



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES**

Bureau of Procurement  
Forum Place, 6<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, Pennsylvania 17101

March 13, 2007

**TO ALL INTERESTED CONTRACTORS:**

You are invited by the Commonwealth of Pennsylvania, Department of General Services (Department), to submit a proposal in response to the attached Invitation to Qualify (ITQ) for the procurement of Snow Mobile Trail Groomer Units and Associated Equipment to the Department of Conservation & Natural Resources (DCNR) (Contract No. 2540-07). Those contractors that respond to this ITQ, if found qualified by the Department and receive an awarded contract, will be eligible to provide quotes for the procurement of Snow Mobile Trail Groomer Units and Associated Equipment to DCNR by submitting prices in response to Requests for Quotes (RFQs).

The Department will qualify contractors for the provision of Snow Mobile Trail Groomer Units and Associated Equipment as identified in this document. Those contractors who qualify through this ITQ process will receive a copy of the signed Contract No. 2540-07.

Sincerely,

Robin Morse  
Commodity Specialist  
Bureau of Procurement

## INVITATION TO QUALIFY (ITQ)

**Commonwealth of Pennsylvania**  
Department of General Services

CONTRACT #2540-07  
PROCUREMENT OF SNOW MOBILE TRAIL GROOMING UNITS and ASSOCIATED  
EQUIPMENT

**Contract Enrollment Period:**

The initial enrollment period will close March 30, 2007.

Enrollment for the remainder of the initial contract period will be accepted again starting October 1, 2007 and will continue to be accepted at the address shown below through March 31, 2012.

Enrollment during the contract renewal period will be accepted starting April 1, 2012 and will continue to be accepted at the address shown below through February 15, 2017.

**Contact Person:**

Robin Morse, Bureau of Procurement, (717) 346-8180

**Response Mailing Address:**

Pennsylvania Department of General Services  
Bureau of Procurement  
Attn: Robin Morse  
555 Walnut Street, 6<sup>th</sup> Floor  
Harrisburg, PA 17101  
E-mail Address: [Rmorse@pa.gov](mailto:Rmorse@pa.gov)

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

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## PART I

### INSTRUCTIONS FOR COMPLETION OF PROPOSAL SUBMISSION

1. **Application Submission:** Your submitted response must be completed on the documents provided and must include the completed Contract Signature Page. All ITQ contract documentation must be returned to the Issuing Office. A copy of all documents should be made for your records.
2. **Completion of the Signature Page:** The contractor's signature shall be in ink. If any information is handwritten or changed in any manner, it must be referenced as shown on the Contract Signature Page, (page 46) and the contractor's authorized signatory must initial and date immediately following the statement.

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

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

All contractors must be registered with the Commonwealth's Central Vendor Management Unit prior to proposal submittal. Contractors can register at the following website [www.vendorregistration.state.pa.us](http://www.vendorregistration.state.pa.us).

Complete the SAP Vendor Number, Contractor's Name and Address, Contact Person, Contractor's Telephone Number, Contractor's Fax Number, Contractor's E-Mail Address, and the Contractor's signature blocks.

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

If signature authority has been delegated by any required principal (as cited above) to another official, (i.e., the Office Manager, the Comptroller, the Sales Manager, etc.), a copy of the resolution (for corporations) or power of attorney (for Partnerships and Sole Proprietorships) signed by the required principal delegating that signature authority to that specific individual must be provided prior to

execution of the Contract. For a municipality or an authority, the delegation document must be either a resolution of the governing body or delegation provided by the organization's by-laws.

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

**3. Areas to be covered by the contract:** This is a contract for use by DCNR to be used to obtain snow mobile trail grooming units and associated equipment for any of their statewide requirements.

## PART II

### INFORMATION REQUIRED FROM CONTRACTORS

1. **Statement of Qualifications:** Contractors must submit properly executed Contract Signature Page.
2. **Mandatory Requirements:** By executing this Contract, the contractor acknowledges the following:
  - a. You have submitted a complete response to this ITQ.
  - b. Your proposal contains the Contract Signature Page with an ORIGINAL SIGNATURE of an official of your company authorized to bind your company to its provisions and the provisions of this ITQ.
  - c. You agree that the contents of your proposal will become part of any snow mobile trail grooming units and/or associated equipment contract that may be entered into as a result of this ITQ and any subsequent RFQs.
  - d. You agree that your proposal will remain valid during the entire contract period.
  - e. You agree that, unless your proposal arrives by 1:30 PM on the date and location specified in the ITQ Cover Letter, it may not be considered for the full contract period beginning March 30, 2007.
  - f. If your firm is selected for receipt of the Request for Quote(s), you agree to comply with the contract terms and conditions of this ITQ and to furnish the required equipment as specified in the RFQ.
  - g. You agree that you must maintain your status as an approved contractor in order to remain eligible to receive an RFQ.

