



August 20, 2021

RE: MILK BID 2021

Dear Vendors,

The 2021 Milk Bid is available to download online at the DGS website (<http://www.emarketplace.state.pa.us/>). If you are unable to download the bid packet, please contact the Issuing Officer listed below.

The following documents must be filled out and returned to Department of Human Services by the bid opening date of Thursday, September 9, 2021 by 1:00 P.M. for consideration of your bid.

Section:

3. Local Purchase Proposal Cover Sheet
4. Bid Page
5. Check Applicable Block Page
10. Manufacturer/Mill Certification
11. Reciprocal Limitations Act Requirements

Remember to sign your bid. Unsigned bids will be disqualified.

BIDS MUST BE RECEIVED PRIOR TO THE BID OPENING TIME ON THE DATE OF THE BID OPENING TO BE COUNTED.

Any questions can be directed to Merry Mitchell at (717) 783-1083 or RA-PWBIDQUESTIONS@pa.gov

Sincerely,

Merry Mitchell

Digitally signed by Merry Mitchell
DN: cn=Merry Mitchell, o=Procurement, ou=BPCM,
email=merrymitchell@pa.gov, c=US
Date: 2021.08.19 19:27:15 -0400

Merry Mitchell
Department of Human Services

DHS MILK BID 2021

DOCUMENT MATERIALS

1. MILK BID COVER LETTER
2. DOCUMENT MATERIALS
3. LOCAL PURCHASE PROPOSAL*
4. BID PAGE*
5. REGION SERVICE AREAS
6. MILK REQUIREMENTS; TOTALS BY REGION
7. MILK PROPOSAL
8. STANDARD TERMS AND CONDITIONS
9. BOP-1303 MANUFACTURER/MILL CERTIFICATION*
10. RECIPROCAL LIMITATIONS ACT REQUIREMENTS*

* These items MUST BE COMPLETED BY VENDOR and RETURNED WITH THE BID.

REMEMBER TO SIGN YOUR BID. UNSIGNED BIDS WILL BE FOUND NON-RESPONSIVE.

BIDS MUST BE RECEIVED PRIOR TO THE BID OPENING TIME ON THE DATE OF THE BID OPENING TO BE COUNTED.

LOCAL PURCHASE PROPOSAL

INSTRUCTIONS:

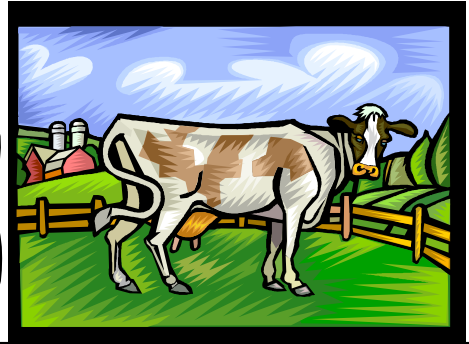
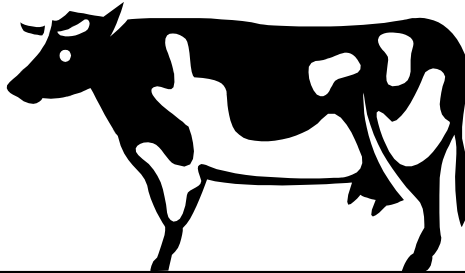
RETURN COMPLETED PROPOSAL IN THE ENCLOSED ENVELOPE PRIOR TO THE DATE AND TIME SPECIFIED FOR BID OPENINGS. BIDS RECEIVED AFTER THE DATE AND HOUR SPECIFIED FOR BID OPENING WILL BE CONSIDERED AS "LATE BIDS" AND CANNOT BE ACCEPTED. ALL ARTICLES LISTED ARE TO BE BID F.O.B. DESTINATION

