



Commonwealth of Pennsylvania

Date: 7/28/2009

Subject: Water & Waste Water Treatment Plants - Components/Equipment

Solicitation/Bid Number: COSTARS-16 REBID

Flyer Number: 1

To All Suppliers:

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

The Special Terms & Conditions have been revised by inclusion of the following:

a. Any items defined as "steel products" in the Steel Products Procurement Act, Act of March 3, 1978, P.L. 6, No. 3, 73 P.S. §§ 1881-1887 ("SPPA"), that the Contractor may provide under this Contract for use in the construction, reconstruction, alteration, repair, improvement or maintenance of public works ("Public Works Project") shall be made from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

i. If a steel product contains both foreign and United States steel, such product shall be determined to be a United States steel product, only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States.

ii. The SPPA provides that, when a Contractor supplies unidentified steel products for a public agency Purchaser's use as part of any Public Works Project, the Contractor must provide documentation including, but not limited to, invoices, bills of lading, and mill certification that the steel was melted and manufactured in the United States, before a public agency may authorize, provide for, or make payment. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the Purchaser public agency that the contractor has fully complied with this provision.

iii. If a Purchaser determines that it has, under a Contract PO, made any payments to the Contractor which should not have been made due to the SPPA's requirements, the Purchaser may recover such payments directly from the Contractor, and the Contractor shall not deny repayment unless it can demonstrate that it has complied with the SPPA's requirements.

iv. The SPPA also provides that any person who willfully violates any of its provisions shall be prohibited from submitting any bids to any public agency for five years after the date of the determination that a violation has occurred. If any subcontractor, manufacturer, or supplier violates the SPPA's provisions, the violator shall be prohibited from performing any work or supplying any materials to a public agency for five years after the date of the determination that a violation has occurred.

v. The Contractor shall include these provisions regarding the SPPA's requirements in every subcontract under which steel products are supplied, so that the provisions shall be binding upon each subcontractor.

b. If the Contractor offers installation as an option for this Contract, and the Purchaser is a governmental entity, the Contractor shall comply with the requirements of the Pennsylvania Prevailing Wage Act, 43 P.S. Sections 165-1 et seq. applicable to the installation. The Secretary of Labor and Industry will determine any applicable wage rates by each craft or work classification needed to perform the Contract installation for a government unit.

c. If the COSTARS member requests installation when procuring a material from this contract, that member may have additional statutory requirements that apply to the installation, such as bonding requirements. At the time a quote is requested, the COSTARS member should inform the vendors of any applicable statutory requirements. Failure by the COSTARS member to do so, however, does not remove the statutory requirement. COSTARS members may not use this contract to obtain construction services nor may they use this contract to avoid statutory requirements. It is the responsibility of the COSTARS member to determine what statutory requirements or limitations apply and whether or not the COSTARS contract is appropriate for the procurement.

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 flyer 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 flyer prior to the bid opening date.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this flyer 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-16). **If you are merely acknowledging this flyer with NO CHANGES** to the bid pricing, you may fax a signed copy of this flyer to DGS at 717-783-6241.

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

Very truly yours,

Name: Rich Woodworth
Title: Commodity Specialist
Phone: 717-787-4103
Email: rwoodworth@state.pa.us

Acknowledged by _____

for _____

(Name of bidding firm)



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG

**COSTARS INVITATION FOR BIDS
SUMMARY SHEET**

Contract No.: COSTARS-16 REBID
Title or Description: Waste and Waste Water Plant – Components and Equipment
Solicitation Start Date: 30 June 2009
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: 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 Waste and Waste Water Plant – Components and Equipment 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 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 DGS COSTARS web-pages at <http://www.dgsweb.state.pa.us/COSTARSReg/Member.aspx>.

This IFB is designed to provide purchase options and competitive pricing to COSTARS members throughout the Commonwealth who may wish to purchase Waste and Waste Water Plant – Components and Equipment 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 Section 6 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 contracts.

The following documents comprise this Invitation For Bids:

1. COSTARS Bid/Contract (GSPUR-15COSTARS REV 7/1/2008)
2. Instructions To Bidders for COSTARS Contracts (COSTARS ITB REV 7/01/2008)
3. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 7/1/2008)
4. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 7/01/2008)
5. Bid Item Workbook and Checklist

These documents are available on the DGS COSTARS web-pages at www.dgs.state.pa.us/costars.

In addition to complying with the bid submission requirements of Section 1 of the *Instructions to Bidders for COSTARS Contracts*, each bidder must submit one hard (printed) copy of its bid in its bid package as stated in this IFB. In addition, the bidder is encouraged to include in its bid package an electronic submission of all offered items and pricing.

Please note that all bidders must submit with their bid a check or money order in the amount of \$500 payable to "Commonwealth of Pennsylvania" for contract-related administrative fees (see Section 9, Administrative Fees, of the *Instructions to Bidders*, page 5, for further guidance). Any bidder whose bid is rejected will receive a refund of this fee from the Commonwealth.

The bidder shall ensure that its business information is accurate. If using a fictitious name, or if the bidder is a foreign (non-Pennsylvania) corporation, please ensure that the business is registered with the Pennsylvania Department of State when submitting a bid, as required by law (refer to document entitled, "*Doing Business in Pennsylvania*", for further guidance). The Department of State website at <http://www.dos.state.pa.us/corps/site/default.asp> has more detailed information on filing requirements for businesses.

DGS will accept written questions and comments concerning this procurement via email to: rwoodworth@state.pa.us .