**PART III**  
**CRITERIA FOR QUALIFICATION**

1. **Mandatory Requirements:** The Department will review proposals to determine if each contractor complies with the Mandatory Requirements found in Part II, Paragraph 2. A contractor's non-acceptance of, or noncompliance with any of these mandatory requirements shall result in the disqualification of the proposal.
  
2. **Responsible and Responsive:** The Department will then evaluate proposals to determine contractor responsibility.
  
3. **Award of Contracts:** All responsible and responsive contractors that have met the Mandatory Requirements found in Part II, Paragraph 2, and that meet the above qualifications, will receive a signed Contract and are eligible to receive RFQs.

**PART IV  
SPECIAL TERMS AND CONDITIONS**

1. **Purpose:** The purpose of this Invitation to Qualify (ITQ) is to qualify responsible and responsive contractors for the procurement of snow mobile trail grooming units and associated equipment to the Commonwealth of Pennsylvania Department of Conservation & Natural Resources (“DCNR”) for various locations throughout the Commonwealth of Pennsylvania (“DCNR locations”).

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

The second step involves the issuance of Requests for Quotes (“RFQ”) to the Qualified Contractors. Through this two-step process, DCNR will offer Qualified Contractors the opportunity to submit prices for specific needs for snow mobile trail grooming units and associated equipment to be supplied to DCNR locations. The Qualified Contractors selected through the RFQ process (“Selected Contractors”) will receive a Purchase Order and will supply equipment to meet specific requirements of DCNR as indicated in the RFQ.

Competitive bids are not required on procurements of snow mobile trail grooming units and associated equipment not exceeding \$5000. Procurements will be made by issuance of a Purchase Order.

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

Robin Morse, Commodity Specialist  
Bureau of Procurement  
555 Walnut Street, 6<sup>th</sup> Floor  
Harrisburg, Pennsylvania 17101  
Telephone No. (717) 346-8180  
E-Mail: [Rmorse@pa.gov](mailto:Rmorse@pa.gov)

3. **Scope:** This ITQ contains instructions for preparing and submitting a proposal, mandatory requirements to be eligible for consideration, contract terms and conditions, and a Contract Signature Page.

4. **Proposals:** To be considered, a proposal must consist of a complete response using the format provided in Part II of this ITQ. The Contract Signature Page must be included with the proposal and have an original signature of an official authorized to bind the bidder to the provisions of the proposal and ITQ. The contents of the proposal of a Qualified Contractor and this ITQ will become contractual obligations when the contract is executed. For this ITQ, the proposal, as submitted, must remain valid during the entire execution process.

5. **Bid Security:** Contractors are not required to submit bid security with their proposals. However, performance security may be required from the Selected Contractor. When performance security is required, the requirements will be set forth in the RFQ.

6. **Addenda to the ITQ**: If it becomes necessary to revise any part of this ITQ, addenda will be posted to the Department's website (<http://www.dgsweb.state.pa.us/comod/main.asp>) for viewing by all contractors who downloaded the original ITQ.
7. **Alternate Proposals**: The Department will not accept alternate proposals. Alternate proposals are those that are provided in a form other than that specified by the Department. The Department will not accept proposals wherein a contractor alters any of the forms provided in the application.
8. **Rejection of Proposals**: The Department reserves the right to reject any and all proposals received as a result of this ITQ.
9. **Incurring Costs**: The Department is not liable for any costs or expenses incurred in the preparation and submission of the proposals.
10. **Submission Due Date**: The initial submission deadline for this ITQ is 1:30 PM on March 30, 2007. It is in the best interest of all contractors to submit the required information by the initial submission date in order to qualify for the full contract period.

Enrollment for the remainder of the contract period will be accepted again starting October 1, 2007.

To be considered for RFQ's during the initial enrollment period, all required documentation must be received at the address below no later than 1:30 PM, March 20, 2007. Responses **MUST** be delivered or mailed to the address below:

Attn: Bureau of Procurement Bid Room  
Department of General Services  
Forum Place, 6<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg PA 17101-1914

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

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

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

**Request For Quotes (RFQs)**: A document that describes the required equipment, and operators, if applicable, and provides interested Qualified Contractors with sufficient information to enable them to prepare and submit quotes. At DCNR's discretion, RFQs may be issued through mail or facsimile or electronic mail.

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

**Contractor:** The Qualified Contractor(s) selected as a result of the RFQ to furnish snow mobile trail grooming units and associated equipment to meet the requirements of DCNR locations.

