



Legislative Budget and Finance Committee

A JOINT COMMITTEE OF THE PENNSYLVANIA GENERAL ASSEMBLY

Offices: Room 400 • Finance Building • Harrisburg • Tel: (717) 783-1600

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REQUEST FOR PROPOSAL (RFP #2013-1)

A Study of the Current Condition and
Future Viability of Casino Gaming in this Commonwealth

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Issued by
The Pennsylvania Legislative Budget and Finance Committee
December 4, 2013

Note: General Instructions have been prepared that pertain to this RFP. The General Instructions, which are attached, must be read in conjunction with the RFP. The RFP contains only a "project description" and "statement of required product." All other pertinent information is set forth in the General Instructions.

Request for Proposal 2013-1
(Continued)

A. Project Description

Background: The advent of legalized gaming in Pennsylvania directly employs over 16,000 people and has generated over \$6 billion in gaming tax revenue. This funding has been used to provide wage and property tax relief to homeowners, sustain Pennsylvania's horse racing industry, enhance economic development and aid local governments, police and emergency services as well as ease the increasing strain on the Commonwealth's General fund budget. The introduction and expansion of gaming in the states that border Pennsylvania have produced a Mid-Atlantic region that has become an extremely competitive market.

In response to these issues and concerns, on December 4, 2013, the Pennsylvania Senate adopted Senate Resolution 273, Attachment A, calling on the Legislative Budget and Finance Committee to conduct a study of the current condition and future viability of casino gaming and the industry's potential for growth in this Commonwealth.

Objectives: The objectives of this study are to:

- (a) Assess the performance of Pennsylvania's casinos, both in generating tax revenues and as an economic development strategy, since 2004 and the impact on existing casinos as new casinos enter the marketplace. Assess the likely performance, over the next 5-10 years, of the tax revenue generating capacity of Pennsylvania's existing and new casinos and the ability to make adequate capital investment in the respective gaming facilities given the projected expansion of gaming in the states that border this Commonwealth.
- (b) Review Pennsylvania's statutory and regulatory requirements and compare them to contiguous states and other states that generate significant casino revenues (e.g., over \$1 billion in gross revenue annually). Based on this review, identify key Pennsylvania requirements that place casinos operating in Pennsylvania at a significant competitive disadvantage relative to other states including gaming tax rates and regulations.
- (c) Quantify at a statewide level (or at a regional level if feasible) the potential economic impact of Pennsylvania making statutory or regulatory changes to those provisions that place Pennsylvania casinos at a competitive disadvantage relative to other states. The economic impacts should include, and separately identify, the impacts to the casinos and to the other public and private entities that would be affected by such changes. Economic impacts should include both capital investments and jobs.
- (d) Assess the potential impact of online gaming on the gaming industry, including the impact online gaming may have on the Commonwealth's tax revenues and employment at the Commonwealth's casinos.
- (e) Identify new products and approaches, including but not limited to, online gaming and betting on fantasy sports teams, that the General Assembly could consider to sustain and maximize gaming revenue in the Commonwealth. Estimate the potential revenue, both

gross and to the Commonwealth, of the most promising options. Unless otherwise agreed to by the LB&FC, these estimates should assume (1) all online gaming activities would occur solely within Pennsylvania state borders, (2) any online gaming would occur through existing casinos, and (3) no additional casinos will be built beyond those already authorized under the statutes of the Commonwealth.

B. Required Products

The contractor's report should include, at a minimum, the required analysis set forth above under the Project Description. Deliverables from the Contractor include the following:

1. On or before the close of business on March 15, 2014, the Contractor shall provide the LB&FC with a written outline of the report and, if requested, provide an oral report of preliminary findings.
2. On or before the close of business on April 15, 2014, a confidential draft of the report shall be delivered to the LB&FC offices.
3. On or before the close of business on May 1, 2014, a final report shall be delivered to the LB&FC offices electronically as a Microsoft Word document and PDF and hard copy.
4. As part of the contract price, the Contractor must be available to provide oral testimony and make a presentation before the Pennsylvania General Assembly, likely through the Legislative Budget and Finance Committee.
5. If requested, the Contractor must also be available to make up to two additional presentations to legislative committees. The cost of these additional presentations will be separately negotiated as needed.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 273 Session of
2013

INTRODUCED BY SCARNATI, WARD, TOMLINSON, BROWNE, ERICKSON,
ARGALL, VULAKOVICH, RAFFERTY, VANCE, WHITE, ALLOWAY, BAKER,
YUDICHAK, SCHWANK, SOLOBAY, STACK AND HUGHES,
NOVEMBER 27, 2013

REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,
NOVEMBER 27, 2013

A RESOLUTION

Directing the Legislative Budget and Finance Committee to study
the current condition and future viability of gaming in this
Commonwealth.