FACILITY: DEPARTMENT OF HUMAN SERVICES

THIS PROPOSAL IS SUBJECT TO THE CONDITIONS AND INSTRUCTIONS ATTACHED. THE BIDDER HEREBY GIVES ASSURANCE OF COMPLIANCE WITH ALL THE CONDITIONS AND INSTRUCTIONS APPEARING THERON.		PROCUREMENT SPECIALIST NAME AND NUMBER Merry Mitchell 717-783-1083	
MAIL DATE MONTH/DATE/YEAR August 20, 2021	OPENING DATE MONTH DATE YEAR September 9, 2021	OPENING TIME 1:00 P.M.	PROPOSAL NUMBER: MILK BID 2021
THE DEPARTMENT RESERVES THE RIGHT TO AWARD BY ITEM OR ON TOTAL BID BASIS, WHICHEVER IS DEEMED MOST ADVANTAGEOUS TO THE COMMONWEALTH		SHIP TO: COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES HEALTH & WELFARE BLDG., ROOM 832 HARRISBURG, PA 17120	
DELIVERY SCHEDULE: DELIVERIES ARE TO BE MADE WITHIN 30 DAYS FROM RECEIPT OF PURCHASE ORDER UNLESS OTHERWISE INDICATED			

DESCRIPTION OF COMMODITY

MILK BID FOR YEAR 2021 PLEASE RETURN ONE (1) COPY OF THIS PROPOSAL



BELOW AND ALL ATTACHMENTS WITH BID ARE TO BE COMPLETED BY THE VENDOR

IN COMPLIANCE WITH THIS PURCHASE PROPOSAL AND SUBJECT TO ALL THE CONDITIONS THEREOF, THE UNDERSIGNED OFFERS AND AGREES IF THIS PROPOSAL IS ACCEPTED, TO FURNISH ANY OR ALL ITEMS UPON WHICH PRICES ARE QUOTED AT THE PRICE SET OPPOSITE EACH ITEM. BID PRICES SHALL REMAIN FIRM FOR A PERIOD OF 60 DAYS FROM BID OPENING DATE. ALL BID INFORMATION MUST BE COMPLETED IN INK. ALL BIDS MUST BE SEALED.

PRINT NAME	DATE/MONTH/YEAR	FEDERAL ID NO.
SIGNATURE		SAP VENDOR NO.
TITLE	TERMS:	PHONE:

VENDOR INFORMATION MAILING LABEL GOES HERE	DEPARTMENT OF HUMAN SERVICES USE ONLY. BID OPENING DATE _____ TIME: _____ AGENT _____ WITNESS _____ WITNESS _____
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BID PAGE

Are you bidding at Milk Marketing Applicable Discount? Yes___ No___

If no, indicate the price per unit above milk marketing minimum.

Cost above minimum: \$_____ per unit.

Bidder's Name _____

Address _____

Telephone _____

Federal ID# (FIN) _____

The bids will be awarded by facility within each region. No vendor will be allowed a second facility in a region until all vendors are offered an opportunity of an award within the region.

The facilities within each region are ranked from high to low by volume. A lottery will be used to identify the awarded vendor for each facility. You will need to identify those facilities that you are not interested in serving.

Please check the applicable block.

Region 1

	YES	NO
Norristown State Hospital	_____	_____

Region 2

	YES	NO
Wernersville	_____	_____

Region 3

	All _____	
	YES	NO
Selinsgrove	_____	_____
Clark Summit	_____	_____
Danville	_____	_____
White Haven	_____	_____
YFC #2	_____	_____

