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## **Part I - General Information**

### **PART I - GENERAL INFORMATION**

#### **I.1 RFP-001.1 Purpose (Oct 2006)**

This request for proposals (RFP) provides to those interested in submitting proposals for the subject procurement ("Offerors") sufficient information to enable them to prepare and submit proposals for the PA DEPARTMENT OF AGRICULTURE consideration on behalf of the Commonwealth of Pennsylvania ("Commonwealth") to satisfy a need for Chemsweep Pesticide Recycling Program ("Project").

#### **I.2 RFP-002.1 Issuing Office (Oct 2006)**

The PA DEPARTMENT OF AGRICULTURE (Issuing Office) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Sheila Strubhar  
PA Department of Agriculture  
2301 North Cameron Street  
Harrisburg, PA 17110  
sstrubhar@pa.gov, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer.

#### **I.3 RFP-003.1 Scope (Oct 2006)**

This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

#### **I.4 RFP-004.1 Problem Statement (Oct 2006)**

Insert text of general statement of the purpose and scope of the work to be done, and time constraints under which the work must be done. The problem statement should be brief since the offeror is provided a detailed work statement in Part IV.

Additional detail is provided in **Part IV** of this RFP.

#### **I.5 RFP-005.1 Type of Contract (Oct 2006)**

It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be a contract containing the Contract Terms and Conditions as shown in Part V of this RFP. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

#### **I.6 RFP-006.1 Rejection of Proposals (Oct 2006)**

The Issuing Office reserves the right, in its sole and complete discretion, to reject any and all proposals received as a result of this RFP.

### **I.7 RFP-007.1 Incurring Costs (Oct 2006)**

The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

### **I.8 RFP-008.1c No Preproposal Conference (Oct 2006)**

There will be no preproposal conference for this RFP. If there are any questions, please forward them to the Issuing Office in accordance with the instructions in this RFP.

### **I.9 RFP-009.1 Questions and Answers (October 2010)**

If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line '6100062101 Question'**) to the Issuing Officer. If the Offeror has questions, they must be submitted via email **no later than** 10/04/2024. The Issuing Officer shall post the answers to the questions on the following website at [www.emarketplace.state.pa.us](http://www.emarketplace.state.pa.us).

An Offeror who submits a question *after* the deadline date for receipt of questions assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions, the Issuing Officer *may* respond to the questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the Issuing Office website are considered as an addendum to, and part of, this RFP. Each Offeror shall be responsible to monitor the Issuing Office website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or 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.

### **I.10 RFP-010.1 Addenda to the RFP (March 2008)**

If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the following website at [www.emarketplace.state.pa.us](http://www.emarketplace.state.pa.us). It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

### **I.11 RFP-011.1b Proposal Response Date (Oct 2012)**

To be considered for selection, all three submittals of the proposal must arrive at the Issuing Office on or before 10/16/2024 by 2:00 PM. The Technical Submittal and the Small Diverse Business Participation Submittal must be submitted in hard copy form, while the Cost Submittal must be submitted electronically through SRM. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send their Technical and Small Diverse Business Participation Submittals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Issuing Office location to which the Technical and Small Diverse Business Participation Submittals are to be submitted is closed on the Proposal Response Date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late Technical and Small Diverse Business Participation Submittals. The SRM system will not permit Offerors

to submit Cost Submittals after the Proposal Response Date and Time.

### **I.12 RFP-012.1B Proposals (February 2015)**

To be considered, Offerors should submit a complete response to this RFP using the format provided in Part II. Offerors shall provide 00 paper copies [one marked "ORIGINAL"] of the Technical Submittal and two (2) paper copies of the Small Diverse Business (SDB) participation Submittal to the Issuing Office. Offerors shall provide the Cost Submittal by entering price(s) through the Supplier Portal and submitting to the Issuing Office through the SRM system. In addition, Offerors shall submit one complete and exact copy of the entire proposal (Technical, Cost and SDB Submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. Offerors should ensure that there is no cost information in the technical Submittal. Offerors should not reiterate technical information in the cost Submittal. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other offeror or Commonwealth official or Commonwealth consultant. Each page of the Technical Submittal and the SDB Submittal should be numbered for ease of reference. An official authorized to bind the Offeror to its provision must sign the proposal. For this RFP, the proposal must remain valid for 120 days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. An Offeror may modify its submitted Technical Submittal and the SDB Submittal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements. An Offeror may modify its Cost Submittal prior to the exact hour and date set for proposal receipt only by entering new price(s) through the Supplier Portal and submitting them to the Issuing Office through the SRM system.

