

IMPORTANT - PLEASE READ

Effective Jan. 26, 2022, the COSTARS Team will no longer accept paper bid submissions. You will be able to submit a bid electronically starting Monday, Feb. 7, 2022.

Please check back on Feb. 7, and select the **COSTARS Bidding Opportunities** button on the [COSTARS Supplier Information](https://www.dgs.pa.gov/COSTARS/Supplier-Information/Pages/default.aspx) page (<https://www.dgs.pa.gov/COSTARS/Supplier-Information/Pages/default.aspx>) to be directed to the new Electronic Bidding Platform landing page to submit a bid.

**COSTARS INVITATION FOR BIDS
SUMMARY SHEET**

Contract No.: COSTARS-39 Rebid 2
Description of Supply: Voting Systems and/or ePollbooks
Solicitation Start Date: 12/17/2018
Bid Opening Date: 01/31/2019
Bid Opening Time: 1:30 PM Eastern
Bid Opening Location: DGS BUREAU OF PROCUREMENT – BID ROOM
 555 WALNUT STREET, 6TH FLOOR
 HARRISBURG, PA 17101-1914

Dear Supplier:

The Department of General Services (DGS) invites you to submit a response to the attached INVITATION FOR BIDS (IFB). DGS will award contracts to all responsive and responsible bidders to provide **Voting Systems and/or ePollbooks** as described in the IFB (see Section 2 of the *Special Terms and Conditions* for details) to local public procurement units and state-affiliated entities (together, "Purchasers") registered as members with the COSTARS Program. A complete list of currently registered COSTARS members, as well as more information about the program, can be found on the Suppliers' area of the DGS COSTARS web-pages at www.costars.state.pa.us.

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

The following documents comprise this Invitation For Bids package:

1. Instructions To Bidders for COSTARS Contracts (COSTARS ITB REV. 01/17/2017)	6. Bid Item Workbook and Checklist
2. Attachment A Doing Business with the Commonwealth	7. GSPUR-89 Reciprocal Limitations Act Requirements
3. Attachment B Voluntary SB-SDB Participation - COSTARS 11.29.2018	8. Addendum(s) (if applicable)
4. COSTARS Bid/Contract (GSPUR-15COSTARS REV 12/19/2013)	9. COSTARS Contract Special Terms and Conditions (COSTARS SpTsCs REV 12/17/2018)
5. Corporate Certification (if applicable)	10. COSTARS Contract Standard Terms and Conditions (COSTARS STD REV 12/13/2018)

These documents are available on the DGS COSTARS web-pages at www.costars.state.pa.us, COSTARS Bidding Opportunities.

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

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

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

DGS will accept written questions and comments concerning this procurement via email to emwilliams@pa.gov.

Sincerely,

Emanuel Williams, Commodity Specialist
Bureau of Procurement

INSTRUCTIONS TO BIDDERS FOR COSTARS CONTRACTS

1. BID SUBMISSION:

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

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

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

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

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

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

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

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

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

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

2. BIDDER'S REPRESENTATION AND AUTHORIZATION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. PRICES:

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

4. CONTRACT DELIVERABLES:

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

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

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

5. MODIFICATION OR WITHDRAWAL OF BID:

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

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

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

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

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

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

2. If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Room prior to the Bid Opening Time, show a picture identification, and provide evidence of his/her authorization by the Bidder to withdraw the Bid.

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

1. The Bidder submits a written request for withdrawal.

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

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

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

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

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

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

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

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

6. REJECTION OF BIDS:

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

7. AWARDS:

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

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

b. If the Bidder is not a manufacturer, it must submit written proof from the manufacturer of the Bidder's authorization to sell the manufacturer's goods and materials, as required by this Contract (the proof need not be specific to this procurement). If the manufacturer defines the area in which the Bidder is authorized to sell its products, the Bidder shall include the manufacturer's description of the Bidder's authorized sales territory. If the Bidder sells through a manufacturer's authorized distributor, DGS will accept the distributor's written authorization to the Bidder permitting the Bidder to sell the manufacturer's goods and materials. The manufacturer's written authorization should state that the distributor has the authority to pass the manufacturer's sales authorization through to the reseller.

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

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

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

8. APPLICABILITY:

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

9. ADMINISTRATIVE FEES:

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

Bidder Classification	Required Administrative Fee
Department of General Services Verified Small Diverse Business	\$166
Department of General Services Self-Certified Small Business	\$500
All Other Bidders	\$1,500

If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, the bidder must submit a copy of its active Small Business Contracting Program certificate with its bid.

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

b. Unless terminated in accordance with the provisions of Subsection 3.c. of the COSTARS Contract Standard Terms and Conditions, the Contract will renew automatically on the anniversary of the Effective Date, (1) provided that the Contractor has submitted a check for the renewal fee made payable to "Commonwealth of PA" for the appropriate amount prior to the renewal date; (2) either party provides the other party with written notice that it does not intend to renew; or (3) the Contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

10. CONTRACT SECURITY:

No performance security is required for this bid.

11. ESTIMATED QUANTITIES:

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

12. DEPARTMENT OF STATE REGISTRATION:

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

13. BID PROTEST PROCEDURE:

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

14. QUESTIONS:

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

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

Doing Business with the Commonwealth

a. Department of State Registration

Any person or entity doing business under a fictitious name in Pennsylvania must register that name with the Pennsylvania Department of State and any corporation that is not incorporated in Pennsylvania must register with the Department of State if it wants to do business in the Commonwealth (for more specific information on this requirement, see <http://www.dos.pa.gov/BusinessCharities/Business/Pages/default.aspx>). **If your firm is not incorporated or registered in Pennsylvania, you must take action to register prior to being approved for a COSTARS-exclusive contract.**

DGS is asking all bidders *other than individuals using their given names* to supply evidence with the bids to show compliance with these requirements. Specifically, DGS requests that each bidder does the following prior to submitting its bid:

1. Go to the [Searchable Corporations Database](#) link on the DOS website.
2. In the blank space, enter the first words of your business name. *Note: if the business name begins with the word “the” use the next word.* Hit “enter”.
3. All businesses beginning with the words you entered are displayed on the next page(s). Find your business and click on its name.
4. Print out a copy of the page with your business information, and attach it to your bid package.

Registration information, forms, and instructions for those entities not already registered are available online from the Pennsylvania Department of State. The following links will assist you in your filing:

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

b. Department of General Services – SRM Supplier Registration

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

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

- ◆ Your company will receive payments from the Commonwealth of Pennsylvania under a contract or purchase order.

Doing Business with the Commonwealth

- ◆ **Your company will receive Request for Quotations, Purchase Orders, or other Procurement documents.**
- ◆ Your company is a construction contractor.