Region 4

	All _____	
	YES	NO
South Mountain	_____	_____
Loysville YDC	_____	_____

Region 5

	All _____	
	YES	NO
Polk Center	_____	_____
Torrance	_____	_____

Region 6

	All _____	
	YES	NO
Ebensburg	_____	_____
Warren	_____	_____
YFC #3	_____	_____

ALL REGIONS

Product Code	Type	REGION 1	REGION 2	REGION 3	REGION 4	REGION 5	REGION 6	TOTALS
400	Standard (Whole) Milk 4% and under Butterfat, Vitamin A & D added, Homogenized, 1/2 pt Containers (48 Per Case)	0	30,000	70,600	0	0	19,200	119,800
400	Standard (Whole) Milk 4% and under Butterfat, Vitamin A & D added, Homogenized, (Containers Gallon Each)	0	900	468	0	0	0	1,368
400	Standard (Whole) Milk NLT 3.25% Milk Fat, Vitamin A & D added, Homogenized, 1/2 pt Containers (48 Per Case)	0	0	23,850	27,200	0	0	51,050
800	Reduced Fat (2% Milk Fat) and under, Vitamin A&D Homogenized (5 Gallon Containers)	0	0	0	0	0	0	0
800	Reduced Fat (2% Milk Fat) and under, Vitamin A&D Homogenized (Gallon Containers)	0	0	0	0	0	0	0
800	Reduced Fat (2% Milk) and under Butterfat, Vitamin A & D added, Homogenized, 1/2 pt Containers (48 Per Case)	0	0	0	0	0	0	0
800	Reduced Fat (2% Milk) and under Butterfat, Vitamin A & D added, Homogenized, 1/4 pt Containers (48 - 4oz Containers Per Case)	0	0	0	0	0	0	0
900	Lowfat Milk (1%) and under Vitamin A&D Added 1/2 pt. Containers (48 Per Case)	275,000	0	468	108,000	0	20,000	403,468
900	Lowfat Milk (1%) and under Vitamin A&D Added (1/2 Gallon Containers)	0	0	0	600	0	450	1,050
900	Lowfat Milk (1%) and under Vitamin A&D Added (Gallon Containers)	0	0	0	0	0	0	0
1200	Nonfat (Skim) Milk Vitamin A&D Added (Quarts-Plastic)	0	0	19,968	0	0	0	19,968
1200	Nonfat (Skim) Milk Vitamin A&D Added (5 Gallon Bulk)	0	0	0	0	0	0	0
1200	Nonfat (Skim) Milk Vitamin A&D Added (Gallon Containers)	0	0	2,080	0	0	0	2,080
1200	Nonfat (Skim) Milk Vitamin A&D Added (1/2 Gallon Containers)	0	0	2,740	0	11,500	0	14,240
1200	Nonfat (Skim) Milk Vitamin A&D Added 1/2 pt Containers (48 Containers Per Case)	0	170,000	408,200	82,200	858,000	113,600	1,632,000
1200	Nonfat (Skim) Milk Vitamin A&D Added 1/4 pt Containers (48 Containers Per Case)	0	0	117,000	0	0	36,000	153,000
500	Flavored Milk (Standard Milk) Chocolate Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	0	0	0	0	0	0	0
600	Flavored Milk (Reduced Fat Milk) Chocolate Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	0	0	16,800	0	60,000	0	76,800
700	Flavored Milk (Nonfat Milk) Chocolate Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	1,000	30,000	24,700	36,600	54,000	78,000	224,300
500	Flavored Milk (Standard Milk) Strawberry Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	0	0	0	0	0	0	0
600	Flavored Milk (Reduced Fat Milk) Strawberry Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	0	0	12,000	0	0	0	12,000
700	Flavored Milk (Nonfat Milk) Strawberry Vitamin A & D Added, 1/2 pt (48 Containers Per Case)	0	0	0	19,200	800	0	20,000
1000	Buttermilk Plain 5% Butterfat & Under (Gallon Container)	0	0	0	0	0	0	0
1000	Buttermilk Plain 5% Butterfat & Under (1/2 pt Container 48 Containers Per Case)	0	0	0	0	0	0	0
1000	Buttermilk Plain 5% Butterfat & Under (Quart Containers)	0	0	0	0	0	0	0
1600	Sour Cream, Bulk 5 LB Containers	0	0	80	0	0	48	128
1900	Heavy Cream (Quart Containers)	0	0	72	0	0	0	72
1700	Light Cream (Quart Containers)	0	0	0	0	0	0	0
510	EGG NOG (Quart Containers)	0	0	108	0	40	0	148
1500	Half & Half Creamer, 3/8 oz (400 Per Case)	0	0	0	0	0	0	0

MILK PROPOSAL

MILK BID 2021

Bid Opening Date September 9, 2021

This proposal covers the milk and milk product requirements for the Department of Human Services and its facilities located in the six milk-marketing regions within the Commonwealth of Pennsylvania for October 1, 2021 – September 30, 2022.

Deliveries: In most instances each of the facilities requires two deliveries per week. All deliveries shall be made F.O.B. destination. Deliveries must be made on days and times specified on the Purchase Order from the facility regardless of the vendors other commitments, to other customers, (i.e. schools).

Product Condition at Delivery: Dairy products must be delivered in a refrigerated truck. The internal temperature on delivery shall not exceed 41 degrees Fahrenheit for chilled products and 10 degrees Fahrenheit for frozen products. The temperatures will assure quality products at the time of deliveries.

Any products that are rejected at the time of delivery will be returned and replaced at the contractor's expense within 24 hours after notice of rejection unless otherwise identified by the Facility Director of Dietetic Services. If the contractor fails to replace the rejected products within the specified period of time, the facility will purchase the products on the open market and surcharge the contractor the additional cost plus \$100.00.