### **I.13 RFP-013.1a Small Diverse Business Information (October 2015)**

The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Business is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is a business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Questions regarding this Program can be directed to:

Department of General Services  
Bureau of Diversity, Inclusion and Small Business Opportunities  
Room 611, North Office Building  
Harrisburg, PA 17125  
Phone: (717) 783-3119  
Fax: (717) 787-7052  
Email: [gs-bsbo@pa.gov](mailto:gs-bsbo@pa.gov)  
Website: [www.dgs.state.pa.us](http://www.dgs.state.pa.us)

The Department's directory of BDISBO-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed from: Searching for Small Diverse Businesses.

#### **I.14 RFP-014.1 Economy of Preparation (Oct 2006)**

Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

#### **I.15 RFP-015.1 Alternate Proposals (Oct 2006)**

The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

#### **I.16 RFP-016.1 Discussions for Clarification (Sept 2011)**

Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

#### **I.17 RFP-017.1 Prime Contractor Responsibilities (Oct 2006)**

The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Offeror to be the sole point of contact with regard to contractual matters.

#### **I.18 RFP-018.1 Proposal Contents (February 2015)**

a. Confidential Information. The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.

b. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

c. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to the Trade Secret Confidential Proprietary Information Notice Form (an Appendix to this RFP) that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part II of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

#### **I.19 RFP-019.1 Best and Final Offers (July 2012)**

**A.** While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:

1. Schedule oral presentations;
2. Request revised proposals;
3. Conduct a reverse online auction; and
4. Enter into pre-selection negotiations.

**B.** The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:

1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
2. Those Offerors, which the Issuing Office has determined in accordance with **Part III, Section III-RFP-005.2b**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The issuing office may further limit participation in the best and final offers process to those remaining responsible offerors which the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

**C.** The Evaluation Criteria found in **Part III, Section III-RFP-004.1a** shall also be used to evaluate the Best and Final offers.

**D.** Price reductions offered through any reverse online auction shall have no effect upon the Offeror’s Technical Submittal. Dollar commitments to Small Diverse Businesses can be reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

#### **I.20 RFP-020.1 News Releases (Oct 2006)**

Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

#### **I.21 RFP-021.1 Restriction of Contact (Oct 2006)**

From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

#### **I.22 RFP-021.2 Notification of Selection (Sept 2011)**

**A. Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the

proposal that is the most advantageous to the Issuing Office.

**B. Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

#### **I.23 RFP-022.1 Debriefing Conferences (Sept 2011)**

Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See Section I-RFP-024.1a or I-RFP-024.1b of this RFP).

#### **I.24 RFP-023.1 Issuing Office Participation (Oct 2006)**

Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in **Part IV**.

#### **I.25 RFP-024.1b RFP Protest Procedure (April 2016)**

A protest by a party not submitting a proposal must be filed within **seven** days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the Proposal Response Date. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

#### **I.26 RFP-025.1 Electronic Version of this RFP (Oct 2006)**

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

#### **I.27 RFP-027.1 COSTARS Program (January 2017)**

**COSTARS Purchasers.** Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 ("Section 1902"), authorizes local public procurement units and state-affiliated entities (together, "COSTARS Members") to participate in Commonwealth procurement contracts that the Department of General Services ("DGS") may choose to make available to COSTARS Members. DGS has identified this Contract as one which will be made available for COSTARS Members' participation.

A. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.

1. A "local public procurement unit" is:

- Any political subdivision (local government unit), such as a municipality, school district, or commission;
- Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
- Any tax-exempt, nonprofit educational institution or organization;
- Any tax-exempt, nonprofit public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and



- Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:

- The Pennsylvania Turnpike Commission;
- The Pennsylvania Housing Finance Agency;
- The Pennsylvania Municipal Retirement System;
- The Pennsylvania Infrastructure Investment Authority;
- The State Public School Building Authority;
- The Pennsylvania Higher Education Facilities Authority, and
- The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>

B. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.

C. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue purchase orders (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.

D. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Bidder	\$166
DGS Self-Certified Small Business Bidder	\$500
All Other Bidders	\$1500

1. Each bidder electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the bidder is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.