12. **Orders:** DCNR will issue a Purchase Order against the Contract to obtain the equipment. This order will constitute authority to furnish the equipment and must be used when invoicing, if applicable, the county for service provided. Each RFQ and/or Purchase Order will be deemed to incorporate the terms and conditions set forth in this Contract.

13. **Contractor Duties:** Each Contractor, subject to the terms and conditions set forth in the Contract, the RFQ, and the Purchase Order, shall furnish snow mobile trail grooming units and associated equipment

a) The Contractor shall be paid only for the units/equipment as specified in the RFQ and then awarded on the Purchase Order issued by DCNR.

b) It is understood that prices quoted and awarded are at FOB Destination terms to include all delivery, set-up, shipping and handling costs, unless otherwise specified in the RFQ.

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

14. **Term:** The Contract shall begin on April 1, 2007 or the date of the Contractor's receipt of the fully executed contract if later, and expire on March 31, 2012. In addition, the Contract or any part of the Contract may be renewed for one additional five-year term by mutual agreement of the Department and the contractor(s).

15. **Contractor Selection:** Qualified Contractors will be selected for receipt of an RFQ from the list of Qualified Contractors on Contract #2540-07. When DCNR requests quotes, all Qualified Contractors on Contract #2540-07 will be invited to submit a quote.

16. **Request For Quote (RFQ):** DCNR will issue a Request for Quote which will include, but not be limited to, the type of equipment, quantity, delivery location, other special terms, conditions and specifications, and bid response requirements. Requests for quotes may be issued on an as-needed basis through mail or facsimile or electronic mail.

Contractors must respond to each RFQ even with only a "NO BID." Contractors that fail to respond to five (5) successive RFQs shall be removed from the Contract #2540-07.

RFQs must be signed by an authorized signatory of the company.

17. **Quote/Bid:** Contractors must submit quotes by the date and time specified in each RFQ to be considered for award. All prices are firm and must be prepared and submitted in accordance with the special terms and conditions of the request for quote.

18. **Award:** DCNR will issue the selected Contractor a Purchase Order. The Contractor cannot begin work until receipt of the fully executed Purchase Order.

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

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

21. **Claims:** Any claims against the Commonwealth must be filed in accordance with Paragraph 21 (Contract Controversies) of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies – SAP, GSPUR-12E (SAP), Rev. 05/07/04*. If a claim results from a Purchase Order based upon an RFQ issued by DCNR, the claim must be filed with DCNR. If such a claim is filed with DGS, it will be referred to DCNR for resolution.

**PART V**  
**STANDARD CONTRACT TERMS AND CONDITIONS**  
**FOR DEPARTMENT OF GENERAL SERVICES**  
**STATEWIDE CONTRACTS FOR SUPPLIES - SAP**

**1. TERM OF CONTRACT**

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

The Effective Date shall be: a) the date the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Special Contract Terms and Conditions and whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.

The fully executed Contract shall not contain "ink" signatures by the Commonwealth. The Contractor understands and agrees that the receipt of an electronically-printed Contract with the printed name of the Commonwealth purchasing agent constitutes a binding, valid contract with the Commonwealth. The printed name of the purchasing agent on the Contract represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Contract. The printed name also represents that all approvals required by Commonwealth contracting procedures have been obtained.

The Contractor shall not start performance until all of the following have occurred: a. the Effective Date has arrived; b. the Contractor has received a copy of the fully-executed Contract; and c. the Contractor has received a purchase order from a Commonwealth agency. The Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred before the Effective Date or before the Contractor receives a copy of the fully-executed Contract or before the Contractor has received a purchase order. Except as otherwise provided in Paragraph 3, no Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract, or any part of the Contract, for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new Contract.

**2. ESTIMATED QUANTITIES**

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

### **3. PURCHASE ORDERS**

Commonwealth agencies may issue purchase orders against the Contract. These orders constitute the Contractor's authority to make delivery. All purchase orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept purchase orders which require performance extended beyond those performance time periods specified in the Contract but in no event longer than ninety (90) days after the expiration date of the Contract period. Each purchase order will be deemed to incorporate the terms and conditions set forth in the Contract.

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

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the purchase order to be legally enforceable.
- b. Upon receipt of an order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the Commonwealth agency, unless and until the Commonwealth agency transmitting the order has properly received an acknowledgement.
- c. The parties agree that no writing shall be required in order to make the order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine purchase order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine purchase order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of genuine purchase orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A purchase order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- d. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase orders under three thousand dollars (\$3,000) in total amount may also be made in person or by telephone using a Commonwealth Procurement VISA Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Procurement VISA card.