All products shall have a "sell by" date of not less than 8 days including the date of delivery.

Estimated Quantities: It shall be understood and agreed that the quantities listed on the purchase orders are estimated only and may be increased or decreased in accordance with the actual requirements of the facility. The facility in accepting this bid, agrees to purchase only the items, as listed, on the purchase order, in such quantities as represented.

Specifications for deliveries should be made as listed below:

¼ Pint	48 each per case
½ Pint	48 each per case
½ Pint Lactaid	20 each per case
Quart	16 each per case
½ Gallon	9 each per case
Gallon	4 each per case

Purchase Order: Each facility will issue a purchase order against this proposal. The purchase order constitutes the contractor's authority to make delivery. Contractors are permitted to only accept Purchase Orders which require deliveries within the contract period.

Special Terms and Conditions: The contract may not be assigned, sublet, or transferred without the written consent of the facility. Awarded vendors shall be responsible for all of the terms and conditions of the contract.

All specified Dairy Products shall conform to Title 7 PA Code Chapter 59, Milk Sanitation and Standards, authorized Commonwealth personnel will inspect products at time of delivery. If random visual inspection of products does not meet specifications, deliveries may be rejected.

In addition to conforming with the provisions of the Milk Marketing Board, milk for use through bulk milk dispensing machines shall be (1) in a container size and shape to accommodate the dispensing equipment of the facility, (2) equipped to permit ready removal of milk there from without contamination of same, and (3) if providing milk in bulk cardboard or corrugated container, said container shall not be waxed or coated.

Milk Marketing Board minimum/applicable discount is defined as the milk market wholesale pricing with limited service, including quantity discounts as shown in general orders.

Any milk configuration as recognized by the Milk Marketing Board may be substituted with a thirty (30) day notification by the facility and approved by the vendor.

All tie bids will be broken by a lottery system. In the event tie bids are received, after the Vendor Responsibility Evaluation Requirements are performed, the tie bids will be broken by a public lottery.

The bid opening and lottery will be held by the Bureau of Procurement and Contract Management Office in Room 832 of the Health & Welfare building, Harrisburg, PA. Each bidder is invited to have a representative at the bid opening; however, a bidder need not be present to receive an award.

Any facility may change quantity or delivery requirements by notification to the awarded vendor. If the change affects the applicable milk marketing discount, it is the responsibility of both the facility and vendor to make the appropriate changes. Any orders issued as a result of this proposal are subject to cancellation. The facility is only responsible for the portion of the order that was actually received.

Since the prices are based on the Milk Marketing minimum/applicable discounts, pricing will be adjusted upon notification of changes by the Milk Marketing Board. Copies of price computations will be sent to the vendor by the facility.

It is the Commonwealth's intent that the legal minimum prices shall include all mandatory and optional discounts and allowances permitted by the Pennsylvania Milk Marketing Board.

In any dispute between the requirements of the facility and the schedule of the awarded vendor, the requirements of the facility shall prevail, and the awarded vendor will not be granted relief from the bid due to a conflict.

Bidding Instructions: Minimum deliveries and applicable discounts will be obtained by using formulas as directed by current Milk Marketing Board.

If not bidding minimum, circle "NO" and indicate the cost above minimum applicable discount in space provided.

Be sure to sign your bid and complete the information requested and return in the enclosed envelope.