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

For more information and to register, please visit the [Supplier Service Center](#) at:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Supplier%20Service%20Center/Pages/default.aspx>

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

c. **Department of General Services Small and Small Diverse Business Programs**

The Commonwealth, through the Small and Small Diverse Business Programs, maintains a strong commitment to providing training, technical assistance, and support for small and small diverse business owners to compete for prime and sub-contracting opportunities with the goal of promoting the economic growth and success of these businesses. The Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO) assists SDBs and SBs on "How to do Business with the Commonwealth" and with contracting opportunities. Working in concert with the COSTARS team, BDISBO's goal is to continue to promote access in governmental contracting.

For information or assistance on BDISBO's programs, or becoming a DGS self-certified small business or a verified small diverse business contact 717-783-3119 or access the link below:
<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx#.WG9-K6Mo6tE>.

If you are a DGS Self-Certified Small Business or DGS-verified Small Diverse Business, you must provide a printed copy of your active Small Business Contracting Program certificate with your bid response.

CORPORATE CERTIFICATION

As Corporate Secretary of _____ ("Corporation"),
I certify that (please check the appropriate line below):

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

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

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

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

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

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

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

Signature:

_____ Corporate Secretary

Date

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: _____

COSTARS Contract Special Terms and Conditions

COSTARS-39 Rebid 2 (12/17/18)

These COSTARS Contract Special Terms and Conditions (“Special Terms and Conditions”) shall be part of the contract for the supply and delivery of **Voting Systems, and/or ePollbooks (EPBs)** between the Commonwealth of Pennsylvania, acting through the Department of General Services (“DGS”), and the successful bidder (“Supplier”).

A. General

1. Order of Precedence. These Special Terms and Conditions supplement the COSTARS Contract Standard Terms and Conditions (“Standard Terms and Conditions”) for this procurement. Should any discrepancy occur, the order of precedence shall be that these Special Terms and Conditions shall prevail over all other Contract documents, the Standard Terms and Conditions shall prevail over the Instructions to Bidders for COSTARS Contracts and the Bidder’s bid submission, and the Instructions to Bidders shall prevail over the Bidder’s bid submission.

2. Contract Scope. The Pennsylvania Secretary of the Commonwealth is the state’s Chief Elections Official who is charged with directing the conduct of boards of elections in Pennsylvania. Under the leadership of the Secretary of the Commonwealth, the Pennsylvania Department of State (DOS) promotes the integrity of the electoral process. Elections in Pennsylvania are conducted locally in each of the 67 counties by a bipartisan board of elections. The Pennsylvania Department of General Services (DGS) COSTARS program is the Commonwealth of Pennsylvania’s cooperative purchasing program and serves as a conduit through which registered and eligible local public procurement units (LPPUs) and state-affiliated entities (together “Members”) are able to leverage contracts established by DGS to cost effectively and efficiently identify Suppliers with whom to do business.

The purpose of this Invitation for Bid (“IFB”) is to solicit bids from qualified Suppliers to enter into contracts to sell Voting Systems, and/or EPBs that have been authorized by the appropriate process for use in the Commonwealth of Pennsylvania.

- a) Voting Systems are required to be certified by the U.S. Election Assistance Commission (EAC). In order for a bid to be deemed responsive, all Voting Systems and all related equipment (hereinafter referred to collectively as Voting Systems) must either be certified by the Pennsylvania Secretary of Commonwealth on or after January 1, 2018, or in the process of achieving such certification at the time of bid submittal. Documentation evidencing the certification or application for certification of all Voting Systems is to be included in any contract resulting from the IFB and must be submitted with the Bid response. In the case of Voting Systems that are in the process of

obtaining certification at the time of bid submittal, documentation of certification must be provided to DGS within 30 days of the issuance of such certification by the Secretary of the Commonwealth.

- b) EPBs must be approved for use by the Secretary of the Commonwealth. In order for a bid to be deemed responsive, EPBs must be approved for use by the Secretary of the Commonwealth on or after January 1, 2018, or be in the process of achieving such approval at the time of bid submittal. Documentation evidencing the approval or application for approval of EPBs is to be included in any contract resulting from the IFB and must be submitted with the Bid response. In the case of EPBs that are in the process of obtaining approval at the time of bid submittal, documentation of approval must be provided to DGS within 30 days of the issuance of such approval by the Secretary of the Commonwealth.

Individual counties that are registered as Members may select from the Suppliers with awarded contracts to purchase a Voting System and/or EPB authorized by the appropriate process for use in the Commonwealth of Pennsylvania. Suppliers who are in the process of achieving such authorization as detailed above shall be eligible for award subject to the successful completion of a submittal in response to this Invitation for Bid. However, Suppliers awarded a COSTARS contract prior to final authorization of a Voting System and/or EPB by the Secretary of the Commonwealth **cannot** execute any sales to Members until the Voting System and/or EPB is authorized by the appropriate process for use in the Commonwealth of Pennsylvania.

3. Contract Award. This bid is issued to establish a Multiple Award Contract in accordance with Section 7 of the Instructions to Bidders. A Multiple Award Contract is a contract awarded to all responsive and responsible bidders. For this IFB, DGS has determined that it will initially only accept bids in response to the IFB received on or before January 31, 2019. After that point in time, DGS will not accept any bids in response to the IFB until such time as a Solicitation Addendum is issued by DGS re-opening the bidding to new bidders. For all bids received on or before January 31, 2019, DGS will begin its evaluation of each bid as soon as a complete bid package is received. Contracts will be executed for the bidders deemed responsive and responsible immediately following each bid's evaluation.

4. Contract Period. DGS will establish the Contract effective date as specified in Subsection 3.a. of the Standard Terms and Conditions. The Contract will renew automatically in accordance with Subsection 3.c. of the Standard Terms and Conditions, unless it is terminated in accordance with Section 24 of the Standard Terms and Conditions, as supplemented by this section. Any Member purchases made under the Contract shall be subject to the Terms and Conditions and pricing in place at the time of the purchase. Any subsequent pricing adjustments made in accordance with Paragraph 6(a) of these Special Terms and Conditions will not impact any pre-existing Member Purchase Orders.