Sincerely,

Richard Woodworth (YT2)
Commodity Specialist
Bureau of Procurement

COSTARS BID/CONTRACT

ISSUING AGENCY	CONTRACTOR NAME AND ADDRESS	SHOW THIS CONTRACT NUMBER ON BID ENVELOPE
Commonwealth of Pennsylvania Department of General Services COSTARS Program 555 Walnut Street, 6 th Floor Harrisburg, PA 17101-1914 COMMODITY SPECIALIST: Richard Woodworth PHONE NO.: 717-787-4103 FAX NO.: (717) 783-6241 CONTRACTING OFFICER: Jeff Mandel Chief Procurement Officer Bureau of Procurement PA Department of General Services 555 Walnut Street, 6 th Floor Harrisburg, PA 17101-1914	CONTACT PERSON: PHONE NO.: FAX NO.:	CONTRACT NO. COSTARS-16 REBID
	BIDDER/CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.	BID OPENING DATE: Bids will be accepted on any given Commonwealth business day.
	BIDDER/CONTRACTOR'S E-MAIL	BID OPENING TIME: 1:30 PM Eastern
	BIDDER/CONTRACTOR'S WEB ADDRESS	EFFECTIVE DATE:
		EXPIRATION DATE:

ITEM NO.	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL LINE ITEM PRICE
N/A	Waste and Waste Water Plant – Components and Equipment Refer to attached <i>Special Terms and Conditions</i> <div style="text-align: center; color: blue; font-weight: bold; text-decoration: underline;"> Click here to download and complete Bid Item Workbook </div>	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 7/01/2008) 2. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 7/1/2008) 3. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 7/01/2008) 4. Bid Item Workbook and Checklist	Form of payment of Administrative Fee provided with this bid (Amount: \$500, payable to "Commonwealth of PA"): <input type="checkbox"/> Certified Check or Bank Cashier's Check <input type="checkbox"/> Money Order
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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. <div style="text-align: center;"> COMMONWEALTH SIGNATURE </div>	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. <div style="text-align: center;"> BIDDER/CONTRACTOR'S SIGNATURE (IN INK) </div>
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PURCHASING AGENCY HEAD OR DESIGNEE _____ DATE _____	PRESIDENT/VICE PRESIDENT/MANAGER OF LLC/PARTNER/OWNER* _____ DATE _____ (SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)
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<div style="text-align: center;"> APPROVED </div> TREASURER _____ DATE _____	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-15-2; 8-K-1512; 8-K-1540		Pre approval numbers: 8-K-15-2; 8-K-1512; 8-K-1540	

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

Attachment B

Doing Business in Pennsylvania

Any person or entity doing business under a fictitious name in Pennsylvania must register that name with the Pennsylvania Department of State (for more specific information on this requirement, see <http://www.dos.state.pa.us/corps/cwp/view.asp?a=1093&q=431168>), 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. **If your firm is not incorporated or registered in Pennsylvania, you must take action to register prior to being approved for a COSTARS 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 do 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 is available online from the Pennsylvania Department of State. The following links will assist you in your filing:

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

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

**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 Waste and Waste Water Treatment Plants – Components and Equipment 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 the purposes of this contract, “Waste and Waste Water Treatment Plants – Components and Equipment” are defined as follows:

<ul style="list-style-type: none"> • Backflow Prevention Items (Assemblies, Devices, Distributors, Enclosures, Software)
<ul style="list-style-type: none"> • Blowers (DOES NOT INCLUDE LEAF BLOWER UNITS)
<ul style="list-style-type: none"> • Chemical Feed Components and Systems
<ul style="list-style-type: none"> • Construction and Maintenance Components and Equipment (DOES NOT INCLUDE POWER EQUIPMENT ITEMS SUCH AS BACKHOE LOADERS, WHEEL LOADERS, SKID LOADER, ETC)
<ul style="list-style-type: none"> • Corrosion Control / Cathodic Protection Equipment and Materials
<ul style="list-style-type: none"> • Desalination Equipment
<ul style="list-style-type: none"> • Disinfection Equipment and Systems
<ul style="list-style-type: none"> • Distribution System Equipment
<ul style="list-style-type: none"> • Drain Line, Valving and Components
<ul style="list-style-type: none"> • Filtration Components
<ul style="list-style-type: none"> • Hoppers / Waste Holding Tanks (DOES NOT INCLUDE RECYCLING TUBS / BINS/ ETC)
<ul style="list-style-type: none"> • Hydrant Accessories and Parts
<ul style="list-style-type: none"> • Leak Detection Equipment
<ul style="list-style-type: none"> • Line Inspection and Maintenance Equipment
<ul style="list-style-type: none"> • Meters
<ul style="list-style-type: none"> • Motorized Components (such as hydraulic pumps) (DOES NOT INCLUDE TRUCK/PRIME-MOVER UNIT)
<ul style="list-style-type: none"> • Ozone Generation Equipment
<ul style="list-style-type: none"> • Pipe
<ul style="list-style-type: none"> • Pipeline Drilling and Tapping Equipment
<ul style="list-style-type: none"> • Pumps
<ul style="list-style-type: none"> • Safety Equipment (DOES NOT INCLUDE PERSONAL SAFETY PRODUCTS SUCH AS CLOTHING ITEMS OR ITEMS NOT ASSOCIATED WITH WASTE & WASTE WATER TREATMENT PLANTS)
<ul style="list-style-type: none"> • Sand / Coal Media / Support Gravel
<ul style="list-style-type: none"> • Scrapers
<ul style="list-style-type: none"> • Screens
<ul style="list-style-type: none"> • Sludge Presses

• Tanks
• Valves
• Well Systems and Equipment

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. The Contract effective date will be no earlier than October 1, 2009. 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. Service Area. The bidder may offer to supply and deliver Waste and Waste Water Treatment Plants – Components and Equipment:

- 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

6. Pricing. The bidder shall complete the Bid Item Workbook, stating percent discount(s) to be deducted from the identified catalog or manufacturer/distributor's most recently published price list; stating "mark-up" as a percentage above the manufacturer/distributor's specified cost; or providing a customized price list of items that the bidder is offering, stating the net price and, if applicable, minimum order requirements for each item. The Bid Item Workbook does not contain a specific list of items. The bidder is free to offer any type or number of items, from any number of manufacturers, in its bid, so long as the items are within the scope of the Contract. Bidders may bid product lines from any number of manufacturers who have authorized the bidders to sell their products. 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's rejection of the bid.

