



**pennsylvania**

DEPARTMENT OF GENERAL SERVICES  
BUREAU OF PROCUREMENT

**Invitation for Bid Package**

**For The**

**Sale of State Surplus Property**

**Mixed Scrap Metal Removal and Recycling**

Solicitation No. 6100051026

# PART I

## GENERAL INFORMATION

### 1. PURPOSE:

The Commonwealth of Pennsylvania (Commonwealth), Department of General Services (DGS), is issuing this Invitation for Bids (IFB) to meet the needs of the Commonwealth Agencies for the removal and recycling of mixed scrap metals for revenue generated income to the Commonwealth.

### 2. SUBMISSION OF BIDS:

- a. Bids are requested for the item(s) described in the Invitation for Bids and all documents references in the IFB (collectively called the IFB). Bidders must submit their bids through the Commonwealth's electronic system (SRM).
- b. It is the responsibility of each bidder to ensure that its bid is received through the electronic system prior to the date and time set for the opening of bids ("Bid Opening Time"). No bid shall be considered if it arrives after the Bid Opening Time, regardless of the reason for the late arrival. Bids that are timely received prior to the Bid Opening Time shall be opened publically in the presence of one or more witnesses at the time and place designated in this IFB for the Bid Opening.
- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB, it shall be rejected. The Bid shall also be rejected if the services offered by the Bidder are not in conformance with the specifications as determined by the Department of General Services.
- d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded services at the price(s) set forth in this Bid at the time(s) and place(s) specified.

### 3. QUESTIONS:

Any questions regarding the IFB must be submitted in writing to the email address of the Issuing Officer provided in the solicitation. While there is no set timeline for the submittal of questions, questions received within 48 hours prior to the bid due date and time will be answered at the discretion of the Commonwealth. All questions received will be answered in writing and such responses shall be posted to eMarketplace as an addendum to the IFB. The Issuing Officer shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the IFB for formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

### 4. ADDENDA TO THE IFB

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to eMarketplace on its website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us). It is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.

**5. BIDDER'S REPRESENTATION AND AUTHORIZATION:**

- a. Each Bidder, by making its Bid, understands, represents, and acknowledges that:
- 1) The Bidder has read and understands the terms and conditions of the IFB and the Bid is made in accordance with those terms and conditions.
  - 2) The item(s) offered in the Bid will be in conformance with the specifications referenced on the IFB without exceptions.
  - 3) The price(s) and amount of the Bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder.
  - 4) Neither the price(s) nor the amount of the Bid, and neither the approximate price(s) nor the approximate amount of the Bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before Bid opening.
  - 5) No attempt has been made or will be made to induce any firm or person to refrain from bidding on the contract, or to submit a bid higher than the Bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
  - 6) The Bid is made 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 subcontractors, nor any suppliers are 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, along with the Bid, a written explanation of why such certification cannot be made.
  - 9) To the best of the knowledge of the person signing the Bid for the Bidder, and except as otherwise disclosed by the Bidder 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) The Bidder has not, under separate contract with the Department of General Services, made any recommendations to the Department of General Services concerning: the IFB, the sale of the supplies described in the IFB, or the market price for the supplies described in the IFB.

11) All information provided by, and representations made by, the Bidder in the Bid are material and important and will be relied upon by the Commonwealth in awarding the contract. Any misstatement shall be treated as fraudulent concealment from the Commonwealth of the true facts relating to the submission of the Bid. A misrepresentation shall be punishable under Section 4904 of Title 18 P.C.S.A.

- b. Each Bidder, by making its Bid, authorizes all Commonwealth agencies to release to the Commonwealth information related to liabilities to the Commonwealth including, but not limited to taxes, unemployment compensation, and workers' compensation liabilities.
- c. If an award is made to the Bidder, the Bidder agrees that it tends to be legally bound to the contract which is formed between the Commonwealth and the Bidder.

**6. BIDS BY DEPARTMENT OF GENERAL SERVICES EMPLOYEES:**

Employees (or their agents) of the Department of General Services are forbidden from purchasing State Surplus Property, and therefore, any bid proposal submitted by a Department of General Services employee will be rejected.