WHEREAS, The advent of legalized gaming under 4 Pa.C.S. Pt.
II (relating to gaming), known as the Pennsylvania Race Horse
Development and Gaming Act, has proven to be a huge success; and

WHEREAS, In the time since the Gaming Act was signed into law
in 2004, 12 gaming facilities have opened for operation
throughout this Commonwealth; and

WHEREAS, The Gaming Act provides for up to 15 gaming
facilities; and

WHEREAS, These facilities offer a wide variety of slot
machines and table games, directly employ over 16,000 people and
have generated a total of over \$6 billion in gaming tax revenue;
and

WHEREAS, Gaming revenue has been used to provide wage and

property tax relief to homeowners, sustain Pennsylvania's horse racing industry, enhance economic development, aid local governments, police and emergency services and provide funding to the Commonwealth's General Fund; and

WHEREAS, It is important that the Commonwealth preserve and build on these successes and continually work to both maintain and improve the gaming industry in this Commonwealth; and

WHEREAS, Recent months have seen gaming revenues begin to level off and even decline at some gaming facilities; and

WHEREAS, As preparation is underway for new gaming facilities to potentially open in the next few years, the Commonwealth may need to consider changes and revisions to the Gaming Act so that all existing and new Category 1, 2 and 3 casino licensees may thrive with growing regional competition; and

WHEREAS, The introduction and expansion of gaming in the states that border this Commonwealth have caused the Mid-Atlantic region to become an extremely competitive market; therefore be it

RESOLVED, That the Senate direct the Legislative Budget and Finance Committee to study the current condition and future viability of gaming and the industry's potential for growth in this Commonwealth; and be it further

RESOLVED, That the committee study the state of gaming under the Gaming Act in this Commonwealth and casino gaming in other states in order to make recommendations to the General Assembly in regard to potential regulatory and legislative changes which could be implemented in order to sustain and maximize gaming revenue and the positive economic impact of gaming in this

Commonwealth; and be it further

RESOLVED, That the committee analyze and compare the Commonwealth's tax structure and statutory and regulatory framework with other gaming states; and be it further

RESOLVED, That the committee analyze the potential impact of online gaming on the gaming industry, including the impact online gaming may have on the Commonwealth's tax revenues and employment at the Commonwealth's casinos; and be it further

RESOLVED, That the committee issue a report of its findings and recommendations to the General Assembly no later than May 1, 2014.



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GENERAL INSTRUCTIONS FOR THE COMPLETION OF A REQUEST FOR PROPOSAL

for

A Study of the Current Condition and
Future Viability of Casino Gaming in this Commonwealth

Issued by
The Pennsylvania Legislative Budget and Finance Committee
December 4, 2013

General Instructions for the Completion of a Request for Proposal

for

A Study of the Current Condition and
Future Viability of Casino Gaming in this Commonwealth

(RFP #2013-1)

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PART I

General Information for the Contractor

1. **Purpose** - These General Instructions, when read in conjunction with the Request for Proposal (RFP #2013-1, hereinafter “RFP”), provide interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Legislative Budget and Finance Committee (LB&FC) to satisfy a need for a study of the current condition and future viability of casino gaming in this Commonwealth.
2. **Issuing Office** - The RFP is issued by the Pennsylvania Legislative Budget and Finance Committee. The issuing office is the sole point of contact in the Commonwealth for the RFP.
3. **Scope** - These General Instructions pertain to the proposals to be submitted in response to the RFP and the material to be included therein, requirements which must be met to be eligible for consideration, general evaluation criteria, and other requirements to be met by each proposal.
4. **Problem Statement** - The purpose of this project for which proposals are being requested is to provide a study of the current condition and future viability of casino gaming in this Commonwealth as is further described in the RFP.
5. **Type of Contract** - It is proposed that if a contract is entered into as a result of the RFP it will be a fixed cost contract. Negotiations may be undertaken with contractors whose proposals as to price and other factors show them to be qualified, responsible, and capable of performing the work.
6. **Rejection of Proposals** - The Legislative Budget and Finance Committee reserves the right to reject any and all proposals received as a result of this request or to negotiate separately with competing contractors.
7. **Incurring Costs** - The Legislative Budget and Finance Committee is not liable for any cost incurred by contractors prior to issuance of a contract.
8. **Preproposal Conference** - A preproposal conference may be held if determined necessary by the LB&FC. LB&FC will notify potential bidders of the specific time and place. The purpose of this conference would be to clarify any points in the RFP that may not be clearly understood by potential proposers. Questions must be forwarded to the LB&FC offices prior to the conference to ensure that sufficient analysis can be made before an answer is supplied. Questions will not be accepted after the preproposal conference closing. In view of the limited facilities available for the conference, it is requested that representation be limited to two representatives from