a. The bidder must identify the catalog, manufacturer/distributor's price list, manufacturer/distributor's specified cost sheet, or customized list on the Bid Item Sheet of the Bid Item Workbook, specifying the catalog, list, or cost sheet name, identification number, if applicable, and effective date. DGS may reject any bid omitting this information from the Bid Item Sheet. The bidder must submit a complete catalog, manufacturer/distributor's price list, or manufacturer/distributor's cost sheet within two working days of any DGS request. If the bidder is offering a customized list of items, the bidder shall attach and submit the customized list including net prices with its Bid Item Workbook.

b. The bidder may offer any type of discount, mark-up, or other pricing structure, such as multiple discounts for different lines of products, or different price lists, or different classes of Purchasers, or different prices for different quantities of products.

i. The bidder shall submit a separate Bid Item Sheet for each type of discount, mark-up, customized discounted list, or pricing structure offered.

ii. The bidder should offer its pricing based upon either quantity or the same "best" price regardless of order quantity in a format similar to that used in any of the templates

on the Bid Item Sheets of the Bid Item Workbook included with the Invitation For Bids.

iii. The bidder may offer different discounts, mark-ups, customized lists, or prices for different classes of Purchasers. For example, if the bidder offers an educational Purchaser discount, mark-up, or pricing at a different level from other eligible Purchasers, the bidder shall submit separate Bid Item Sheets for each class of Purchaser.

iv. After Contract award, a Contractor may offer, either on its own initiative or at a Purchaser's request, additional discounts, reduced mark-ups, customized lists, or discounted prices for any purchase within the scope of the Contract, even if such discounts, mark-ups, or discounted prices were not included in the bid prices.

c. Except in the event of increased discounts or reduced mark-ups as permitted under Paragraph 6.b.iv., the bidder's percent discount(s) or mark-ups from the bid documents shall remain firm for the entire contract period, including any renewal periods. A Contractor may update its Contract pricing information (actual prices versus percent discounts or mark-ups) upon Contract award. Thereafter, the Contractor may update its pricing no more frequently than **monthly** to adjust its pricing in accordance with any increases or decreases in its manufacturer's or distributor's public price list or manufacturers' or distributors' specified cost sheet, or both. The Contractor shall submit a written request accompanied by an updated Bid Item Workbook to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the update(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 update is automatic within five business days upon DGS' receipt unless notified otherwise in writing by DGS. In no event shall the Contractor increase prices for a particular purchase order following receipt of the order from the Purchaser, nor shall the Contractor be permitted to increase prices retroactively, for any reason.

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, or due to unusual market conditions, the Contractor's cost of supplying Waste and Waste Water Treatment Plants – Components and Equipment increases significantly during the term of this Contract, 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. 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.

7. Leases and Installment Purchases. A Contractor may, at its option, offer the Contract Items through a lease or installment purchase. If offered by the Contractor, any Contract items procured through a lease or installment purchase may be offered in accordance with the Leasing Terms and Conditions (Attachment A) or Installment Purchase Terms and Conditions (Attachment A1).

a. The Contractor may, at its option, use its standard leasing or installment purchase terms and conditions in lieu of using the terms in Attachments A and A1, provided that, in the event of any conflicts with these Special Terms and Conditions and the Standard Terms and Conditions for COSTARS Contracts, the order of precedence will be, first, these Special Terms and Conditions; then, to the extent not inconsistent, the Standard Terms and Conditions, and finally, to the extent not inconsistent with either of the aforementioned DGS Special and Standard Terms and Conditions, the Contractor's standard lease or installment payment terms and conditions.

b. If a bidder chooses to offer the Contract items through a lease or installment purchase, a bidder may, at its option, either:

- i. submit installment purchase and/or leasing price schedule(s), which the Contractor may update **monthly** as with its other price terms, with its bid response; or
- ii. state within its bid response that it chooses to offer Purchasers the option of a lease or installment purchase for the Contract items, and that it will provide its standard terms for lease or installment purchase pricing based upon the purchase price of the item as adjusted for payments over time.

The Contractor shall, with its acceptance of the Purchaser's order, provide any Purchaser wishing to accept the offer of a lease or installment purchase for the Contract items with the Contractor's standard installment purchase and/or leasing price schedule(s).

8. Warranties. 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.

9. Ancillary Services. A Contractor may choose to offer ancillary services in conjunction with the products it provides to the Purchaser.

a. Sample ancillary services include, but are not limited to, the following:

- Customization – any modification to a Contract item to meet Purchaser-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.
- Installation
- Training
- Extended Warranty
- Post Warranty Support and Maintenance Service

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 Purchaser, the Contractor and Purchaser 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, DGS reserves the right to restrict the types of services to be offered on any contract resulting from this IFB.

10. Steel Products and Prevailing Wage Requirements.

a. Any items defined as "steel products" in the Steel Products Procurement Act, Act of March 3, 1978, P.L. 6, No. 3, 73 P.S. §§ 1881-1887 ("SPPA"), that the Contractor may provide under this Contract for use in the construction, reconstruction, alteration, repair, improvement or maintenance of public works ("Public Works Project") shall be made from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

i. If a steel product contains both foreign and United States steel, such product shall be determined to be a United States steel product, only if at least 75% of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States.

ii. The SPPA provides that, when a Contractor supplies unidentified steel products for a public agency Purchaser's use as part of any Public Works Project, the Contractor must provide documentation including, but not limited to, invoices, bills of lading, and mill certification that the steel was melted and manufactured in the United States, before a public agency may authorize, provide for, or make payment. If a steel product is identifiable from its face, the contractor must submit certification which satisfies the Purchaser public agency that the contractor has fully complied with this provision.

iii. If a Purchaser determines that it has, under a Contract PO, made any payments to the Contractor which should not have been made due to the SPPA's requirements, the Purchaser may recover such payments directly from the Contractor, and the Contractor shall not deny repayment unless it can demonstrate that it has complied with the SPPA's requirements.

