

**PART I – STATEMENT OF WORK
RENTED EQUIPMENT INVITATION TO QUALIFY
3516T01**

I.1 Overview:

The purpose of the Rented Equipment Invitation to Qualify (ITQ) is to qualify responsible and responsive Contractors for the rental of highway and other equipment with or without operator to the Commonwealth of Pennsylvania Department of Transportation (“Department”) for various locations throughout the Commonwealth of Pennsylvania.

This ITQ will result in a contract (“Contract”) that is the first step in a two-step procurement process. Only those Contractors that respond to this ITQ and that the Department determines to be qualified (“Qualified Contractors”) will be eligible to participate in the second step.

The second step involves the issuance of Requests for Quotes (“RFQ”) to the Qualified Contractors. Through this two-step process, the Department will offer Qualified Contractors the opportunity to submit quotes for specific requirements of rental equipment to be supplied to Department locations. The Qualified Contractor selected through the RFQ process (“Selected Contractors”) will receive a Purchase Order and will supply the equipment to meet the specific requirements of the Department as indicated in the RFQ.

I.2 Term of the Contract:

The term of the Contract shall commence on the effective date of the Notice-to-Proceed and shall end on August 31, 2027, subject to other provisions of the Contract. A Contractor shall not perform any work until a Contract has been fully executed and an RFQ has been issued and awarded through a fully executed Purchase Order to the Contractor by the Department.

This Contract, when accepted by the Department, shall constitute a Contract that is binding on the Contractor, his/her/its executors, administrators, successors, and/or assignees.

Although the term of this Contract ends on August 31, 2027, issuance of a Purchase Order for a shorter period of time does not mean that a Contractor is entitled to work beyond the effective dates of any Purchase Order that is issued.

All Purchase Orders received by the Contractor on or before the expiration date of the Contract are valid and must be performed in accordance with the Contract. RFQs and Purchase Orders may specify a service period of up to, but no longer than, ninety (90) days beyond the expiration date of the Contract.

Any Purchase Order may be extended up to ninety (90) days upon the same terms and conditions by the Department to meet its operational needs by providing the Contractor with written notice prior to the expiration of the Purchase Order.

I.3 Scope:

This ITQ will cover rental of equipment to the Department with or without operator. The equipment required is identified within the ITQ Portal, Service Categories, Technicals. Note: Equipment is referenced as Technicals within the ITQ portal. The Department’s Issuing Office may add or delete equipment as necessary to meet the Department’s needs. When additional equipment, with or without operator, that is reasonably construed to be within the scope of the ITQ is to be added to the ITQ, the Department’s Issuing Office will notify Qualified Contractors on the ITQ of the equipment to be added.

Contractors may add equipment or counties by updating their ITQ Contract through the ITQ Portal, pending review and approval by the Issuing Officer.

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For your convenience, a list of specific equipment is included in Exhibit A at [Rented Equipment List](#).

I.4 Issuing Office:

The ITQ is issued and administered by the Department's Bureau of Office Services. The Issuing Office is the sole point of contact in the Department for this ITQ; all inquiries should be referred to:

RENTED EQUIPMENT
Issuing Officer
Bureau of Office Services
400 North Street, 5th Floor
Harrisburg, Pennsylvania 17120
Telephone:(717) 346-9900
RA-PDRENTEDEQUIPITQ@pa.gov

I.5 Existing Contracts:

All existing ITQ Contracts for this service may continue until the end of their current term, including extensions, in accordance with the Terms and Conditions of the current ITQ Contract, which is scheduled to expire on August 31, 2017.

It is intended that the current ITQ Contract #221001, due to expire on August 31, 2017, will be used for Summer 2017 rented equipment needs.

It is intended that this ITQ Contract 3516T01 being bid, effective December 1, 2016, or thereabout, will be used for Winter 2017 rented equipment needs.

I.6 Changes Affecting the Status of the Contract:

It is the responsibility of the Contractor to notify the Issuing Officer, in writing, of any changes that affect the status of the Contract, including, but not limited to:

- addition and/or removal of personnel assigned work under an RFQ;
- equipment unavailability or breakdown;
- any issue which may negatively affect the performance of the service;
- any changes or additions of equipment or counties; and
- changes to their e-mail address.

Refer to Part IV- "ITQ Standard Contract Terms and Conditions," for additional requirements.

