

**COSTARS INVITATION FOR BIDS  
SUMMARY SHEET**

**Contract No.:** COSTARS-21  
**Description of Supply:** Pest Control Services  
**Solicitation Start Date:** 09/11/2012  
**Bid Opening Date:** Bids will be accepted at the address below on any given Commonwealth business day. Any bid received after the Bid Opening Time will be opened on the next Commonwealth business day.  
**Bid Opening Time:** 1:30 PM Eastern  
**Bid Opening Location:** DGS BUREAU OF PROCUREMENT – BID ROOM  
 555 WALNUT STREET, 6<sup>TH</sup> 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 **Pest Control Services** as described in the IFB (see Section 2 of the *Special Terms and Conditions* for details) to local public procurement units and state-affiliated entities (together, "Purchasers") registered as members with the COSTARS Program. A complete list of currently registered COSTARS members, as well as more information about the program, can be found on the Suppliers' area of the DGS COSTARS web-pages at [www.costars.state.pa.us](http://www.costars.state.pa.us).

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

The following documents comprise this Invitation For Bids package:

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

These documents are available on the DGS COSTARS web-pages at [www.costars.state.pa.us](http://www.costars.state.pa.us), COSTARS Bidding Opportunities.

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

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

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

DGS will accept written questions and comments concerning this procurement via email to [emwilliams@pa.gov](mailto:emwilliams@pa.gov).

Sincerely,

Emanuel Williams, Commodity Specialist  
Bureau of Procurement

## INSTRUCTIONS TO BIDDERS FOR COSTARS CONTRACTS

### 1. **BID SUBMISSION:**

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

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

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

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

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

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

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

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

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

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

## **2. BIDDER'S REPRESENTATION AND AUTHORIZATION:**

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

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

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

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

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

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

6. The Bidder submits its Bid in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

7. To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Bidder in its Bid.

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

9. To the best of the knowledge of the person signing the Bid for the Bidder, except as the Bidder has otherwise disclosed in its Bid, the Bidder has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Bidder that is owed to the Commonwealth.

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

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

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

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

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

### **3. PRICES:**

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

### **4. CONTRACT DELIVERABLES:**

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

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

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

### **5. MODIFICATION OR WITHDRAWAL OF BID:**

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

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

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

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

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

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

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

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

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

1. The Bidder submits a written request for withdrawal.

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

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

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

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

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

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

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

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

## **6. REJECTION OF BIDS:**

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

## **7. AWARDS:**

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

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

b. If the Bidder is not a manufacturer, it must certify in writing listing all manufacturers for which the Bidder is authorized to sell those manufacturer's goods and materials, as required by this Contract. If the Bidder's authorization is limited to certain geographic areas or products, the

Bidder shall include a description of such limitations in the certification. If the Bidder sells through a manufacturer's authorized distributor, the Bidder must certify in writing that it is authorized to sell through the authorized distributor. Upon request by DGS, the Bidder must provide written proof from the manufacturer stating the Bidder's authorization to sell the manufacturer's products within three (3) days of the request. If the Bidder sells through a manufacturer's authorized distributor, DGS will accept the distributor's written authorization to the Bidder permitting the Bidder to sell the manufacturer's goods and materials. The manufacturer's written authorization should state that the distributor has the authority to pass the manufacturer's sales authorization through to the reseller.

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

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

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

**8. APPLICABILITY:**

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

**9. ADMINISTRATIVE FEES:**

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

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

If the bidder is a Department of General Services Self-Certified Small Business, the bidder must submit its active Small Business Procurement Initiative (SBPI) certificate with its bid.

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

b. Unless terminated in accordance with the provisions of Subsection 3.c. of the COSTARS Contract Standard Terms and Conditions, the Contract will renew automatically on the anniversary of the Effective Date, (1) provided that the Contractor has submitted a check for the renewal fee made payable to "Commonwealth of PA" for the appropriate amount prior to the renewal date and, if the Contractor is a Department of General Services Self-Certified Small Business, a copy of its active SBPI certificate; (2) either party provides the other party with written notice that it does

not intend to renew; or (3) the Contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

**10. CONTRACT SECURITY:**

No performance security is required for this bid.