each potential proposer. The preproposal conference is for information purposes only. Answers furnished during the conference will not be official until verified in writing by the LB&FC.

9. **Amendment to the RFP** - If it becomes necessary to revise any part of the RFP, an amendment will be issued to all contractors who received the basic RFP.
10. **Response Date** - To be considered, **proposals must arrive at the offices of the Legislative Budget and Finance Committee by close of business (5:00 p.m.) on or before January 8, 2014 (receipt by email is acceptable)**. Contractors mailing proposals should allow sufficient mail delivery time to ensure timely receipt of their proposals.
11. **Proposals** - To be considered, contractors must submit a complete response to the RFP, using the format provided in Part II of these General Instructions. Each proposal must be submitted in three (3) copies to the issuing office. No other distribution of proposals will be made by the contractor. Proposals must be signed by an official authorized to bind the contractor to its provisions. For the RFP, the proposal must remain valid for at least 90 days. Moreover, the contents of the proposal of the successful bidder will become contractual obligations if a contract is entered into.
12. **Economy of Preparation** - Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor's ability to meet the requirements of the RFP.
13. **Oral Presentation** - Contractors who submit proposals may be required to make an oral presentation of their proposal to the Legislative Budget and Finance Committee and/or members of its staff. Such presentations provide an opportunity for the contractor to clarify his/her proposal to ensure thorough mutual understanding. If necessary, the Legislative Budget and Finance Committee will schedule these presentations.
14. **Prime Contractor Responsibilities** - The selected contractor will be required to assume responsibility for all services offered in his/her proposal whether or not he/she produces them. Further, the Legislative Budget and Finance Committee will consider the selected contractor to be the sole point of contact with regard to contractual matters.
15. **Disclosure of Proposal Contents** – The total bid price may be publicly disclosed; however, detailed cost and price information provided in proposals will be held in confidence and, except for the one selected, will not be revealed or discussed with competitors. All other material submitted becomes the property of the Legislative Budget and Finance Committee and may be returned only at the Committee's option. Proposals submitted may be reviewed and evaluated by any person other than

competing bidders at the discretion of the Committee. The Legislative Budget and Finance Committee has the right to use any or all ideas presented in any reply to the RFP. Selection or rejection of the proposal does not affect this right.

16. **Conflict of Interest** - The proposer certifies that to its knowledge it has no undisclosed public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest, and that the proposer has no association, direct or indirect, which interest or association does conflict in any manner with the performance of the services or obligations under the proposed contract.
17. **Standard Contract** - The selected contractor will be expected to enter into a contractual agreement with the Legislative Budget and Finance Committee. The contract shall not become effective until it has been signed by the Legislative Budget and Finance Committee Executive Director and at least a majority of the Legislative Budget and Finance Committee Officers. All contracts, once executed, shall be a matter of public record and available to interested members of the public.
18. **Ownership of Reports Produced** - In regard to any contract that is let as a result of the RFP, all written reports that are produced by the contractor during and as a part of fulfillment of the contract will be the property of the Legislative Budget and Finance Committee. Additionally, news releases pertaining to this project will not be made without prior approval of the Legislative Budget and Finance Committee, and then only in coordination with the Committee.

PART II

Information Required From the Contractor

Contractor proposals must be submitted in the format outlined below. To be considered, the proposal must respond to all requirements in this part of the General Instructions. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