I.7 Contractor Duties:

Each Contractor, subject to the terms and conditions set forth in the Contract, the RFQ, and the Purchase Order, shall furnish rental equipment with or without operators.

- The Contractor shall be paid only for the time the equipment is operating unless otherwise agreed to and specified in the RFQ.
- The Contractor shall be responsible for all costs, including permits, in the delivery and return of the equipment unless otherwise specified in the RFQ.
- Equipment shall be delivered directly to the location specified in the RFQ. The Contractor

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shall be responsible for the movement of equipment from job site to job site unless identified within the RFQ. At the discretion of the District or County Equipment Manager, the Department may move equipment.

- Each Contractor who is successfully qualified shall be considered a prime Contractor with respect to the Department's ITQ Contract.
- Each Selected Contractor shall assume responsibility for delivery of all services specified.

The Department shall consider the Selected Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges.

I.8 Qualified Contractors:

Contractors will be selected for receipt of an RFQ from the list of Qualified Contractors for the type of equipment, with or without operator, and County of Interest being requested.

- For requirements under the threshold established by the Department of General Services for Small No Bid procurements, the Department will issue an RFQ to **at least one Qualified Contractor** on the ITQ who has identified that type of equipment and further identified the specific County of Interest.
- When the Department requests quotes over the Small No Bid threshold established by the Department of General Services, **all** Qualified Contractors that have indicated an interest in supplying the equipment for that county will be invited to submit a quote.

When the Department identifies multi-equipment needs, all Qualified Contractors that have indicated an interest in providing any of the equipment identified for the county will be invited to submit a quote. When supplying the quote, the Contractor shall agree to provide **all** equipment identified.

When the Department identifies a need in multiple counties, all Qualified Contractors who have indicated an interest in servicing any of the counties will be invited to submit a quote for the specified piece of equipment. When supplying the quote, the Contractor shall agree to service **all** counties identified.

When the Department identifies multi-county and multi-equipment needs, all Qualified Contractors who have indicated an interest in servicing any of the equipment in any of the counties identified in the need will be invited to submit a quote. When supplying the quote, the Contractor shall agree to service **all** counties and **all** equipment identified.

I.9 Requests For Quote:

The Department will issue a RFQ, which will include, but not be limited to, the type of equipment, estimated quantity, delivery location, effective term of the Purchase Order, other special terms, conditions and specifications, and bid response requirements. RFQs will be issued and returned on an as-needed basis through electronic mail, unless otherwise specified within the RFQ.

Failure to maintain a current and valid e-mail address on the ITQ will adversely impact the Contractor's ability to receive RFQs.

Contractors must respond to each RFQ, even with only a "NO BID." Contractors that fail to respond

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to five (5) successive RFQs either for a single county or on a multi-county basis may be deemed ineligible to receive and respond to RFQs to supply any and all equipment to that county or counties.

Contractors must submit quotes in sufficient time to be received by the date, time, and manner specified in each RFQ in order to be considered for award. It is the Contractor's responsibility to ensure that only those agents who are authorized to bind the Contractor respond to the RFQ. All prices shall be firm and must be prepared and submitted in accordance with the specifications in the RFQ.

I.10 Purchase Orders:

Upon award of the RFQ, the Department will issue to the Selected Contractor a Purchase Order. Purchase Orders shall constitute the Contractor's Notice-to-Proceed. The Contractor shall not begin work and shall not be paid for work performed prior to the receipt of the fully executed Purchase Order. The Contractor shall not be paid for work performed after the expiration date of the Purchase Order. No Department employee has the authority to verbally direct the commencement of any work under this Contract prior to the effective dates of the Contract and the Purchase Order.

I.11 Inspections:

The Contractor shall furnish the type, condition, and quantity of equipment that is necessary for the proper and productive execution of the contracted work.

Equipment must pass all inspections. All equipment shall be subject to inspection upon delivery and return and at any time during the rental period. If the equipment is rejected in an inspection, the Contractor shall receive no reimbursement.

Failure by the Contractor to supply equipment that meets the specifications identified within the RFQ may result in termination, the Contractor being determined non-responsive, and/or entry into the Commonwealth's Responsibility Program for Contractor performance.