**11. ESTIMATED QUANTITIES:**

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

**12. DEPARTMENT OF STATE REGISTRATION:**

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

**13. BID PROTEST PROCEDURE:**

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

**14. QUESTIONS:**

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

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

## Doing Business with the Commonwealth

### a. Department of State Registration

Any person or entity doing business under a fictitious name in Pennsylvania must register that name with the Pennsylvania Department of State and any corporation that is not incorporated in Pennsylvania must register with the Department of State if it wants to do business in the Commonwealth (for more specific information on this requirement, see [http://www.dos.state.pa.us/portal/server.pt/community/corporation\\_bureau/12457](http://www.dos.state.pa.us/portal/server.pt/community/corporation_bureau/12457)). **If your firm is not incorporated or registered in Pennsylvania, you must take action to register prior to being approved for a COSTARS-exclusive contract.**

DGS is asking all bidders *other than individuals using their given names* to supply evidence with the bids to show compliance with these requirements. Specifically, DGS requests that each bidder 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 are available online from the Pennsylvania Department of State. The following links will assist you in your filing:

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



## Doing Business with the Commonwealth

### b. Department of General Services – SRM Supplier Registration

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

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

- ◆ Your company will receive payments from the Commonwealth of Pennsylvania under a contract or purchase order.
- ◆ **Your company will receive Request for Quotations, Purchase Orders, or other Procurement documents.**
- ◆ Your company is a construction contractor.

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

For more information and to register, please visit the Supplier Service Center at:

[http://www.portal.state.pa.us/portal/server.pt/community/supplier\\_service\\_center/5104](http://www.portal.state.pa.us/portal/server.pt/community/supplier_service_center/5104)

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

### c. Department of General Services Self-Certified Small Business

If you are certified as a Department of General Services Self-Certified Small Business, you must provide a printed copy of your active certification with your bid response and each year upon renewal. To see if your firm qualifies as a Department of General Services Self-Certified Small Business, information and a step-by-step instruction guide for self-certification is available at [www.smallbusiness.pa.gov](http://www.smallbusiness.pa.gov).

## COSTARS BID/CONTRACT

ISSUING AGENCY	CONTRACTOR NAME AND ADDRESS	SHOW THIS CONTRACT NUMBER ON BID ENVELOPE
Commonwealth of Pennsylvania Department of General Services Bureau of Procurement COSTARS Program 555 Walnut Street, 6 <sup>th</sup> Floor Harrisburg, PA 17101-1914  COMMODITY SPECIALIST: Emanuel Williams PHONE NO.: 717-703-2946 FAX NO.: 717-783-6241  CONTRACTING OFFICER: Dawn Eshenour, Acting Director Programs & Systems Division	CONTACT PERSON:	CONTRACT NO. <b>COSTARS-21</b>
	PHONE NO.:	BID OPENING DATE:
	FAX NO.:	BID OPENING TIME: <b>1:30 PM EST</b>
	BIDDER/CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.	EFFECTIVE DATE:
	BIDDER/CONTRACTOR'S VENDOR NUMBER	EXPIRATION DATE:
	BIDDER/CONTRACTOR'S E-MAIL	
BIDDER/CONTRACTOR'S WEB ADDRESS		

ITEM NO.	DESCRIPTION OF ITEMS	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL LINE ITEM PRICE
N/A	<b>Pest Control Services</b>  Refer to attached <i>Special Terms and Conditions</i>  <a href="#" style="color: blue; text-decoration: underline;">Click here to download and complete Bid Item Workbook.</a>	N/A	N/A	N/A	<b>REFER TO BID ITEM SHEET (S)</b>

<b>CHECK HERE IF CONTINUED ON PAGE 2</b> <input type="checkbox"/>	ALL PRICES ARE F.O.B. DESTINATION	<b>TOTAL BID</b> ▶	REFER TO BID ITEM SHEET (S)
---	-----------------------------------	--------------------	-----------------------------

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 10/01/2013) 2. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 10/01/2013) 3. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 12/10/2009) 4. Bid Item Workbook and Checklist	The Bidder must pay the appropriate Administrative Fee upon request to receive a Contract award, as more fully described in Section 9 of the <i>Instructions to Bidders for COSTARS Contracts</i> .
---	---

The Commonwealth of Pennsylvania, through the Department of General Services, accepts the Bid of the Bidder/Contractor for the awarded item(s) and agrees to be legally bound hereby.  <p style="text-align: center;">▼ <b>COMMONWEALTH SIGNATURE</b> ▼</p>	In compliance with the bid and contract terms, conditions, and specifications, the undersigned, on behalf of the Bidder/Contractor, intending to be legally bound hereby, offers and agrees, if the Bid is accepted, to provide the specified item(s) at the price(s) set forth above at the time(s) and point(s) specified.  <p style="text-align: center;">▼ <b>BIDDER/CONTRACTOR'S SIGNATURE (IN INK)</b> ▼</p>
---	--

PURCHASING AGENCY HEAD OR DESIGNEE _____ DATE _____  <p style="text-align: center;">▼ <b>APPROVED</b> ▼</p> TREASURER _____ DATE _____	PRESIDENT/VICE PRESIDENT/MANAGER OF LLC/PARTNER/OWNER* _____ DATE _____ (SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)  SECRETARY/ASSISTANT SECRETARY/TREASURER/ASSISTANT TREASURER* _____ DATE _____ (SIGN BELOW, PRINT NAME, AND CIRCLE TITLE ABOVE)
--	--

\*If someone other than one of these officers signs for the Bidder/Contractor, a copy of a corporate resolution or other appropriate signature authorization must be included with the bid. Failure to include a copy of the appropriate signature authorization, if required, may result in the rejection of the bid unless the Department's Bureau of Procurement has a copy on file.