#### **4. INDEPENDENT CONTRACTOR**

In performing the obligations required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

#### **5. COMPLIANCE WITH LAW**

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

#### **6. ENVIRONMENTAL PROVISIONS**

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

#### **7. POST-CONSUMER RECYCLED CONTENT**

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions.

#### **8. COMPENSATION/INVOICES**

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) which are delivered and accepted by the Commonwealth.

Unless otherwise specified or unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an *invoice itemized by purchase order line item* to the address referenced on the purchase order promptly after the item(s) are delivered. The invoice should include only amounts due under the purchase order. The purchase order number must be included on all invoices.

#### **9. PAYMENT**

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address on the contract purchase order, if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the item(s) as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based

upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the item(s) furnished by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the item(s) if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth Purchasing Card to make purchases under the Contract. The Commonwealth Purchasing Card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract.

## **10. TAXES**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 2374001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

## **11. WARRANTY**

The Contractor warrants that all item(s) furnished by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. The Contractor shall pass through to the Commonwealth the manufacturer's warranty for all parts or supplies provided under the Contract. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

## **12. DELIVERY**

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in Paragraph 20, all item(s) must be delivered within the time period specified on the contract purchase order. Time is of the essence and, in addition to any other remedies, the contract purchase order is subject to termination for failure to deliver as specified. Unless otherwise stated by the

Contractor in its Bid or indicated in the Special Contract Terms and Conditions, delivery must be made within thirty (30) days after award of the Contract Purchase Order.

### **13. 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 the item(s) or the process provided or used in the performance of the purchase order which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the purchase order. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of the item(s) provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the purchase order. 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 noninfringement 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 Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the item(s) of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth 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 paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

### **14. OWNERSHIP RIGHTS**

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

### **15. ASSIGNMENT OF ANTITRUST CLAIMS**

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally

bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the supplies and services which are the subject of the Contract.

#### **16. HOLD HARMLESS PROVISION**

The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

#### **17. AUDIT PROVISIONS**

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract.

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

#### **18. INSPECTION AND REJECTION**

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

#### **19. DEFAULT**

- a. The Commonwealth may, subject to the provisions of Paragraph 20, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 21, Termination Provisions) the whole or any part of this Contract including a purchase order, for any of the following reasons:

- 1) Failure to deliver the awarded item(s) within the time specified in the Contract or contract purchase order or as otherwise specified;
  - 2) Improper delivery;
  - 3) Failure to provide an item(s) which is in conformance 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.
- b. In the event that the Commonwealth terminates this Contract in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.
- c. If the Contract is terminated in whole or in part as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Department of General Services, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for any partially manufactured or delivered item(s) accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and the Commonwealth. The Commonwealth may withhold from amounts otherwise due the Contractor for such partially manufactured or delivered item(s), such sum as the Commonwealth determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in Paragraph 22, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **20. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but 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 Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract.

## **21. TERMINATION PROVISIONS**

The Commonwealth has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a purchase order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or purchase order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract or purchase order. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 19, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a purchase order for other cause as specified in this Contract or by

law. If it is later determined that the Commonwealth erred in terminating the Contract or a contract purchase order for cause, then, at the Commonwealth's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph 21.a.

## **22. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

## **23. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph 23, the Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under the Contract without the prior written consent of the Department of General Services, which consent may be withheld at the sole and absolute discretion of the Department of General Services.
- c. The Contractor may not assign, in whole or in part, the Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Department of General Services, which consent may be withheld at the sole and absolute discretion of the Department of General Services.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Department of General Services, assign its rights to payment to be received under the Contract or a contract purchase order, provided that the Contractor provides written notice of such assignment to the Buyer and the ordering Commonwealth agency together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of the Contract.

- e. For the purposes of the Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Department of General Services shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Buyer written notice of any such change of name.

**24. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

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

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due

under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **25. CONTRACTOR INTEGRITY PROVISIONS**

- a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.
- 1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - 2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - 3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
  - 4) **Financial interest** means:
    - a) Ownership of more than a five percent interest in any business; or
    - b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - 5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

- f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## **26. CONTRACTOR RESPONSIBILITY PROVISIONS**

- a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of the bid/contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- b. The Contractor must also certify, in writing, that as of the date of its execution of the bid/contract, it has no tax liabilities or other Commonwealth obligations.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor

shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

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

## **27. 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 subparagraph a above.

## **28. HAZARDOUS SUBSTANCES**

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the 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 pursuant thereto 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 Paragraph (1) through (4):
  - 1) Hazardous substances:
    - a) The chemical name or common name,
    - b) A hazard warning, and
    - c) The name, address, and telephone number of the manufacturer.
  - 2) Hazardous mixtures:
    - a) The common name, but if none exists, then 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 consisting 1.0% or more of the mixture,
    - d) A hazard warning, and
    - e) The name, address, and telephone number of the manufacturer.
  - 3) Single chemicals:
    - a) The chemical name or the common name,
    - b) A hazard warning, if appropriate, and
    - c) The name, address, and telephone number of the manufacturer.
  - 4) Chemical Mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) A hazard warning, if appropriate,
    - c) The name, address, and telephone number of the manufacturer, and

- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the 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 hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be 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 substance or mixture present therein.

b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS 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 Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

## **29. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract purchase order upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the contract purchase order without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

### **30. APPLICABLE LAW**

The 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.

