

**CONTRACT TERMS AND CONDITIONS FOR  
QUALIFIED PROFESSIONAL SERVICES PURSUANT TO THE SPEED ACT**

**1. BACKGROUND**

The SPEED Act required that the Department procure the Services of multiple Qualified Professionals to perform expedited reviews of permit applications at the request of Permittees. The Department issued IFB 6100062192 to invite Qualified Professionals to submit bids to perform these Services. The Department has evaluated the bid of the Contractor and has determined that the Contractor has met the qualifications to perform the Services of a Qualified Professional pursuant to the SPEED Act.

**2. GENERAL**

- a. The Contractor shall perform the Services as detailed in the Scope of Work and each subsequent Project Work Order issued pursuant to this contract.
- b. The Department will engage Contractor to perform Services in accordance with the Department's policies for selecting Qualified Professionals when requested by a Permittee pursuant to the SPEED Act.
- c. Upon request by the Department, Contractor shall provide a quote for the Services requested in accordance with the rates set forth in this Contract. The Department will provide the quote to the Permittee for acceptance or rejection. If the Permittee accepts the quote provided by Contractor to the Department, a Project Work Order will be issued by the Department to the Contractor to begin performance of the Services.

**3. TERM OF CONTRACT**

The term of this contract shall commence on the Effective Date (as defined below) and shall continue for a period of two years. The Effective Date shall be fixed by the Contracting Officer after the contract has been fully executed by the Contractor and by the Department and all approvals required by Commonwealth contracting procedures have been obtained. The contract shall not be a legally binding contract until after the Effective Date is affixed and the fully executed contract has been sent to the Contractor.

**4. EXTENSION OF CONTRACT TERM**

The Department reserves the right, upon notice to the Contractor, to extend the term of this contract for up to three additional one-year terms upon the same terms and conditions.

**5. DEFINITIONS**

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

- a. Commonwealth: The government of the Commonwealth of Pennsylvania, inclusive of the Department of Environmental Protection.
- b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean business days.

- d. Department: The Pennsylvania Department of Environmental Protection
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, Recommendation Reports, deficiency letters, reports, analyses, and any other materials developed for the purpose of performing the Services.
- f. IFB: IFB for SPEED Program Air Quality Permits.
- g. Project Work Order: The project level engagement between the Department and the Contractor for the provision of Services as requested by the Permittee.
- h. Permittee: An individual or entity seeking an expedited permit review pursuant to the SPEED Act.
- i. Qualified Professional: The individual Contractor or its employee(s) who meets the requirements to be considered a Qualified Professional pursuant to the SPEED Act and the requirements set forth in the IFB.
- j. Recommendation Report: The final work product provided to the Department for each permit review. The “Review Memo” and “Issuance Memo” will be considered Recommendation Reports for Air Quality Permits reviewed under the SPEED Program.
- k. Scope of Work: The full description of the Services to be provided by the Contractor as described in the IFB.
- l. Services: Expedited permit review services being provided by the Contractor for the benefit of a Permittee as described in the respective Scope of Work for that permit type.
- m. SPEED Act: The Streamlining Permits for Economic Expansion and Development Program as defined in Article XVIII of House Bill 2310 of 2024.

## **6. INDEPENDENT PRIME CONTRACTOR**

In performing its obligations under this contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth and not as an agent or representative of the Permittee. 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 this contract.

## **7. DELIVERY**

The Contractor shall proceed with all due diligence in the performance of the services with Qualified Professionals, in accordance with the timeline required in the Scope of Work.

## **8. WORK VOLUME**

It shall be understood and agreed that the Department cannot guarantee any particular volume of work to be performed under this contract. The decision to ultimately engage the Contractor for any specific project rests solely with the Permittee. Contractor will be asked to provide a quote for Services on a per-project basis in accordance with the selection method set forth in Section 1803(G)

of the SPEED Act and as described in the IFB. The Department reserves the right to develop processes and procedures for the selection of Qualified Professionals in order to carry out its obligations under the SPEED Act in a manner that is in the best interest of the Commonwealth.

**9. OWNERSHIP RIGHTS**

The Department shall have unrestricted authority to reproduce, distribute, and use any submitted Documentation delivered to the Department as part of the performance of this contract.