5. Pricing

- a) **Voting Systems.** If the Bidder desires to sell Voting Systems they shall complete the Bid Item Workbook. In the Voting Systems Bid Item Sheet Tab of the Bid Item Workbook, the Bidder shall provide firm prices for each complete Voting System package(s) being offered. In the Voting Systems Bid Item Sheet, the Bidder shall state firm prices for the system Components listed. In the Optional Upgraded Cost of the Bid Item Sheet, the Bidder shall list any Optional Upgrade Items or services being offered that are not listed in Voting Systems Bid Item Sheet Tab. The Bidder shall return the completed Bid Item Workbook and all specified attachments in a sealed envelope. Failure to do so may result in DGS' rejection of the bid. If the Bidder does not desire to sell Voting Systems they may mark the corresponding sections of the Bid Item Workbook "N/A" to be considered responsive for this section of the bid response.
- i. **Pricing Specifications for Voting Systems.** The Bidder must identify the offered Voting System on the Bid Item Sheet of the Bid Item Workbook, specifying the System name (model/version), System type, included features (Precinct Tabulation, Central Count Tabulation, Paper Audit Trail), and EMS Software. Omission of this information from the Bid Item Sheet may be cause for DGS to reject the bid. A complete description of each Voting System, including Voting System specifications, Manufacturer's Warranty and Maintenance Agreement, shall be submitted with the Bid Item Workbook.
- b) **EPBs.** If the Bidder desires to sell EPBs they shall complete the Bid Item Workbook. In the EPB Item Sheet Tab of the Bid Item Workbook, the Bidder shall provide firm prices for each complete EPB package being offered. In the EPB Bid Item Sheet, the Bidder shall state firm prices for the EPB Components listed. In the Optional Upgraded Cost of the Bid Item Sheet, the Bidder shall list any Optional Upgrade Items or services being offered that are not listed in the EPB Bid Item Sheet Tab. The Bidder shall return the completed Bid Item Workbook and all specified attachments in a sealed envelope. Failure to do so may result in DGS' rejection of the bid. In the event that the Bidder does not desire to sell EPBs they may mark the corresponding sections of the Bid Item Workbook "N/A" to be considered responsive for this section of the bid response.
- i. **Pricing Specifications for EPBs.** The Bidder must identify the offered EPB on the Bid Item Sheet of the Bid Item Workbook, specifying the EPB name (model/version), included features, and Software and Accessories (battery packs, stylus, stand). Omission of this information from the Bid Item Sheet may be cause for DGS

to reject the bid. A complete description of each EPB, including EPB specifications, Manufacturer's Warranty and Maintenance Agreement, shall be submitted with the Bid Item Workbook.

6. Pricing General Standards. It is suggested that the Bidder offer volume pricing, provided in a format similar to the example provided on the Bid Item Sheet of the Bid Item Workbook. COSTARS members are encouraged to negotiate the price of the Voting System and/or the EPBs, in accordance with the pricing submitted by the Supplier.

- a) **Pricing Updates.** A Supplier may update its Contract pricing annually at the time of contract renewal with DGS. Such pricing changes shall only be applicable to Purchase Orders issued after the pricing update. The terms and/or financing rates contained within Purchase Orders that include lease or an installment purchase provisions shall remain fixed for the term of the lease or installment purchase agreement.
 - i. If a legislative change, policy change, regulation or any related act of a legislative or regulatory body at the state or federal level occurs subsequent to bid opening or contract award results in a required modification(s) to the Supplier's Voting Systems Package(s), Components, EPBs, and/or other Optional Items, or due to unusual market conditions, the Supplier's cost of supplying Systems increases more than ten percent, the Supplier may seek to adjust its prices more frequently. The Supplier shall:
 1. submit a letter to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the adjustment(s).
 2. complete and resubmit the Bid Item Workbook. In the Voting Systems and/or the EPB Bid Item Sheet Tab of the Bid Item Workbook, update any and all prices that adjustment may be otherwise justified under the terms of this section. The Bidder shall provide firm prices for each complete Voting System and/or EPB package(s) being offered.
 - ii. It is the responsibility of the Supplier to adequately justify the change(s). A letter of verification from the manufacturer must accompany all price adjustment requests showing the manufacturer has increased its prices to all Suppliers. The Commodity Specialist will notify the Supplier in writing stating approval/disapproval of the request. Upon approval, the Supplier may issue new price and/or product list(s).
- b) **Discounted Pricing.** After Contract award, a Supplier may offer, either on its own initiative or at a Member's request, discounted prices for any purchase

within the scope of the Contract, even if such discounted prices were not included in the bid prices.

- c) **Additional Items.** The Supplier may supplement its Bid Item Workbook at any time to provide pricing for additional Contract items within the scope of the Contract that become available after submission of the Supplier's bid or to remove items or services it no longer wishes to offer. The Supplier shall submit a written request accompanied by a revised Bid Item Workbook to the DGS Commodity Specialist assigned to this procurement requesting review and approval of the revision(s). The Supplier must also submit with the pricing request documentation that the new contract items have been certified or approved (as appropriate) by the Secretary of the Commonwealth. Any additions to manufacturer lines shall be in accordance with Section A(6)(d).
- d) **Manufacturer's Authorization.** If the Bidder is not a manufacturer, it must submit written proof from the manufacturer of the Bidder's authorization to sell the manufacturer's goods and materials, as required by this Contract (the proof need not be specific to this procurement). If the manufacturer defines the area in which Department of General Services COSTARS Instructions to Bidder REV 01/17/2017 (Version A) – page 5 the Bidder is authorized to sell its products, the Bidder shall include the manufacturer's description of the Bidder's authorized sales territory. If the Bidder sells through a manufacturer's authorized distributor, DGS will accept the distributor's written authorization to the Bidder permitting the Bidder to sell the manufacturer's goods and materials. The manufacturer's written authorization should state that the distributor has the authority to pass the manufacturer's sales authorization through to the reseller. Approval of the change is automatic.

7. Leasing and Installment Purchases. COSTARS members are encouraged to negotiate the price of the Voting System and/or the EPBs, in accordance with the pricing submitted by the Supplier. Only after pricing has been negotiated should leasing or an installment purchase be considered as both options will increase the price of the item. When requesting lease or installment purchase pricing, Suppliers may provide commercially reasonable terms and conditions pertaining solely to the lease or installment purchase which are subject to negotiation by the Members. COSTARS members shall review and negotiate the lease terms and conditions, lease annual percentage rate, residual and after lease provisions in accordance with good business practice. All lease or installment purchase terms shall be subject to the standard approval processes established for the COSTARS member, either by policy or statute, and shall become part of the purchase order. Please note below - different terms may apply to bidding for Voting systems and EPBs.

- a) **Voting System Leasing and Installment Purchases.** Voting System Suppliers are asked to offer leasing and installment purchases under this contract for all terms specified herein.
- i. **Leases.** The Supplier shall provide lease options. The Supplier may offer, and the Member may choose, a lease or a lease with an option to buy. The length of the lease term shall be between twelve (12) and ninety-six (96) months as agreed to by the Supplier and the Member. Leases may contain an option to purchase the Voting System at the end of the lease term as agreed to by the Member and the Supplier.
 - ii. **Installment or Financed Purchases.** Suppliers shall provide pricing for 3-year, 5-year, and 8-year installment or financed purchase plans. Suppliers shall complete the “Financing Terms Tab” of the Bid Item Workbook by including interest rates for the specified situations presented. Interest rates included in the “Financing Terms Tab” of the Bid Item Workbook shall be subject to change based upon market conditions at the time of purchase and negotiations between the Supplier and the Member. Suppliers are not required to update the interest rates as set forth in the Bid Item Workbook as price adjustments.
 - iii. **First Installment Payment or Lease.** The first payment of an installment or financed purchase, or a lease shall be negotiated by the Supplier and Member. First payment is anticipated to occur within 12 months of the Purchase Order execution.
- b) **EPB Leasing and Installment Purchases.** EPB Suppliers may offer pricing and financing terms under the conditions described above or using other terms they choose. Members are encouraged to negotiate terms directly with the Supplier prior to agreeing to an arrangement.
- c) **Outright Purchase Permitted.** Nothing in this Paragraph 7 shall prevent any Member from purchasing Voting Systems or EPBs outright with no Supplier financing required.