**7. ELECTRONIC VERSION OF THIS IFB:**

This IFB is being made available by electronic means. If a Bidder electronically accepts the IFB, the Bidder acknowledges and accepts full responsibility to ensure that no changes are made to the IFB. In the event of a conflict between a version of the IFB in the Bidder's possession and the Issuing Office's version of the IFB, the Issuing Office's version shall govern.

**8. PRICES:**

The bid submitted by the successful bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded service(s) at prices quoted in its Bid.

**9. MODIFICATION OR WITHDRAWAL OF BID:**

- a. Bid Modification Prior to Bid Opening. If a Bidder intends to modify its bid after submitting the bid into the Commonwealth's electronic system (SRM) but prior to Bid Opening, the Bidder must do so within SRM. Once the Bidder has modified the bid, the bid must be saved and re-submitted in SRM. A failure to re-submit the bid within SRM will result in the bid not being properly submitted and no award can be made as a result of the non-submitted bid.
- b. Bid Withdrawal Prior to Bid Opening. If a Bidder intends withdraw its bid after submitting the bid into SRM but prior to Bid Opening, the Bidder must do so within SRM.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
  - 1) The Bidder submits a written request for withdrawal.

- 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.
  - 3) The request for relief and supporting evidence must be received by the Buyer for the Department of General Services referenced on the IFB within three (3) business days after Bid opening, but before award of the contract.
  - 4) The Department of General Services shall not permit a Bid withdrawal if the Bid withdrawal would 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) If a Bidder is permitted to withdraw its Bid, 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 Department of General Services.
- d. Firm Bid. Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Department of General Services, withdraws its Bid 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 security or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- e. Clarification and Additional Information. After the receipt of Bids, the Department of General Services shall have the right to contact Bidders for the purpose of seeking:
- 1) Clarification of the Bid which confirms the Department of General Services' understanding of statements or information in the Bid or;
  - 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

## **10. REJECTION OF BIDS:**

The Department of General Services 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 if the best interests of the Commonwealth are thereby served.

## **11. BID PROTEST PROCEDURES:**

- a. **Who May File the Protest.** Any Bidder or prospective bidder who is aggrieved in connection with the IFB or award of the contract solicitation or award of a contract may file a protest. Protests relating to cancellation of invitation for bids and protests relating

to the rejection of all bids are not permitted. A Bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.

b. **Time for Filing.**

- 1) If a protest is submitted by a prospective bidder, the protest must be filed before the bid opening time or proposal receipt date.
- 2) If a protest is file by a Bidder, the protest must be filed within seven (7) days after the protesting Bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT OR PURCHASE ORDER WAS AWARDED. The date of filing is the date of the protest.
- 3) Untimely protests shall be disregarded.

c. **Form of Protest.**

- 1) A protest must be in writing and filed with the agency head (or designee) of the purchasing agency.
- 2) A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
- 3) The protesting party may submit with the protest any documents or information deemed relevant.

d. **Notice of Protest.** If award has been made, the agency head (or designee) shall notify the successful Bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all Bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the purchasing agency within three (3) days after receipt of notice of the protest.

e. **Stay of Procurement.** The head of the purchasing agency (or designee) shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after that award, whether the performance of the contract shall be suspended. The Issuing Office shall not proceed further with the IFB or with the award of the contract, and shall suspend performance of the contract if awarded, unless the head of the purchasing agency makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interest of the Commonwealth.

f. **Procedures.**

- 1) **Contracting Officer Response.** Within fifteen (15) days of the receipt of a protest, the contracting officer may submit a written response to the head of the

purchasing agency (or designee). The response may include any documents or information that the contracting officer deems relevant to the protest.

- 2) **Protesting Party Response.** With ten (10) days of the date of the contracting officer response, the protesting party may file a written reply.
- 3) **Review.** The head or the purchasing agency (or designee) shall:
  - a) Review the protest and any response or reply.
  - b) Request and review any additional documents or information he or she deems necessary to render a decision.
  - c) Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.
  - d) In his or her sole discretion, conduct a hearing.
  - e) Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.
  - f) If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.
- 4) **“Clearly Without Merit” Determinations.** If the head of the purchasing agency (or designee) determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the head of the purchasing agency (or designee) shall immediately issue the decision as required by subparagraph h, below.
  - g. **Settlement.** The Issuing Office has the authority to settle and resolve bid protests.
  - h. **Decision.** The head of the purchasing agency (or designee) shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:
    - 1) State the reasons for the decision.
    - 2) If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.
    - 3) If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

The agency head (or designee) shall send a copy of the decision to the protesting party and any other person determined by the agency head to be affected by the decision.