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

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

# **CORPORATE CERTIFICATION**

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

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

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

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

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

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

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

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

Signature:

\_\_\_\_\_ Corporate Secretary

\_\_\_\_\_ Date

\_\_\_\_\_



# Commonwealth of Pennsylvania

Date: 5/1/2014  
Subject: Pest Control Services  
Solicitation/Bid Number: COSTARS-21  
Solicitation Date: 09/11/2012  
Addendum Number: 1

To All Suppliers:

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

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

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

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

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

**The bid opening date and time shall remain the same.**

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

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

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

**If you have already submitted your bid, you MUST acknowledge this addendum prior to the bid opening date** to the address listed above, noting your acknowledgement and acceptance of the addendum either by a signature on its face or by separate cover memo.

IF YOU ARE **CHANGING ANY BID PRICE(S)** FROM A PRIOR BID SUBMISSION, **DO NOT FAX** this addendum and/or cover memo; you must **furnish these instructions in a sealed envelope to the above address.** Please indicate the contract number (COSTARS-21) on the outside of the envelope. **If you are merely acknowledging this addendum with NO CHANGES** to the bid pricing, you may fax a signed copy of this addendum to DGS at 717-783-6241.

Date: 5/1/2014  
Subject: Pest Control Services  
Solicitation/Bid Number: COSTARS-21  
Solicitation Date: 09/11/2012  
Addendum Number: 1

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

Very truly yours,

Name: Emanuel Williams  
Title: Commodity Specialist  
Phone: 717-703-2946  
Email: [emwilliams@pa.gov](mailto:emwilliams@pa.gov)

Acknowledged by \_\_\_\_\_

for \_\_\_\_\_

(Name of bidding firm)

## COSTARS CONTRACT SPECIAL TERMS AND CONDITIONS

These COSTARS Contract Special Terms and Conditions (“Special Terms and Conditions”) shall be part of the contract for the supply and delivery of **PEST CONTROL SERVICES** 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, “Pest Control Services” are defined to include the following:

• <b>GENERAL INDOOR/OUTDOOR PEST &amp; RODENT CONTROL</b>
• <b>TERMITE CONTROL</b>
• <b>FUMIGATION SERVICES</b>

Additional detail is provided in Section 7, Statement of Work, of these Special Terms and Conditions.

**3. Eligibility Requirements.** To be eligible for this Contract, the Contractor shall:

a. Possess and maintain a valid Pesticide Application Business License Certificate issued by the Pennsylvania Department of Agriculture (PDA). **A copy of the certificate must be submitted with all responses for each servicing branch, which the Contractor intends to utilize to provide coverage.**

b. Provide proof of appropriate insurance that includes a statement indicating that the coverage applies to pesticide application and/or show endorsement number CG26160194, CG26160798 or equivalent. DGS reserves the right to request an additional Certificate of Insurance prior to award of the contract.

**4. Contract Award.** This is a multiple award contract in accordance with Section 7 of the ITB. However, Paragraphs 7 a. and 7 b. of ITB do not apply to this procurement. 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.

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

**6. Service Area.** The bidder may offer to supply and deliver Pest Control Services:

a. Statewide, or

b. 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

c. To any number of counties specifically identified in the bidder's bid by their corresponding names and numbers, as listed on the Service Area Sheet of the Bid Item Workbook.

**7. Statement of Work.** The Contractor shall provide labor, materials, services, skills, supervision, and necessary tools and equipment for extermination services to include General Pest and Rodent Control, Termite Control and/or Fumigation Services, with the use of Integrated Pest Management (IPM) when possible and/or upon request.

a. **Licenses, Certificates, and Insurance.** Refer to Section 3, Eligibility Requirements, of these Special Terms and Conditions for guidance.

i. The Purchaser may require legible photocopies, prior to commencing work, of applicable licenses and certificates for every Contractor Employee who will be performing on-site services under the Contract. Businesses and applicators must be licensed and certified in the appropriate categories. These licenses and certifications must be maintained throughout the life of the Contract.

ii. The Purchaser may require proof of insurance, prior to commencing work. Appropriate insurance must be maintained throughout the life of the Contract.