**10. ACCEPTANCE AND REJECTION OF RECCOMENDATIONS**

Recommendation Reports submitted by the Contractor shall not be deemed accepted until the Department has reviewed the Contractor's Recommendation Report and found it to meet all requirements defined in the Scope of Work.

Any Recommendation Report which is discovered to be deficient or fails to conform to the specifications shall be rejected and returned to Contractor to correct the deficiency. It shall become the duty of the Contractor to remedy the deficiency without additional expense to the Permittee within 24 hours after notification by the Department.

If the Contractor fails the remedy the deficiency within 24 hours, or other time as agreed to by the Department, the Project Work Order will be terminated and the fee for Services will be forfeited by the Contractor and returned to the Permittee. Failure to provide complete and timely Recommendation Reports may result in termination of this contract by the Department in accordance with sections 19 and 21 below.

**11. COMPLIANCE WITH LAW**

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

**12. CERTIFICATION OF NO-CONFLICT**

All Qualified Professional(s) assigned to a project must certify to the Department the following before any work may begin:

1. The Qualified Professional has not performed services for the applicant within three years of the date of submission of the permit application to the Department; and
2. The Qualified Professional does not have any other conflict of interest that may prohibit the Qualified Professional from performing the Services.

The timeline for review will begin upon receipt of the above-described certification and the issuance of a Notice to Proceed by the Department. If any Qualified Professionals are added or replaced, a new certification of no-conflict as described above must be submitted.

**13. COMPENSATION**

No Commonwealth funds will be used to compensate Contractor for Services provided under this contract. Permittees will deposit funds with the Department in the amount set forth in the quote provided by Contractor. In no event will Commonwealth funds be utilized to compensate the Contractor.

- a. The Contractor is required to perform the Services at the price quoted for the Permittee using the rates provided by the Contractor in the Cost Sheet to the IFB. The quoted fee will be collected from the Permittee by the Department and held in escrow until the Contractor has submitted an acceptable Recommendation Report. No travel, per diem, or other administrative expenses may be paid under this Contract.
- b. Upon submission of a final compliant Recommendation Report by the Contractor, the Department will release the escrowed funds to the Contractor. No final invoices will be submitted by the Contractor.
- c. If additional funds are required to complete the Services, a new quote will need to be provided. At that time, continuation of the Services will be solely at the will of the Permittee.
- d. The Contractor shall not be compensated for any Services performed in excess of those identified in the Project Work Order and Notice to Proceed without the explicit approval of the Department.
- e. The Department shall not authorize any work to be completed until the Permittee has deposited the required amount of funds.

#### 14. BILLING

There will be no billing or invoicing by the Contractor for the work performed pursuant to this contract. Contractors will be paid the amount stated in the quote upon completion of the Services to the Department's satisfaction. Contractor will not be issued a purchase order at any time.

#### 15. PAYMENT

- a. Permittee is required to submit payment to the Department in the amount indicated in Contractor's quote. No Commonwealth funds will be used to issue payment under this contract.
- b. The Commonwealth will make contract payments through Automated Clearing House (ACH).
  - 1) Within 10 days of award of the contract, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
  - 2) It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

#### 16. 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 negligent or intentional act or omission of the Contractor or its employees and agents that are related to this Contract.
- 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.

## **17. APPLICATION CHANGES**

The Department is required by law to provide public access to permit applications and any changes or amendments that occur during review. Notwithstanding anything in section 35 below, Contractor is required to notify the Department of any material changes or amendments made to the application being reviewed. Contractor has an obligation to provide complete documentation of all application packages at the request of the Department at any time.

## **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 this contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for this 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. DEFAULT**

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under this 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 of this contract or any Project Work Order for any of the following reasons:
  - 1) Failure to perform the Services within the time specified;
  - 2) Unsatisfactory performance of the Services;
  - 3) Loss of ability to meet the requirements of a Qualified Professional under this Contract;
  - 4) Discovered undisclosed conflict of interest between the Contractor and a Permittee for which Services are being performed;
  - 5) Insolvency or bankruptcy; or
  - 6) Assignment made for the benefit of creditors.