### **31. INTEGRATION**

The RFQ - Invitation For Bids form and the Contract form, including all documents referenced on the forms, as well as the purchase orders constitute the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties or by a change order signed by the Commonwealth. All such amendments and change orders will be made using the appropriate Commonwealth form.

### **32. CHANGES**

The Commonwealth reserves the right to *make changes* at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the supply within the scope of the Contract; 3) to exercise an option to purchase or early payment option; 4) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 5) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. *Any such change shall be made by:* a. the contracting officer shown on the Contract form, or b. the agency contracting officer for changes to purchase orders, *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. Such increases, decreases, changes, modifications or exercises of purchase options will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the supply in accordance with the *change*. Any dispute by the Contractor in regard to the performance required *by any notification of change* shall be handled through Paragraph 22, "Contract Controversies".

**EXHIBIT A-1**

**CONSTRUCTION PRODUCTS  
RECYCLED CONTENT**

(A) **REQUIREMENT**

All construction products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Construction Products</b>	<b>Material</b>	<b>% of Post-Consumer Materials</b>	<b>% of Total Recovered Materials</b>
Structural Fiberboard	Recovered Materials	-	80
Laminated Paperboard	Post-consumer Paper	100	-
Rock Wool Insulation	Slag	-	75
Fiberglass Insulation	Glass Cullet	-	20
Cellulose Insulation (loose-fill and spray-on)	Post-consumer Paper	75	-
Perlite Composite Board Insulation	Post-consumer Paper	23	-
Plastic Rigid Foam, Polyisocyanurate/ Polyurethane: Rigid Foam Insulation	Recovered Material	-	9
Foam-in-Place Insulation	Recovered Material	-	5
Glass Fiber Reinforced Insulation	Recovered Material	-	6
Phenolic Rigid Foam Insulation	Recovered Material	-	5
Floor Tiles (heavy duty/commercial use)	Rubber	90	-
	Plastic	-	90
Patio Blocks	Rubber or Rubber Blends	90	-
	Plastic or Plastic Blends	-	90
Polyester Carpet Fiber Face	Polyethylene terephthalate (PET) resin	25	-
Latex Paint: --Consolidated <sup>1</sup> --Reprocessed <sup>2</sup> ----White, Off-White, Pastel Colors ----Grey, Brown, Earthtones, and Other Dark Colors	Recovered Material	100	-
	Recovered Material	20	-
	Recovered Material	50	-
Shower and Restroom Dividers/Partitions:	Plastic	20	-
	Steel <sup>4</sup>	16	9

<sup>1</sup> Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

<sup>2</sup> Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.

		67	33
Carpet Cushion:			
--Bonded Polyurethane	Old Carpet Cushion	15	-
--Jute	Burlap	40	-
--Synthetic Fibers	Carpet Fabrication Scrap	-	100
--Rubber	Tire Rubber	60	-
Railroad Grade Crossing Surfaces			
--Concrete	Coal Fly Ash	-	15
--Rubber <sup>3</sup>	Tire Rubber	-	85
--Steel <sup>4</sup>	Steel	16	9
		67	33

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the construction product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

<sup>3</sup>The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives

<sup>4</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

**EXHIBIT A-2**  
**VEHICULAR PRODUCTS**  
**RECYCLED CONTENT**

(A) **REQUIREMENT**

All vehicular products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Vehicular Product</b>	<b>Requirements</b>
Re-Refined Oil	25% re-refined oil base stock for engine lubricating oils, hydraulic fluids, and gear oils.

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

“Re-refined oil” is oil that is manufactured with a minimum of twenty-five percent basestock made from used oil that has been recovered and processed to make it reusable as oil. Once the oil has been refined, no difference can be detected between re-refined and virgin oil.

