonwealth and DGS harmless from any liability whatsoever arising out of the specifics of a Purchaser-issued PO under this Contract.

20. AUDIT PROVISIONS

DGS and its designees, including without limitation any Purchaser issuing a PO under this Contract, shall have the right, at reasonable times and at a site DGS may designate, to audit the Contractor's books,

documents, and records to the extent that such books, documents, and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records that will support its 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 DGS, Purchasers who have issued Contract POs, and/or their authorized representatives.

21. INSPECTION AND REJECTION

No item(s) received by any Purchaser issuing a Contract PO shall be deemed accepted until the Purchaser has had a reasonable opportunity to inspect the item(s). The Purchaser may reject any item(s) discovered to be defective or failing to conform to the Contract specifications 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. The Contractor shall have the duty to remove rejected item(s) from the Purchaser's premises without expense to the Purchaser within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Purchaser shall have the right to dispose of the item(s) as its own property and shall retain that portion of the proceeds of any sale that represents the Purchaser's costs and expenses for the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with other non-defective items conforming to the specifications. If the Contractor fails, neglects, or refuses to do so, the Purchaser shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies then or later due to the Contractor, the difference between the price stated in the Contract and the actual cost of the item(s) to the Purchaser.

22. DEFAULT

a. DGS or any Purchaser may, subject to the provisions of Section 23 of this Contract ("Force Majeure"), and in addition to its other rights under this Contract, declare the Contractor in default under the Contract as to DGS, or under any PO issued under the Contract as to the issuing Purchaser, by written notice to the Contractor. DGS may terminate (as provided in Section 24 of this Contract, "Termination Provisions") the whole or any part of this Contract, or in the case of any Purchaser, terminate a PO issued under this Contract, for any of the following reasons:

1. Failure to deliver the awarded item(s) within the time specified in the Contract or PO or as otherwise specified;
2. Improper delivery;
3. Failure to provide an item or items conforming with the specifications referenced in the Invitation For Bids;
4. Delivery of a defective item;
5. Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
6. Insolvency or bankruptcy;
7. Assignment made for the benefit of creditors;
8. Failure to protect, to repair, or to make good any damage or injury to property; or
9. Breach of any provision of this Contract or any PO.

b. In the event that any Purchaser terminates a PO as provided in Subsection a. of this Section 22, any Purchaser may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those in any PO so terminated, and the Contractor shall be liable to Purchaser for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.

c. If the Contract is terminated in whole or in part as provided in Subsection a. above, a Purchaser, in addition to any other rights provided in this Section 22, may require the Contractor to transfer title and deliver immediately to the Purchaser in the manner and to the extent directed by the Purchaser, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the PO as has been terminated. Except as provided below, payment for any partially manufactured or delivered item(s) accepted by the Purchaser shall be in an amount agreed upon by the Contractor and the

Purchaser. The Purchaser may withhold from amounts otherwise due the Contractor for such partially manufactured or delivered item(s), such sum as the Purchaser determines to be necessary to protect the Purchaser against loss.

d. The rights and remedies of DGS and the Purchaser provided in this Section 22 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. Failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by DGS or the Purchaser of any rights and remedies in regard to the event of default or any succeeding event of default.

f. In the event a Purchaser terminates a PO under this Contract, the Contractor's exclusive remedy shall be against the Purchaser and not against DGS. The Contractor shall seek remedies against any Purchaser under a PO under the laws of the Commonwealth of Pennsylvania as they relate to contract disputes against non-Commonwealth parties, unless the Purchaser is subject to the jurisdiction of the Board of Claims, in which event the Contractor's exclusive remedy shall be to seek damages against the Purchaser before the Board as provided in Title 63 Pa.C.S. Part II, Subchapter C.

23. FORCE MAJEURE

No Purchaser will incur any liability to the Contractor, and the Contractor shall not incur any liability to any Purchaser, if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without its fault or negligence. Causes beyond the control of the Contractor or Purchaser may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Purchaser and the DGS Commodity Specialist 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 Purchaser and the DGS Commodity Specialist may reasonably request. After receipt of such notification, the Purchaser and the DGS Commodity Specialist may individually elect either to cancel the Contract or PO, as applicable, 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 Purchaser and DGS, by notice to the Contractor, may suspend all or a portion of the Contract or PO, as applicable.

24. TERMINATION PROVISIONS

DGS has the right to terminate this Contract, and any Purchaser shall have the right to terminate a PO issued under this Contract, upon written notice to the Contractor, for any of the following reasons:

a. DGS shall have the right to terminate this Contract, and any Purchaser shall have the right to terminate any PO issued under this Contract, for its convenience if DGS or the Purchaser, as applicable, determines termination to be in its best interest. The Contractor is entitled to complete any PO initiated prior to the effective date of the termination for which the Purchaser receives delivery of a satisfactory product, but in no event shall the Contractor fill any POs received after the termination date of this Contract.

b. DGS shall have the right to terminate this Contract, and any Purchaser shall be entitled to terminate any PO issued under this Contract, for Contractor default as defined in Section 22 of this Contract, or for any other cause specified in this Contract or by law upon written notice to the Contractor. If it is later determined that DGS or the Purchaser erred in terminating the Contract or PO for cause, then, at the discretion of DGS or the Purchaser, as applicable, the Contract shall be deemed to have been terminated for convenience under Subsection a. of this Section 24.

25. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Section 26, the Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person without the Purchaser's prior written consent, which consent may be withheld at the Purchaser's sole and absolute discretion.

c. The Contractor may not assign, in whole or in part, this Contract or any rights, duties, obligations, or responsibilities under this Contract without DGS's prior written consent, which consent may be withheld at DGS's sole and absolute discretion.

d. Notwithstanding anything else in this Contract, the Contractor may, without DGS's consent, assign its rights to payment under this Contract or any PO issued under this Contract, provided that the Contractor provides written notice of such assignment to the DGS Commodity Specialist and the Purchaser together with a written acknowledgement from the assignee to DGS 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. DGS's consent to any assignment, other than an assignment of payment as specified in subsection d. of this Section 25, 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 Contract terms and conditions and to assume the Contract duties, obligations, and responsibilities being assigned.

g. Any Contractor change of name that does not change the Contractor's federal identification number shall not be considered an assignment of this Contract. The Contractor shall give the DGS Commodity Specialist and the Purchaser written notice of any such change of name.

26. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

c. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

d. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

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

Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

f. 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.

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

h. 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.

27. CONTRACTOR INTEGRITY PROVISIONS

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

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

- a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
- d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. **"Financial Interest"** means either:
 - (1) Ownership of more than a five percent interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
- g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

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

applicable to Contractor or that govern contracting or procurement with the Commonwealth.

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - (3) had any business license or professional license suspended or revoked;
 - (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

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

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

28. CONTRACTOR RESPONSIBILITY PROVISIONS

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

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at www.dgs.pa.gov 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

29. AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that 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. § 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 subsection a above.

30. HAZARDOUS SUBSTANCES

The Contractor shall provide information to DGS and any Purchaser under this Contract about the identity and hazards of hazardous substances the Contractor may supply or use in the performance of this Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated at 4 Pa. Code Section 301.1 *et seq.*

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

1. Hazardous substances:

- A. The chemical name or common name,
 - B. A hazard warning, and
 - C. The manufacturer's name, address, and telephone number.
2. Hazardous mixtures:
- A. The common name or, if no common name exists, the trade name;
 - B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
 - C. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
 - D. A hazard warning; and
 - E. The manufacturer's name, address, and telephone number.
3. Single chemicals:
- A. The chemical or common name;
 - B. A hazard warning, if appropriate; and
 - C. The manufacturer's name, address, and telephone number.
4. Chemical Mixtures:
- A. The common name or, if no common name exists, the trade name;
 - B. A hazard warning, if appropriate;
 - C. The manufacturer's name, address, and telephone number; and
 - D. The chemical or common name of either the top five substances by volume or those substances comprises 5.0% or more of the mixture.

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

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

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

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

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

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

31. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract on any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies the Contractor may maintain for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate this Contract without liability.

32. APPLICABLE LAW

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

33. INTEGRATION

This Contract form, along with the COSTARS Contract Special Terms and Conditions, Invitation For Bids form, and all documents referenced on the forms, as the applicable provisions of the POs issued by the Purchasers, constitute the entire agreement between the parties. No agent, representative, employee, or officer of DGS or the Contractor has authority to make, or has made, any oral or written statement, agreement, or representation which may in any way be deemed to modify, add to, detract from, or otherwise change or alter the terms and conditions of, this Contract. No negotiations between the parties, nor any custom or usage, shall modify or contradict any of the terms and conditions of this Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms, other than in a PO authorized by any individual Purchaser, shall be valid or binding unless accomplished by a written amendment signed by both parties or by a DGS- signed change order on the appropriate Commonwealth form.

34. CHANGES

DGS reserves the right to make changes at any time during the term of this Contract, including any renewals, to:

- a. add or delete materials or services within the scope of the Contract;
- b. procure additional Contractors for the materials and services;
- c. notify the Contractor that the Commonwealth is exercising Contract termination; or
- d. automatically incorporate by reference into this contract any changes to the Commonwealth's Management Directives governing the required standard contract provisions set forth in Sections 26 through 29 of this Contract that may occur at any time during the term of this Contract, provided that the Commonwealth has notified the Contractor of such change.

DGS shall make changes permitted under this Section 34 by notifying the Contractor in writing. The change shall be effective as of the date of the notification of change, unless the change specifies a later effective date. The Contractor agrees to provide Contract supplies or services to all subsequent Purchasers in accordance with the change. If the Contractor does not wish to abide by the changed terms, it may opt out of the contract on written notice to the Commonwealth, such option to be effective at the end of the then-current Contract quarter.

35. COSTARS BRAND

DGS has registered the COSTARS name and logo (together, the "COSTARS Brand") as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under this Subsection.

- a. The Contractor shall pay the appropriate Contract fee as more fully described in Section 9 of the Instructions to Bidders for COSTARS Contracts covering its participation in the program, including without limitation any use of the COSTARS Brand, for each Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract year. Failure to pay the fee shall result in termination of the Contract at the end of the then-current Contract period.
- b. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

1. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.
2. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
3. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
4. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
5. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
6. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

36. RIGHT-TO-KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the

Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

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