Table of Contents

SECTION-1-CON..... 2

1.1 RFP-005.1 Type of Contract (Oct 2006) 2

1.2 CONTRACT-001.1c Contract Terms and Conditions – Stand-Alone (Jan 24 2007) 2

1.3 CONTRACT-002.1d Term of Contract – Contract (March 2007) 2

1.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006) 2

1.5 CONTRACT-003.1B Signatures – Contract - Stand Alone (July 2015)..... 2

1.6 CONTRACT-004.1a Definitions (Oct 2013) 3

1.7 CONTRACT-005.1b Agency Purchase Orders (Oct 2013) 3

1.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)..... 4

1.9 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)..... 4

1.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)..... 4

1.11 CONTRACT-008.1a Warranty (Oct 2006) 5

1.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013) 5

1.13 CONTRACT-009.1d Ownership Rights (Oct 2006) 5

1.14 CONTRACT-010.1a Acceptance (Oct 2006)..... 6

1.15 CONTRACT-010.2 Product Conformance (March 2012) 6

1.16 CONTRACT-010.3 Rejected Material Not Considered Abandoned (Oct 2013)..... 6

1.17 CONTRACT-011.1a Compliance With Law (Oct 2006)..... 6

1.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)..... 6

1.19 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016) 7

1.20 CONTRACT-014.3 Recycled Content Enforcement (Feb 2009)..... 7

1.21 CONTRACT-015.1 Compensation (Oct 2006)..... 7

1.22 CONTRACT-015.2 Billing Requirements (February 2012) 7

1.23 CONTRACT-016.1 Payment (Oct 2006) 7

1.24 CONTRACT-016.2 ACH Payments (Aug 2007) 8

1.25 CONTRACT-017.1 Taxes (Dec 5 2006)..... 8

1.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006) 8

1.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)..... 8

1.28 CONTRACT-020.1 Audit Provisions (Oct 2006) 9

1.29 CONTRACT-021.1 Default (Oct 2013) 9

1.30 CONTRACT-022.1 Force Majeure (Oct 2006)..... 10

1.31 CONTRACT-023.1a Termination Provisions (Oct 2013)..... 11

1.32 CONTRACT-024.1 Contract Controversies (Oct 2011) 11

1.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)..... 12

1.34 CONTRACT-026.1 Other Contractors (Oct 2006) 12

1.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (March 2015)..... 12

1.36 CONTRACT-028.1 Contractor Integrity Provisions (Jan 2015)..... 13

1.37 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)..... 15

1.38 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)..... 16

1.39 CONTRACT-031.1 Hazardous Substances (Oct 2013) 16

1.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006) 18

1.41 CONTRACT-033.1 Applicable Law (Oct 2006)..... 18

1.42 CONTRACT-034.1c Integration – Contract (Nov 30 2006)..... 18

1.43 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011) 18

1.44 CONTRACT-035.1a Changes (Oct 2006)..... 19

1.45 CONTRACT-037.1a Confidentiality (Oct 2013) 19

1.46 CONTRACT-046.1 Manufacturer’s Price Reduction (Oct 2006)..... 20

1.47 CONTRACT-051.1 Notice (Dec 2006)..... 20

1.48 CONTRACT-052.1 Right to Know Law (Feb 2010) 20

CONTRACT - STANDARD TERMS and CONDITIONS

1.1 RFP-005.1 Type of Contract (Oct 2006)

It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a Milk Marketing Board Pricing contract containing the Contract Terms and Conditions as shown in Part V of this RFP. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

1.2 CONTRACT-001.1c Contract Terms and Conditions – Stand-Alone (Jan 24 2007)

The Contractor and the Commonwealth agree that the following terms and conditions are part of the Contract:

1.3 CONTRACT-002.1d Term of Contract – Contract (March 2007)

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

b. The Commencement Date shall be the later of the "Valid from" date shown on the Contract output form or the Effective Date (as defined below).

c. The Effective Date shall be the Effective Date printed on the Contract output form after the Contract has been fully executed by the Contractor and the Commonwealth (fully executed by the Commonwealth means that it has been signed and approved as required by Commonwealth contracting procedures).

1.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)

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

1.5 CONTRACT-003.1B Signatures – Contract - Stand Alone (July 2015)

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. 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 Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract may be signed in counterparts. The Contractor shall sign the Contract and return it to the Commonwealth. After the Contract is signed by the Contractor and returned to the Commonwealth, it will be processed for Commonwealth signatures and approvals. When the Contract has been signed and approved by the Commonwealth as required by Commonwealth contracting procedures, the Commonwealth shall create a Contract output form which shall: 1) clearly indicate "Fully executed" at the top of the form; 2) include a printed Effective Date and 3) include the printed name of the Purchasing Agent indicating that the document has been electronically signed and approved by the Commonwealth. Until the Contractor receives the Contract output form with this information on the Contract output form, there is no legally binding contract between the parties.

The fully-executed Contract may be sent to the Contractor electronically or through facsimile equipment. The electronic transmission of the Contract shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Contract shall constitute receipt of the fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

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

1.6 CONTRACT-004.1a Definitions (Oct 2013)

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

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

1.7 CONTRACT-005.1b Agency Purchase Orders (Oct 2013)

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

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

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

1.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

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

1.9 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)

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 this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

1.10 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)

1.11 CONTRACT-008.1a Warranty (Oct 2006)

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

1.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

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

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

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

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

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

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

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

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

1.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and

delivered to the Commonwealth as part of the performance of the Contract.