1. **Statement of the Problem** - State in succinct terms your understanding of the problem presented and the services required by the RFP.
2. **Management Summary** - Include a narrative description of the proposed effort and a list of the items to be delivered and services to be provided.
3. **Work Plan** - Describe briefly your technical plan for accomplishing the work. Indicate the number of staff person hours allocated to each major task to be completed.
4. **Prior Experience** - Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to should be identified and the name of the customer shown, including the name, address, and telephone number of the supervisor at the time of the experience.
5. **Personnel** - Include the number of executive and professional personnel, e.g., analysts, researchers, consultants, etc., who will be engaged in the work and show the specific relevant experience and expertise each brings to the project. Show where these personnel will be physically located during the time they are engaged in the work. Include education and experience related to the specific requirements of this project. Proposal submission will verify acceptance that personnel, once assigned, will not be reassigned to another project without consent of the LB&FC. All staff assigned to this project will be identified by task and the number of hours for each task. A narrative will accompany the estimate of hours which explains how the estimate was established and why the bidder foresees the completion of the task within the allotted time.
6. **Cost and Price Analysis** - The information requested in this section is required to support the reasonableness of your quotation and is for internal Legislative Budget and Finance Committee use only. This portion of the proposal must be bound and sealed separately from the remainder of the proposal.

- a. Direct Labor Costs - Itemize so as to show the following for each category of personnel with a different rate per hour:
 - (1) Category (e.g., partner, project manager, analyst, senior auditor, research associate)
 - (2) Estimated hours
 - (3) Rate per hour
 - (4) Total cost for each category and for all direct labor costs
 - b. Other Direct Costs - Itemize
 - c. Overhead and Indirect Costs - Itemize
 - d. Total Cost
7. **Conflict of Interest** – List any and all contracts your company has had with the gaming industry in the last six years. Briefly describe the services provided under the contracts. List any and all other contracts.

PART III

Criteria for Selection

1. All proposals received from contractors will be reviewed and evaluated by an evaluation committee composed of Legislative Budget and Finance Committee staff. During this review process the staff shall have the authority to meet with bidders as necessary for purposes of clarification of the proposals submitted. The staff shall not be permitted, however, to discuss the proposals submitted by one bidder with any other bidder. The LB&FC evaluation committee will recommend for selection the proposal which most closely meets the requirements of the RFP and satisfies the needs of the study project.
2. The following areas of consideration will be used in making the selection. The areas may not be weighted equally:
 - a. **Responder Qualifications** - This criterion includes the ability of the responder to meet the terms of the RFP, especially the time constraint, and the quality, relevancy, and recency of studies and projects completed by the responder.
 - b. **Professional Personnel** - This refers to the competence of professional personnel who would be assigned to the job by the responder. Qualifications of professional personnel will be measured by education, experience, and relevant accreditations and certifications, with particular preference to experience in studying issues similar to that described in the RFP.
 - c. **Soundness of Approach** - Emphasis here is on whether the technical approach is responsive to all written specifications and requirements contained in the RFP.
 - d. **Cost** - Cost will not necessarily be the deciding factor in the selection process.
 - e. **Demonstrated Adherence to Nondiscrimination and Equal Opportunity Requirements** - In order to be considered for selection, responders must be in compliance with 16 Pa. Code §49.1 et seq. Responders must provide information indicating compliance and acceptance as a precondition to the contract.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 273 Session of
2013

INTRODUCED BY SCARNATI, WARD, TOMLINSON, BROWNE, ERICKSON,
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II (relating to gaming), known as the Pennsylvania Race Horse
Development and Gaming Act, has proven to be a huge success; and

WHEREAS, In the time since the Gaming Act was signed into law
in 2004, 12 gaming facilities have opened for operation
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facilities; and

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WHEREAS, It is important that the Commonwealth preserve and build on these successes and continually work to both maintain and improve the gaming industry in this Commonwealth; and

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WHEREAS, As preparation is underway for new gaming facilities to potentially open in the next few years, the Commonwealth may need to consider changes and revisions to the Gaming Act so that all existing and new Category 1, 2 and 3 casino licensees may thrive with growing regional competition; and

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RESOLVED, That the committee issue a report of its findings and recommendations to the General Assembly no later than May 1, 2014.

APPENDIX B Agreement

This Agreement made this ____ day of _____ 20__ between the Pennsylvania LEGISLATIVE BUDGET AND FINANCE COMMITTEE, a statutorily created committee of the Pennsylvania Legislature, hereinafter referred to as the “LB&FC,” with principal offices in the Finance Building (mailing address is P.O. Box 8737, Harrisburg, PA 17105-8737), and _____, hereinafter referred to as the “CONTRACTOR,” with an office at _____.

WITNESSETH:

WHEREAS, Act 1959-195, as amended, 46 P.S. §70.1 et seq., enacted on August 4, 1959, amended September 20, 1961, authorizes the LB&FC to request, receive, review, examine, study, ascertain, and compare fiscal information concerning the budget, the revenues and expenditures of the Commonwealth; and

WHEREAS, Act 1959-195, as amended, 46 P.S. §70.3(8), enacted on August 4, 1959, amended September 20, 1961, authorizes the LB&FC to select and employ other personnel that it may deem necessary in the performance of its duties; and

WHEREAS, on December 3, 2013, the Pennsylvania Senate adopted Senate Resolution _____, calling on the LB&FC to conduct a study of the current condition and future viability of casino gaming in this Commonwealth.