b. **General Indoor/Outdoor Pest and Rodent Control** consists of:

i. Pests – the use of a pesticide and/or trapping device to control invertebrate pests, including but not limited to, cockroaches, ants, spiders, silverfish, centipedes, millipedes, earwigs, bees, wasps, flies, fleas, stored products pests, and other similar indoor or outdoor pest.

ii. Rodents – the use of a pesticide and/or trapping device to control vertebrate pests, including but not limited to, mice, rats and limited control of herbaceous growth around buildings which could harbor rodents.

c. **Termite Control** consists of the use of a pesticide to control termites and other wood destroying organisms.

d. **Fumigation Services** consists of the use of a fumigant material, such as Methyl Bromide, Vikane, Aluminum Phosphide, etc. to control pests of a structure or stored product.

e. **Pests excluded** for prevention and/or elimination are the following, but not limited to birds, bats, snakes, squirrels, raccoons, opossums, groundhogs, skunks and all other vertebrates other than rodents.

f. **Integrated Pest Management (IPM)** is the managed use of combined pest control alternatives, including cultural, mechanical, biological and chemical, to most effectively prevent or reduce to acceptable levels of damage caused by pests. IPM methods should be used to the extent possible to remove and exterminate rodents, insects, and other pests. IPM is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

IPM is the selection, integration, and implementation of multiple pest control techniques based on predictable economic, ecological, and sociological consequences, making

maximum use of naturally occurring pest controls, such as weather, disease agents, and parasitoids, using various biological, physical, chemical, and habitat modification methods of control, and using artificial controls only as required to keep particular pests from surpassing intolerable population levels predetermined from an accurate assessment of the pest damage potential and the ecological, sociological, and economic cost of other control measures.

Once monitoring, identification, and action thresholds indicate that pest control is required, and preventive methods are no longer effective or available, IPM programs then evaluate the proper control method, both for effectiveness and risk. Effective, less risky pest controls are chosen first, including highly targeted chemicals, such as pheromones to disrupt pest mating, or mechanical control, such as trapping or weeding. If further monitoring, identifications and action thresholds indicate that less risky controls are not working, then additional pest control methods would be employed, such as targeted spraying of pesticides. Application(s) of non-specific pesticides is a last resort. All label directions shall be followed.

**g. Pesticide Application.**

i. When requested by a Purchaser, a Contractor shall, at no charge, provide a complete inspection of the facility to be serviced. Results of the inspection shall be reported as part of the price quote requested by the Purchaser.

ii. The Contractor shall provide in its quote the appropriate service IPM frequency for the various areas or buildings to be serviced. This may vary depending on infestation history or facility type. In the quote, frequencies and prices will be indicated for each building with a total indicated for the term of the purchase order.

iii. Intended service application procedures or a "scope of services" will also be included as part of each quote.

iv. The purchase and use of all chemicals will be the responsibility of the Contractor. Contractor is reminded that any use of a pesticide inconsistent with its label is a violation of State and Federal law.

v. The Contractor shall not store any pesticide product on the property being serviced. When on site, products shall remain under Contractor's care, custody and control at all times.

vi. The Contractor shall use non-pesticide methods of control wherever possible.

vii. When it is determined that a pesticide must be used in order to obtain adequate control, the Contractor shall employ the use of formulations and treatment techniques, which minimize the amount of pesticides used and the potential exposure of people and the environment.

viii. Pesticide use shall consist of the least hazardous material, most precise application technique, and minimum quantity of material necessary to achieve control.

ix. Pesticide application shall be according to the need and not by schedule. As a general rule, application of pesticides in any area inside or outside the premises shall not occur unless visual inspections or monitoring devices indicate the presence of pests and/or termites in that specific area.



x. Any and all monitoring devices shall be placed in a manner that will not interfere with grounds maintenance operations. Whenever possible, the devices shall also be placed in a manner that discourages public tampering by placing them in inconspicuous locations where they are not readily visible.

xi. Only products permissible under current State and Federal Regulations may be used and those used only in strict accordance with precautions, directions and recommendations shown on the label of the product. Pesticides being used shall be registered with EPA and PDA. Rodenticides and insecticides shall be used with all due precautions to prevent the possibility of incident to humans, domestic animals, pets, non-target wildlife and property.

xii. Provide treatment using only products that comply with the provisions of the Federal Insecticide, Fungicide and Rodenticide Act of 1972 and the Pennsylvania Pesticide Control Act of 1973 and the regulations issued there under. Pesticides being used shall be registered with EPA and PDA.

xiii. Transport, handling and use of all pesticides shall be in strict accordance with precautions, recommendations, the manufacturer's label instructions and all applicable Federal and State laws and regulations.