I.12 Maintenance:

The Contractor, at the Contractor's expense, unless otherwise specified in the RFQ, shall maintain equipment in good mechanical and operating condition subject to inspections. The Contractor shall make all repairs and/or replacements of the equipment while it is in possession of the Department. Maintenance, repair and replacement of equipment includes, but is not limited to, wearing parts such as milling teeth, cutting edges, tires, scrapers, etc.

All routine maintenance shall be completed after normal work hours. The Contractor shall furnish all fuels, oils, lubricants, anti-freeze, water, operators and operating attachments unless otherwise agreed to between the parties and specified in the RFQ. The Contractor shall always be responsible for fueling winter equipment when provided with operator.

During maintenance, all cleaning of equipment shall be performed by the Contractor in an environmentally safe manner, away from waterways and drainage courses. The potential for soil and ground water pollution shall be minimized. If petroleum-based cleaners are used, the residue shall be collected and disposed of in accordance with current environmental regulations. If other organic cleaners are used, it may preclude the need for collection and disposal of residue.

I.13 Equipment Operators:

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When the Contractor supplies equipment operators, the operators shall be an agent of the Contractor authorized and permitted to sign any and all related Department documents for the purpose of recording the actual hours worked and other required documentation.

The Contractor, where required, shall furnish qualified operators that provide for a safe and efficient operation. The Department reserves the right to require the Contractor to substitute operator(s) to ensure a safe and efficient operation.

All equipment operators shall be required to wear OSHA-recommended safety gear, where applicable.

I.14 Litter/Road Debris:

The picking up of litter and road debris in conjunction with rented equipment with operator may be included when identified within the RFQ. In the event that it is the intent to include litter/road debris pickup within the RFQ for rented equipment with operator, the Department must determine if it is necessary to seek concurrence from the Union for contracting out preserved bargaining unit work.

I.15 Automatic Vehicle Locator (AVL)/Global Positioning System (GPS):

The Contractor shall furnish, when identified within the RFQ, AVL/ GPS units to record the location and utilization of the equipment. The AVL/GPS system shall be capable of real-time tracking and data capture for historical review of all equipment at the same time collectively or individually. The Contractor is responsible for providing the Department with either a website access location to view the AVL/GPS location of the equipment in real-time or, if identified in the RFQ, the vehicle locations may be displayed along with the Department's vehicles on an internal Department-based software solution or external solution such as PA511.

In the event that the RFQ identifies a requirement for website access, the Contractor will provide the information in a file format compatible with the Department's existing software. The Contractor shall be required, at the Contractor's expense, to provide all necessary software for the above-mentioned data.

The Department may articulate, in the RFQ, its intent to supply the Contractor with an AVL/GPS unit and a requirement that the Contractor place the unit into each truck to track vehicle location for hours worked under this Contract. The vehicle locations may be displayed along with the Department's vehicles on an internal Department-based software solution or external solution such as PA511.

In the event that the Department supplies the AVL/GPS unit, the Contractor shall be responsible for the unit while in the Contractor's possession and the return of the unit in good working order at demobilization. The Contractor shall be responsible for the cost of replacing the Department's AVL/GPS equipment in the Contractor's possession in the event that it is lost, damaged, or stolen.

I.16 Hour Meter:

All equipment to be paid on an hourly basis without an operator provided by the Contractor shall be equipped with an hour meter installed by the Contractor to verify usage unless otherwise specified in the RFQ.

I.17 Risk of Loss:

The Contractor shall assume and bear the risk of loss or damage to, or theft of, the equipment and all component parts while the equipment or parts are in possession of the Department, whether or not

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an operator has been provided by the Contractor. However, if the equipment is provided without an operator and the Department could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the equipment, the Contractor shall not bear the risk of loss. No loss or damage to the equipment shall impair any Contractor or Department obligation under any Purchase Order issued as a result of this Contract. If a Contractor alleges that the Department could have prevented a loss, damage, or a theft by exercising reasonable care or diligence in the use, protection, or care of the equipment, it shall submit an invoice and supporting materials to the Contracting Officer for review to determine if the matter should be referred to the Department of General Services' Bureau of Risk & Insurance Management or be treated as a contract controversy pursuant to Section IV.31 of the Terms and Conditions.

I.18 Additional Equipment:

The Department reserves the right to use any prequalified Contractors to furnish items of rental equipment, which are not on the list of representative equipment shown on the ITQ Service Categories, Technicals.

