

**REQUEST FOR PROPOSALS FOR**

**Pay for Success Performance Contracts in Early Childhood  
Education, Public Safety and Health & Human Services**

**ISSUING OFFICE**



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES  
BUREAU OF PROCUREMENT**

**555 Walnut Street  
Forum Place, 6<sup>th</sup> Floor  
Harrisburg, PA 17101**

**RFP NUMBER**

**6100035379**

**DATE OF ISSUANCE**

**August 18, 2015**

**REQUEST FOR PROPOSALS FOR**  
**Pay for Success Performance Contracts in Early Childhood**  
**Education, Public Safety and Health & Human Services**

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## CALENDAR OF EVENTS

The Commonwealth will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Deadline to submit Questions via email to Margaret Mary Juran, <a href="mailto:mjuran@pa.gov">mjuran@pa.gov</a> .	Potential Offerors	<b>August 24, 2015</b>
<p>Pre-proposal/Webinar Conference—<b>OPTIONAL</b>.            Pa Department of General Services            Forum Place 6<sup>th</sup> Floor, Conference Room 1            555 Walnut Street            Harrisburg, PA 17101</p> <p><b>**NOTE**</b> Public parking in the Forum Place Parking Garage is not available. There is public parking in the Fifth Street Garage which is located across the street from the Forum Place or on the street at the meters. Parking fees are the Offerors' responsibility.</p>	Issuing Office/Potential Offerors	<b>August 27, 2015 9:00am EST</b>
Answers to Potential Offeror questions posted to the DGS website ( <a href="http://www.dgsweb.state.pa.us/RTA/Search.aspx">http://www.dgsweb.state.pa.us/RTA/Search.aspx</a> ) no later than this date.	Issuing Office	<b>September 1, 2015</b>
Please monitor website for all communications regarding the RFP.	Potential Offerors	<b>ONGOING</b>
Sealed proposal must be received by the Issuing Office at Pa Department of General Services Bureau of Procurement Attn: Margaret Mary Juran/RFP 6100035379 555 Walnut Street Forum Place, 6 <sup>th</sup> Floor Harrisburg, PA 17101	Offerors	<b>October 1, 2015 4:00pm EST</b>

## PART I

### GENERAL INFORMATION

**I-1. Purpose.** This request for proposals (“RFP”) provides to those interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for the Office of the Budget’s consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for Contractors to provide Pay for Success (“PFS”) performance contracts to design and implement programs focused on expanding access to high-quality pre-kindergarten; reducing recidivism; and promoting public health and well-being (“Project”).

**I-2. Issuing Office.** The Department of General Services (“Issuing Office”) has issued this RFP on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFP shall be Margaret Mary Juran, the Issuing Officer for this RFP. Please refer all inquiries to the Issuing Officer at [mjuran@pa.gov](mailto:mjuran@pa.gov).

**I-3. Scope.** This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

**I-4. Problem Statement.** Decades of research have demonstrated that public investment can improve the lives of Pennsylvanians while simultaneously strengthening the state’s bottom line. From pre-kindergarten, where every \$1 in public funding generates more than \$7 in government savings and benefits, to criminal justice, where reducing recidivism avoids costs and improves public safety, there are opportunities for evidence-based investments across state government.

PFS performance contracts<sup>1</sup> provide an innovative strategy to finance these proven programs through public-private partnerships. PFS contracts are rigorous, binding agreements based on a straightforward proposition: taxpayers will only pay for services that actually achieve results and save money in the long-run. The strategy enables the state to fund programs and services that improve economic opportunity, health, and safety that it otherwise might not be able to afford in the short-term. Moreover, PFS directs funding toward programs that have a strong evidence base and record of effectiveness.