2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to "Commonwealth of PA". The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.

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

1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.

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

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

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

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

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

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

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

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

1. The Contractor shall submit the reports through the web-based COSTARS Suppliers' Gateway of the PA Supplier Portal at <https://pasupplierportal.state.pa.us/irj/portal/anonymous>, Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US

Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101-1914.

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

3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

H. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at [www.costars.state.pa.us](http://www.costars.state.pa.us).

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at [www.costars.state.pa.us](http://www.costars.state.pa.us), where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.

2. Direct all questions concerning the COSTARS Program to:

Department of General Services  
COSTARS Program  
555 Walnut Street, 6th Floor  
Harrisburg, PA 17101  
Telephone: 1-866-768-7827  
E-mail [GS-PACostars@pa.gov](mailto:GS-PACostars@pa.gov)

#### **I.28 RFP-028.1 Participating Addendum with an External Procurement Activity (Oct 2006)**

Section 1902 of the *Commonwealth Procurement Code*, 62 Pa.C.S. Section 1902, permits external procurement activities to participate in cooperative purchasing agreements for the procurement of services, supplies or construction.

a. **Definitions.** The following words and phrases have the meanings set forth in this provision:

- (1) *External procurement activity:* The term, as defined in 62 Pa. C. S. Section 1901, means a "buying organization not located in the Commonwealth [of Pennsylvania] which if located in this Commonwealth would qualify as a public procurement unit [under 62 Pa. C.S. Section 1901]. An agency of the United States is an external procurement activity."
- (2) *Participating addendum:* A bilateral agreement executed by the Contractor and an external procurement activity that clarifies the operation of the Contract for the external procurement activity concerned. The terms and conditions in any participating addendum shall affect only the procurements of the purchasing entities under the jurisdiction of the external procurement activity signing the participating addendum.
- (3) *Public procurement unit:* The term, as defined in 62 Pa. C. S. Section 1901, means a "local public procurement unit or purchasing agency."
- (4) *Purchasing agency:* The term, as defined in 62 Pa. C. S. Section 103, means a "Commonwealth agency authorized by this part or any other law to enter into contracts for itself or as the agent of another Commonwealth agency."

b. **General.** A participating addendum shall incorporate the terms and conditions of the Contract resulting from

this RFP. The Contractor shall not be required to enter into any participating addendum.

**c. Additional Terms.**

- (1) A participating addendum may include additional terms that are required by the law governing the external procurement activity.
- (2) A participating addendum may include new, mutually agreed upon terms that clarify ordering procedures specific to a participating external procurement activity.
- (3) The construction and effect of any participating addendum shall be governed by and construed in accordance with the laws governing the external procurement activity.
- (4) If an additional term requested by the external procurement activity will result in an increased cost to the Contractor, the Contractor shall adjust its pricing up or down accordingly.

**d. Prices.**

- 1) **Price adjustment.** For any costs affecting the percent markup that the Contractor will or will not incur or that differ from costs incurred or not incurred in the fulfillment of this Contract, the Contractor shall adjust its pricing up or down accordingly. These costs may include, but not be limited to:
  - (a) State and local taxes;
  - (b) Unemployment and workers compensation fees;
  - (c) E-commerce transaction fees; and
  - (d) Costs associated with additional terms, established pursuant to the Contract.
- 2) The Contractor's pricing for an external procurement activity shall be firm and fixed for the duration of the initial term of the Contract. After the initial term of the Contract, if the Contract is renewed, the Contractor's pricing may be adjusted up or down based on market conditions only with the mutual agreement of both the Contractor and any external procurement activity.

**e. Usage Reports on External Procurement Activities.** The Contractor shall furnish to the Contracting Officer an electronic quarterly usage report, preferably in spreadsheet format no later than the fifteenth calendar day of the succeeding calendar quarter. Reports shall be e-mailed to the Contracting Officer for the Contract. Each report shall indicate the name and address of the Contractor, contract number, period covered by the report, the name of the external procurement activity that has used the Contract and the total volume of sales to the external procurement activity for the reporting period.

**f. Electronic Copy of Participating Addendum.** The Contractor, upon request of the Contracting Officer, shall submit **one** electronic copy of the participating addendum to the Contracting Officer within **ten** days after request.