8. Delivery. All items covered under this Contract shall be delivered FOB destination within 90 days of the Supplier’s receipt of a Purchase Order unless otherwise agreed to in writing by the party issuing the Purchase Order. The Supplier agrees to deliver Contract items to multiple sites within the county as specified in the Purchase Order.

9. Acceptable Forms of Payment. Supplier must accept payment for hardware and services associated with this contract by check or by purchasing / credit card.

10. Ancillary Services. Awarded Suppliers may offer to provide additional related services in conjunction with the equipment items they are offering to supply the Member under this contract. Services include, but are not limited to: maintenance, training, relocation of equipment and installation.

For such services, the awarded Supplier and the Member shall negotiate the applicable services and prices and the Member will request one written and signed offer from the awarded Supplier. These services are over and above the services already built into the bid prices. These services and their associated prices will not be a factor in bid evaluation and award of the contract; however, Bidders may submit a list of services they wish to provide and their costs. If it is not possible to submit pricing, as may be the case with certain installation services, Bidders may simply note which services they will provide, and the actual price will be negotiated between the Awarded Supplier and the Member. The Commonwealth does however, reserve the right to restrict the services which can be procured under a contract and not to include any services if either the price(s) is (are) unacceptable or services are outside of the acceptable scope of additional services. Any price update for these services is subject to the "Update Option" clause.

a) **Other ancillary services may include:**

- i. **Customization** – any modification to a Contract item to meet Member-specific requirements.
- ii. **Special Delivery Arrangements** – these may include, without limitation, fuel surcharges, added charges for multiple delivery locations, or staged deliveries (multiple dates). Such terms shall not alter the requirements of Subsection 10.b of the COSTARS Contract Standard Terms and Conditions, requiring in pertinent part that the pricing include standard FOB destination delivery.
- iii. **Post Warranty Support and Maintenance Service** (only for products/component parts purchased from the contract)
- iv. **Extended Warranty** (only for products/component parts purchased from the contract)
- v. **Disposal / Relocation**
- vi. **Analysis** – Planning and Pre-Design, Feasibility Studies and Project Cost Budgeting, Risk Assessment
- vii. **Design & Engineering** – Architectural / Engineering Layout Services, Communications and Data Cabling Layout / Configuration Services

viii. **Service Desk / Technical Support**

- b) Any ancillary services provided will be entirely at the Supplier's option.
- c) The Bidder may submit the list of ancillary services and prices it proposes to offer in any format. If it is not possible to submit pricing, as may be the case with certain installation services, the Supplier shall simply note that it is offering the service and that the actual price will be negotiated between the Supplier and the COSTARS participant and annotated on the purchase order at time of order.
- d) Though all potential ancillary services with their associated prices should be included in the Bid proposal, such services and their associated prices are not a factor in bid evaluation. However, COSTARS reserves the right to restrict the types of services to be offered on any contract resulting from this Invitation for Bid.

B. Bid Responsiveness Requirements

1. Mandatory Requirements for Voting Systems. Suppliers are eligible for award if they are offering Voting Systems certified by the EAC and are certified by the Pennsylvania Secretary of the Commonwealth on or after January 1, 2018, or in the process of achieving such certification at the time of bid submittal. Any responding Supplier must be licensed to do business in the Commonwealth of Pennsylvania. Voting System manufacturers must be eligible to submit voting machines for federal testing and certification.

- a) **Minimum Technical Requirements.** Bidders must provide Voting System solutions that include a voter verifiable paper record. The Bidder must describe and provide documentation of its ability to supply and service its Voting System for the duration of the system's life expectancy. Specifically, the Supplier must provide:
 - i. A synopsis of the Bidder's prior implementation of the Voting System in other jurisdictions, if any, including, but not limited to, a list of all customers who have purchased the Voting System and any and all known anomalies experienced with the use of the Voting System;
 - ii. Information on the Supplier's employees and affiliates, locations, company size and ability to provide technical support simultaneously to several counties in the Commonwealth of Pennsylvania and other jurisdictions that use its Voting System and;

- iii. Information on foreign ownership/financing, data hosting, and production for any equipment or ancillary products.

b) **Description of Equipment.** In a document separate and apart from the required State of Manufacture Form the Bidder must list:

- i. The manufacturer of each piece of equipment that is not manufactured by the Supplier but necessary for implementation and operation of the Voting System.
- ii. All consumables (and the supply chain for each) required for the operation of the Voting System.
- iii. All accessories items recommended by the Supplier that can be purchased as part of the Voting System but is not mandatory for the operation of the system.
- iv. An outline of all settings for administrative users that are configurable, and which are not, as well as the default status of those settings.
- v. A recommended acceptance testing procedure for all aspects of the Voting System in a format that can be used as a checklist by the purchasing county's board of elections.
- vi. A sample timeline for implementation and resource requirements showing deliverables to a Member that would make a purchase from this contract.
- vii. Documentation of security testing conducted by the Supplier or a third party, including any risk/vulnerability assessments. This documentation should also describe how the systems security features align with Commonwealth IT policies.

2. Mandatory Requirements for EPBs. Suppliers are eligible for award if they are offering EPBs that are approved by the Pennsylvania Secretary of the Commonwealth on or after January 1, 2018, or in the process of achieving such certification at the time of bid submittal. Any responding Supplier must be licensed to do business in the Commonwealth of Pennsylvania.

a) **Minimum Technical Requirements.** The Bidder must describe and provide documentation of its ability to supply and service its EPBs for the duration of the EPBs life expectancy. Specifically, the Supplier must provide:

- i. A synopsis of the Bidder's prior implementation of the EPB in other jurisdictions, including, but not limited to, a list of all customers who

have purchased the EPB and any and all known anomalies experienced with the use of the EPB.

- ii. Information on the Supplier's employees and affiliates, locations, company size and ability to provide technical support simultaneously to several counties in the Commonwealth of Pennsylvania and other jurisdictions that use its EPB. Additionally, the Supplier must provide information on foreign ownership/financing, data hosting, and production for any equipment or ancillary products.

b) **Description of Equipment.** In a document separate and apart from the required State of Manufacture Form the Bidder must list:

- i. The manufacturer of each piece of equipment that is not manufactured by the Supplier but necessary for implementation and operation of the EPB.
- ii. All consumables (and the supply chain for each) required for the operation of the EPB.
- iii. All accessories items recommended by the Supplier that can be purchased as part of the EPB but is not mandatory for the operation of the system.
- iv. An outline of all settings for administrative users that are configurable, and which are not, as well as the default status of those settings.
- v. A recommended acceptance testing procedure for all aspects of the EPB in a format that can be used as a checklist by the purchasing county's board of elections.
- vi. A sample timeline for implementation and resource requirements showing deliverables to a Member that would make a purchase from this contract.
- vii. Documentation of security testing conducted by the Supplier or a third party, including any risk/vulnerability assessments. This documentation should also describe how the systems security features align with Commonwealth IT policies.