xiv. Pesticides applied to the air should never be used for routine treatment inside facilities. Pesticides should be applied only as containerized or crack and crevice treatments in which the applied treatment is not readily visible. Any excess pesticide applied should be readily cleaned according to manufacturer specifications.

xv. Rodenticides and insecticides shall be used with all due precautions to prevent the possibility of incident to humans, domestic animals, pets, non-target wildlife and property.

xvi. Insecticides should be applied only as baits formulated as solids, pastes, or gels. Spray or dust formulations should be selected only as a last resort or when solids, pastes, or gels are not practical. Material(s) selected shall be labeled for the type of pest on site of application.

xvii. Insecticides approved for normal use should be limited to nonvolatile bait formulations that are either applied to cracks and crevices or concealed inside protective containers.

xviii. When rodent bait stations are used, only tamper-resistant shall be used. A station location map shall be provided indicating all locations of rodent bait stations and multiple catch traps. Each station or multiple catch trap(s) shall have a sticky label for the exterminator to indicate the date serviced during each visit.

xix. For Termite Service(s), maps or graphs indicating the station location and placement of monitoring devices and/or pesticide applications shall be maintained. The maps or graphs shall be updated regularly to show revisions to the placement of monitoring devices and any applications of pesticide. They are to be included with the Contractor's service record. The service record should also include performance of all work, including the findings of monitoring activities.

xx. The pest control program will include a monitoring program set up to identify pest infestations. Pests identified will be reported to the facility along with

appropriate pesticide applications performed to control them and structural/procedural recommendations for any maintenance, sanitation or procedural modification(s) deemed necessary to eliminate pest food, water, harborage or access.

xxi. Bait formulations, traps, vacuuming, sanitation, and exclusion techniques should be emphasized for insect control inside facilities.

xxii. Preventative pesticide treatments of areas determined to be at high risk for infestation by insects or rodents, through inspection at the onset of the program or as part of a maintenance program, are acceptable. However, preventative pesticide treatments of areas determined to be at high risk for infestation by termites may be acceptable. Written approval must be granted by the Facility Manager or designee prior to any preventive pesticide application. Such approval is not a waiver from the Contractor's obligation to follow all label instructions for the pesticide(s) to be used.

xxiii. In accordance with the Purchaser's requirements and subject to Contractor's price list of services provided, the Contractor shall rotate the use of supplies and use newly developed chemicals as required to maximize the effectiveness of service and prevent the development of pest resistance to insecticides.

**h. Record Keeping.**

i. Each service will include the completion of a service report that provides all information required by the Pesticides Rules and Regulations (7 PA Code CH. 128 as amended October 12, 2001); and if appropriate, for school pesticide applications, refer to Act 36 of 2002 (15 P.S. § 7-772.2). Each service will include an inspection and report of maintenance and sanitation needs important to effective pest control at the facility. Contractor shall keep the service report and provide a copy to the Purchaser each time a service is performed.

ii. Site logs will be provided to the Purchaser to report pest sightings by occupants to the Contractor at the time of service. These site logs will be initialed and dated by the exterminator as appropriate control measures are taken.

i. **Return or Corrective Service Calls.** Where a Purchase Order has been issued to a Contractor for Pest Control Services, the Contractor shall provide additional visit(s) at no additional charge if the previous service visit did not alleviate the problem.

**j. Emergency Services and Special Requests.**

i. Twenty-four hour emergency telephone numbers shall be provided to the Purchaser so facility personnel can contact the Contractor in the event of suspected or actual emergency involving pest infestation.

ii. The Contractor may be requested to perform corrective, special or emergency service(s) that are beyond routine service requests. The Contractor shall respond to these exceptional circumstances, which normally involve a threat to health or a major disruption of normal work activities, and begin the necessary work within one (1) business day after receipt of the request (with the exception of the requirements contained in 7 PA Code CH. 128, Subchapters C & F, as amended October 12, 2001; and if appropriate, the notification requirements for pesticide applications within schools contained in Act 36 of 2002 (15 P.S. § 7-772.2)), unless the Contractor and the Purchaser shall agree

otherwise.

k. **Termite Inspection.** A prospective Purchaser may request the Contractor to provide termite building inspection services. The report shall be provided to the requesting prospective Purchaser, and the Contractor shall maintain a copy. The prospective Purchaser shall not be under any obligation to purchase fumigation or other pest control services from the Contractor, with the exception of paying for the termite inspection service.