iv. The SPPA also provides that any person who willfully violates any of its provisions shall be prohibited from submitting any bids to any public agency for five years after the date of the determination that a violation has occurred. If any subcontractor, manufacturer, or supplier violates the SPPA's provisions, the violator shall be prohibited from performing any work or supplying any materials to a public agency for five years after the date of the determination that a violation has occurred.

v. The Contractor shall include these provisions regarding the SPPA's requirements in every subcontract under which steel products are supplied, so that the provisions shall be binding upon each subcontractor.

b. If the Contractor offers installation as an option for this Contract, and the Purchaser is a governmental entity, the Contractor shall comply with the requirements of the Pennsylvania Prevailing Wage Act, 43 P.S. Sections 165-1 et seq. applicable to the installation. The Secretary of Labor and Industry will determine any applicable wage rates by each craft or work classification needed to perform the Contract installation for a government unit.

c. If the COSTARS member requests installation when procuring a material from this contract, that member may have additional statutory requirements that apply to the installation, such as bonding requirements. At the time a quote is requested, the COSTARS member should inform the vendors of any applicable statutory requirements. Failure by the COSTARS member to do so, however, does not remove the statutory requirement. COSTARS members may not use this contract to obtain construction services

nor may they use this contract to avoid statutory requirements. It is the responsibility of the COSTARS member to determine what statutory requirements or limitations apply and whether or not the COSTARS contract is appropriate for the procurement.

LEASING TERMS AND CONDITIONS

I. General.

- A. Lease options. To the extent that the Contractor offers Purchasers the option to lease any items covered by the Contract, the lease shall, in addition to the other terms and conditions of the Contract, be governed by these Leasing Terms And Conditions. The Contractor may offer both standard leases and lease/purchases. These transactions shall be referred to as "Leases" in these Leasing Terms and Conditions. If a Purchaser desires a Lease, the Purchaser shall indicate its election to lease Contract items on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Purchaser explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Items" in these Leasing Terms and Conditions.
- B. Assignments. The Contractor may assign, without DGS or Purchaser consent, any Lease to a third party ("Initial Assignee") who will fund the purchase of the Leased Items. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Items. The Contractor shall notify the Purchaser of any Lease assignment in its acknowledgment of the Lease PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- C. Leased Items. Notwithstanding any provisions to the contrary in the COSTARS Contract, in the event of a Lease assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Purchaser waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Leased Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached as Exhibit One to these Leasing Terms and Conditions, if any portion of the Leased Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make rental payments under the applicable Lease and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- D. Acceptance. After a Purchaser executes and the Initial Assignee receives an acceptance certificate in the form attached as Exhibit 1 to these Terms and Conditions ("Acceptance Certificate"):
1. The Purchaser shall, regardless of whether any portion of the Leased Items is unsatisfactory for any reason, nevertheless, continue to make rental payments under the Lease and shall make any claim relating to the Leased Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
 2. The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

II. Lease Terms.

The Contractor may provide any Leased Items under the Contract for any term up to 60 months, including a Fair Market Value Option for Lease/Purchases. The Purchaser shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the PO.

III. Term.

The Lease term shall commence on the date the Purchaser accepts the equipment and/or Leased Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO.

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IV. Payments.

- A. Full term intention. The Purchaser shall pay the applicable monthly or annual rent payment for the Leased Items for the full Lease term unless the Purchaser terminates the Lease, either for Contractor Default under Section V.J.2. of these Leasing Terms and Conditions or for nonappropriation of funds as specified in Subsection B. of this Section IV.
- B. Nonappropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Purchaser issued the Lease PO, the Purchaser may return the Leased Items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Lease, provided:
1. the Purchaser delivers unencumbered title to the Leased Items to the contractor or Initial Assignee (if applicable);
 2. the Purchaser returns the Leased Items to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 3. the Purchaser gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Items are not being replaced by similar items from another vendor. In the event the Purchaser returns the Leased Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

V. Leasing Terms and Conditions.

- A. Title. Title to the Leased Items shall not pass to the Purchaser but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass upon payment of the final installment or other concluding payment option, after which neither the Contractor nor any assignee shall have any further interest in the Leased Item. The Purchaser acknowledges that the Leased Items remain personal property during the Lease term and that the Leased Items shall not become a fixture or affixed to real property during that term. The Purchaser shall keep the Leased Items free and clear of all encumbrances during the Lease term, excluding any Contractor or assignee security interest.
1. At the Contractor's or Initial Assignee's request, as applicable, the Purchaser will join the Contractor/Initial Assignee in executing one or more financing statements pursuant to the Uniform Commercial Code or other registration law applicable to the location of any Leased Items.
 2. If the Contractor/Initial Assignee deems filing to be necessary or desirable, the Contractor/Initial Assignee will pay the cost of filing the financing statement(s) in public offices.
- B. Risk of Loss. The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Items and all component parts while the Leased Items or parts are in the Purchaser's possession, unless the Purchaser could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Items or parts. No loss or damage to the Leased Items or parts shall impair any Contractor or Purchaser obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Purchaser's exercise of reasonable care or diligence, and the Contractor determines the Leased Items or parts can be economically repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Items or their parts. In the event that the any of the Leased Items or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Items shall be considered a total loss and the Lease shall terminate as to those Leased Items, and the Purchaser's obligation to pay rent for the affected Leased Items shall be deemed to have ceased as of the date of the loss.