Pennsylvania is poised to join a vanguard of states and local governments that are using PFS contracting as an approach to solve urgent challenges in their communities. Governor Wolf’s 2015-16 Executive Budget includes a proposal for the Commonwealth to enter into PFS performance contracts. On March 24, 2015, the Commonwealth issued a request for information (“RFI”) seeking expert, legislative, and public feedback to inform the development of the PFS

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<sup>1</sup> These are sometimes called “Social Impact Bonds,” a term which was coined in the United Kingdom and has led to some confusion. The private-sector financing arrangement is not a typical debt instrument and these transactions do not require the government to issue debt. To avoid these misperceptions, the Commonwealth has decided to name these programs “Pay for Success” performance contracts. This terminology is in accordance with other states and the federal government.

program. The Commonwealth received over 50 responses to the RFI, the most responses thus far for any state government pursuing a PFS initiative. RFI responses are publicly accessible on the Issuing Office website at

[www.portal.state.pa.us/portal/server.pt/community/pay\\_for\\_success\\_initiative/22049](http://www.portal.state.pa.us/portal/server.pt/community/pay_for_success_initiative/22049).

Under the most common PFS model, the government contracts with an independent intermediary entity, or directly with a service provider, to provide social services. The government pays this contract-holder entirely—or almost entirely—based upon achievement of performance targets. Performance is rigorously measured by comparing the outcomes of individuals who receive services from the service provider relative to the outcomes of a comparison or control group whose members are not offered the services. Performance targets are linked to taxpayer savings. If the contract-holder fails to achieve the minimum target(s) negotiated, the government does not pay, ensuring that taxpayer funds are not spent on programs that are ineffective. Payments typically rise for performance that exceeds the minimum target, up to an agreed-upon maximum payment level. The contract-holder obtains operating funds by raising capital from private, commercial or philanthropic sources which provide upfront capital in exchange for a share of the government payments that become available if the performance targets are met. If the contract-holder is an intermediary, it uses these operating funds to subcontract with one or more service providers to deliver the interventions necessary to meet the performance targets. Independent monitoring and evaluation of outcomes is critical in PFS contracts, as government payment is predicated on the achievement of outcomes. Rigorous evaluation systems, which determine if pre-established targets have been reached, can deepen the Commonwealth’s understanding of which programs actually work, and findings can be used to improve services throughout Pennsylvania. This learning enables the Commonwealth to spend taxpayer funds more efficiently and scale up evidence-based, innovative programs that have been proven to work in Pennsylvania. Additional detail is provided in **Part IV** of this RFP.

This RFP is made up of three (3) Lots as described below. Offerors may propose on an individual lot or all three (3) Lots. Offerors must submit a separate and complete proposal (technical, cost and small diverse business) for each Lot for which it plans to propose an offer and indicate the respective Lot on the proposal. The Commonwealth reserves the right to make one or more awards per Lot. In addition, the Commonwealth reserves the right to award one or more Lots to one Offeror. If one (1) Offeror is awarded all three (3) Lots, a single contract covering all three (3) Lots will be executed. When making final selection decisions, the Issuing Office may consider factors beyond the evaluation criteria, such as the distribution of PFS performance contracts across program areas and geographic areas and cost.

**LOT 1 - Early Childhood Education:** Provide services that expand access to high-quality pre-kindergarten for three- and four-year-olds from low-income families.<sup>2</sup>

Children who participate in high-quality pre-kindergarten (“pre-k”) perform better in school, graduate from high school at higher rates, and earn more throughout their lives compared to peers who do not have access to high-quality pre-k programs. Since 2003, Pennsylvania has been

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<sup>2</sup> For the purposes of this RFP, “low-income families” are defined as those earning up to three times the federal poverty level.

among the states that offer full-day pre-k to three- and four-year-olds. Evidence shows that the Commonwealth's hallmark pre-k program—Pennsylvania Pre-K Counts—is working. In 2013-14, third graders from low-income families who had been enrolled in Pre-K Counts outperformed a comparison group of their low-income peers in both math and reading.