1.14 CONTRACT-010.1a Acceptance (Oct 2006)

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

1.15 CONTRACT-010.2 Product Conformance (March 2012)

The Commonwealth reserves the right to require any and all Contractors to:

1. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
2. Supply published manufacturer product documentation.
3. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
4. Complete a survey/questionnaire relating to the bid requirements and specifications.
5. Provide customer references.
6. Provide a product demonstration at a location near Harrisburg or the using agency location.

1.16 CONTRACT-010.3 Rejected Material Not Considered Abandoned (Oct 2013)

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

1.17 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

1.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to: the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. Section 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. Section 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. Section 693.1.

1.19 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)

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 by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

1.20 CONTRACT-014.3 Recycled Content Enforcement (Feb 2009)

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

1.21 CONTRACT-015.1 Compensation (Oct 2006)

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

1.22 CONTRACT-015.2 Billing Requirements (February 2012)

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- Vendor name and "Remit to" address, including SAP Vendor number;
- Bank routing information, if ACH;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;
- Price extension;
- Total price; and
- Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

1.23 CONTRACT-016.1 Payment (Oct 2006)

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

1.24 CONTRACT-016.2 ACH Payments (Aug 2007)

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

1.25 CONTRACT-017.1 Taxes (Dec 5 2006)

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

1.26 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

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

1.27 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

1.28 CONTRACT-020.1 Audit Provisions (Oct 2006)

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents and records that relate to costs or pricing data for the Contract for a period of three (3) years from the date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

1.29 CONTRACT-021.1 Default (Oct 2013)

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 5) Improper delivery;
 - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;

13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

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

15) Breach of any provision of the Contract;

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

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

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

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

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

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

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

1.30 CONTRACT-022.1 Force Majeure (Oct 2006)

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

1.31 CONTRACT-023.1a Termination Provisions (Oct 2013)

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

a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

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

1.32 CONTRACT-024.1 Contract Controversies (Oct 2011)

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. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, 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.

1.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

- a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

1.34 CONTRACT-026.1 Other Contractors (Oct 2006)

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

1.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (March 2015)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in

violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.

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

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

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

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

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

8. 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.

1.36 CONTRACT-028.1 Contractor Integrity Provisions (Jan 2015)

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

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

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

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

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers,

Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

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

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

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

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

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

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

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3) had any business license or professional license suspended or revoked;
- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative

agency.

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

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

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

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

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

1.37 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)

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

includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

1.38 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)

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

1.39 CONTRACT-031.1 Hazardous Substances (Oct 2013)

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 ensure 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 Subparagraphs (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.

1.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

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

1.41 CONTRACT-033.1 Applicable Law (Oct 2006)

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

1.42 CONTRACT-034.1c Integration – Contract (Nov 30 2006)

This Contract, including all referenced documents, and any Purchase Order constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

1.43 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

1.44 CONTRACT-035.1a Changes (Oct 2006)

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Contract Controversies Provision.

1.45 CONTRACT-037.1a Confidentiality (Oct 2013)

a) The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

(b) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:

- (1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (2) independently generated by the recipient and not derived by the information supplied by the disclosing party.
- (3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to

the Commonwealth under this Contract.

(c) The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:

- (1) Prepare an un-redacted version of the appropriate document, and
- (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
- (3) Prepare a signed written statement that states:
 - (i) the attached document contains confidential or proprietary information or trade secrets;
 - (ii) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - (iii) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
- (4) Submit the two documents along with the signed written statement to the Commonwealth.

1.46 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)

If, prior to the delivery of the awarded item(s) by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

1.47 CONTRACT-051.1 Notice (Dec 2006)

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, teletype, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

1.48 CONTRACT-052.1 Right to Know Law (Feb 2010)

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

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

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

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

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

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

RECIPROCAL LIMITATIONS ACT REQUIREMENTS

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

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

I. REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

II. CALCULATION OF PREFERENCE

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

THIS FORM MUST BE COMPLETED AND RETURNED WITH THE BID

III. STATE OF MANUFACTURE

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

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

IV. BIDDER'S RESIDENCY

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

Correct Address: _____

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

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