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- C. Assignment. The Purchaser shall not assign any Lease, or other interest in the Leased Items, nor shall the Purchaser sublease the Leased Items, without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Lease PO and Leased items to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease or Leased Items to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the Purchaser, the Contractor may assign rental payments under any Lease or Lease/Purchase to a third party.
- D. Purchase Option. If the Purchaser is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Items "as is with no additional warranty" by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Items as established in the COSTARS Contract. Upon the Purchaser's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Items shall pass to the Purchaser.
- E. Extension. If the Purchaser does not elect to purchase the Leased Items at the expiration of a Lease term, and the Purchaser is not in default under the Lease, the Purchaser may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The extension will be made under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.
- F. Return of Equipment. At the expiration or termination of a Lease for any Leased Items, or upon Contractor/Initial Assignee demand pursuant to Section V.J. of these Leasing Terms and Conditions, the Purchaser shall promptly return the Leased Items, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Purchaser shall pay the required rent for the Leased Items until they have been shipped to the Contractor.
1. Since DGS has, as a matter of policy, determined that all hard drives contain information that is confidential or sensitive, the Contractor shall, at its discretion, either remove and destroy any hard drive from the Leased Items or clean the hard drive to Office of Administration/U.S. Department of Defense standards, and the Contractor shall provide written certification to the Purchaser that the hard drive has been destroyed or cleaned to Office of Administration/U.S. Department of Defense standards.
 2. Except in the event of a total loss of any or all Leased Items as described in Subsection V.B. of these Leasing Terms and Conditions, and except for any costs associated with the removal, destruction, and cleaning of any hard drives, the Purchaser shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Items to good operating condition in accordance with the COSTARS Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.
 3. The Contractor's/Initial Assignee's costs associated with the cleaning of any hard drive to Office of Administration/U.S. Department of Defense standards and the removal and destruction of any hard drive(s) shall be included in the rental amount. The Purchaser shall not be required to pay additional charges for the Contractor's/Initial Assignee's cleaning of a hard drive to Office of Administration/U.S. Department of Defense standards nor for the Contractor's/Initial Assignee's removal and destruction of any hard drive(s) upon the return of a Leased item.
- G. Warranties.
1. The Contractor/Initial Assignee, as applicable, grants to the Purchaser the benefit of any and all manufacturer or supplier warranties for the Leased Items during the Lease term.

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2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser's quiet enjoyment of the Leased Items so long as no event of default as defined in Subsection V.J. of these Leasing Terms and Conditions shall have occurred and be continuing.

H. Liability.

1. The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Leased Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser 's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.
2. The Purchaser shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Subsection 1. of this Section H., including but not limited to risks of public liability and property damage.

I. Financing and Prepayment.

1. If the Contractor is not the supplier of the Leased Items, the Contractor will pay the charges for the Leased Items directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments to an Initial Assignee, the Purchaser's obligation to make rental payments for the Leased Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Leased Item.
2. The Purchaser may terminate the financing for any Leased Item by prepaying its remaining rental payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
3. If the Purchaser purchases any items related to a Leased Item prior to the expiration of the Lease terms, or if the Lease is terminated for any reason except nonappropriation as described in Subsection IV.B. of these Leasing Terms and Conditions, and if the Leased Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Leased Item.

J. Default

1. If the Purchaser does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment; if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee; or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, then the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:
 - a. Terminate the Lease.

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- b. Take possession of any or all Leased Items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Leased Items may be and remove and repossess the Leased Items from the Premises without being liable to the Purchaser in any action or legal proceeding. The Contractor/assignee may, at its option, sell the repossessed Leased Items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Items and placing the Leased Items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Items shall include only those items that were leased or lease/purchased under the PO.
 - c. Recover from the Purchaser all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease PO. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default, the Purchaser may pursue one or more of the following remedies:
- a. If the rental payments under the Lease have been assigned to an Initial Assignee, the Purchaser shall continue to make rental payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.
 - b. The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual number of Leased items which were delivered and accepted. If no Leased Items have been delivered and accepted, the Purchaser may terminate the Lease without liability for any payment.
 - c. If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the Contractor's default against the Purchaser's obligation to make rental payments.

VI. Compliance with Internal Revenue Code.

- A. Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Lease term, permit the Leased Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
- B. Governmental status. Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser pursuant to Subsection V.J. of these Leasing Terms and Conditions. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports

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required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will upon demand pay the Contractor/Initial Assignee a sum the Contractor/ Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

VII. Use and Location of, and Alterations to, Leased Items.

The Purchaser shall keep the Leased Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Items. The Purchaser, at its own cost and expense, shall maintain the Leased Items in good operating condition and will not use or deal with the Leased Items in any manner which is inconsistent with the terms of the COSTARS Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Leased Items and the Purchaser will not allow the Leased Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Items shall be made without the approval of the Contractor/Initial Assignee.

VIII. Warranty Disclaimer.

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY LEASED ITEMS "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE..

IX. Governing Law; Severability.

- A. All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.
- B. If any provision of these Leasing Terms and Conditions is held to be invalid or unenforceable, all other provisions shall remain in effect.

X. Notices.

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in the applicable PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

XI. Terms.

These Leasing Terms and Conditions are in addition to the other terms and conditions of the COSTARS Contract, except to the extent the Contractor assigns a PO to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the COSTARS Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Purchaser has elected the lease option.

EXHIBIT ONE

Purchase order No. _____ dated _____, 20____, by and between
_____ (Contractor) and _____ (Purchaser).

ACCEPTANCE CERTIFICATE

The undersigned certifies, represents to, and agrees with the Contractor or its assignee as follows:

1. The Purchaser has received and accepted the Leased Items identified on the attached schedule on the date specified below the signature on this page ("Acceptance Date").
2. The Purchaser has conducted inspection and/or testing of the identified Leased Items as it deems necessary and appropriate and acknowledges that it accepts the identified Leased Items as of the Acceptance Date.
3. The Purchaser is not in any event of default as defined in the COSTARS Contract, and no event which would become an event of default has occurred and is continuing at the Acceptance Date.