## **PART II**

### **SELECTION CRITERIA**

#### **1. MANDATORY RESPONSIVENESS REQUIREMENTS:**

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;
- b. Properly signed by the Bidder.

#### **2. AWARDS:**

Unless all Bids are rejected, and except as otherwise provided by law, award will be made, through the issuance of a notice of contract award, to the highest responsible and responsive Bidder(s). Unless otherwise specified, the Department of General Services reserves the right to award by item or on a total Bid basis, whichever is deemed more advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be corrected.

#### **3. METHOD OF AWARD:**

If the Issuing Office enters into a contract as a result of this IFB, it will be a multiple award contract containing the terms and conditions set forth in this IFB. Award will be made to the highest responsive and responsible Bidder on a county by county basis. Bidders maybe awarded more than one county. The High Bid (highest purchase price) will be determined by the highest "Price Adjustment Factor" result in accordance with the American Metal Market (AMM) Newspaper (refer to Appendix B, Bid Sheet). The awarded Contractor(s) will be required to remove and purchase scrap metal offered by Commonwealth agencies at the purchase price on the bid sheet submitted to DGS with their original bid.

#### **4. THE BIDS:**

All tie Bids will be broken by the Department of General Services.

#### **5. PROMPT PAYMENT DISCOUNTS:**

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

#### **6. OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE:**

The Commonwealth reserves the right to purchase products or services covered under this Contract through a separate competitive bidding procedure, whenever the Commonwealth deems it in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the product or service exists or when the price offered is significantly lower than the Contract price.

## PART III

### STATEMENT OF WORK MIXED SCRAP METAL REMOVAL AND RECYCLING

#### 1. CONTRACT SCOPE/OVERVIEW:

This Contract (identified here and in the other documents as the “Contract”) will cover the requirements of Commonwealth agencies for removal and recycling of mixed scrap metals for revenue generated income to the Commonwealth of Pennsylvania.

#### 2. DEFINITIONS.

- a. **Mixed Scrap Metal:** Discarded metal from typical garage and highway maintenance operations suitable for recycling/reprocessing.
- b. **Non-Recyclable Debris/Contaminants:** Non-metal materials such as dirt, soil, rocks, branches, limbs, pallets, tree stumps, brush and/or wood debris.
- c. **Roll-Off Box:** Container provided by the Contractor for the agency to accumulate and store mixed scrap metal between pick-ups and removals; container used for transporting mixed scrap metal.
- d. **Recycling:** Processing mixed scrap metal in order to recover a usable product or energy; the use of the mixed scrap metal as an effective substitute for commercial products or any process that results in the beneficial use of scrap metal.

#### 3. PICK-UP & REMOVAL OF SCRAP METAL:

The awarded Contractor(s) agrees to purchase and remove/recycle all mixed scrap metals offered under this Contract. Contractor shall provide all removal and labor at their own expense, including any transportation and operating costs necessary for the removal and recycling of mixed scrap metal from ordering Commonwealth agencies.

- a. **Notice and Lead-Time:** The Contractor shall provide at least one roll-off box per location in which the agency will accumulate and store mixed scrap metal between pick-ups and removals. The Contractor will receive written notice (via fax or email) when mixed scrap metal is available for removal. Upon notification from an agency, Contractor will schedule the pick-up/removal of the mixed scrap metal container as soon as possible. The Contractor agrees to remove the scrap metal within ten (10) business days or less unless otherwise agreed upon (in writing) with the agency contact person.
- b. **Pick-up and Removal of Mixed Scrap Metal:** Upon arriving at the agency location, the Contractor will receive the STD-497 Surplus Property Contract Receipt/Invoice Form; and if the form is incomplete, the Contractor will complete Contractor’s Name and Address, Department Location, Date of Pick-Up, Contract Number, checkbox next to Mixed Scrap Metals and Contractor’s Signature. Contractor will obtain agency contact’s signature and will leave Copies 1 and 2 with the agency contact person. Contractor will retain Copies 3 and 4 of STD-497 Surplus Property Contract Receipt/Invoice Form.