**I.29 Submission-001.1 Representations and Authorizations (February 2017)**

By submitting its proposal, each Offeror understands, represents, and acknowledges that:

A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.

B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.

C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

D. The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.

E. The Offeror makes its proposal 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 proposal.

F. To the best knowledge of the person signing the proposal for the Offeror, the Offeror, 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 or proposing on any public contract, except as the Offeror has disclosed in its proposal.

G. To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror 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 Offeror that is owed to the Commonwealth.

H. The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.

I. The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.

J. Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.

K. Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

## **Part II - PROPOSAL REQUIREMENTS**

### **PART II - PROPOSAL REQUIREMENTS**

#### **II.1 RFP-001.1c General Requirements (July 2012)**

Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Technical Submittal. **The Technical Submittal and the Small Diverse Business Participation Submittal should not contain any cost data related to the Offeror's Proposal.** Each Proposal shall consist of the following:

Two separately sealed submittals, which are to be submitted in *hard copy*:

- a. Technical Submittal
- b. Small Diverse Business Participation Submittal

#### **AND**

The Cost Submittal that consists of the Offeror's completion and *submission of the pricing through the Supplier Portal in the SRM system.*

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

#### **II.2 RFP-002.1 Technical Submittal Requirements - Standard (July 2012)**

Offerors must include in their Technical Submittal, their responses to the following:

**a. Statement of the Problem:** State in succinct terms your understanding of the problem presented or the service required by this RFP.

**b. Managment Summary:** Include a narrative description of the proposed effort and a list of the items to be delivered or services to be provided.

**c. Work Plan:** Describe in narrative form your technical plan for accomplishing the work. Use the task descriptions in Part IV of this RFP as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

**d. Prior Experience:** Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to must be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

**e. Personnel:** Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel, include the employee's name and, through a resume or similar document, the Project personnel's education and experience. Indicate the responsibilities each individual will have in this Project and how long each has been with your company. Identify by name any subcontractors you intend to use and the services they will perform.

**f. Training:** If appropriate, indicate recommended training of agency personnel. Include the agency personnel to be trained, the number to be trained, duration of the program, place of training, curricula, training materials to be

used, number and frequency of sessions, and number and level of instructors.

**g. Financial Capability:** Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

**h. Objections and Additions to Standard Contract Terms and Conditions:** The Offeror will identify which, if any, of the terms and conditions (contained in Part V) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for Part V. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in Part V. The Issuing Office will reject any proposal that is conditioned on the negotiation of terms and conditions other than those set out in Part V.

### **II.3 RFP-003.1a Small Diverse Business Participation Submittal (October 2015)**

A. To receive credit for being a Small Diverse Business or for subcontracting with a Small Diverse Business (including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Small Diverse Business qualification in the Small Diverse Business participation submittal of the proposal, as indicated below:

A Small Diverse Business verified by BDISBO as a Small Diverse Business must provide a photocopy of their verification letter.

B. In addition to the above verification letter, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:

1. **All** Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.

2. **All** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:

- a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;
- b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
- c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
- d) The location where each Small Diverse Business will perform services.
- e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.

f) A subcontract or letter of intent signed by the Offeror and the Small Diverse Business (SDB) for each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. In addition, the subcontract or letter of intent must identify the fixed percentage commitment and associated estimated dollar value that each SDB will receive based on the total value of the initial term of the contract as provided in the Offeror's Cost Submittal. Attached is a letter of intent template which may be used to satisfy these requirements.

g) The name, address and telephone number of the primary contact person for each Small Diverse Business.

3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.

4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.

C. The Offeror is required to submit **two** copies of its Small Diverse Business participation submittal. The submittal shall be clearly identified as Small Diverse Business information and sealed in its own envelope, separate from the remainder of the proposal.

D. A Small Diverse Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

E. An Offeror that qualifies as a Small Diverse Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

#### **II.4 RFP-004.1B Cost Submittal Requirements - Electronic Submission (Jan 2008)**

The Cost Submittal consists of the Offeror's completion and submission of its pricing through the Supplier Portal in the SRM system. Offerors should **not** include any assumptions in their cost submittals. If the Offeror include assumptions in its cost submittal, the Issuing Office may reject the proposal. Offerors should direct in writing to the Issuing Office any questions about whether a cost or other component is included or applies. All Offerors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis. The Issuing Office will reimburse the selected Offeror for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.