(Purchaser)

By: _____

Title

Date

INSTALLMENT PURCHASE TERMS AND CONDITIONS

I. General.

- A. Installment purchase options. To the extent that the Contractor offers Purchasers the option to pay for any items covered by the Contract in installments over time, the installment purchase shall, in addition to the other terms and conditions of the Contract, be governed by these Installment Purchase Terms And Conditions. If a Purchaser desires to purchase items on an installment basis, the Purchaser shall indicate its Installment Purchase election on the PO issued to the Contractor ("Installment Purchase PO"). By issuing an Installment Purchase PO, the Purchaser explicitly agrees to these Installment Purchase Terms and Conditions. Any items covered by an Installment Purchase shall be called "Installment Items" in these Installment Purchase Terms and Conditions.
- B. Assignments. The Contractor may assign, without DGS or Purchaser consent, any Installment Purchase PO to a third party ("Initial Assignee") who will fund the purchase of the Installment Items. The Initial Assignee may take title to, and assume the right to receive all payments for, the Installment Items. The Contractor shall notify the Purchaser of any Installment Purchase PO assignment in its acknowledgment of the Installment Purchase PO to the Purchaser, providing the Purchaser with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- C. Installment Items. Notwithstanding any provisions to the contrary in the COSTARS Contract, in the event of an assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Installment Purchase Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing an Installment Purchase PO, the Purchaser waives any claims it may have under the Installment Purchase against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Installment Item. The Purchaser acknowledges that the Initial Assignee is not the supplier of the Installment Items and is not responsible for their selection or installation. After the ordering Purchaser executes, and the Initial Assignee receives, an acceptance certificate in the form attached as Exhibit 1 to these Installment Purchase Terms and Conditions, if any portion of the Installment Items is unsatisfactory for any reason, the ordering Purchaser shall, nevertheless, continue to make payments under the applicable Installment Purchase terms and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- D. Acceptance. After a Purchaser executes and the Initial Assignee receives an acceptance certificate in the form attached as Exhibit 1 to these Terms and Conditions ("Acceptance Certificate"):
1. The Purchaser shall, regardless of whether any portion of the Installment Items is unsatisfactory for any reason, nevertheless, continue to make payments under the applicable Installment Purchase and shall make any claim relating to the Installment Items against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
 2. The rights of the Initial Assignee and any subsequent assignee to receive payments are absolute and unconditional and shall not be affected by any defense or right of set-off.

II. Installment Purchase Terms.

The Contractor may provide any Installment Items under the Contract for any term up to 60 months, including a Fair Market Value Option for Installment Purchases. The Purchaser shall identify the term selected on the Installment Purchase PO. The Installment Purchase term shall commence on the date the Purchaser accepts the Installment Items by executing the Acceptance Certificate, and the term shall continue for the length specified on the Installment Purchase PO.

III. Payments.

- A. Full term intention. The Purchaser shall pay the applicable monthly payment for the Installment Items. The Purchaser shall continue payment for the full Installment Purchase term, unless the Purchaser terminates the Installment Purchase, either for Contractor default under Subsection IV.G. of these Installment Purchase Terms and Conditions or for nonappropriation of funds as specified in Subsection B. of this Section III.
- B. Nonappropriation. The Purchaser's obligation is payable only and solely from funds allotted for the purpose of the Installment Purchase. If sufficient funds are not appropriated for continuation of performance under any Installment Purchase for any fiscal year subsequent to the one in which the Purchaser issued the Installment Purchase PO, the Purchaser may return the Installment items to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee will release the Purchaser of all further obligations under the Installment Purchase, provided:
1. the Purchaser delivers unencumbered title to the Installment items to the contractor or Initial Assignee (if applicable);
 2. the Purchaser returns the Installment items to the Contractor/ Initial Assignee in good condition, reasonable wear and tear excepted; and
 3. the Purchaser gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Installment Items are not being replaced by similar items from another vendor. In the event the Purchaser returns the Installment Items for failure of appropriations, the Purchaser shall pay all amounts then due under the Installment Purchase through the end of the fiscal year for which sufficient funds were appropriated for the Installment Purchase.

IV. Installment Purchase Terms and Conditions.

- A. Title and Security Interest. Title to the Installment Items shall pass to the Purchaser at the time and place of delivery to the Purchaser of each unit of equipment. The Contractor or its Initial Assignee shall have a purchase money security interest in the Installment Items until payment of all installments as set forth in the payment schedule are made, or if the Purchaser prepays its installments, upon payment of the agreed amount between the Contractor and the Purchaser as set forth in Subsection IV.F. of these Installment Purchase Terms and Conditions.
1. Upon payment of the final installment or other concluding payment option, neither the Contractor nor its assignee shall have any further interest in the Installment Items.
 2. The Installment Items shall remain personal property and shall not become a fixture or affixed to real property without consent of the Contractor/assignee.
 3. At the request of the Contractor or Initial Assignee, the Purchaser will join the Contractor/assignee in executing one or more UCC-1 financing statements.
 4. The Purchaser will keep the Installment Items free and clear of all encumbrances except the Contractor's/assignee's security interest.
- B. Assumption of Risks.
1. The Purchaser shall, after acceptance of the Installment Items, assume and bear the risk of damage to, or loss or theft of, the Installment Items (including all component parts) from any cause other than action or inaction of the Contractor/assignee. The loss or damage of the Installment Items shall not impair any obligation of the Purchaser under these Installment Purchase Terms and Conditions, which shall continue in full force and effect. In the event that all or part of the Installment Items shall, as a result of the above-mentioned causes, become, in the Purchaser's reasonable determination, lost, stolen, destroyed, rendered unusable, or irreparably damaged, then the

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Purchaser shall notify the Contractor/assignee in writing. At its option, the Purchaser shall elect either:

- a. to replace the equipment either like equipment, or
 - b. to pay pro rata to the Contractor/assignee all payments then currently due according to the payment schedule, plus the pro rata principal portion of any remaining installments. The "pro rata principal portion of remaining installment payments" is that percentage of the principal portion of remaining installment payments as of the date of payment that the cost of the units of the equipment lost, stolen, destroyed, or rendered irreparably unusable or damaged bears to the total cost of the equipment determined by the amounts set forth in the field purchase order.
2. The Purchaser assumes all risks and liabilities for injury to or death of any person, or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Items, as more fully set forth in Paragraph 1. of Subsection IV.E. of these Installment Purchase Terms and Conditions.
 3. The Purchaser agrees to obtain insurance as provided under Paragraph 2. of Subsection IV.E. of these Installment Purchase Terms and Conditions.
- C. Assignment. The Purchaser shall not assign any Installment Purchase PO or other interest in the Installment items without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole or in part in, the Installment Purchase to an Initial Assignee, who in turn may further assign and/or grant a security interest in an Installment Purchase to a subsequent assignee without the Purchaser's consent. Any other Contractor assignment shall require the Purchaser's prior written consent. Upon written notice to the Purchaser, the Contractor may assign payments under any Installment Purchase to a third party.
- D. Warranties.
1. The Purchaser shall have the benefit of any and all manufacturer or supplier warranties for the Installment Items.
 2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, will interfere with the Purchaser's quiet enjoyment of the Installment Items so long as no event of default as defined in Subsection V.G. of these Installment Purchase Terms and Conditions shall have occurred and be continuing.
- E. Liability.
1. The Purchaser assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Purchaser's possession, use, operation, condition, or storage of any Installment Item, whether such injury or death be of agents or employees of the Purchaser or of third parties, and whether such property damage be to the Purchaser's property or the property of others; provided, however, that the damage or injury results from the action or inaction of the Purchaser, its agents or employees, and provided that judgment has been obtained against the Purchaser, its agents or employees. This provision shall not be construed to limit the governmental immunity of any Purchaser.
 2. The Purchaser shall, during the Installment Purchase term, either self-insure or purchase insurance to cover the risks it has assumed under Paragraph 1. of this Subsection IV.E., including but not limited to risks of public liability and property damage.
- F. Financing and Prepayment.
1. If the Contractor is not the supplier of the Installment Items, the Contractor will pay the charges for the Installment Items directly to the supplier. In the event the Contractor

assigns the Installment Purchase to an Initial Assignee, the Initial Assignee will pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned payments under the Installment Purchase to an Initial Assignee, the Purchaser's obligation to make payments for the Installment Items for which the Purchaser has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or destruction of any license or licensed program materials, or by any Purchaser dissatisfaction with any Installment Item.

2. The Purchaser may at any time elect to prepay its remaining Installment Purchase payments. The Purchaser shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining payments to reflect the requested prepayment and shall advise the Purchaser of the balance to be paid.
3. If the Purchaser purchases Contract items related to an Installment Item prior to the expiration of the Installment Purchase terms, or if the Installment Purchase is terminated for any reason except nonappropriation as described in Subsection III.B. of these Installment Purchase Terms and Conditions, and if the Installment Item has been delivered and the Purchaser has executed and delivered to the Contractor an acceptance certificate, the Purchaser shall prepay such Installment Item.

G. Default

1. If the Purchaser does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Purchaser is delinquent in payment, if the Purchaser breaches any other provision under these Terms and Conditions and such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee, or if the Purchaser files any petition or proceeding (or has a petition or proceeding filed against it) under any bankruptcy, insolvency, or similar law, the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:
 - a. Terminate the applicable Installment Purchase.
 - b. Take possession of any or all Contract items in the Purchaser's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter upon the premises where the Contract items may be and remove and repossess the Contract items, from the premises without being liable to the Purchaser in any action or legal proceedings. The Contractor/assignee may, at its option, sell the repossessed Contract items at public or private sale for cash or credit. The Purchaser shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Contract items and placing the Contract items in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Contract items shall include only those items that were purchased under the Installment Purchase.
 - c. Recover from the Purchaser all payments then due, plus the net present value of the amount of the remaining payments. The present value of such remaining payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Installment Purchase. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.

2. In the event of Contractor default, the Purchaser may pursue one or more of the following remedies:
 - a. If the payments under the Installment Purchase have been assigned to an Initial Assignee, the Purchaser shall continue to make payments for those Contract Items which have been delivered and for which the Purchaser has provided acceptance certificates to the Contractor/Initial Assignee.
 - b. The Purchaser may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the Contract payments will be recalculated to take into consideration and pay for the actual number of Contract items which were delivered and accepted. If no Installment items have been delivered and accepted, the Purchaser may terminate the Installment Purchase without liability for any payment.
 - c. If payments have not been assigned, the Purchaser may set off or counterclaim any and all damages incurred by the Purchaser as a result of the contractor's default against its obligation to make payments.

V. Compliance with Internal Revenue Code.

- A. Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Purchaser shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Purchaser shall also keep a copy of each notification of assignment with the Purchaser's counterpart of the order and shall not, during the Installment Purchase term, permit the Installment Items to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
- B. Governmental status. Eligible Purchasers include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Purchaser's status under the IRC shall constitute an event of default by the Purchaser pursuant to Subsection IV.G. of these Installment Purchase Terms and Conditions. If the Internal Revenue Service rules that the Purchaser does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Purchaser fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Purchaser will, upon demand, pay the Contractor/Initial Assignee a sum the Contractor/Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

VI. Use and Location of, and Alterations to, Installment Items.

The Purchaser shall keep the Installment Items within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Installment Items. The Purchaser, at its own cost and expense, shall maintain the Installment Items in good operating condition and will not use or deal with the Installment Items in any manner which is inconsistent with the terms of the COSTARS Contract or any applicable laws and regulations. The Purchaser agrees not to misuse, abuse, or waste the Installment Items and the Purchaser will not allow the Installment Items to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Installment Items shall be made without the approval of the Contractor/Initial Assignee.

VII. Warranty Disclaimer.

IN THE EVENT THE CONTRACTOR ASSIGNS AN INSTALLMENT PURCHASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED ITEMS), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE PURCHASER TAKES THE EQUIPMENT AND ANY FINANCED ITEM "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE PURCHASER HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

VIII. Governing Law; Severability.

- A. All Purchases made under these Installment Purchase Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Installment Purchase Terms and Conditions.
- B. If any provision of these Installment Purchase Terms and Conditions is held to be invalid or unenforceable, all other provisions shall remain in effect.