- b. The Permittee may request that Contractor stop work at any time and may request that any outstanding Project Work Order for Services being provided for the Permittee be terminated.
- c. In the event that the Department terminates this contract or any Project Work Order in whole or in part as provided in Subparagraph a. above, the Department may engage another Contractor to complete the Services. The Contractor shall forfeit its right to compensation for any Services that being performed pursuant to a terminated Project Work Order for a reason set forth in section 19a. above.
- d. If this contract or a Project Work Order is terminated at the request of Permittee as described above in section 19b, Contractor will be paid for the hours of work actually performed up to the date of termination.
- e. Upon termination of this contract or a Project Work Order, the Contractor shall transfer all Documentation and partially completed items, including, where applicable, reports, and working papers to the Department within 24 hours.
- f. The rights and remedies of the Department 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.
- g. The Department's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Department or the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- h. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of this contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **20. 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.

If, at the time of a force majeure event, the Contractor has any open Project Work Orders, the Department must be notified within 24 hours of the time the Contractor becomes aware that such cause would prevent or delay its performance of the Services. If the Contractor does not have any open Project Work Orders, the Department must be notified within five days of the time the Contractor becomes aware that such cause will prevent or delay performance of the Services. 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 Department may elect to cancel the Contract and any open Project Work Order.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or any open Project Work Orders.

## **21. TERMINATION PROVISIONS**

The Commonwealth has the right to terminate this Contract or any Project Work 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 Project Work Order for its convenience if the Commonwealth determines termination to be in its best interest. Any payment for partially completed work will be determined at the discretion of the Department at the time of termination, taking into consideration all facts surrounding the reason for termination and the status of outstanding Project Work Orders at the time. In no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability or appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose
- c. **TERMINATION FOR CAUSE:** The Department shall have the right to terminate the Contract or a Project Work Order for Contractor default under the Default provisions in Section 18 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 Project Work Order for other cause as specified in the Contract or by law. If it is later determined that the Department erred in terminating the Contract or a Project Work Order for cause, then, at the Commonwealth's discretion, the Contract or Project Work Order shall be deemed to have been terminated for convenience under Subparagraph a.

## **22. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from this contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review

timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

## **23. 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 this 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.



## 24. OTHER CONTRACTORS

The Department intends to engage multiple contractors to perform the same or similar Services provided in this contract. The Contractor shall fully cooperate with other contractors and Department employees and coordinate its work as required by the Department. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

## 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 EEO1 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 thirdparty 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 PROVISIONS

- 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.

**b. 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.

**c. 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.

d. **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 be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.
- e. **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.
- f. **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 PROVISIONS

- a. **Definition.** 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. APPLICABLE LAW

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

### **30. INTEGRATION**

This contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Department 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 agreed to in writing by the Department.

### **31. 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.

### **32. CONTROLLING TERMS AND CONDITIONS**

The terms and conditions of this contract shall be the exclusive terms of agreement between the Contractor and the Department. 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, 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 Department.

### **33. 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 make changes to the Services within the scope of the Contract; 2) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 3) 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 Services 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 the Contract Controversies Provision.

### **34. BACKGROUND CHECKS**

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.

- b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
- c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
- d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

### **35. CONFIDENTIALITY**

- a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information and that of any Permittee with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only with specific approval by the Department and if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. It should be presumed that all information and materials provided to Contractor by the Permittee, whether such information is provided through the Department or directly from the Permittee, should be considered to be confidential. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this contract, and at the discretion of the nonbreaching party, result in termination for default.



- b. The obligations stated in this Section do not apply to information:
  - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this contract.
- d. If the Contractor is compelled or otherwise required by law to disclose confidential information, the Contractor shall provide the Department with prompt notice of any intended or compelled disclosure and provide reasonable assistance to the Department in obtaining a protective order. If a protective order or other remedy is not obtained or the Department grants a waiver under this agreement, the Department may furnish only that portion of the confidential information that the Contractor is legally compelled or is otherwise required to disclose.

### **36. INSURANCE REQUIREMENT**

Contractor shall maintain for the period covered by this contract professional liability insurance for all licensed professionals performing Services pursuant to this contract in an amount of \$1,000,000.00 per occurrence or whatever is customarily carried by the Contractor for providing similar Services.

### **37. NOTICE**

Any written notice to any party under this contract shall be deemed sufficient if delivered by 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 and/or email address as identified in the Vendor Portal
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

### 38. 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.

**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:

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