The Contractor will remove the roll-off box from the agency location and provide an empty roll-off box in its place. The Contractor will transport the loaded container directly from the agency location to the Contractor's processing facility. *Note: Contractor will immediately advise the Contracting Officer if any delays in any step of the pick-up/removal occur.*

- c. **Recycling Process:** For each removal of mixed scrap metal, Contractor will be required to provide a signed, certified weight ticket. Shipments to scrap metal processing facilities, which are based in Pennsylvania, must be weighed by a licensed Public Weigh Master and accompanied by a Weigh Master's certificate. The scale must be approved by the Pennsylvania Department of Agriculture, Bureau of Ride and Measurement Standards, Weights & Measures Division, or tested and approved by a Scale Repair Service. Shipments to scrap metal processing facilities based outside of Pennsylvania must be certified and licensed by their respective state agency. The Commonwealth of Pennsylvania reserves the right to have any shipment weighed at an independent weighing station. All costs for verification of weight will be the responsibility of the Contractor.
- d. **Notice to Commonwealth of Pennsylvania:** Upon removal of mixed scrap metal, Copy 4 (Gold copy) of the STD-497 Surplus Property Contract Receipt/Invoice Form must be returned to the Department of General Services, Bureau of Supplies and Surplus Operations, State Surplus Property Division, Room G-46, 2221 Forster Street, Harrisburg, PA 17105 with certified weight slip and payment. Copy 3 (Pink Copy) is retained by the Contractor.

#### 4. **SPILL AND RELEASE RESPONSIBILITIES:**

Although not anticipated due to the nature of mixed scrap metal, the awarded Contractor is solely responsible for any and all spills, leaks or releases, which occur as a result of or are contributed to by the actions of its agents, employees, or sub-contractors (if applicable). In the event of a spill, leak, or release, the awarded Contractor agrees to take the following actions:

- a. Evacuate and warn those persons that may be affected by the spill.
- b. Clean up the spill in a manner which complies with local, state and federal laws, regulations and standards.
- c. For spills which occur on property other than property owned or leased by the Commonwealth or government municipality or contract user, provide all notifications and reports as specified by local, state and federal laws, regulations and standards.
- d. For spills which occur on property owned or operated by the Commonwealth, government municipality or contract user, notify the appropriate Incident Commander.

#### 5. **REJECTION OF PICK-UP/REMOVAL:**

Before removing the roll-off box of mixed scrap metal from the agency location(s), Contractor has the right to inspect container and determine if the load meets the definition of mixed scrap metal. If the Contractor determines that the roll-off contains non-recyclable debris and/or contaminants, Contractor reserves the right to request partial relief from pick-up/removal as detailed in Section 8 (B) of these

Special Contract Terms and Conditions. A request for such relief must be made in writing to the Contracting Officer, must be narrowly tailored, and must include justification explaining the reason(s) for rejection of the container. The Contracting Officer will analyze and approve/disapprove Contractor's notification for rejection of referenced container. Corrective action may be taken by the agency in order to receive removal and recycling of the materials. The decision to allow such relief shall be at the sole discretion of the Commonwealth, and may not be challenged or appealed absent bad faith. Commonwealth of Pennsylvania is not responsible for costs incurred by Contractor.

6. **BID SHEET:**

The bid sheet information is the Excel spreadsheet (Appendix B of this IFB). For purposes of this IFB, the Department of General Services divided the state of Pennsylvania into two (2) regions and the corresponding counties, which will utilize separate industry indexes for pricing: Region 1 – Pittsburgh Index; and Region 2 – Philly Index.

Bidders shall complete the Bid Sheet, indicating their Price Adjustment Factor (Negative, Positive or Zero) off the higher price Gross Ton of Scrap Iron and Steel Prices as stated in the American Metal Market (AMM) Newspaper under the heading: Consumer Buying Prices, No. 1, Heavy Metal. Bidders are not required to bid on all counties listed. Bidder may bid on an individual county or any combination of counties. However, it shall be understood that **Bidders may not bid on portions of a county;** and purchase/removal of scrap metals must be provided for ALL locations within a selected county.