I.19 Emergency:

If an emergency situation threatens public health, welfare, or safety, or if circumstances outside the control of the Department create an urgency of need and do not permit time to solicit competitive quotes, the Department may obtain equipment necessary to avert a crisis without soliciting quotes.

I.20 Procurement of Alternate Services:

The Department reserves the right to procure services covered under this Contract through another source, where the Department concludes that it is in the Commonwealth's best interest to do so. In addition, the Department reserves the right to conduct work with its own workforce.

I.21 Permits, Fees, and Notices:

The Contractor shall obtain and pay for all permits, licenses, and certifications required by law for proper execution and completion of its work. The Contractor shall furnish proof of payment for permits, licenses, or certificates, or proof that no permits, licenses, or certificates are required. This proof shall be furnished prior to starting work.

The Contractor shall give all notices and comply with all applicable laws, ordinances, regulations, rules, and orders of any public authority bearing on the performance of the work. If the Contractor observes that any of the Contract documents are at variance therewith in any respect, they shall promptly notify the Issuing Office, in writing. Any necessary modifications shall be made by the Issuing Office.

If the Contractor performs any work knowing it to be contrary to such applicable laws, ordinances regulations, rule of orders, and without such written notice to the Issuing Office, the Contractor shall assume full responsibility therefore and shall bear all cost attributable thereto.

I.22 Contractor Performance:

During the Contract period, Contractors who perform poor or unsafe work, do not provide services on time, or engage in other unacceptable conduct (e.g. violation of the Contract Terms and Conditions), may be entered into the Commonwealth's Contractor Responsibility Program (CRP), and may be removed from the list of Qualified Contractors and restricted from supplying Rented Equipment services. Furthermore, entry into the CRP may affect the contractor's ability to obtain future contracts

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with all Commonwealth agencies.

I.23 Order of Precedence:

If any conflicts or discrepancies should arise in the Terms and Conditions of this Contract, or the interpretation thereof, the order or precedence shall be:

The Contract, subject to its internal order of precedence as follows:

- (1) Part I, "Statement of Work," (2) Part IV, "Standard Terms and Conditions,"
- (3) All other documents referenced in this ITQ, (4) Purchase Order and any attachments thereto, including: (a) the RFQ, and (b) the Contractor's quote as accepted by the Commonwealth.

I.24 Bid Security:

Contractors are not required to submit bid security with their application. However, performance security may be required from the Selected Contractor. When performance security is required, the requirements will be set forth in the RFQ.

I.25 Protests:

Any protest arising from the award or non-award of a Contract by the Department as a result of this ITQ (or subsequently issued RFQ) must be filed in writing with the Secretary of the Department of Transportation and follow the procedures set forth in Section 1711.1 of the Procurement Code, 62 Pa.C.S. § 1711.1.

I.26 News Releases:

Contractors shall not issue news releases, internet postings, advertisements or any other public communications pertaining to Rented Equipment awards with the Department without written approval of the Issuing Office, and then only in coordination with the Issuing Office.

I.27 Addenda to the ITQ:

If it becomes necessary to revise any part of this ITQ, an addendum will be provided to all Contractors who received the original ITQ.

I.28 Alternate Applications/Quotes:

The Department will not accept alternate applications or quotes. Alternate applications/quotes are those that are provided in a form other than that specified by the Department. The Department will not accept applications wherein a Contractor alters any of the forms provided in the application.

I.29 Rejection of Applications/Quotes

The Department reserves the right to reject any and all applications/quotes received as a result of this ITQ.

I.30 Incurring Costs:

The Department shall not be liable for any costs or expenses incurred in the preparation and submission of the proposals.

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I.31 Agility Agreements:

Notwithstanding any other right or obligation under this Contract, the Department expressly reserves the right to obtain these services pursuant to separate contracts, known as Agility Agreements, that it has entered into or may enter into with political subdivisions, public authorities, other government agencies or other entities, institutions, or organizations under the authority of Chapter 19 of the Procurement Code (Act 1998-57, 62 Pa. C.S. Section 101 et seq.) for the exchange of supplies, services, facilities, personnel or such other items as may be procured through intergovernmental contracting pursuant Chapter 19.