#### **II.5 RFP-005.1 Domestic Workforce Utilization Certification (Oct 2006)**

Offerors who seek consideration for the Domestic Workforce Utilization Certification criterion must complete, sign and submit the Domestic Workforce Utilization Certification Form, which is attached to and made a part of this RFP. The completed and signed Domestic Workforce Utilization Certification Form must be submitted in the same sealed envelope with the Technical Submittal.

#### **II.6 RFP-006.1b COSTARS Program Election to Participate (July 2012)**

Offerors electing to permit COSTARS members to participate in this Contract should complete and sign the COSTARS Program Election to Participate form, which is attached to and made a part of this RFP. If the Offeror is asserting that it is a Department of General Services Certified Small Business, also provide an active Department of General Services Small Business Certification. Submit the form and the certification, as applicable, in the same sealed envelope with the Technical Submittal only if the Offeror elects to participate in the program.

#### **II.7 RFP-012.1b Iran Free Procurement Certification and Disclosure – Electronic Submittal (November 2016)**

Prior to entering a contract worth at least \$1,000,000 or more with a Commonwealth entity, an offeror must: a)



certify it is not on the current list of persons engaged in investment activities in Iran created by the Pennsylvania Department of General Services (“DGS”) pursuant to Section 3503 of the Procurement Code and is eligible to contract with the Commonwealth under Sections 3501-3506 of the Procurement Code; or b) demonstrate it has received an exception from the certification requirement for that solicitation or contract pursuant to Section 3503(e). All offerors must complete and return the Iran Free Procurement Certification form, which is attached hereto and made part of this RFP. The completed and signed Iran Free Procurement Certification form must be submitted in the same sealed envelope with the Technical Submittal.

See the following web page for current Iran Free Procurement list:

<http://www.dgs.pa.gov/businesses/materials%20and%20services%20procurement/procurement-resources/pages/default.aspx#.WDNfJJ>

### **Part III - Criteria for Selections**

#### **PART III - CRITERIA FOR SELECTION**

##### **III.1 RFP-001.1a Mandatory Responsiveness Requirements (Oct 2006)**

To be eligible for selection, a proposal must be:

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

##### **III.2 RFP-002.1 Technical Nonconforming Proposals (January 2011)**

The Mandatory Responsiveness Requirements set forth in **Section III- RFP-001.1a or Section III-RFP-001.1b** above are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

##### **III.3 RFP-003.1a Evaluation (October 2015)**

The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

##### **III.4 RFP-004.1a Evaluation Criteria (October 2015)**

**A. Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **[Insert the percentage]** % of the total points. Evaluation will be based upon the following in order of importance: **[List here in order of importance each Technical Sub-criterion for example: Understanding the Problem, Offeror Qualification, Personnel Qualifications, Soundness of Approach, Available Facilities, etc.]** The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score.

The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:

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

**B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **[Insert the percentage]** % of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following webpage:

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

##### **C. Small Diverse Business Participation:**

BDISBO has established the weight for the Small Diverse Business (SDB) participation criterion for this RFP as 20 % of the total points. Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:

- A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
- To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
- A significant subcontracting commitment is a minimum of five percent (5%) of the total contract value. **[Five percent (5%) may be adjusted with DGS approval for particular procurements based on the type of project and available SDBs; “total contract value” may be changed with DGS approval to another pre-defined contract cost component as appropriate to better reflect the amount of contractor compensation realized in particular contract payment structures.]**
- A subcontracting commitment less than five percent (5%) of the total contract value **[Edit highlighted terms to match if prior subsection is edited per above note.]** is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

**Priority Rank 1:** Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB prime offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available).

Subcontracting commitments to additional SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 2:** Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.

**Priority Rank 3:** Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment.

SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

**Priority Rank 4:** Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

*SDB % Being Scored   x   Points/Additional   =   Awarded/Additional*

*Highest % SDB Commitment   Points Available\*   SDB Points*

*Priority Rank 1   =   50 Additional Points Available*

*Priority Rank 3   =   100 Total Points Available*

Please refer to the following webpage for an illustrative chart which shows SDB scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

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

### **III.5 RFP-005.2b Offeror Responsibility (Oct 2013)**

To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**; and

B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.