a. **Bid Sheet Definitions.**

- 1) **Purchase Price:** The amount paid by the Contractor to the Commonwealth of Pennsylvania for purchase of mixed scrap metals as adjusted by the AMM period.
  - a) The purchase price may fluctuate every thirty (30) days. Price Adjustment Factor rate(s) will remain fixed throughout the life of the Contract. The first 30-day period will be calculated on the second Monday of the month preceding the effective date of the fully executed Contract. The awarded Contractor must always use the date of the AMM listed on the front of the paper. This price will remain in effect for 30 consecutive days. The next 30-day period will be calculated against the second Monday of each subsequent month, etc.
- 2) **Price Adjustment Factor – Negative (-):** The amount the Bidder will decrease its price from the higher AMM No. 1 Heavy Metal price, which is used to calculate the amount paid (purchase price) to the Commonwealth of Pennsylvania for mixed scrap metals.
- 3) **Price Adjustment Factor – Positive (+):** The amount the Bidder will increase its price from the higher AMM No. 1 Heavy Metal price, which is used to calculate the amount paid (purchase price) to the Commonwealth of Pennsylvania for mixed scrap metals.
- 4) **Price Adjustment Factor – Zero (\$0.00):** \$0.00 – This indicates the Bidder will pay the exact, higher price for No. 1 Heavy Metal as listed on the AMM. The Zero Price Adjustment Factor does NOT mean that the scrap metal is free.

- 5) **No Bid:** Counties left blank on the Bid Sheet – This indicates that the Bidder does not offer mixed scrap metal removal and recycling for any locations in the respective county.

7. **PAYMENT:**

This Contract will be a Revenue Producing Contract. The Commonwealth of Pennsylvania will not pay for scrap metals removed or any other fees or charges under this Contract. Charges to the Commonwealth of Pennsylvania will not be considered, and the bid will be rejected.

Payment shall be submitted within 30 (thirty) calendar days from the date of removal, to the Department of General Services, Bureau of Supplies and Surplus Operations, State Surplus Property Division, Room G-46, 2221 Forster Street, Harrisburg, PA 17105.

The Department of General Services, Bureau of Supplies and Surplus Operations prefers all Suppliers provide payment via Electronic Funds Transfer. Upon contract issuance, BSSO will supply all awarded Suppliers with appropriate bank routing information and instructions regarding information to be transmitted by the Supplier to the Office of the Budget for posting against the STD-497, Surplus Property Contract Receipt/Invoice Form.

Where payment via Electronic Funds Transfer isn't possible, payment for purchased scrap must be made by company check, certified check, bank cashier's check or money order. Personal checks or cash are NOT acceptable.

- a. **Late Payments:** After thirty (30) days, unpaid invoices will be subject to a 1-½ % interest charge per month.
- b. **Example of Payment Determination:** An agency requires pick-up/removal of 6,720 lbs. of mixed scrap metal. For this example, the corresponding index is \$220-\$222. *When the index references two rates, use the highest rate.* Bidder has offered a Negative Price Adjustment Factor of (-) \$70.10 per Gross Ton.

Gross Ton = 2,240 lb.

Quantity: 6,720 lbs. / 2,240 lb. = 3 Gross Tons

Payment: \$222 - \$70.10 = \$151.90/Gross Ton

Total Payment: \$151.90 X 3 Gross Tons = \$455.70

**PART IV**  
**STANDARD CONTRACT**  
**TERMS AND CONDITIONS**  
**FOR THE SALE OF STATE SURPLUS PROPERTY**

**1. TERM OF CONTRACT**

The Contract term shall be two (2) years from the Effective Date.

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

The Effective Date shall be: a) the Effective Date printed on the Contract after the Contract has been fully executed by the Contractor and the Commonwealth (signed and approved as required by Commonwealth contracting procedures) or b) the “Valid from” date printed on the Contract, whichever is later.

**2. RENEWAL OF CONTRACT TERM**

The Contract may be mutually renewed for a maximum of 3 additional one year terms. The renewal may be exercised as individual or multiple year terms. Any renewal will be under the same terms, covenants, and conditions. No further document is required to be executed to renew the term of the Contract.

**3. EXTENSION OF THE CONTRACT TERM**

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

**4. SIGNATURES**

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or removal of any surplus property under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any work or removal performed prior to the Effective Date.

The Contract will not include “ink” signatures by the Commonwealth. The electronically-printed name of the Purchasing Agent represents that signature of that individual who as the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract does not have “Fully Executed” at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

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

The Commonwealth and the Contractor specifically agree as follows:

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

## **5. INDEPENDENT PRIME CONTRACTOR**

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

## **6. DELIVERY OF SERVICES**

The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

## **7. COMPLIANCE WITH LAW**

The contractor shall comply with all applicable federal and state laws and regulations and local ordinances in performing its obligations under the Contract.