IX. Notices.

Service of all notices under these Installment Purchase Terms and Conditions shall be sufficient if delivered to the Purchaser at the address set forth in the applicable Installment Purchase PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the Installment Purchase PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

X. Terms.

These Installment Purchase Terms and Conditions are in addition to the other terms and conditions of the COSTARS Contract, except to the extent the Contractor assigns an Installment Purchase to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Installment Purchase Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the COSTARS Contract and these Installment Purchase Terms and Conditions, these Installment Purchase Terms and Conditions shall prevail to the extent that the Purchaser has elected an Installment Purchase option.

EXHIBIT 1

Purchase Order No. _____ dated _____, 20____, by and between
_____ (Contractor) and _____ (Purchaser).

ACCEPTANCE CERTIFICATE

The undersigned certifies, represents to, and agrees with the Contractor or its assignee as follows:

1. The Purchaser has received and accepted the Installment Items identified on the attached schedule on the date specified below the signature on this page ("Acceptance Date").
2. The Purchaser has conducted inspection and/or testing of the identified Installment Items as it deems necessary and appropriate and acknowledges that it accepts the identified Installment Items as of the Acceptance Date.
3. The Purchaser is not in any event of default as defined in the COSTARS Contract, and no event which would become an event of default has occurred and is continuing at the Acceptance Date.

(Purchaser)

By: _____

Title

Date

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 responsible 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 a \$500 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.

a. The Bidder shall submit with its Bid a check in the amount of \$500, payable to "Commonwealth of PA". The Bidder must pay the \$500 fee to receive a Contract award. DGS may reject as nonresponsive any Bid where the fee is not included with the Bid package. 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" in the amount of \$500 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 B 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 rwoodworth@state.pa.us. 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:

Rich Woodworth
rwoodworth@state.pa.us
c/o DGS Bureau of Procurement
COSTARS Program
555 Walnut Street, 6th Floor
Harrisburg, PA 17101-1914

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 to gain access to the COSTARS Members-only website. 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.dgsweb.state.pa.us/COSTARSReg/Supplier.aspx?costarsNav=|>.

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 <http://www.dgsweb.state.pa.us/COSTARSReg/RegForm.aspx?costarsNav=> 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 a check prior to the anniversary date for payment of the contract renewal fee, made payable to "Commonwealth of PA", in the amount of \$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 <http://www.dgs.state.pa.us/costars>.

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 Contract quarter.

a. The Contractor shall submit the reports via the web-based COSTARS Suppliers' Gateway at www.dgs.state.pa.us/costars. 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 24 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. Following exhaustion of the Contractor's administrative remedies against DGS as set forth in Section 25 of this Contract, the Contractor's exclusive remedy against DGS shall be to seek damages in the Board of Claims.

g. 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. CONTRACT CONTROVERSIES

a. In the event of a controversy or claim arising out of this Contract (except when the claim relates to a specific PO, as specified in Subsection d. of this Section) the Contractor must, within six months after the cause of action accrues, file a written claim with the DGS contracting officer for a determination and, in the case of a claim involving a PO, with the Purchaser. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

b. The DGS contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the

performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

d. In the event of a controversy or claim arising out of a PO, the Contractor shall file a written claim directly with the Purchaser.

26. 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 26, 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.

27. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, Contractor agrees as follows:

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Minority and Women Business Opportunities for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Minority and Women Business Opportunities.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

g. 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.

28. CONTRACTOR INTEGRITY PROVISIONS

a. For purposes of this Section 28 only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.

1. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

2. **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 execution of this agreement.

3. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4. **Financial interest** means:

A. Ownership of more than a five percent interest in any business; or

B. Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form that refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse 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.

29. CONTRACTOR RESPONSIBILITY PROVISIONS

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of the bid/contract, that neither the Contractor, nor any subcontractors, nor any suppliers 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, a written explanation of why such certification cannot be made.

b. The Contractor must also certify, in writing, that as of the date of its execution of the bid/contract, it has no tax liabilities or other Commonwealth obligations.

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 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, which 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 <http://www.dgs.state.pa.us> or contacting the:

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

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 27 through 30 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 35 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.

36. 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 in this Subsection.

a. The Contractor shall pay a \$500 fee 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.

Attachment C

Contract Provisions - Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.

- b. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Contractor using the Contractor information provided by the Contractor in SRM [*or* “the legal contact information provided in this Contract”] if the agency needs the Contractor’s assistance in any matter arising out of the Right to Know Law. The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.

- c. Upon notification to the Contractor that the Commonwealth has received a request for records under the RTKL, the Contractor shall fully assist the Commonwealth in responding to the request. Such assistance shall include providing the Commonwealth within three (3) days, access to, and copies of, any document or information arising out of the Contract in the Contractor’s possession that the Commonwealth deems a Public Record (“Requested Information”) and providing such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, the Contractor must immediately notify the Commonwealth that it will need up to an additional twenty-five (25) days, and must provide in writing the reason the additional time is needed. If the Contractor fails to provide the Requested Information to the Commonwealth within the period specified in this provision, the failure shall be considered an event of default and the Contractor shall pay, indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure. If the Office of Open Records or the Pennsylvania Courts determines that a record in the possession of the Contractor is a public record, liquidated damages of \$500 per day will be assessed for each calendar day beyond the date the Contractor was required to provide the record.

- d. The Commonwealth’s determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Contractor agrees not to challenge the Commonwealth’s decision to deem the Requested Information a Public Record. If the Contractor considers the Requested Information to be a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within five (5) days. If, upon review of the Contractor’s written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold liable the Commonwealth for such a decision.

- e. The Commonwealth will reimburse the Contractor for any costs associated with complying with this provision only to the extent allowed under the fee schedule

Attachment C

established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

f. Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. 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. 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.