I.32 Department Employee:

The Contractor, whether an individual, a partner, manager, officer, stockholder, or employee of a firm, is not an employee of the Department, nor does any employee of the Department have any pecuniary interest in the proceeds of the Contract either as an employee of the Contractor or otherwise. No employee or officer of the Department may lease equipment to or from the Department either by using his own name or that of any other. Additionally, no member of the immediate family of a Department employee may lease equipment to the Department. Immediate family refers to any of the following: father, mother, brother, sister, daughter, son, husband, or wife. The Contractor hereby agrees that the Contract shall be terminated for violation of this condition of the Contract.

I.33 Minimum Wage Provision:

1. Contractor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. Adjustment. Beginning January 1, 2017, and annually thereafter, Contractor shall pay its employees described in Paragraph 1. above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. Exceptions. These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. Notice. Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.

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5. Records. Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. Sanctions. Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. Subcontractors. Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

**PART II – SUBMITTER APPLICATION
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Contractors interested in doing business with the Department of Transportation (Department) through the Rented Equipment ITQ Contract (ITQ), 3516T01, must submit a qualification package and supporting documentation to the Department. The Department will review the qualification package and supporting documentation to determine whether the Contractor meets the minimum eligibility requirements. Failure to meet these requirements may result in the Contractor's qualification package being rejected. Each Contractor that meets the minimum eligibility requirements will be awarded a contract. Award of a contract to a Contractor is not a guarantee of business.

After reviewing **PARTS I – IV** of this ITQ, the Contractor shall begin the qualification process by clicking on the “*Back to Select ITQ*” button at either the top or bottom of the page. The Contractor may then begin to develop its online qualification package by clicking on the “*Select*” button. The system will walk the Contractor through the steps that are required to develop and submit its online qualification package.

Contractors interested in submitting a qualification package to become a Rented Equipment ITQ Contractor must meet **all** of the following requirements:

1. The Contractor must be registered to do business with the Commonwealth of Pennsylvania. If you are not a registered Contractor, go to www.pasupplierportal.state.pa.us and register.
2. The Contractor must submit a qualification package to the Department in accordance with Part II – Submitter Application and the Open Enrollment Process outlined in Part III of this ITQ Contract.
3. All Contractors will be required to complete the ITQ Supplier Profile Questionnaire in “Step 3.” Click on the following link, “[How to Submit an ITQ Proposal](#),” to assist you with this process.
4. **Subcontractors**: Contractors interested in providing services as a subcontractor under this Contract do not need to be qualified as a Contractor since the prime Contractor assumes responsibility for all services whether or not it provides them directly. A Contractor may not subcontract without prior approval from the Department Issuing Office.

Steps for Submitting an ITQ Qualification Package Through the PA Supplier Portal:

To submit an ITQ qualification package, the Contractor shall first select “Create New” and then select “3516T01 REITQ” from the list of ITQ contracts. The Contractor must acknowledge it has reviewed Parts I through IV of the ITQ by clicking the check box located at the end of Part IV, prior to Step 1. When going through each of these steps, the required fields must be completed before a successful save may be performed. If you attempt to save without **all** required fields being completed, you will get error messages directing you to correct the appropriate field. Required fields are marked with a **Red Asterisk ***.

- Step 1:** Select ITQ; Select the Rented Equipment ITQ and review ITQ documents, Parts I through IV.
- Step 2:** Proposal Contact Information: Complete the required fields for the designated contact person for this ITQ qualification package.
- Step 3:** Supplier Profile: You will be required to complete each section of the ITQ Supplier Profile Questionnaire.
- I. **Company Information**: All fields in this section are applicable to this ITQ and require response.

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- Headquarter Address: If the Local Company Address and the Headquarter Address are the same, place a checkmark in the “Same as above” box and the fields will automatically populate.
- Contacts: Complete this section to fill in the contact table. You must input contact information for each required contact type in the drop down list. Once all of the information is input for a specific contact type, click on the “Add Contact” button and the list will generate in the table provided. The same individual may be used as a contact more than once.
- When entering email addresses, please use a company resource account, if available, not an individual’s personal email address.
 - It is the sole responsibility of the Contractor to insure that they maintain a valid e-mail address for the ITQ in the ITQ Portal.