3. Service Area. The Bidder may offer to supply and deliver Voting Systems or EPBs:

- a) Statewide, or
- b) To any one county specifically identified in the Bidder's bid by its corresponding name and number, as listed on the Service Area Sheet of the Bid Item Workbook, or
- c) To any number of counties specifically identified in the Bidder's bid by their corresponding names and numbers, as listed on the Service Area Sheet of the Bid Item Workbook.

C. Voting System and EPB Requirements

1. Member Equipment Requirements.

- a) **The Voting System for each county must include the following equipment:**
 - i. One ADA accessible voting unit per polling location and any in-person location used for absentee voting.
 - ii. Only touchscreen units with a voter verifiable paper record are allowed.
 - iii. If the county uses a precinct optical scan system, they must have at least one scanner per precinct and sufficient scanners per precinct to provide for efficient voting.
 - iv. Election Management System to allow counties to set up and run Elections and tabulate results.
 - v. The Voting System for each county may include high speed optical scanner(s) for absentee ballot tabulation.
- b) **The EPB for each county must include the following:**
 - i. the pollbook;
 - ii. any accessories purchased by the county (stylus, stands, etc);
 - iii. and any approved software needed to program, manage, update and maintain the EPB.
- c) **Equipment Pricing.** The Supplier must provide an itemized list of the cost to purchase each piece of equipment listed in Section C(1). A Member must be

able to purchase additional equipment at the cost provided by the Supplier. The cost listed must be for acquiring new (unused and not refurbished) equipment and must include all items required for a functional unit that can be used on Election Day.

- d) **Limitations on Component Sales.** The Supplier must not sell any components of the system that are not included in the Secretary of the Commonwealth certification or approval. This includes replacement hardware or software during the life of the system.

2. Voting System Requirements.

- a) **Certification.** The Voting System must be approved and certified by both the U.S. Election Assistance Commission (EAC) and the Pennsylvania Secretary of the Commonwealth on or after January 1, 2018, or in the process of achieving such certification at the time of bid submittal.

3. Electronic Pollbook Requirements.

- a) **Pennsylvania Approval.** EPBs must be approved by the Pennsylvania Secretary of the Commonwealth on or after January 1, 2018, or in the process of achieving such certification at the time of bid submittal.
- b) **Restricted Access.** The EPB may not permit access to voter information other than what is needed to check them in at the polling place.
- c) **Setting and Functionality.** The Supplier must provide information regarding all configuration settings related to wireless, WiFi and all types of networking functionality built in to the EPB.
- d) **PA ITP for Data.** The EPB must comply with Commonwealth of Pennsylvania ITP's for data at rest and data in transmission.
- e) **Data Hosting.** The EPB Supplier must provide information on all data hosting options. All data storage, processing and hosting must be within continental U.S. borders.
- f) **Limitations on Remote Access.** Remote desktop tools shall not be installed or used on any part of the system.
- g) **PA ITP for Background Checks.** The EPB must comply with, at a minimum, Commonwealth of Pennsylvania ITP's for background checks.

- h) **Data Extraction.** The system must allow support for import and extract of precinct, polling place and poll worker data.
- i) **Data Retention and Audit.** DOS and Members retain the rights to the data and may conduct audits and reviews of this data at any time.

D. Requirements Post-Award

1. Contract Requirements Post-Award for Voting Systems and EPBs. Suppliers are subject to all current and future directives issued by the Secretary of the Commonwealth. Suppliers are also subject to an audit and/or investigation of their company and manufacturing facilities to ensure compliance with the Secretary of the Commonwealth's approval or certification of their equipment.

- a) **Progress of Certification or Approval Process.** If the Supplier is in the certification or approval process by the Secretary of the Commonwealth after being awarded a COSTARS contract by DGS, the Supplier is required to provide regular updates to any interested Member(s) who contacted the Supplier with the status of certification or approval process as it proceeds.
- b) **Ongoing Supplier Reporting Requirements.** The Supplier must describe, document and/or notify DGS regarding:
 - i. **Reporting.** Any reporting requirements set forth as a condition in the certification or approval report issued by the Secretary of the Commonwealth;
 - ii. **Manuals and Training.** The Supplier must provide all user guides, training and maintenance manuals to DGS.
 - iii. **Notification and Approval Requirement for Upgrades.** The Supplier must notify DGS separate and apart from any sales reporting 30 days prior to providing upgrades or completing a sale with a Member election office.
 - 1. The Supplier shall not push updates or provide automatic updates to a Member without notifying the Member and the DGS. All updates, patches, modifications, bug fixes, etc., must be certified or approved by the Secretary of the Commonwealth through the appropriate process for use in the Commonwealth.
 - 2. The Supplier must provide routine updates of their product roadmap to note upcoming features or changes to hardware and software components to DGS and any customer jurisdictions.

3. The Supplier shall update their Bid-Item Workbook with DGS and submit the updated Bid-Item Workbook to the DGS Commodity Specialist

2. Continuation of Operations and Disaster Recovery.

- a) **Continuation of Operations.** Supplier shall provide and, at all times during the Term, shall maintain the capability (i) to continue operations due to a loss, interruption or unexpected cause of removal of the Supplier's facility/site; and (ii) to recover from unpredicted interruptions within its operating environment or technology infrastructure, resulting from a loss or disruption ranging from a temporary loss of a critical system component to a full Supplier facility/site disaster. The Supplier must provide technical and operational documentation and recommendations for continuity of operations plans, both for the systems on site at polling places and any data or services hosted by the Supplier.
- b) **Disaster Recovery Plan.** Without limiting the generality of the foregoing, the Supplier shall comply with the terms of the Business Continuity Plan parameters of Recovery Point Objective (RPO) and Return To Operations (RTO) of 30 minutes and 2 hours, respectively, as the same may be amended as agreed by the Parties in writing, in responding to any circumstances that threatens to impair or prevent the continued operation of the Services or the Supplier's business. The Supplier shall provide contingency plans to recover from site disasters, fires, floods, explosions, and other events likely to result in business interruption. This includes providing information on all backups the county and the Supplier are responsible to retain.
- c) **Annual Update.** On each anniversary of the Effective Date of the contract award, the Supplier shall deliver to DGS an updated Business Continuity Plan and Disaster Recovery Plan. Each plan delivered by the Supplier shall be subject to DGS review, modification, acceptance and approval. Any modifications or updates thereto as reasonably requested by DGS as such modifications or updates are developed by the Supplier shall be attached thereto and incorporated therein and herein, in their entirety, by this reference. DGS review and approval of the Supplier's plans shall not act as a waiver of, nor in any way effect, the Supplier's obligations hereunder.