## **8. ENVIRONMENTAL PROVISIONS**

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

## **9. REMOVAL OF PURCHASED PROPERTY**

Contractor shall furnish all labor and transportation, and pay for all costs for the removal of the purchased property. The Contractor shall notify the Property Agent, identified on the front of the Invitation For Bids – Bid Proposal, prior to removal of the purchased property. The employee or agent of the Contractor, who will remove the purchased property, shall provide the Property Agent or his representative with proper identification and authorization from the Contractor and shall sign a receipt at the time of removal of the purchased property.

## **10. PAYMENTS**

Payment for the purchased property must be made by electronic funds transfer, certified check, bank cashier's check or money orders, payable to the "Commonwealth of Pennsylvania." Personal checks, company checks or cash are not acceptable.

## **11. ACTUAL QUANTITIES**

When the Invitation For Bids – Bid Proposal specifies actual quantities, the Contractor will receive an invoice for the total amount of the items awarded to the Contractor. The Contractor will then be required to make final payment within ten (10) days from the date of the invoice. Upon receipt of the final payment, the Commonwealth will authorize the buyer, in writing, to take title to and remove the property. All property must be removed from sale site within ten (10) days after such authorization. Property which is not removed within the ten (10) day period will be regarded as abandoned and the Commonwealth shall have the right to dispose of it as it so desires. In addition, the Commonwealth will retain the following percentages of the final payment: \$.01 through \$250.00 – 50% of the final payment; \$250.01 through \$500.00 – 40% of the final payment; and \$500.01 and up – 30% of the final payment.

## **12. ESTIMATED QUANTITIES**

- a. When the Invitation For Bids – Bid Proposal specifies estimated quantities, it shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual quantities of the property which become surplus to the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to sell only the property in such quantities as represent the actual quantities of the property which become surplus to the Commonwealth.
- b. When the Invitation For Bids – Bid Proposal specifies estimated quantities, the Commonwealth shall require the Contractor to pay an additional 50% of the total amount (based on the estimated quantities) within ten (10) days as additional security. Upon receipt of the additional security, the Commonwealth will authorize the Contractor to remove the purchased property. The property shall be removed within ten (10) days from receipt of the authorization and weighed, counted or measured under the surveillance of the Commonwealth Property Agent or representative. Actual quantities or amounts shall be certified in writing by the Commonwealth Property Agent or representative and forwarded to the Department of General Services where a final invoice will be prepared

and forwarded to the Contractor for payment. Final payment shall be made within ten (10) days from the date of the invoice. Property which is not removed within the ten (10) day period will be regarded as abandoned and the Commonwealth shall have the right to dispose of it as it so desires. In addition, the Commonwealth will retain the following percentages of the final payment as liquidated damages: \$.01 through \$250.00 –50% of the first payment; \$250.01 through \$500.00 – 40% of the final payment; and \$500.01 and up – 30% of the final payment.

### **13. OVERDUE PAYMENT PENALTY**

AFTER 30 DAYS, UNPAID INVOICES WILL BE SUBJECT TO A 1 ½% INTEREST CHARGE PER MONTH. THE INTEREST WILL ONLY BE CHARGED TO THE OVERDUE PRINCIPLE.

### **14. SALES TAX**

All sales of State Surplus property are subject to the Pennsylvania retail sales tax unless an exemption certificate is filed by the buyer with the State Surplus Property Division, Department of General Services.

### **15. STATUS OF THE PROPERTY**

ALL STATE SURPLUS PROPERTY IS SOLD ON A “AS IS, WHERE IS” BASIS. THE DESCRIPTION OF EACH ITEM HAS BEEN COMPILED TO THE BEST OF THE COMMONWEALTH’S KNOWLEDGE AND BELIEF, HOWEVER, THE COMMONWEALTH EXTENDS NO GUARANTEE OR WARRANTY AS TO PROPERTY’S CONDITION AND THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. All bidders are invited and urged to inspect the property prior to the submission of bids. The Commonwealth will not furnish labor or equipment for the purpose of such inspections. Under no circumstances, will a refund or adjustment be made because of the failure of surplus property to meet the standards expected by the Contractor for the failure of the Contractor to inspect the property prior to sale.

