



**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.1 - **6100064896**

# 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 – ELECTRONIC SUBMITTAL:

- 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 publicly 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 DGS.
- 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 <https://www.emarketplace.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 DGS, made any recommendations to DGS concerning the: IFB, sale of the supplies described in the IFB, or 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, omission, or misrepresentation 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 pursuant to 18 Pa. C.S. § 4904.
- 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 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 DGS are forbidden from purchasing State Surplus Property, and therefore, any bid proposal submitted by a DGS 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 DGS referenced on the IFB within three (3) business days after Bid opening, but before award of the contract.
  - 4) DGS 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 DGS.
- 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 DGS, 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, DGS shall have the right to contact Bidders for the purpose of seeking:
- 1) Clarification of the Bid which confirms DGS' 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:**

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 if the best interests of the Commonwealth are thereby served.

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

The Bid Protest Procedure is on the DGS website at

<https://www.pa.gov/content/dam/copapwp-pagov/en/dgs/documents/documents/procurement-forms/handbook/pt1/pt%20i%20ch%2058%20bid%20protests.pdf>

## **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 contract/purchase order in accordance with the method of award. Unless otherwise specified, DGS 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. As a condition for receipt of award of a contract/purchase order, the Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the Pa Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

#### **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 may be 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) Fastmarkets 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 DGS.

#### **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 will cover the requirements of Commonwealth agencies for removal and recycling of mixed scrap metals for revenue generated income to the Commonwealth.

#### 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 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 shall 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 shall 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 shall obtain agency contact's signature and

leave Copies 1 and 2 with the agency contact person. Contractor shall retain Copies 3 and 4 of STD-497 Surplus Property Contract Receipt/Invoice Form.

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

- c. **Recycling Process:** For each removal of mixed scrap metal, Contractor shall 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 or contaminants, Contractor reserves the right to request partial relief from pick-up/removal. 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 shall 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. The Commonwealth of Pennsylvania is not responsible for costs incurred by the Contractor.

## 6. **BID SHEET:**

The bid sheet information is the Excel spreadsheet (Appendix B of this IFB). For purposes of this IFB, DGS 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) Fastmarkets 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 Fastmarkets 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 Fastmarkets 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 Fastmarkets 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 Fastmarkets 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 Fastmarkets. 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 G46, 2221 Forster Street, Harrisburg, PA 17105.

The Department of General Services, Bureau of Supplies and Surplus Operations (BSSO) prefers all Suppliers provide payment via Electronic Funds Transfer. Upon contract issuance, BSSO will supply all awarded Contractors with appropriate bank routing information and instructions regarding information to be transmitted by the Contractor 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 1.5 % 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**  
**CONTRACT**  
**TERMS AND CONDITIONS**  
**FOR THE SALE OF STATE SURPLUS PROPERTY**

**1. TERM OF CONTRACT**

The initial term of the Contract shall be 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 1 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 Agency contact person 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. AUTOMATED CLEARING HOUSE (ACH) PAYMENTS**

- a. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).
- b. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
- c. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

## **12. ESTIMATED QUANTITIES**

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.

## **13. OVERDUE PAYMENT PENALTY**

AFTER 30 DAYS, UNPAID INVOICES WILL BE SUBJECT TO A 1.5 % 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. INDEMNIFICATION

- a. **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.
- b. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit 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 any terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- c. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow 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 DGS 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, the Contractor, 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 per person and \$2,000,000 per 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 DGS 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

- a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor 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 its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- b. **Nondiscrimination/Sexual Harassment Obligations.** The Contractor shall not:
  - i. in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, 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.
  - ii. 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 this contract.

- iii. 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 this contract.
  - iv. in any manner 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 this contract relates.
  - v. 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.
- c. **Establishment of Contractor Policy.** The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.
- d. **Notification of Violations.** The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- e. **Cancellation or Termination of Contract.** The Commonwealth may cancel or terminate this contract and all money due or to become due under this contract may be forfeited for a violation of the terms and conditions of these Nondiscrimination/Sexual Harassment provisions. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
- f. **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

## 26. CONTRACTOR INTEGRITY

a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply.