WHEREAS, the LB&FC requires specialized/technical assistance in carrying out the requirements of this study;

NOW, THEREFORE, the parties intending to be legally bound hereby agree as follows:

(1) **Term.** The term of the Agreement shall be from _____ through completion and release of the final report.

(2) **Required Product and Services.**

(a) **Reports.** The CONTRACTOR shall deliver the required reports and other products set forth under Section B of the Request for Proposal (RFP #2013-1 hereinafter “RFP”) which is attached to this Agreement as Attachment A and incorporated herein. The required products shall be in the form and substance required by the RFP and be delivered on or before the dates specified below. The final report shall not include color pages unless expressly authorized by the LB&FC Executive Director.

- i. On or before the close of business on March 15, 2014, the contractor shall provide the LB&FC with a written outline of the report and, if requested, provide an oral report of preliminary findings.
- ii. On or before the close of business on April 15, 2014, a confidential draft of the report shall be delivered to the LB&FC offices.
- iii. On or before the close of business on May 1, 2014, a final report shall be delivered to the LB&FC offices electronically as a Microsoft Word document and PDF and hard copy.
- iv. The Contractor must be available to provide oral testimony and make presentations to the LB&FC.

(b) **Testimony.** Hearing dates will be after the delivery of the final report by the CONTRACTOR to the LB&FC. Notification will be provided to the CONTRACTOR by the LB&FC at least five (5) working days prior to the hearing dates.

(3) **General Terms.** All work performed in fulfillment of this Agreement shall be subject to the terms and conditions of this Agreement and shall be in conformity with:

(a) The General Instructions for the Completion of the RFP and made part of this Agreement and incorporated as Attachment A.

(b) Any express, written, signed modification or waiver of this Agreement which has been physically attached to the original of this Agreement.

(c) CONTRACTOR'S proposal dated _____ made in response to the RFP (hereinafter "Contractor's Proposal") which is made part of this Agreement and incorporated herein as Attachment B.

(4) **Payment.** The LB&FC agrees to pay the CONTRACTOR pursuant to this Agreement as follows:

(a) A total fee for completion of the report not to exceed \$_____: 20% on the contract execution date; 20% after delivery and acceptance by the LB&FC of a written draft outline of the contractor's report indicating preliminary findings and the materials collected to date to support those findings; 30% after delivery and acceptance by the LB&FC of the draft report; 30% after delivery and acceptance by the LB&FC of the final report. Acceptance of the report outline, draft and final reports is at the sole discretion of the LB&FC Executive Director. Such acceptance shall not be unreasonably withheld.

- (c) **Availability of Data.** If after reasonable efforts and through no fault of its own, as determined in the sole discretion of the Executive Director, CONTRACTOR is unable to acquire the data necessary to complete all work to be performed in fulfillment of this Agreement, the total payment due under the contract may be reduced by an appropriate percentage as determined by the Executive Director. CONTRACTOR will remain responsible for completing all other requirements under this Agreement.

(5) **Entire Agreement.** This Agreement contains all the terms and conditions agreed upon by the parties. Any modifications or waivers of this Agreement shall only be valid when they have been reduced to writing, duly signed and attached to the original of this Agreement. Continuation of this Agreement is based on compliance with all its terms and conditions. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.

(6) **Disputes.** The parties may initiate a dispute concerning this Agreement by written notice to the dispute participants requesting a meeting of representatives of the LB&FC and CONTRACTOR to review the circumstances, resolve issues, and formalize a future course of action including modification of existing contractual agreements. Such a meeting will be held within 10 days following a receipt of said notice.

(7) **Access to Records and Confidentiality.** Pursuant to statutory authority, the LB&FC approaches this study with the expectation that it shall receive full and unobstructed access to all files, records, and documents of the agencies involved, insofar as such are pertinent to matters being inquired into by the LB&FC as part of this study.