An Offeror which fails to demonstrate sufficient financial capability to assure good faith performance of the contract as specified herein may be considered by the Issuing Office, in its sole discretion, for Best and Final Offers or contract negotiation contingent upon such Offeror providing contract performance security for the first contract year cost proposed by the Offeror in a form acceptable to the Issuing Office. Based on the financial condition of the Offeror, the Issuing Office may require a certified or bank (cashier's) check, letter of credit, or a performance bond conditioned upon the faithful performance of the contract by the Offeror. The required performance security must be issued or executed by a bank or surety company authorized to do business in the Commonwealth. The cost of the required performance security will be the sole responsibility of the Offeror and cannot increase the Offeror's cost proposal or the contract cost to the Commonwealth.

Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

### **III.6 RFP-005.3 Final Ranking and Award (October 2015)**

A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BDISBO's final small diverse business participation scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.

B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.

C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT HIGHEST OVERALL SCORE.

D. The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

### **III.7 RFP-006.1a Method of Selection (Sept 2011)**

The Issuing Office will notify the selected Offeror in writing of its selection for negotiation after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.

**Part IV - Statement of Work**  
**PART IV - STATEMENT OF WORK**  
**IV.1 WORK STATEMENT**

Part IV, Statement of Work, is attached and made part of this RFP.

## **PART V - CONTRACT TERMS and CONDITIONS**

### **V.1 CONTRACT-001.1a Contract Terms and Conditions (Nov 30 2006)**

The Contract with the selected offeror (who shall become the "Contractor") shall include the following terms and conditions:

### **V.2 CONTRACT-002.1b Term of Contract – PO (July 2015)**

The term of the Contract created by the issuance of the Purchase Order shall commence on the Original PO Effective Date, which will be printed on the Purchase Order output form after the Solicitation Response or Purchase Order has been signed and returned by the contractor, electronically signed by the Commonwealth and approved as required by Commonwealth contracting procedures. If the Purchase Order output form 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 Purchase Order has not been fully executed. Subject to the other provisions of the Contract, the Contract shall end on the later of: a) complete delivery and acceptance of the awarded item(s); b) the expiration of any specified warranty and maintenance period; c) payment by the Commonwealth for the item or items received; or d) any Expiration Date identified in the Purchase Order.

### **V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Oct 2013)**

The Contract may be mutually renewed for a maximum of 2 additional 1 year term(s), so long as the Commonwealth provides written notice to the Contractor of its intention to extend the Contract by letter dated not less than 090 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 060 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). 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.

### **V.4 CONTRACT-002.2f Renewal of Contract Term; Adjusted Prices – Index Based (Oct 2013)**

The Contract may be renewed for a maximum of 2 additional 1 year term(s), so long as Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter prior to the expiration of the term of the agreement, or any extension thereof. The Commonwealth may exercise the renewal as individual year or multiple year term(s). Any renewal will be under the same terms, covenants and conditions, provided, however, that the rates under the contract may be adjusted to reflect inflation by applying the **(fill in month and year)** unadjusted. The established base index is defined as the most current published prior to the bid due date. At the time of renewal, the current will be compared with the established base index and the multiplier will be determined by dividing the current Index by the established base Index. The multiplier will be used to increase or decrease the contract rates by the same amount. The Commonwealth will issue a change notice information the Contractor of such changes. After such a change, the current Index at the time of the change will become the new base and the new contract rates will become the new base rates. In the event of no change in the , the Commonwealth will renew the contract with no price adjustment. No further document is required to be executed to renew the term of the contract.

### **V.5 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)**

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

### **V.6 CONTRACT-003.1d Signatures - PO (July 2015)**

The Contract shall not be a legally binding contract until the fully-executed Purchase Order has been sent to the Contractor. No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Purchase Order prior to the Original PO Effective Date. The Contractor hereby

waives any claim or cause of action for any service or work performed prior to the Original PO Effective Date.

The Purchase Order may be signed in counterparts. The Contractor shall sign the Solicitation Response or Purchase Order and return it to the Commonwealth. After the Solicitation Response or Purchase Order is signed by the Contractor and returned to the Commonwealth, it will be processed for Commonwealth signatures and approvals. When the Purchase Order has been electronically signed and approved by the Commonwealth as required by Commonwealth contracting procedures, it shall: 1) clearly indicate "Fully executed" at the top of the form; 2) include a printed Original PO Effective Date and 3) include the printed name of the Purchasing Agent indicating that the document has been electronically signed and approved by the Commonwealth. Until the Contractor receives the Purchase Order output form with this information on the Purchase Order output form, there is no legally binding contract between the parties.