- i. “Affiliate” means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- ii. “Contractor” means the individual or entity, that has entered into this contract with the Commonwealth.
- iii. “Contractor Related Parties” means any Affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- iv. “Financial Interest” means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- v. “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, as may be amended, 4 Pa. Code §7.153(b), apply.
- vi. “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.

a. **Representations and Warranties.**

- i. Contractor Representation and Warranties. The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:
  - 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 are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or

investigative agency.

- ii. **Contractor Explanation.** If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.
- iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.
- iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

b. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:

- i. maintain the highest standards of honesty and integrity.
- ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- iv. not accept, agree to give, offer, confer, 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, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
- v. 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. The Contractor must disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

- vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award.
  - vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.
  - viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the 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 the ethical standards.
- c. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:
- i. 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. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
  - ii. 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 and make identified Contractor employees available for interviews at reasonable times and places.
  - iii. upon the inquiry or request of an Inspector General, 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. This information may include, but is not limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- d. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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 contract.
- e. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes

aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

## 27. CONTRACTOR RESPONSIBILITY

- a. **Definitions.** For the purpose of these provisions, the term "Contractor" means 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. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.
- b. **Contractor Representations.**
  - i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this 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 make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.
  - ii. The Contractor represents that as of the date of its execution of this 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. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.
- d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.
- e. **Reimbursement.** The Contractor shall 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 contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not 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. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

## 28. AMERICANS WITH DISABILITIES ACT

- a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code § 12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.
- b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.
- c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion

## 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

This contract is governed by and must be 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, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

## 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. **Applicability.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this contract.

- b. **Contractor Assistance.** If the Commonwealth needs the Contractor's assistance in any matter **arising** out of the RTKL related to this contract, the Commonwealth shall notify the Contractor that it requires the Contractor's assistance, and the Contractor shall provide to the Commonwealth:
  - i. access to, and copies of, any document or information in the Contractor's possession (Requested Information) arising out of this contract that the Commonwealth reasonably believes is a public record under the RTKL, within ten calendar days after receipt of written notification; and
  - ii. any other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this contract.
  
- c. **Trade Secret or Confidential Proprietary Information.** If the Contractor considers the Requested Information to include 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 shall notify the Commonwealth and provide, within seven calendar days of receipt of the written notice a written statement, signed by a representative of the Contractor, that explains why the requested material is exempt from public disclosure under the RTKL. If the Commonwealth determines that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information to the Commonwealth within five business days of receipt of written notice of the Commonwealth's determination.:
  
- d. **Reimbursement.**
  - i. **Commonwealth Reimbursement.** If the Contractor fails to provide the Requested Information and the Commonwealth is ordered to produce the Requested Information, the Contractor shall reimburse the Commonwealth for any damages, penalties, or costs that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
  - ii. **Contractor Reimbursement.** The Commonwealth will reimburse the Contractor for any costs that the Contractor incurs as a direct result of 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.
  
- e. **Challenges of Commonwealth Release.** 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 reimburse the Commonwealth for any legal expenses incurred by the Commonwealth as a result of the challenge, including any damages, penalties or costs that the Commonwealth may incur as a result of the Contractor's legal challenge, regardless of the outcome.
  
- f. **Waiver.** As between the parties, the Contractor waives 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.

- g. **Survival.** The Contractor's obligations contained in this Section survive the termination or expiration of this contract.

### 37. ENHANCED MINIMUM WAGE

- a. **Enhanced Minimum Wage.** Contractor shall pay no less than \$15.00 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 services or lease when the employee spends at least 20% of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate will 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 Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees:
  - i. Exempt from minimum wage under the Minimum Wage Act of 1968;
  - ii. covered by a collective bargaining agreement;
  - iii. 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
  - iv. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision 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; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.
- e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not limited to, termination of the contract or lease, nonpayment, debarment, or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

**38. OFFSET**

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

**39. WORKER PROTECTION AND INVESTMENT**

The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;
- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.