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the vehicular product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE REFERENCED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the vehicular product(s), to provide the Commonwealth with documentary evidence that the vehicular product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

**EXHIBIT A-3  
PAPER PRODUCTS  
RECYCLED CONTENT**

(A) **REQUIREMENT**

All paper offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer content as shown below for the applicable products:

Item	Notes	Post-Consumer Content (%)
<b>Printing and Writing Papers</b>		
Reprographic	Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction	30
Offset	Used for book publishing, commercial printing, direct mail, technical documents, and manuals	30
Tablet	Office paper such as note pads and notebooks	30
Forms bond	Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless	30
Envelope	Wove Kraft, white and colored (including manila) Kraft, unbleached Excludes custom envelopes	30 10 10
Cotton fiber	High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items	30
Text and cover	Premium papers used for cover stock, books, and stationery and matching envelopes	30
Supercalendered	Groundwood paper used for advertising and mail order inserts,	10

	catalogs, and some magazines	
Machine finished groundwood	Groundwood paper used in magazines and catalogs	10
Papeteries	Used for invitations and greeting cards	30
Check safety	Used in the manufacture of commercial and government checks	10
Coated	Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes	10
Carbonless	Used for multiple-impact copy forms	30
File folders	Manila or colored	30
Dyed filing products	Used for multicolored hanging folders and wallet files	20
Index and card stock	Used for index cards and postcards	20
Pressboard	High-strength paperboard used in binders and report covers	20
Tags and tickets	Used for toll and lottery tickets, licenses, and identification and tabulating cards	20
<b>Newsprint</b>		
Newsprint	Groundwood paper used in newspapers	20
<b>Commercial Sanitary Tissue Products</b>		
Bathroom tissue	Used in rolls or sheets	20
Paper towels	Used in rolls or sheets	40
Paper napkins	Used in food service applications	30
Facial tissue	Used for personal care	10
General-purpose industrial wipers	Used in cleaning and wiping applications	40

<b>Paperboard and Packaging Products</b>		
Corrugated containers (<300 psi) (300 psi)	Used for packaging and shipping a variety of goods	25 25
Solid fiber boxes	Used for specialized packaging needs such as dynamite packaging and army ration boxes	40
Folding cartons	Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware	40
Industrial paperboard	Used to create tubes, cores, cans and drums	45
Miscellaneous	Includes “chipboard” pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles	75
Padded mailers	Made from kraft paper that is usually brown but can be bleached white	5
Carrierboard	A type of folding carton designed for multipack beverage cartons	10
Brown papers	Used for bags and wrapping paper	5
<b>Miscellaneous Paper Products</b>		
Tray liners	Used to line food service trays. Often contain printed information.	50

“Post-consumer” content is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer content is part of the broader category of recovered material.”

The Commonwealth of Pennsylvania recognizes that paper products are universally made with scrap material recovered from the manufacturing process; use of such materials is a standard practice, both efficient and economical for the paper maker; therefore, bidders of paper products need not certify that their products are made with “pre-consumer,” “recovered,” or “secondary” paper fiber.

(B) **BIDDER'S CERTIFICATION**

Bidder certifies that the paper product(s) which the bidder is offering contains the required minimum percentage of post-consumer content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a mill certification must be completed and signed by the mill before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the paper product(s), to provide the Commonwealth with documentary evidence that the paper product(s) were in fact produced with the required minimum percentage of post-consumer content.

**EXHIBIT A-4  
LANDSCAPING PRODUCTS  
RECYCLED CONTENT**

(A) **REQUIREMENT**

All landscaping products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Landscaping Products</b>	<b>Recovered Material Content</b>
Hydraulic Mulch: -----Paper -----Wood/Paper	100% (post-consumer) 100% (total)
Compost Made From Yard Trimmings and/or Food Waste	Purchase or use compost made from yard trimmings, leaves, grass clippings and/or food wastes for applications such as landscaping, seeding of grass or other plants, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation. DGS further recommends implementing a composting system for these materials when agencies have an adequate volume and sufficient space.
Garden Hose: -----Rubber and/or Plastic	60% (post-consumer)
Soaker Hose: -----Rubber and/or Plastic	60% (post-consumer)
Lawn and Garden Edging: -----Rubber and/or Plastic	30% (post-consumer)/30-100% (total)
Landscaping Timber and Posts: -----HDPE -----Mixed Plastics/Sawdust -----HDPE/Fiberglass -----Other mixed Resins	25% (post-consumer) + 50% (recovered) 50% (post-consumer) + 50% (recovered) 75% (post-consumer) + 20% (recovered) 50% (post-consumer) + 45% (recovered)

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the landscaping product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the landscaping product(s), to provide the Commonwealth with documentary evidence that the landscaping product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