3. Service & Maintenance.

- a) A five (5) year service and maintenance plan for all parts of the Voting System and/or EPB, including hardware, software, updates to firmware or software, peripherals, and "Consumer-off-the-Shelf" products, shall be included in the price of the Voting System and/or EPB. Supplier shall state

prerequisites for Member implementation, including, but not limited to, infrastructure, resources, etc.

- b) The Supplier must provide at no additional cost a supply of all required consumables such as toner, ink, paper, etc., in sufficient quantities to complete acceptance testing and one election cycle. The Member will be responsible for the consumables thereafter.
- c) The cost of the required service and maintenance must be itemized as specifically as possible. The Supplier must provide detailed pricing for the identical level of service and maintenance for an additional five years beyond the expiration of the initial five years.
- d) If the anticipated life cycle of the system is believed to be greater than ten years, the Supplier must provide detailed pricing estimates for the identical level of service and maintenance for that time period beyond the expiration of the first ten years.
- e) The Supplier must provide a service and maintenance schedule, a corresponding log for a customer to document, and the recommended service and maintenance for each part of the Voting System and/or EPB.
- f) The Supplier must disclose whether a third party, independent Supplier, or Member is permitted to provide service and maintenance to the Voting System and/or EPB without voiding any terms of the warranty or violating a licensing agreement. If internal or third party, the Supplier should describe the qualifications and/or certifications held by technicians and/or companies as certified partners for the system, as well as information on ownership and key personnel.
- g) A Voting System and/or EPB purchased by a county must be shipped F.O.B. Destination Prepaid to a site designated by the purchasing county.
- h) The Supplier must deliver, assemble, install and configure and provide a fully operational Voting System and/or EPB to the Members making the purchase. The Supplier must work with the county election officials on delivery, assembly and acceptance testing based on the requirements mentioned in Section C of this document and any conditions specified in the Voting System certification and/or EPB approval report issued by the Secretary of the Commonwealth. Upon completion of the system acceptance test the Supplier must work with the county election officials to validate and certify that the system adheres to the certified configuration for which the sale has been made.
- i) The Supplier must provide an implementation or project plan to the Member and the Secretary of the Commonwealth that includes milestones such as:

order placed, order delivered, acceptance testing, implementation, etc. This plan must include a point person for each milestone and an area for the Supplier and Member to sign off on task completion.

- j) The Supplier shall allow the county election officials to perform minor service and maintenance the voting system and/or EPB without voiding any terms of the warranty or violating a licensing agreement. Additionally, the Supplier shall allow the county to access the voting system or EPB in response to a court order and/or legal requirement or responsibility of the county without voiding any terms of the warranty or violating a licensing agreement.

4. Software License. If any license is required for software for the systems, the Member and the Supplier shall negotiate and execute the license, without DGS involvement. Suppliers may license Software products either by the number of named users or by the number of processors running the Software. In no event shall the terms of any license agreement supplant or supersede any terms of the COSTARS contract. In the event of any conflict between the COSTARS contract and a license agreement, the COSTARS contract shall be controlling.

- a) The price of the Voting System and/or EPB must include all requisite licensing for software for five years from the date that the system is received by a purchasing county board of elections.
- b) The Supplier must provide detailed pricing for continued licensing for an additional five years beyond the expiration of the initial five years.
- c) If the anticipated life cycle of the Voting System and/or EPB is believed to be greater than ten years, the Supplier must provide detailed pricing estimates for the requisite licensing for software for that time period beyond the expiration of the first ten years.
- d) The Supplier must allow any and all software licensing to be transferrable among Pennsylvania counties that acquired the Voting System and/or EPB through any contract negotiated by or offered through the Commonwealth of Pennsylvania.
- e) The costs must be itemized and must specifically list all the required and optional software modules.
- f) If the Supplier intends to no longer upgrade the Voting System and/or EPB, the Member has the right to withdraw from upgrade, maintenance, licensing and/or other agreements connected to this procurement. The Supplier must notify DGS and all Members that own a Voting System and/or EPB of end of support/life six months prior to end date.

5. Minimum Training Requirements and Training Materials. The Supplier must provide training and training materials as set out in any certification report or directive from the Secretary of the Commonwealth for the voting system and in the results of the approval report for EPBs prior to the first use of the voting system and/or EPB in a primary or general election. The price of the Voting System and/or EPB training specified must be included in the price of purchase.

The Commonwealth and any Member shall have the right to copy, use, and distribute to voters, political candidates, political committees, civic organizations, news organizations, and elections staff and volunteers, the materials the Supplier furnishes to the Member for training or instruction of any nature for the use and operation of the Voting System and/or EPB. Such materials may include, without limitation, audio and video instructional materials, printed manuals, and any other information supplied pursuant to the requirements of this procurement. The Commonwealth and any Member may make as many copies of any or all of these materials as deemed necessary for election-related purposes, and they may distribute these materials to any individual or organization to provide election related information. The Commonwealth and any Member shall ensure that all such materials are copied and distributed in their complete original state and display all original copyright notices.

6. Implementation Support. The Supplier must provide an employee or agent to serve as a principal point of contact with DGS and every purchasing county board of elections. This employee or agent shall be responsible for coordinating the delivery, receipt, acceptance testing, and setup of the Voting System and/or EPBs at a site designated by the purchasing county board of elections. This employee or agent also shall be responsible for coordinating the required training with the county's board of elections.

The price of the Voting System and/or EPB (where applicable) must include on the ground, in-person support from the Supplier:

- a) For acceptance testing;
- b) For election support for the first election during which the Voting System is used including:
 - i. Ballot creation;
 - ii. System set up;
 - iii. Pre-election logic and accuracy testing;
 - iv. Set up for Election Day voting;
 - v. Election Day support and troubleshooting assistance;
 - vi. Tabulation and reporting of results both for the unofficial and official canvass;

- vii. Post-election testing and reporting;
 - viii. Post-election audits;
 - ix. And any possible recounts.
- c) For election support for the first election during which the EPB is used including:
- i. System set up;
 - ii. Pre-election testing;
 - iii. Election Day support and troubleshooting;
 - iv. And post-election testing and reporting.
- d) For preventative maintenance for the first two years
- i. Voting System Maintenance Validation. This maintenance must include a validation that the Voting System is configured in adherence to the Secretary of the Commonwealth's certification.
 - ii. EPB Maintenance Validation. This maintenance must include a validation that the EPB is configured in adherence to the Secretary of the Commonwealth's approval.

The Supplier's on-the-ground, in-person support person must be familiar with Pennsylvania elections; well-trained in the use of the Voting System and/or EPB; conversant in the English language; licensed and insured to drive within Pennsylvania; have reliable transportation that can accommodate the transport of voting equipment from the purchasing county board of election's office to a polling location; and have immediate access to other employees or agents of the Supplier who can provide additional assistance if necessary.