**l. Manner and Time to Conduct Services.**

i. The Contractor shall perform routine pest control services that do not adversely affect occupant health or productivity during normal working hours of operation in the buildings.

ii. No sprays, dusts or applications of liquid or aerosol pesticides may be applied when the immediate area to be treated is occupied, if so directed by the label.

iii. When it is necessary to perform work outside of the regularly scheduled hours, the Contractor shall notify the requesting Purchaser at least one (1) working day in advance, unless the Contractor and the Purchaser shall agree otherwise.

iv. The Contractor shall observe all safety precautions throughout the performance of this contract.

v. All Contractor personnel working in or around property to be serviced shall wear distinctive uniform clothing.

vi. The Contractor shall determine and provide additional personal protection equipment required for the safe performance of work.

vii. Protective clothing, equipment, and devices shall, as a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the products being used.

viii. All services must be performed during the hours and/or timeframe established on each purchase order and the Contractor will be subject to standard rules and regulations in regard to access to the Purchaser's facility.

**m. Safety & Health.**

i. All work shall comply with all applicable State and Federal safety and health requirements.

ii. The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work.

iii. The Contractor shall obtain and adhere to Purchaser's security requirements and policies, laws and regulations while performing work.

n. **Structural/Procedural Recommendations.** Structural modifications for pest control, including the application of caulk and other sealing materials, will not be the responsibility of the Contractor. However, throughout the life of this contract, the Contractor shall be responsible for notifying the Facility Manager or designee in writing about any

structural, sanitary, or procedural modifications deemed necessary to eliminate pest food, water, harborage, or access.

**8. Pricing.** The bidder shall complete the Bid Item Workbook providing a customized list of services that the bidder is offering, stating either the hourly rate, or the net price per square foot, or the net price per application and, if applicable, minimum order requirements for each service. Sections 7 and 9 of these Special Terms and Conditions explain the products and/or services that Purchasers may request. The bidder is free to offer any type or number of items in its bid, so long as the products and/or services are within the scope of the Contract. The bidder has the choice to either enter the customized price list on the Bid Item Sheet of the Bid Item Workbook or as a separately attached document. 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 provide a customized list of services and pricing in accordance with Section 8. The bidder shall specify on the customized price list the effective date of the price list in the space provided. DGS may reject any bid omitting this information from the Bid Item Sheet. If the bidder is submitting a customized price list separate from the Bid Item Sheet, the bidder shall attach and submit the customized list including pricing with its Bid Item Workbook.

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

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

ii. The bidder should offer its' pricing based upon products and/or services, or the same "best" price regardless of product and/or service, in a format similar to that used in the Bid Item Sheet of the Bid Item Workbook included with the Invitation For Bids.

iii. The bidder may offer different discounts, customized lists, or prices for different classes of Purchasers. For example, if the bidder offers an educational Purchaser discount 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, customized lists, or discounted prices for any purchase within the scope of the Contract, even if such discounts or discounted prices were not included in the bid prices.

c. Except in the event of increased discounts as permitted under Paragraph 8.b.iv., the bidder's pricing from the bid documents shall remain firm for the entire contract period. A Contractor may update its Contract pricing information upon Contract award. Thereafter, the Contractor may update its pricing no more frequently than Yearly to adjust its pricing in accordance with any increases or decreases in its customized price list. 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). Approval of the update(s) 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 Pest Control Services 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). The Commodity Specialist will notify the Contractor in writing stating approval/disapproval of the request. Upon approval, the Contractor may issue new price list(s).

e. The Contractor may supplement its Bid Item Workbook at any time to provide pricing for additional Contract products and/or services within the scope of the Contract that become available after submission of the Contractor's bid or to remove products and/or services it no longer wishes to offer. The Contractor shall submit a written request accompanied by a revised Bid Item Workbook or separately attached customized price list to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the revision(s). Approval of the change is automatic within five business days upon DGS' receipt unless notified otherwise in writing by DGS.

**9. Ancillary Products and/or Services.** As provided in the Invitation for Bids (IFB), a Contractor may choose to offer ancillary products and/or services **in conjunction with the Contract services it provides to the Purchaser.** However, any ancillary products and/or services offered must be: (1) expressly authorized in the original IFB/Contract, (2) directly related to the Contract services purchased, (3) limited to the Contract services purchased and (4) initiated/ordered at the time of Contract service purchase. Stand-alone purchase of ancillary products and/or services is not within the scope of this Pest Control Services Contract. The Department of General Services reserves the right to determine which ancillary products and/or services shall be included in any contract.