The future success of Pennsylvania's children depends on dramatically expanding access to proven early learning programs like Pre-K Counts. Today, only one out of three Pennsylvania children in families earning up to three times the federal poverty level, or \$71,550 for a family of four, is enrolled in high-quality pre-k. To advance the goal of universal, high-quality pre-kindergarten for Pennsylvania's three- and four-year-olds, the Commonwealth is interested in using PFS as a tool to expand high-quality pre-k for low-income families

Priority outcomes include, but are not limited to, increased preparedness for kindergarten, increased academic performance in reading and math, and decreased utilization of special education services.

**LOT 2 - Public Safety:** Provide services that reduce recidivism.

An essential element of any “reentry” system is that formerly incarcerated individuals return to their communities prepared to live safe and successful lives. For many individuals exiting state correctional facilities, the promise of successful reentry into their communities goes unfulfilled. In Pennsylvania, the three-year recidivism rate is approximately 60 percent, with rates in some counties exceeding 70 percent. The cost of recidivism is not only borne by the formerly incarcerated and their communities, but also by Pennsylvania taxpayers.

The Commonwealth aims to promote public safety and save taxpayer dollars by implementing a PFS program that reduces recidivism in Pennsylvania. Priority outcomes include, but are not limited to, reduced recidivism, increased employment and job retention, increased high school graduation and/or GED certification, and reduced substance abuse for ex-offenders. Offerors may propose services that achieve outcomes through a variety of approaches, including: employment, education and vocational training, supportive housing, substance abuse treatment, cognitive behavioral therapy, and family therapy. Services employing approaches that are not listed may also be proposed.

**LOT 3 - Health and Human Services:** Provide services that improve the health and well-being of Pennsylvanians.

The Commonwealth is interested in pursuing a PFS program that improves the health and well-being of Pennsylvanians. Offerors may propose services addressing issues that include, but are not limited to, the following: evidence-based home visiting services as defined by the federal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program; substance abuse and addiction; chronic homelessness; supportive housing; child well-being; long-term living; and home- and community-based services. Although the Issuing Office is willing to consider proposals for a variety of programs within the Health and Human Services program area, Offerors should recognize that responsive proposals must: (1) identify an empirically measurable outcome for a clearly defined target population; (2) present credible evidence supporting the

effectiveness of the proposed intervention; and (3) identify measurable cost savings that accrue to the Commonwealth.

**Minimum Program Parameters.** For all Lots, in order for the proposed intervention to have sufficient scope, the Commonwealth requires that total costs for any single PFS performance contract must not be less than \$5 million. Total contract costs include all program costs, outcome evaluation and validation costs, and maximum funder return for the entire length of the contract. Any program implemented pursuant to this RFP must serve a number of individuals that is sufficient to permit a rigorous evaluation of outcomes, relative to a counterfactual. The Commonwealth requires a minimum service delivery period of one year, but strongly recommends that service delivery occur over a multi-year period. Programs may require a planning and start-up period of up to one year prior to the service delivery period, as well as up to two years following service delivery for measurement of outcomes. The Commonwealth reserves the right to determine the duration of contracts in accordance with its sole judgment on how best to achieve the goals of the RFP.

The Commonwealth may make multiple awards pursuant to this RFP. The Commonwealth makes no guarantee that a contract, or any obligation to purchase any services, will result from this RFP. The Commonwealth reserves the right to assign certain obligations under the contract entered into pursuant to this RFP to one or more Commonwealth agencies or entities, as may be appropriate.

The Issuing Office reserves the right to procure independent evaluation and validation services for any PFS program separate from this RFP.

**I-5. Type of Contract.** It is proposed that if the Issuing Office enters into a contract as a result of this RFP, it will be substantially in the form of the standard Contract Terms and Conditions as shown in Part V. The Issuing Office, in its sole discretion, may undertake negotiations with Offerors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Contract.

**I-6. Rejection of Proposals.** The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal received as a result of this RFP.