### **16. INSPECTIONS**

The Department of General Services, State Surplus Property Division, reserves the right to inspect the Contractor’s premises prior to award and at any time during the term of the Contract.

### **17. HOLD HARMLESS**

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives the Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101 *et seq.*), the Office of Attorney General (OAG) has the sole authority to

represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as I deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth, in its sole discretion, allows the Contractor to control the defense and any related settlement negotiations.

## **18. AUDIT PROVISIONS**

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

## **19. INSURANCE**

The Contractor shall, at its expense, procure and maintain during the term of the Contract, the following types of insurance, issued by companies acceptable to the Department and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania.

- a. Worker's Compensation Insurance for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.
- b. Public liability and property damage insurance to protect the Commonwealth, and the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease accidental death and damage to property, including loss of use resulting from any property damage, that may arise from the activities performed under this Contract or the failure to perform under this Contract, whether such performance or nonperformance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than \$500,000 each person and \$2,000,000 each occurrence, personal injury and property damage combined. Such policies shall be occurrence rather than claims-made policies and shall name the Commonwealth of Pennsylvania as an additional insured. The insurance shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Contract and during the term of the contract, the Contractor shall provide the Department with current certificates of insurance. These certificates shall contain a provision that the coverages afforded under the policies will not be cancelled or changed until at least thirty (30) days' written notice has been given to the Department.

## 20. DEFAULT

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - 3) Unsatisfactory performance of the work;
  - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 5) Improper delivery;
  - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - 7) Delivery of a defective item;
  - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - 9) Discontinuance of work without approval;
  - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - 11) Insolvency or bankruptcy;
  - 12) Assignment made for the benefit of creditors;
  - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
  - 14) Failure to protect, to repair, or to make good any damage or injury to property;
  - 15) Breach of any provision of the Contract;
  - 16) Failure to comply with representations made in the Contractor's bid/proposal; or

- 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **21. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed

and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

## **22. TERMINATION PROVISIONS**

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

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

## **23. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- b. If the Contractor or the contracting officer requests mediation and the other party agree, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

#### **24. ASSIGNABILITY AND SUBCONTRACTING**

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

#### **25. 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; and
- 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.

## 26. 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.

- a. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
  - 1) **"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.
  - 2) **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract
  - 3) **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.

- 4) **“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.
- 5) **“Financial Interest”** means either:
  - (a) Ownership of more than a five percent interest in any business; or
  - (b) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- 6) **“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.
- 7) **“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.

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

- 1) Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- 2) Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to 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-lit places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- 3) 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.

- 4) 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.
- 5) Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
  - (a) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
  - (b) been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
  - (c) had any business license or professional license suspended or revoked;
  - (d) 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
  - (e) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

- 6) 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).

- 7) 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.
- 8) 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.
- 9) 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. UPS will not utilize the services of a subcontractor on the Contract. If UPS does intend to use the services of a subcontractor, UPS will need to receive the Commonwealth's approval in writing before subcontracting.
- 10) 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.

## **27. 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 <http://www.dgs.state.pa.us/> or contacting the:

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

**28. 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 the Contract or from activities provided for under the Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph "a" above.

**29. COVENANT AGAINST CONTINGENT FEES**

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

**30. APPLICABLE LAW**

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

### **31. INTEGRATION**

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

### **32. ORDER OF PRECEDENCE**

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the solicitation; and the Contractor's response to the solicitation.

### **33. CONTROLLING TERMS AND CONDITIONS**

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

### **34. CHANGES**

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

### **35. NOTICE**

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

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

**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.

### 37. ENHANCED MINIMUM WAGE PROVISIONS

- a. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$12.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week;
- b. **Adjustment.** Beginning July 1, 2019, and annually thereafter, the minimum wage rate shall be increased by \$0.50 until July 1, 2024, when the minimum wage reaches \$15.00. Thereafter, the minimum wage rate would be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1;
- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
  - 1. exempt from the minimum wage under the Minimum Wage Act of 1968;
  - 2. covered by a collective bargaining agreement;
  - 3. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or

- 4. required to be paid a higher wage under any state or local policy or ordinance;
- d. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed;
- e. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions;
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral; and
- g. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.