Ancillary products and/or services authorized in the Invitation for Bids for this Contract may include, but are not limited to, the following:

- INSECT BAIT STATIONS AND INSTALLATION
- INSECT TRAPS AND INSTALLATION
- RODENT BAIT STATIONS AND INSTALLATION
- RODENT TRAPS AND INSTALLATION
- ODOR ELIMINATORS
- SANITIZERS

a. Any ancillary product(s) and/or service(s) provided will be entirely at the Contractor's option.

b. Installation as used in this Contract is limited to delivery in place with no permanent attachment to real property. However, fastening a product to an existing building floor, wall, ceiling or roof which can later be removed without damaging the building and connecting to existing electrical, plumbing and HVAC fixtures is permitted.

c. If a Contractor chooses to offer ancillary products and/or services in conjunction with the Contract services it provides to the Purchaser, the Contractor and Purchaser shall negotiate the applicable product(s) and/or service(s) to be provided and notate the details of the required product(s) and/or service(s) and price(s) on the purchase order at time of order.

d. The bidder may submit the list of ancillary products and/or 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 product(s) and/or service(s) and that the actual price will be negotiated between the Contractor and the Purchaser and annotated on the purchase order at time of order.

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

## **COSTARS CONTRACT STANDARD TERMS AND CONDITIONS**

### **1. PURPOSE OF CONTRACT**

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

### **2. PURCHASERS UNDER THE CONTRACT**

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

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments

or an area government that expends public funds for the procurement of supplies, services, and construction.

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

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

Should the Contractor become aware of, or be contacted by, any potential purchaser not currently registered as a COSTARS member, where the potential purchaser believes it may qualify for, and wishes to participate in, the COSTARS Program, the Contractor may refer the potential purchaser to [http://www.portal.state.pa.us/portal/server.pt/community/costars/1272/costars\\_member\\_registration/243910](http://www.portal.state.pa.us/portal/server.pt/community/costars/1272/costars_member_registration/243910) to complete the DGS COSTARS member online application.

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

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

### **3. TERM OF CONTRACT**

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

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

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the

fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

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

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

<b>Contractor Classification</b>	<b>Required Administrative Renewal Fee</b>
<b>Department of General Services Self-Certified Small Business Bidder</b>	<b>\$500</b>
<b>All Other Bidders-Contractors</b>	<b>\$1,500</b>

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

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

#### **4. PURCHASE ORDERS**

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

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

For electronically-issued POs, the following terms apply:

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

b. The parties agree that no writing other than the PO and Contractor's acknowledgement shall be required to make the PO legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of an electronic PO or acknowledgement under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are required to be in writing signed by the parties. A printed record of any electronic PO or acknowledgement will be admissible as evidence in any judicial, arbitration, mediation, or administrative proceedings to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of POs or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the PO or acknowledgement were not in writing or signed by the parties. A PO or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated in these Terms and Conditions for such documents.

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

#### **5. INDEPENDENT CONTRACTOR**

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



## **6. THIRD PARTY BENEFICIARIES**

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

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

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

## **7. COMPLIANCE WITH LAW**

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

## **8. ENVIRONMENTAL PROVISIONS**

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

## **9. CONTRACTOR DEDICATED WEBSITE**

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

## **10. PRICING, COMPENSATION, AND INVOICES**

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

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

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

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

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

## **11. PAYMENT**

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

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

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

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

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

## **12. TAXES**

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

## **13. WARRANTY**

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

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

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

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

## **14. DELIVERY**

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

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

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

## **15. SALES REPORTS**

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

a. The Contractor shall submit the reports via the web-based COSTARS Suppliers' Gateway at [http://www.portal.state.pa.us/portal/server.pt/community/costars/1272/costars\\_supplier\\_gateway/565804](http://www.portal.state.pa.us/portal/server.pt/community/costars/1272/costars_supplier_gateway/565804). 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, 6<sup>th</sup> Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

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

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

#### **16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any item(s) or process covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided or used in the performance of this Contract or any PO issued under this Contract. The Contractor shall defend any suit or proceeding brought against DGS or any Purchaser on account of any alleged patent, copyright, or trademark infringement in the United States of the item(s) provided or used in the performance of this Contract or any PO, upon condition that DGS or the Purchaser shall provide prompt notification to the Contractor in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense; and all reasonable information and cooperation required for the defense. As principles of governmental or public law may be involved, DGS or any Purchaser may participate in or choose to conduct, in its sole discretion, the defense of any such action. If DGS or any Purchaser furnishes information and assistance at the Contractor's written request, it shall be furnished at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold DGS and any Purchaser harmless from all damages, costs, and expenses, including attorney's fees that the Contractor, DGS, or the Purchaser may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Contract or any PO. If any of the item(s) provided by the Contractor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with noninfringing equal performance item(s), or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the Purchaser, only those items of equipment or software which are held to be infringing, and to pay the Purchaser 1) any amounts the Purchaser paid towards the item(s) of the product, less straight line depreciation; 2) any license fee the Purchaser paid for the use of any software, less a reasonable amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance the Purchaser paid to the Contractor. The Contractor's obligations under this Section continue without time limit. No costs or expenses shall be incurred for the Contractor's account without its written consent.