II. Organizational Information:

- Sections A through F are required under this ITQ and must be responded to accordingly.
- Section C, DGS Self Certified Small Business, will be filled in automatically by the system.
- Sections G through M are not applicable to this ITQ. However, all fields are designated as required fields and must have a response. Note: If you find that a required field asks for information that is "Not Applicable" to your business, enter "N/A" for a text field and "0" for a numeric field.

STEP 4: Service Categories: The service category for this ITQ is Rented Equipment, click on the *Add* button to move it to the right-hand box.

For your convenience, a list of specific equipment is included in Exhibit A “*Rented Equipment List*”. Ref: Part I, Statement of Work, Section I.3, Scope.

STEP 5: Select the counties in which you will provide equipment through this ITQ. If you will provide service in all 67 counties, click the “Select All” button.

STEP 6: Select Technicals (Technicals = Specific Equipment) and click on the radio button for each piece of equipment you are providing. If the piece of equipment is being offered with and without operator you must select the radio button for each.

Be aware, your selection of specific equipment and counties will directly affect which RFQs you will receive. Ref: Part I, Statement of Work, Section I.8, Qualified Contractors.

STEP 7: Additional Requirements are not required; continue to the next step.

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STEP 8: The Pre-Submission Audit is used to track your progress while developing your ITQ proposal. Review all sections to be sure “complete” has been captured in all columns. If the far right column is blank, then the step is incomplete. In this case, click on the “Cancel” button at the bottom of the page and click on the appropriate step that is not complete. An empty checkbox will indicate the step is incomplete.

Once all required information and documentation has been provided, a paragraph preceded by a checkbox will be in view. Click on the checkbox if you believe that you have completed your qualification package with all accurate and applicable information. Once the checkbox is marked, the “Submit Proposal” tab will appear and you are ready to submit your qualification package. Click on the “Submit Proposal” tab and submit your qualification package.

In the event of system or functionality issues, the Department reserves the right to modify the process for the selection of equipment and/or counties.

**PART III – INITIAL AND OPEN ENROLLMENT
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The Rented Equipment Invitation to Qualify (ITQ) will have two (2) enrollment periods. The initial enrollment period for the ITQ Contract is from December 1, 2016, through February 1, 2017. You, the Contractor, agree that unless your proposal is completed and submitted in the ITQ portal by February 1, 2017, it shall not be considered for the full contract period beginning on or about September 1, 2017. The Pennsylvania Department of Transportation (Department) reserves the right to extend the initial enrollment period to insure adequate geographic coverage.

The ITQ open enrollment process begins on April 3, 2017, and will remain open until June 30, 2027. During the open enrollment period, new Contractors who did not participate and become qualified in the initial enrollment period may seek to be added to the list of Qualified ITQ contractors.

Existing Contractors may seek to become qualified in additional Equipment Categories (Service Categories, Technicals) and counties via the PA Supplier ITQ Portal at any time throughout the term of the Contract.

The application evaluation and Contract execution process for a new or existing Contractor may take an estimated thirty (30) to sixty (60) Department business day to complete. Please note that the qualification, evaluation, and contract execution process may take longer to complete than estimated above depending on the volume of applications received and the availability of Department resources.

Contractors are strongly encouraged to submit their qualification package as soon as practicable.

The current ITQ Contract will expire on August 31, 2017. To participate in RFQs for work after September 1, 2017, Contractors must submit a new ITQ qualification application within the enrollment periods identified above.

**PART IV – STANDARD TERMS AND CONDITIONS
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IV.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

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

IV.2 CONTRACT-002.1a Term of Contract – Contract (May 2012)

The initial term of the Contract shall be ten (10) year(s) and zero (00) month(s).

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

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

IV.3 CONTRACT-002.2a Renewal of Contract Term (Nov 30, 2006)

The Contract may be renewed for a maximum of zero (0) additional zero (0) year term(s).

IV.4 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.

IV.5 CONTRACT-003.1a Signatures – Contract (Oct 2013)

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

The Contract will not include an "ink" signature by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract 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 Contract has not been fully executed.

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

The Commonwealth and the Contractor specifically agree as follows:

1. No handwritten signature shall be required in order for the Contract to be legally enforceable.
2. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not

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to contest the validity or enforceability of a genuine Contract 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 Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgement shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.

3. 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.