**EXHIBIT A-5**  
**MISCELLANEOUS PRODUCTS**  
**RECYCLED CONTENT**

(A) **REQUIREMENT**

All miscellaneous products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Miscellaneous Products</b>	<b>Recovered Material Content</b>
Awards and Plaques	
-----Glass	75% (post-consumer) + 25% (recovered)
-----Wood	100% (total)
-----Paper	40% (post-consumer)
-----Plastic and Plastic/Wood Composites	50% (post-consumer) + 45% (recovered)
Industrial Drums	
-----Steel <sup>1</sup>	16% (post-consumer) + 9% (recovered)
-----Plastic (HDPE)	30% (post-consumer)
-----Fiber (paper)	100% (post-consumer)
Mats	
-----Rubber	75% (post-consumer) + 10% (recovered)
-----Plastic	10% (post-consumer) + 90% (recovered)
-----Rubber/Plastic Composite	100% (post-consumer)
Pallets	
-----Wood	95% (post-consumer)
-----Plastic	100% (post-consumer)
-----Thermoformed	25% (post-consumer)
-----Paperboard	50% (post-consumer)
Signage	
-----Plastic	80% (post-consumer)
-----Aluminum	25% (post-consumer)
-----Plastic Sign Posts/Supports	80% (post-consumer)
-----Steel Sign Posts/Supports <sup>2</sup>	16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered)
Sorbents	
-----Paper	90% (post-consumer) + 10% (recovered)
-----Textiles	95% (post-consumer)
-----Plastics	25% (total)
-----Wood <sup>3</sup>	100% (total)
-----Other Organics/Multimaterials <sup>4</sup>	100% (total)

<sup>1</sup>Steel used in steel drums is manufactured using the Basic Oxygen Furnace (BOF) process, which contains 25-30% total recovered material, of which 16% is post-consumer steel. Steel used in manual-grade strapping is manufactured using either the BOF process or the Electric Arc Furnace (EAF) process, which contains 100% total recovered materials, of which 67% is post-consumer steel.

<sup>2</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

<sup>3</sup> "Wood" includes materials such as sawdust and lumber mill trimmings.

Manual-Grade Strapping	
-----Polyester	50% (post-consumer)
-----Polypropylene	10% (total)
-----Steel <sup>2</sup>	16% (post-consumer) +9% (recovered)
	67% (post-consumer) +33% (recovered)

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the miscellaneous product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the miscellaneous product(s), to provide the Commonwealth with documentary evidence that the miscellaneous product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

<sup>4</sup> Examples of other organics include, but are not limited to, peanut hulls and corn stover. An example of multimaterial sorbents would include, but not be limited to, a polymer and cellulose fiber combination.

<sup>2</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

**EXHIBIT A-6  
NONPAPER OFFICE PRODUCTS  
RECYCLED CONTENT**

**(A) REQUIREMENT**

All nonpaper office products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Nonpaper Office Product</b>	<b>Recovered Material Content</b>
Recycling Containers and Waste Receptacles: -----Plastic -----Steel <sup>1</sup> -----Paper -----Corrugated -----Solid Fiber Boxes -----Industrial Paperboard	20% (post-consumer) 16% (post-consumer) +9% (recovered)  25% (post-consumer) 40% (post-consumer) 40% (post-consumer) + 60% (recovered)
Plastic Desktop Accessories (polystyrene) including desk organizers, sorters, and trays, and memo, note, and pencil holders.	25% (post-consumer)
Binders: -----Plastic-Covered -----Paper-Covered -----Pressboard -----Solid Plastic -----HDPE -----PE -----PET -----Misc. Plastics	25% 75% (post-consumer) +15% (recovered) 20% (post-consumer) + 30% (recovered)  90% (post-consumer) 30% (post-consumer) 100% (post-consumer) 80% (post-consumer)
Trash Bags (plastic)	10% (post-consumer)
Toner Cartridges	Return used toner cartridges for remanufacturing and reuse or purchase a remanufactured or recycled-content replacement cartridge.
Printer Ribbons	Procure printer ribbon reinking or reloading services or procure reinked or reloaded printer ribbons.

<sup>1</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated item is made from steel manufactured from in a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel.

Plastic Envelopes	25% (post-consumer)
Plastic Clipboards: -----HDPE -----PS -----Misc. Plastics	90% (post-consumer) 50% (post-consumer) 15% (post-consumer)
Plastic File Folders -----HDPE	90% (post-consumer)
Plastic Clip Portfolios -----HDPE	90% (post-consumer)
Plastic Presentation Folders -----HDPE	90% (post-consumer)

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the nonpaper office products which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the paper, to provide the Commonwealth with documentary evidence that the nonpaper office product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