The Supplier must disclose whether the Supplier, a third party, or an independent contractor is available to a purchasing Member to provide support for pre-election programming, setup, tabulation, and reporting after the first election and the current cost of such support.

7. Source Code and Escrow Items Obligations. The Supplier must maintain an escrow agreement covering all source codes of the Voting System and/or EPB for a period of ten years from the date of delivery to and acceptance by a purchasing county board of elections. The Member shall have the right to access the source codes in escrow subject to the conditions specified below in Section D(7)(d). The Supplier must pay all costs associated with 1) placing the codes in escrow and 2) verifying that the Supplier has placed the codes in escrow (note: the escrow agent conducts this verification and charges a separate fee for this service).

- a) **Source code.** Simultaneously with delivery of the Voting System and/or EPB software to purchasing Member, the Supplier shall deliver a true, accurate and complete copy of all source codes relating to the software to an escrow agent.
- b) **Escrow.** To the extent that Voting System and/or EPB software and/or any perpetually-licensed software include application software or other materials generally licensed by the Supplier, Supplier agrees to place in escrow with an escrow agent copies of the most current version of the source code for the applicable software that is included as a part of the Services, including all updates, improvements, and enhancements thereof from time to time developed by Supplier.
- c) **Escrow agreement.** An escrow agreement must be executed by the parties, with terms acceptable to the Member prior to deposit of any source code into escrow.
- d) **Obtaining source code.** Supplier agrees that upon the occurrence of any event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Supplier to fulfill its obligations to the Member under this Contract, the Member shall be able to obtain the source code of the then-current source codes related to Voting Systems software, EPB software, and/or any Supplier Property placed in escrow from the escrow agent.

8. Decommissioning and Disposal. The Supplier must provide information on the decommissioning and disposal process to any county purchasing equipment and provide a copy to the Secretary of the Commonwealth, or his designee. The Supplier, county and the Secretary of the Commonwealth, or his designee must agree to the proposed process. At minimum, the disposal process must adhere to the requirements outlined in the Commonwealth of Pennsylvania's ITP-SEC015 relating to cleaning of electronic media, surplus or recycling of IT resources, reassigning electronic devices, cleaning electronic media, failed media, and chain of custody procedures.

9. Equipment and Software Warranties. This is the minimum equipment and software warranty that must be provided by the Supplier. A Supplier may offer an enhanced warranty period as part of its product pricing.

- a) Supplier warrants that for the first 5-year period (the "Warranty Period"), it will repair or replace any component of the equipment or Supplier provided software which, while under normal use and service: (i) fails to perform in accordance with its documentation in all material respects, or (ii) is defective in material or workmanship. The Warranty Period will commence upon delivery. Any repaired or replaced item of equipment or Supplier provided software shall be warranted only for the unexpired term of the Warranty

Period. All replaced components of the equipment or Supplier provided software will become the property of the Supplier except in situations where the components contain data. If there are any components containing data then the county will follow appropriate protocols for safekeeping or destroying the component. At minimum, the disposal process must adhere to the requirements outlined in the Commonwealth of Pennsylvania's ITP-SEC015 relating to cleaning of electronic media, surplus or recycling of IT resources, reassigning electronic devices, cleaning electronic media, failed media, and chain of custody procedures. Supplier shall not be responsible for the repair or replacement of (i) consumable parts, such as batteries or protective coatings that are designed to diminish over time, (ii) cosmetic damage, including, but not limited to, screen cracks, scratches, dents and broken plastic or (iii) defects caused by normal wear and tear. All equipment warranty services shall be provided at a location agreed upon by the Supplier and Member. This warranty is effective provided that (i) Customer promptly notifies Supplier of the failure of performance or defect and is otherwise in compliance with its obligations hereunder, (ii) the equipment or Supplier provided software to be repaired or replaced has not been repaired, changed, modified or altered except as authorized or approved by Supplier, (iii) the equipment or Supplier provided software to be repaired or replaced is not damaged as a result of accident, theft, vandalism, neglect, abuse, liquid contact or use which is not in accordance with instructions or specifications furnished by Supplier or causes beyond the reasonable control of Supplier or Customer, including acts of God, fire, riots, acts of war, terrorism or insurrection, labor disputes, transportation delays, governmental regulations and utility or communication interruptions, and (iv) Customer has installed and is using the most recent update, or the second most recent update, provided to it by Supplier. This warranty is void for any units of equipment which: (i) have not been stored or operated in a temperature range according to their specifications, (ii) have been severely handled so as to cause mechanical damage to the unit, or (iii) have been operated or handled in a manner inconsistent with reasonable treatment of an electronic product.

- b) The Supplier shall allow the county election officials to perform minor service and maintenance the voting system and/or EPB without voiding any terms of the warranty or violating a licensing agreement. Additionally, the Supplier shall allow the county to access the voting system or EPB in response to a court order and/or legal requirement or responsibility of the county without voiding any terms of the warranty or violating a licensing agreement.
- c) Supplier warrants that the equipment and Supplier provided software will operate in conjunction with the third party items during the Warranty Period, provided that (i) Customer is using third party items which have been approved by Supplier in writing for use with the equipment and Supplier provided software, (ii) Customer has installed and is using the most recent update, or the second most recent update, provided to it by Supplier, and (iii)

the third party items are performing in accordance with their own specifications and documentation in all material respects and are not defective in material or workmanship. In the event of a breach of this warranty, Supplier will repair or replace the item of equipment or Supplier provided software that is causing such breach to occur. Customer acknowledges that Supplier has merely purchased the third party items for resale or rental to Customer, and that the proprietary and intellectual property rights to the third party items are owned by parties other than Supplier ("Third Parties"). Customer further acknowledges that except for the payment to Supplier for the third party items, all of its rights and obligations with respect thereto flow from and to the Third Parties. Supplier shall provide Customer with copies of all documentation and warranties for the third party items which are provided to Supplier.

- d) In the event of a breach of subsections (a) or (c), Supplier's obligations, as described in such subsections, are customer's sole and exclusive remedies. Supplier expressly disclaims all warranties, whether express or implied, which are not specifically set forth in this contract, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

Enhanced warranty pricing after the minimum equipment and software warranty must be itemized allowing the counties to choose the appropriate service required.

10. Modifications. Voting System Modifications or replacements necessary due to decertification by either the EAC or the Commonwealth of Pennsylvania or a field issue or anomaly occurring in any fielded system in the United States that impacts the casting or tabulation of votes of any fielded system in Pennsylvania must be provided to Members at no cost or it must be replaced with a certified system at no cost. The Supplier shall be liable to the Members for any and all reasonable costs incurred to obtain and utilize such replacement Voting Systems, alternative voting methods, EPBs, and or alternative pollbooks for all elections occurring until the equipment is re-certified, reapproved, or the Member terminates the Purchase Order for cause and procures new equipment.