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Purchase Order to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Purchase Order legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Purchase Order 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 Purchase Order or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Purchase Order or acknowledgement were not in writing or signed by the parties. A Purchase Order or acknowledgment 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 any such document if necessary.

#### **V.7 CONTRACT-004.2 Definitions (February 2024)**

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

#### **V.8 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)**

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.

#### **V.9 CONTRACT-013.1 Environmental Provisions (Oct 2006)**

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, Act 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.



#### **V.10 CONTRACT-014.1 Post-Consumer Recycled Content (June 2016)**

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified by the Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

#### **V.11 CONTRACT-014.3 Recycled Content Enforcement (Feb 2009)**

The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

#### **V.12 CONTRACT-016.2 Automated Clearing House (ACH) Payments (February 2024)**

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.

#### **V.13 CONTRACT-017.1 Taxes (Dec 5 2006)**

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

#### **V.14 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)**

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

#### **V.15 CONTRACT-019.1 Indemnification (February 2024)**

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.

#### **V.16 CONTRACT-020.1 Audit Provisions (Oct 2006)**

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

#### **V.17 CONTRACT-021.1 Default (Oct 2013)**

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 ensure 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.

#### **V.18 CONTRACT-022.1 Force Majeure (Oct 2006)**

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 Purchase Order.

#### **V.19 CONTRACT-024.1 Contract Controversies (Oct 2011)**

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 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.

#### **V.20 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)**

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.

#### **V.21 CONTRACT-026.1 Other Contractors (Oct 2006)**

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. 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. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

#### **V.22 CONTRACT-027.1 Nondiscrimination/Sexual Harassment (February 2024)**

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.

## **V.23 CONTRACT-028.1 Contractor Integrity (February 2024)**

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 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.

## **V.24 CONTRACT-029.1 Contractor Responsibility (February 2024)**

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.

#### **V.25 CONTRACT-029.2 Offset (February 2024)**

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.

#### **V.26 CONTRACT-030.1 Americans with Disabilities Act (February 2024)**

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.

#### **V.27 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)**

The Contractor warrants that no person or selling 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 or selling 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.

#### **V.28 CONTRACT-033.1 Applicable Law and Forum (February 2024)**

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.

#### **V.29 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)**

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.

#### **V.30 CONTRACT-041.1 Contract Requirements-Small Diverse Business and Small Business Participation (July 2016)**

The provisions contained in the RFP concerning Contract Requirements - Small Diverse Business and Small Business Participation are incorporated by reference herein.

#### **V.31 CONTRACT-045.1 Insurance - General (Dec 12 2006)**

The Contractor is required to have in place during the term of the Contract and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth 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 any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Contract or the failure to perform under the Contract, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and 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 at each insurance renewal date during the term of the Contract, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days written notice has been given to the Commonwealth.

The Commonwealth shall be under no obligation to obtain such certificates from the Contractor(s). Failure by the Commonwealth to obtain the certificates shall not be deemed a waiver of the Contractor's obligation to obtain and furnish certificates. The Commonwealth shall have the right to inspect the original insurance policies.

#### **V.32 CONTRACT-052.1 Right to Know Law (February 2024)**

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.

**V.33 CONTRACT-054.1 Worker Protection and Investment (February 2024)**

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.

#### **V.34 CONTRACT-055.1 Data Breach or Loss (February 2024)**

To the extent the Contractor receives, provides, stores, manages, maintains, and/or transmits personal information including, but limited to, personal health information, pursuant to this Contract, the Contractor shall comply with all applicable data protection, data security, data privacy and data breach notification laws, including but not limited to the *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329. Further, to the extent the Contractor maintains, stores, or manages computerized data on behalf of the Commonwealth that constitutes personal information, as defined in the *Breach of Personal Information Notification Act*, Act of December 22, 2005, P.L. 474, No. 94, as amended, 73 P.S. §§ 2301-2329, the Contractor shall comply with the then current version of the following IT Policies (ITPs): *ITP-SEC019, Policy and Procedures for Protecting Commonwealth Electronic Data*; *ITP-SEC024, IT Security Incident Reporting Policy*; *ITP-SEC025, Proper Use and Disclosure of Personally Identifiable Information (PII)*; and *ITP-SEC031, Encryption Standards*.