IV.6 CONTRACT-004.1a Definitions (Oct 2013)

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

1. Agency: The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this Contract, that entity shall also be identified as "Agency".
2. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
3. Days: Unless specifically indicated otherwise, days mean calendar days.
4. Developed Works or Developed Materials: All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
5. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
6. Services: All Contractor activity necessary to satisfy the Contract.

IV.7 CONTRACT-005.1d Purchase Orders (Oct 2013)

Commonwealth agencies may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Each Purchase Order will be deemed to incorporate the Terms and Conditions set forth in the Contract.

Purchase Orders will not include an "ink" signature by the Agency. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

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Purchase Orders may be issued 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 an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

1. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
2. The parties agree that no writing shall be required in order to make the Purchase Order legally binding. The parties hereby agree not to contest the validity or enforceability of a 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 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 Purchase Orders 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.
3. 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.

Purchase Orders under ten thousand dollars (\$10,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

IV.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 the 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.

IV.9 CONTRACT-007.01b Delivery of Services (Nov 30, 2006)

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

IV.10 CONTRACT-007.02 Estimated Quantities (Nov 30, 2006)

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts

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only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever the Commonwealth deems it to be in its best interest.

IV.11 CONTRACT-008.1a Warranty (Oct 2006)

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one (1) year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace, or otherwise correct any problem with the delivered item.

When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

IV.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2013)

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report, document, or other material provided to the Commonwealth under the Contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor shall agree to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are

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held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

IV.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

IV.14 CONTRACT-010.1a Acceptance (Oct 2006)

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

IV.15 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

IV.16 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.

IV.17 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2013)

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

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Environmental Protection Agency in its Comprehensive Procurement Guidelines, which can be found at <http://www.epa.gov/epawaste/conserve/tools/cpg/index.htm> .

IV.18 CONTRACT-014.3 Recycled Content Enforcement (February 2012)

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.

IV.19 CONTRACT-015.1 Compensation (Oct 2006)

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Purchase Order. All item(s) shall be delivered within the time period(s) specified in the Purchase Order. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.

IV.20 CONTRACT-015.1A Compensation/Expenses (Oct 2013)

The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

IV.21 CONTRACT-015.2 Billing Requirements (February 2012)

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- Vendor name and "Remit to" address, including SAP Vendor number;
- Bank routing information, if ACH;
- SAP Purchase Order number;
- Delivery Address, including name of Commonwealth agency;
- Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- Quantity provided;
- Unit price;
- Price extension;
- Total price; and
- Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

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IV.22 CONTRACT-016.1 Payment (Oct 2006)

1. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post-payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
2. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

IV.23 CONTRACT-016.2 ACH Payments (Aug 2007)

1. The Commonwealth will make contract payments through the Automated Clearing House (ACH). Within ten (10) days of award of the Contract or Purchase Order, the Contractor must submit or must have already submitted its ACH information within their user profile in the Commonwealth's procurement system (SRM).
2. The Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.
3. It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

IV.24 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

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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.

IV.25 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.

IV.26 CONTRACT-019.1 Hold Harmless Provision (Nov 30, 2006)

1. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If the OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of the Contractor made in the defense of such suits.
2. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

IV.27 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 Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

IV.28 CONTRACT-021.1 Default (Oct 2013)

1. 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

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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:

- a. Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - b. 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;
 - c. Unsatisfactory performance of the work;
 - d. Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - e. Improper delivery;
 - f. Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - g. Delivery of a defective item;
 - h. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - i. Discontinuance of work without approval;
 - j. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - k. Insolvency or bankruptcy;
 - l. Assignment made for the benefit of creditors;
 - m. Failure or refusal within ten (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;
 - n. Failure to protect, to repair, or to make good any damage or injury to property;
 - o. Breach of any provision of the Contract;
 - p. Failure to comply with representations made in the Contractor's bid/proposal; or
 - q. Failure to comply with applicable industry standards, customs, and practice.
2. 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.

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3. 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.
4. 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.
5. 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.
6. 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.

IV.29 CONTRACT-022.1 Force Majeure (Oct 2006)

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

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

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.