#### **17. OWNERSHIP RIGHTS**

Each Purchaser issuing a PO under this Contract shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Purchaser as part of the performance of the PO.

#### **18. ASSIGNMENT OF ANTITRUST CLAIMS**

The Contractor and DGS recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Purchaser under each Contract PO. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to each Purchaser issuing a Contract PO all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the supplies and services which are the subject of the Contract PO.

#### **19. HOLD HARMLESS PROVISION**

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

#### **20. AUDIT PROVISIONS**

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

documents, and records to the extent that such books, documents, and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records that will support its prices charged and costs incurred for the Contract.

The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to DGS, Purchasers who have issued Contract POs, and/or their authorized representatives.

## **21. INSPECTION AND REJECTION**

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

## **22. DEFAULT**

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

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

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

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

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

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

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

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

### **23. FORCE MAJEURE**

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

The Contractor shall notify the Purchaser and the DGS Commodity Specialist orally within five (5) days, and in writing within ten (10) days, of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Purchaser and the DGS Commodity Specialist may reasonably request. After receipt of such notification, the Purchaser and the DGS Commodity Specialist may individually elect either to cancel the Contract or PO, as applicable, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Purchaser and DGS, by notice to the Contractor, may suspend all or a portion of the Contract or PO, as applicable.

### **24. TERMINATION PROVISIONS**

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

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

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

### **25. ASSIGNABILITY AND SUBCONTRACTING**

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

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

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

d. Notwithstanding anything else in this Contract, the Contractor may, without DGS's consent, assign its rights to payment under this Contract or any PO issued under this Contract, provided that the Contractor provides written notice of such assignment to the DGS Commodity Specialist and the Purchaser together with a written acknowledgement from the assignee to DGS that any such payments are subject to all of the terms and conditions of this Contract.

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

f. DGS's consent to any assignment, other than an assignment of payment as specified in subsection d. of this Section 25, shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all Contract terms and conditions and to assume the Contract duties, obligations, and responsibilities being assigned.

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

## **26. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

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

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

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

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

5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **27. CONTRACTOR INTEGRITY PROVISIONS**

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

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

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

2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.

3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#), or to breach any other state or federal law or regulation.

4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.

5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.

7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

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

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the Commonwealth prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or

- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d. Necessary for purposes of Contractor's internal assessment and review; or
- e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
- f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- g. Otherwise required by law.

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

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
  - (1) obtaining;
  - (2) attempting to obtain; or
  - (3) performing a public contract or subcontract.

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

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

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

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

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



b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

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

14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

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

17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

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

c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

d. "Financial interest" means:

(1) Ownership of more than a five percent interest in any business; or

(2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

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

f. "Immediate family" means a spouse and any unemancipated child.

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

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

## **28. CONTRACTOR RESPONSIBILITY PROVISIONS**

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

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

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

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

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

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

6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

## 29. AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subsection a above.

## 30. HAZARDOUS SUBSTANCES

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

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

### 1. Hazardous substances:

- A. The chemical name or common name,
- B. A hazard warning, and
- C. The manufacturer's name, address, and telephone number.

### 2. Hazardous mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
- C. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
- D. A hazard warning; and
- E. The manufacturer's name, address, and telephone number.

### 3. Single chemicals:

- A. The chemical or common name;
- B. A hazard warning, if appropriate; and
- C. The manufacturer's name, address, and telephone number.

#### 4. Chemical Mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. A hazard warning, if appropriate;
- C. The manufacturer's name, address, and telephone number; and
- D. The chemical or common name of either the top five substances by volume or those substances comprises 5.0% or more of the mixture.

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

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

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

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

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

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

### **31. COVENANT AGAINST CONTINGENT FEES**

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

### **32. APPLICABLE LAW**

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

### **33. INTEGRATION**

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

amendment signed by both parties or by a DGS- signed change order on the appropriate Commonwealth form.

### **34. CHANGES**

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

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

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

### **35. COSTARS BRAND**

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

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

b. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:

1. The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or suppliers, any privileges it may have to use the COSTARS Brand under this Contract.

2. The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.

3. The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.

4. Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.

5. The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.

6. The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

**36. RIGHT-TO-KNOW LAW**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, 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 if the agency needs the Contractor's assistance in any matter arising out of the Right to Know Law ("RTKL"). 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 from the Commonwealth that the Commonwealth requires the Contractor's assistance in responding to a RTKL request for records in the Contractor's possession, the Contractor shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Contractor's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Contractor shall 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, including any statutory damages assessed against the Commonwealth.
- 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 include a request for 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 seven (7) calendar days of receiving the request. 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 the Commonwealth liable 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 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.