11. On-Site Support and Help Desk. The Supplier shall provide on-site support during all elections occurring within one year of the date the System becomes fully operational, but in no event less than two regular (May and November) elections, at each Member's county election office commencing one hour before and ending one hour after poll hours for all elections occurring within one year following each purchase. Additionally, the Supplier shall make a Help Desk available during normal business hours commencing four days prior to the election through the day after election day. Additionally, the Help Desk shall be available from 6:00 a.m. on election day through 6:00 a.m. the following day. The Supplier shall respond to site-specific issues within the Member counties within one hour of notification.

12. Court Orders. If a court of competent jurisdiction issues a subpoena or other order directing either the Member or the Supplier to produce any proprietary or confidential data under this Contract, including without limitation software source code and object code, software and hardware documentation, training materials, and component pricing information, in any form whatsoever, the party served with the order shall promptly notify the party whose information is subject to the order to provide said party with sufficient opportunity to contest the order. Such notice shall not be required in the event the information subject to the subpoena or order is public information under the Right to Know Law, 66 P.S. §§ 65.1-66.9, or any other law which may require disclosure, or the data subject to the order is already lawfully within the public domain.

13. Cooperation. The Supplier and the Member shall reasonably cooperate with each other and the Pennsylvania Secretary of the Commonwealth at the requesting party's expense in the prosecution or defense of any action arising from or related to the use of Voting Systems and/or EPBs purchased/leased through this COSTARS contract. The party requesting such cooperation shall pay the reasonable out-of-pocket expenses incurred in providing such cooperation. Cooperation shall include, but is not limited to, litigation support such as testimony, expert reports and/or advice concerning the Voting Systems and/or EPBs.

14. Ownership Rights (Software). In connection with Voting Systems software and/or EPB software, Section 17 of the COSTARS Contract Standard Terms and Conditions, provides: *"Each Purchaser issuing a PO under this Contract shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Purchaser as part of the performance of the PO."* (emphasis added). The Commonwealth clarifies that the Supplier shall be permitted to reproduce, distribute, and use in its discretion only software specifically developed for the particular PO under which such special software development or modifications may be ordered.

- a) **Exclusion of Standard Software.** The Commonwealth clarifies that Section 17 of the COSTARS Contract Standard Terms and Conditions shall not apply to the Supplier's standard Voting Systems software, and/or EPB software the use of which shall be governed by the Supplier's standard licensing terms and conditions, to the extent that they do not conflict with any other terms in the COSTARS Contract.

ATTACHMENT B

Voluntary Small/Small Diverse Business Participation

The Commonwealth of Pennsylvania, Department of General Services (DGS), COSTARS, and the Department of State encourage participation by small/small diverse businesses as prime contractors and encourages all prime contractors to make a significant commitment to use small/small diverse businesses as subcontractors and suppliers.

A Small Business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and may not exceed an average of \$38.5 million in gross annual revenues over the preceding three years.

A Small Diverse Business is a DGS-verified Minority, Woman, Veteran, Service Disabled Veteran, LGBT, or Disability-Owned Business Enterprise.

Questions regarding this Program can be directed to:

PA Department of General Services
Bureau of Diversity, Inclusion & Small Business Opportunities (BDISBO)
Room 611, North Office Building
401 North Street
Harrisburg, PA 17120-0500
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: GS-BDISBO@pa.gov
Website: www.dgs.pa.gov

The Department's directory of Small and Small Diverse Businesses (SBs and SDBs) can be found in the online, searchable database at www.dgs.internet.state.pa.us/suppliersearch.

Contractors, if using Small/Small Diverse Businesses as subcontractors for third party services, shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to BDISBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small/Small Diverse Business subcontractors and suppliers. If there was no activity during the quarter, then the form must be completed by stating "No activity in this quarter." The Quarterly Utilization Report form is available to download or can be completed online at <http://www.dgs.pa.gov/Businesses/Small%20Diverse%20Business%20Program/Pages/Small-and-Diverse-Business-Resources.aspx>.

COSTARS CONTRACT STANDARD TERMS AND CONDITIONS

1. PURPOSE OF CONTRACT

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

2. PURCHASERS UNDER THE CONTRACT

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

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.

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

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

Should the Contractor become aware of, or be contacted by, any potential purchaser not currently registered as a COSTARS member, where the potential purchaser believes it may qualify for, and wishes to participate in, the COSTARS Program, the Contractor may refer the potential purchaser to www.costars.state.pa.us to complete the DGS COSTARS member online application.

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

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

3. TERM OF CONTRACT

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

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

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred

under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

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

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

Contractor Classification	Required Administrative Renewal Fee
Department of General Services Verified Small Diverse Business Bidder	\$166
Department of General Services Self-Certified Small Business Bidder	\$500
All Other Bidders-Contractors	\$1,500

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

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

4. PURCHASE ORDERS

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

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

For electronically-issued POs, the following terms apply:

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

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

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

5. INDEPENDENT CONTRACTOR

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

6. THIRD PARTY BENEFICIARIES

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

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

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

7. COMPLIANCE WITH LAW

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

8. ENVIRONMENTAL PROVISIONS

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

9. CONTRACTOR DEDICATED WEBSITE

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

10. PRICING, COMPENSATION, AND INVOICES

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

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

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

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

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

11. PAYMENT

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

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

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

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

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

12. TAXES

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

13. WARRANTY

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

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

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

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

14. DELIVERY

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

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

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

15. SALES REPORTS

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

a. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

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

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

16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

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

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

17. OWNERSHIP RIGHTS

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

18. ASSIGNMENT OF ANTITRUST CLAIMS

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

19. HOLD HARMLESS PROVISION

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

20. AUDIT PROVISIONS

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

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

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

21. INSPECTION AND REJECTION

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

22. DEFAULT

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

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

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

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

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

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

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

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

23. FORCE MAJEURE

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

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

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

24. TERMINATION PROVISIONS

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

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

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

25. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Section 25, the Contract shall be binding upon the parties and their respective successors and assigns.

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

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

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

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

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

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

26. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

a. 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 by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or 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.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or 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.

c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.

d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing 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 contracted services are performed shall satisfy this requirement for employees with an established work site.

f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or 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.

g. 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, regulations and policies 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 Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

h. 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.

i. 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.

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

27. CONTRACTOR INTEGRITY PROVISIONS

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

28. CONTRACTOR RESPONSIBILITY PROVISIONS

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

a. 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.

b. 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.

c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, 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.

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

e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth 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.

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at www.dgs.pa.gov or contacting the:

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

29. AMERICANS WITH DISABILITIES ACT

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

b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and

actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subsection a above.

30. HAZARDOUS SUBSTANCES

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

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

1. Hazardous substances:

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

2. Hazardous mixtures:

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

3. Single chemicals:

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

4. Chemical Mixtures:

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

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

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

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

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.

- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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

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

31. COVENANT AGAINST CONTINGENT FEES

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

32. APPLICABLE LAW

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

33. INTEGRATION

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

34. CHANGES

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

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

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

35. COSTARS BRAND

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

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

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

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

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

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

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

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

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

36. RIGHT-TO-KNOW LAW

a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("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.