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IV.30 CONTRACT-023.1a Termination Provisions (Oct 2013)

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

- 1. TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- 2. NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.
- 3. TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

IV.31 CONTRACT-024.1 Contract Controversies (Oct 2011)

- 1.** In the event of a controversy or claim arising from the Contract, the Contractor must, within six (6) 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.
- 2.** 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 one hundred twenty (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 one hundred twenty (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 one hundred twenty (120) days (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's

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determination shall be the final order of the purchasing agency.

3. Within fifteen (15) days of the mailing date of the determination denying a claim or within one hundred thirty five (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.

IV.32 CONTRACT-025.1 Assignability and Subcontracting (Oct 2013)

1. Subject to the Terms and Conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.

IV.33 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

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shall equitably enforce this paragraph as to all Contractors to prevent the imposition of unreasonable burdens on any Contractor.

IV.34 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Feb 2015)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate 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.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
4. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to

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inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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

IV.35 CONTRACT-028.1 Contractor Integrity Provisions (Jan 2015)

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

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. **"Contractor"** means the individual or entity, that has entered into this contract with the Commonwealth.
 - d. **"Contractor Related Parties"** means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
 - e. **"Financial Interest"** means either:
 - 1) Ownership of more than a five percent interest in any business; or
 - 2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - f. **"Gratuity"** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
 - g. **"Non-bid Basis"** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
2. In furtherance of this policy, Contractor agrees to the following:

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- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - 1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - 2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - 3) had any business license or professional license suspended or revoked;
 - 4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
 - 5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor.

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The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may

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terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

IV.36 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)

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

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

IV.37 CONTRACT – 030.1 THE AMERICANS WITH DISABILITIES ACT (OCT 2011)

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

During the term of this agreement, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the *Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.

2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

IV.38 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.

IV.39 CONTRACT-033.1 Applicable Law (Oct 2006)

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and

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the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

IV.40 CONTRACT- 034.1b Integration (Nov 30 2006)

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

IV.41 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006)

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

IV.42 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.

IV.43 CONTRACT-035.1a Changes (Oct 2006)

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

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IV.44 CONTRACT-036.1 Background Checks (Oct 2013)

1. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf> . The background check must be conducted prior to initial access and on an annual basis thereafter.
2. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.
3. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
4. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 Amended (January 30, 2008) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

IV.45 CONTRACT-037.1a Confidentiality (Oct 2013)

1. The Contractor agrees to protect the confidentiality of the Commonwealth's confidential information. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party (notice may be communicated by describing the information, and the specifications around its use or disclosure, in the SOW). Neither party may assert that information owned by the other party is such party's confidential information. The parties agree that such confidential information shall not be copied, in whole or in part, or used or disclosed except when essential for authorized activities under this Contract and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of such confidential information shall be marked by the party making the copy with any notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving

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party's possession, other than one copy, which may be maintained for archival purposes only, and which will remain subject to this Contract's security, privacy, data retention/destruction and confidentiality provisions (all of which shall survive the expiration of this Contract). Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default pursuant to the DEFAULT provision of this Contract, in addition to other remedies available to the non-breaching party.

2. Insofar as information is not otherwise protected by law or regulation, the obligations stated in this Section do not apply to information:
- a. already known to the recipient at the time of disclosure other than through the contractual relationship;
 - b. independently generated by the recipient and not derived by the information supplied by the disclosing party.
 - c. known or available to the public , except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - d. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - e. required to be disclosed by law , regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

3. The Contractor shall use the following process when submitting information to the Commonwealth it believes to be confidential and/or proprietary information or trade secrets:
- a. Prepare an unredacted version of the appropriate document, and
 - b. Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
 - c. Prepare a signed written statement that states that:
 - 1) the attached document contains confidential or proprietary information or trade secrets;
 - 2) the Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
 - 3) the Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
 - d. Submit the two documents along with the signed written statement to the Commonwealth.

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IV.46 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:

1. **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.
2. **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.

IV.47 CONTRACT-051.1 Notice (Dec 2006)

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

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

IV.48 CONTRACT-052.1 Right to Know Law (Feb 2010)

1. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.

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2. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
3. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
4. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
5. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
6. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
7. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
8. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory

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damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

9. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

IV.49 CONTRACT-Titles Not Controlling

Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

IV.50 CONTRACT-Severability

The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

V.51 CONTRACT-Independence of the Parties:

It is understood by and between the parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Contractor and the Department, or as constituting the Department as the representative or general agent of the Contractor for any purpose whatsoever.