(a) For the limited purpose of gaining access to such files, records, and documents, CONTRACTOR personnel authorized by the LB&FC will act in an agency capacity of the LB&FC. All such authorized CONTRACTOR personnel shall abide by all procedures and requirements applicable to LB&FC personnel in regard to confidentiality of information. The LB&FC shall provide the CONTRACTOR with written information regarding applicable procedures and requirements. The CONTRACTOR agrees to maintain all information developed and obtained during and at the completion of this contract in accordance with LB&FC's policy statement on the access, maintenance, and disclosure of records, published at 101 Pa. Code Chapter 401.

(b) The CONTRACTOR and its employees recognize the responsibility to properly handle and protect the confidentiality of all information which is protected by law from public disclosure. The CONTRACTOR and its employees also recognize the personal liability for penalties that are applicable

to individuals who improperly or illegally disclose confidential information.

(c) The CONTRACTOR shall not use or disclose any information gained as a result of any aspect of this Agreement for any purpose not connected with its responsibilities under this Agreement, except with prior written approval of the LB&FC Executive Director.

(d) The CONTRACTOR shall not release the draft or final report prepared under this contract to any third party without the explicit written permission of the LB&FC Executive Director prior to the public release at the LB&FC meeting.

(8) **Subcontracts.** Except for any subcontractors specifically authorized by this Agreement, CONTRACTOR shall not enter into any subcontracts without obtaining prior written approval from the LB&FC Executive Director.

(9) **Records.** The CONTRACTOR agrees to maintain books, records, documents, and other evidence pertaining to the cost of this Agreement. The CONTRACTOR further agrees to make available at all reasonable times during normal business hours on reasonable advance written notice during the term of this Agreement any of the above evidence for inspection, audit, or reproduction by any authorized representative of the LB&FC.

(10) **Independent Contractor.** The CONTRACTOR shall perform its obligations under this Agreement as an independent contractor and shall provide all liability, property damage, workers' compensation, or any other insurance as required by law.

(11) **Construction and Severability.** Insofar as possible, this Agreement is to be governed by and construed according to the laws of the Commonwealth of Pennsylvania. If any part, term, or provision is held by the courts to be illegal or in conflict with the laws of Pennsylvania, then the terms of the Agreement that may conflict with the laws of the Commonwealth of Pennsylvania shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to such rule of law unless the purpose of the Agreement would be frustrated in which case this Agreement would be deemed null and void.

(12) **Hold Harmless.** CONTRACTOR, being bound by all applicable state regulations, hereby expressly agrees to indemnify, defend, and hold the LB&FC harmless against any and all claims or losses arising from any act or omission of the CONTRACTOR, its employees, or agents, caused by CONTRACTOR's negligence or willful misconduct and arising directly out of the performance of this Agreement. CONTRACTOR shall not be required hereunder to indemnify, defend, or hold harmless the Common-

wealth of Pennsylvania, in part or in whole, from any claim resulting solely from the negligent acts or omissions of the Commonwealth of Pennsylvania or any third party. The indemnity obligations contained herein are contingent upon LB&FC giving CONTRACTOR reasonably timely written notice of any such claim and reasonable cooperation in defense of any such claim.

(13) **Property Rights and Materials.** The materials developed by the CONTRACTOR during this Agreement and delivered to the LB&FC, as the final report(s) required by this Agreement shall be the property of the LB&FC.

(a) CONTRACTOR relinquishes any and all copyrights and/or privileges to the final report developed under this Agreement. CONTRACTOR shall not include in the final report any copyrighted matter without the approval of the LB&FC Executive Director or unless the CONTRACTOR provides the LB&FC with written permission of the copyright owner for the LB&FC to use such copyrighted matter in the manner provided herein.

(b) CONTRACTOR shall defend any suit or proceeding brought against the LB&FC on account of any alleged infringement of any copyright arising out of the performance of this Agreement provided that the LB&FC shall provide reasonably timely notification of such suit or proceeding, together with full right, authorization, and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. The CONTRACTOR shall pay all damages and costs awarded therein against the LB&FC and shall bear any costs in the defense thereof. If any materials are held to constitute infringement, the CONTRACTOR shall, at its own expense and option, obtain the rights to use such materials, replace them or modify them so that they are no longer infringing.

(14) **Non-Discrimination Compliance.** During the term of this contract, CONTRACTOR agrees as follows:

(a) CONTRACTOR shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, handicap, ancestry, national origin, age or sex.

CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees or agents are treated during employment without regard to their race, color, religious creed, handicap, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

CONTRACTOR shall post in conspicuous places, available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(b) CONTRACTOR shall in advertisements or requests for employment placed by it or on its behalf state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.

(c) CONTRACTOR shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by CONTRACTOR.