**EXHIBIT A-7**  
**PARK & RECREATION PRODUCTS**  
**RECYCLED CONTENT**

(A) **REQUIREMENT**

All park and recreation products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Park &amp; Recreation Product</b>	<b>Recovered Material Content<sup>1</sup></b>
<b>Park Benches &amp; Picnic Tables:</b> -----Plastic <sup>2</sup> -----Plastic Composites -----Aluminum -----Concrete -----Steel <sup>3</sup>	90% (post-consumer) + 10% (recovered) 50% (post-consumer) + 50% (recovered) 25% (post-consumer) 15% (total) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered)
<b>Plastic Fencing for Specified Uses<sup>4</sup></b>	60% (post-consumer) + 30% (recovered)
<b>Playground Equipment</b> -----Plastic <sup>3</sup> -----Plastic Composites -----Steel <sup>4</sup>  -----Aluminum	90% (post-consumer) + 10% (recovered) 50% (post-consumer) + 45% (recovered) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 25% (post-consumer)
<b>Playground Surfaces:</b> -----Plastic or Rubber	90% (post-consumer)
<b>Running Tracks:</b> -----Plastic or Rubber	90% (post-consumer)

<sup>1</sup> The recommended recovered materials content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.

<sup>2</sup> "Plastic" includes both single and mixed plastic resins. Park benches and picnic tables made with recovered plastic may also contain other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

<sup>3</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (AF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

<sup>4</sup> Designation includes fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the park and recreational product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the park and recreational product(s), to provide the Commonwealth with documentary evidence that the park and recreational product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

**EXHIBIT A-8  
TRANSPORTATION PRODUCTS  
RECYCLED CONTENT**

**(A) REQUIREMENT**

All transportation products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<b>Transportation Products</b>	<b>Recovered Material Content<sup>1</sup></b>
Traffic Cones: -----Plastic (PVC and LDPE) -----Crumb Rubber	50% (recovered) 50% (recovered)
Traffic Barricades (type I and II only): -----Plastic (HDPE, LDPE, PET) -----Steel <sup>2</sup>  -----Fiberglass	80% (post-consumer) + 20% (recovered) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 100% (recovered)
Parking Stops: -----Plastic and/or Rubber -----Concrete Containing Coal Fly Ash  -----Concrete Containing Ground Granulated Blast Furnace Slag	100% (recovered) 20% (recovered) 15% when used as a partial cement replacement as an admixture in concrete. 25% (recovered)
Traffic Control Devices: -----Channelizers: -----Plastic -----Rubber (base only) -----Delineators: -----Plastic -----Rubber (base only) -----Steel (base only) <sup>2</sup>  -----Flexible Delineators	25% (post-consumer) 100% (post-consumer)  25% (post-consumer) 100% (post-consumer) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 25% (post-consumer)

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

<sup>1</sup> Content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.

<sup>2</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the transportation product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the transportation product(s), to provide the Commonwealth with documentary evidence that the transportation product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

MANUFACTURER/MILL CERTIFICATION

(To be submitted with invoice for each order)

TO BE COMPLETED BY MANUFACTURER/MILL:

NAME OF MANUFACTURER/MILL: \_\_\_\_\_

ADDRESS OF MANUFACTURER/MILL: \_\_\_\_\_

FEDERAL EMPLOYER I.D. NO.: \_\_\_\_\_

CONTRACT OR REQUISITION NO. \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS OF CONTRACTOR: \_\_\_\_\_

Type of product(s) which the manufacturer/mill furnished to the contractor: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATION: I, the undersigned officer of the above-named manufacturer/mill, do hereby certify that I am authorized to provide this certification on behalf of the above-named manufacturer/mill and that the type of product(s) listed above which my company furnished to the contractor named above for the referenced contract or purchase requisition, contained not less than \_\_\_\_\_% post-consumer materials and \_\_\_\_\_% recovered materials as those terms are defined in the invitation for bids. I understand that this document is subject to the provisions of the Unsworn Falsification of Authorities Act (18 P.S. Section 4904).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**PENNSYLVANIA DEPARTMENT OF CONSERVATION & NATURAL RESOURCES**  
**Invitation to Qualify: Snow Mobile Trail Grooming Units and Associated**  
**Equipment**

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

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

**CONTRACTOR MUST COMPLETE ALL APPLICABLE AREAS**

<b>SAP VENDOR NUMBER</b> (All vendors must register with the Commonwealth at <a href="http://www.vendorregistration.state.pa.us">www.vendorregistration.state.pa.us</a> ):	
<b>CONTRACTOR NAME &amp; ADDRESS:</b> If SOLE PROPRIETOR is doing business as (d/b/a) another name, see instructions in Part II, attached:	
<b>CONTRACTOR CONTACT PERSON:</b>	
<b>PHONE NUMBER:</b>	(     )
<b>FAX NUMBER:</b>	(     )
<b>E-MAIL ADDRESS:</b>	

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