(d) It shall be no defense to a finding of noncompliance with the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission or this nondiscrimination clause that CONTRACTOR had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the CONTRACTOR was not on notice of the third-party discrimination or made a good faith effort to correct it; such factor shall be considered in mitigation in determining appropriate sanctions.

(e) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that CONTRACTOR will be unable to meet its obligations under the nondiscrimination clause, CONTRACTOR shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(f) CONTRACTOR shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of CONTRACTOR's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may, after hearing and adjudication, be terminated or suspended, in whole or in part, and CONTRACTOR may be declared temporarily ineligible for further Commonwealth contracts, and such other sanctions may be imposed and remedies invoked as provided by the Contract Compliance Regulations.

(g) CONTRACTOR shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the

LB&FC and the Human Relations Commission, for purposes of investigating to ascertain compliance with the provisions of this clause. If CONTRACTOR does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Commission.

(h) CONTRACTOR shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

(i) CONTRACTOR shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

(j) The terms used in this nondiscrimination clause shall have the same meaning as in the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission, 16 Pa. Code Chapter 49.

(k) CONTRACTOR obligations under this clause are limited to the CONTRACTOR's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

(15) **ADA Compliance.** CONTRACTOR agrees to comply with the Americans with Disabilities Act provisions as follows:

(a) Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C.F.R. §35.101 et seq., CONTRACTOR understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the CONTRACTOR agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

(b) CONTRACTOR shall be responsible for and agrees to indemnify and hold harmless the LB&FC 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 paragraph (a) above.

(16) **LB&FC Responsibilities.** The LB&FC will provide limited facilities and services to the CONTRACTOR including the following:

- (a) General liaison services with the agencies identified for review by the CONTRACTOR.
- (b) Work services and space in the LB&FC offices and limited clerical support and telephone and reproduction facilities.
- (c) Ready access to LB&FC Executive Director and Contract Compliance Officer.
- (d) Coordination and sharing of information services to prevent duplication.

Final typing and reproduction of the CONTRACTOR's final report will be the CONTRACTOR's responsibility.

(17) **Contract Integrity.** No officer, member or employee of the Commonwealth and no Member of the General Assembly who exercises any function or responsibilities under this Agreement, shall participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested, nor shall any such officer, member or employee of the Commonwealth or Members of the General Assembly have any interest, direct or indirect, in this Agreement or the proceeds thereof.

The CONTRACTOR covenants that it presently has no undisclosed public or private interest, direct or indirect, and shall not acquire any such interest directly or indirectly which would conflict in any manner or degree with the performance of its services or obligations hereunder. The CONTRACTOR further covenants that in the performance of this Agreement it shall not knowingly employ any person having such interest.

(18) **Breach and Termination.** If, through any cause, the CONTRACTOR shall fail in any material respect to fulfill in timely or proper manner its obligations under this Agreement or if the CONTRACTOR shall violate in any material respect any of the covenants or stipulations of this Agreement, the LB&FC shall thereupon have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In that event, all finished documents, data, studies, photographs, and reports or other material (including computer disks) prepared by the CONTRACTOR for delivery to the LB&FC under this Agreement shall become property of the LB&FC and be returned by the CONTRACTOR immediately to the LB&FC. The CONTRACTOR shall be entitled to receive just and equitable compensation for satisfactory completion of work prior to termination of the Agreement. Compensation for material prepared by the

CONTRACTOR other than the completed final report shall be determined solely at the discretion of the LB&FC.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the LB&FC for damages sustained by the LB&FC by virtue, in any manner or degree, of the CONTRACTOR's performance of its services hereunder.

Without limiting the foregoing, the LB&FC and the CONTRACTOR agree that completion of the requirements of this Agreement by the completion dates is an essential requirement of this Agreement. Failure by the CONTRACTOR to provide the completed reports by the stated completion dates in this Agreement is a material breach of the Agreement by the CONTRACTOR.

The LB&FC and the CONTRACTOR reserve the right to waive any breach of this Agreement. Such waiver shall be in writing.

It is understood that providing oral testimony at public hearings after the delivery of the report is an essential requirement of this Agreement. Failure to provide such testimony will represent a material breach of this Agreement by the CONTRACTOR. CONTRACTOR's maximum liability to the LB&FC arising for any reason relating to service rendered under this agreement shall be limited to two times the total fees under the contract.

(19) **Change in Circumstances.** If at any time there is a change in circumstances that makes the completion of this contract no longer necessary, the LB&FC agrees to pay the CONTRACTOR a fair and reasonable amount as determined by the Executive Director, based on the total amount of the contract, for work completed to date, and, at that time, the contract will be terminated.

(20) **Non-assignability.** The CONTRACTOR shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written approval of the LB&FC Executive Director thereto, which shall be attached to the original Agreement, and subject to such conditions and provisions as the LB&FC may deem necessary. No such approval by the LB&FC of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the LB&FC in addition to the total agreed-upon price.

(21) **Non-collusion.** The CONTRACTOR warrants that in the preparation of its bid proposal and cost estimates resulting in this Agreement, the CONTRACTOR did not collaborate, collude, or otherwise cooperate with any other bidder involved in the competitive bidding process with the LB&FC. For breach or violation of this warranty, the LB&FC shall have the right to annul this Agreement without liability.

(22) **Availability of Funds.** The obligations of the LB&FC under this Agreement are subject to the appropriation of funds by the General Assembly of

Pennsylvania. However, CONTRACTOR shall be entitled to receive payment for services rendered.

(23) **Contractor Qualified.** The CONTRACTOR covenants that it is presently qualified to do business in the Commonwealth. The CONTRACTOR, therefore, certifies that all registrations and licenses necessary to perform the services or supply the items under this contract have been acquired prior to contracting with the LB&FC.

(24) **Access to Agencies.** The LB&FC staff will serve in a liaison role between CONTRACTOR personnel and the Commonwealth agencies identified for this project.

(a) The CONTRACTOR and its employees shall abide by all procedures and requirements applicable to LB&FC personnel in regard to the relationship with the Commonwealth agencies identified for this project. The LB&FC shall provide the CONTRACTOR with written information regarding applicable procedures and requirements.

(b) All CONTRACTOR personnel shall maintain appropriate identification at all times during performance of this Agreement. The LB&FC shall provide identification cards to CONTRACTOR personnel. All identification cards issued to CONTRACTOR personnel shall be returned to the LB&FC upon termination of this Agreement.

(c) All CONTRACTOR personnel shall continuously keep the LB&FC staff informed of developments in their contact with the Commonwealth agencies identified for this study. The LB&FC staff shall have the right to participate in any and all contacts between the CONTRACTOR and its employees and the Commonwealth agencies. The LB&FC shall have the right to review and receive all information of any type received from the agencies by the CONTRACTOR personnel during the performance of this Agreement at any time during the term of this Agreement.

(25) **Progress Reports.** The CONTRACTOR shall periodically keep the LB&FC staff informed of its progress in the performance of its study. This includes meetings to discuss CONTRACTOR progress and work activities with the LB&FC staff or any other periodic reporting and review as may be requested by the LB&FC Executive Director.

(26) **Incorporation of Documents.** In addition to the terms and conditions set forth in the 28 paragraphs to this document, the CONTRACTOR and the LB&FC expressly agree that:

(a) RFP and the General Instructions for its completion are hereby made part of this Agreement and incorporated as Attachment A.

(b) CONTRACTOR’s Proposal is hereby made part of this Agreement and incorporated as Attachment B except to the extent that any provisions of such CONTRACTOR proposal are inconsistent with any of the terms and conditions of this Agreement. Any such inconsistent provision in Contractor’s Proposal shall be null and void and shall in no manner affect CONTRACTOR’s performance, rights, or obligations under this Agreement.

(27) **Conduct of Work.** In preparation of the required draft and final reports, CONTRACTOR shall perform all work in accordance with the provisions of CONTRACTOR’S Proposal, except as provided in Paragraph 26(b) above.

(28) **Captions.** The captions used herein are for the convenience of reference only, shall not be deemed to be a part of this Agreement and shall not have independent significance.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their officials thereunto duly authorized.

[CONTRACTOR]

_____	_____
(Signature)	(Date)
Name _____	
Title _____	

_____	_____
(Signature)	(Date)
Name _____	
Title _____	

LEGISLATIVE BUDGET AND FINANCE COMMITTEE

OFFICERS (This Agreement shall not become effective until signed by a majority of LB&FC Officers.)

(Signature) (Date)

Honorable Robert Mensch
Chairman

(Signature) (Date)

Honorable James R. Brewster
Vice Chairman

(Signature) (Date)

Honorable Robert W. Godshall
Secretary

(Signature) (Date)

Honorable Phyllis Mundy
Treasurer

EXECUTIVE DIRECTOR

(Signature) (Date)

Philip R. Durgin

COUNSEL

(Signature) (Date)

Patricia A. Berger