**I-7. Incurring Costs.** The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-8. Pre-proposal Conference.** The Issuing Office will hold a Pre-proposal Conference as specified in the Calendar of Events. Offerors will have the option to attend in person or participate via webinar. The purpose of this conference is to provide opportunity for clarification of the RFP. Offerors should forward all questions to the Issuing Office in accordance with **Part I, Section I-9** to ensure adequate time for analysis before the Issuing Office provides an answer. Offerors may also ask questions at the conference. In view of the limited facilities available for the conference, Offerors should limit their representation to three (3) individuals per Offeror. The Pre-proposal conference is for information only. Any answers furnished during the

conference will not be official until they have been verified, in writing, by the Issuing Office. All questions and written answers will be posted on the Department of General Services' (DGS) website as an addendum to, and shall become part of, this RFP. Attendance at the Pre-proposal Conference is **OPTIONAL**. If participating by webinar, please use the following information to connect to the conference:

Bridge Number: 17176124788  
Toll-free: 18557344390  
PIN: 112175

Web Conference Provider: OpenScape Web Collaboration

For all Commonwealth of PA Users and Participants that can download .exe files excluding Apple Operating Systems and Mobile Devices.

URL: [https://openscapewebconf1.pa.gov/client/fastclient\\_i\\_r482562EC.exe](https://openscapewebconf1.pa.gov/client/fastclient_i_r482562EC.exe)

Allows full hosting features including desktop and file sharing.

For all Participants including Apple Operating Systems and Mobile Devices Web Client:

<https://openscapewebconfw1.pa.gov/joinclient.aspx?inv=r482562EC>

Allows viewing of collaboration content (shared screen) via browser.

For Commonwealth of PA Users only

Audio Conference Viewer

Conference Viewer:

<https://openscapeuc1.pa.gov/tweb/portal/req?clickToDial&ConferenceID=UDNESWNFaldhckNDO1BCS9qsq%2BsQ1Ooj%2B%2FEI6KcG96A%3D>

Launches Browser window and shows audio conference participants

**I-9. Questions & Answers.** If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line “RFP 6100035379 Question”**) to the Issuing Officer named in **Part I, Section I-2** of the RFP. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its proposal will not be responsive or competitive because the Commonwealth is not able to respond before the proposal receipt date or in sufficient time for the Offeror to prepare a responsive or competitive proposal. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section I-10**. Each Offeror shall be

responsible to monitor the DGS website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described on the DGS website.

**I-10. Addenda to the RFP.** If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the DGS website at <http://www.dgsweb.state.pa.us/RTA/Search.aspx>. It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to the website as an addendum to the RFP.

**I-11. Response Date.** To be considered for selection, hard copies of proposals must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject, unopened, any late proposals.

**I-12. Proposals.** To be considered, Offerors should submit a complete response to this RFP to the Issuing Office, using the format provided in **Part II**, providing separately sealed envelopes **for each Lot for which the Offeror is submitting a proposal: eight (8) paper copies [one marked "ORIGINAL"] of the Technical Submittal, eight (8) paper copies of the Cost Submittal and two (2) paper copies of the Small Diverse Business (SDB) participation submittal.** In addition to the paper copies of the proposal, Offerors shall submit one **complete and exact** copy of the entire proposal (Technical, Cost and SDB submittals, along with all requested documents) on CD-ROM or Flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. Offerors may not lock or protect any cells or tabs. Offerors should ensure that there is no costing information in the technical submittal. Offerors should not reiterate technical information in the cost submittal. The CD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (**Appendix A – Proposal Cover Sheet** to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for **180 days** or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's

proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

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

**I-13. Small Diverse Business Information.** The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

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

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

Questions regarding this Program can be directed to:

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

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

**I-14. Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP. It is requested that Offeror's limit their Technical proposal submittal to a maximum of fifty (50) pages, including attachments and excluding required appendices A-E and financial statements.

**I-15. Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

**I-16. Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

**I-17. Oral Presentation.** Offerors who meet the technical threshold contained in Part III-5 may be required to make an oral presentation. The Issuing Office will schedule the presentations.

**I-18. Prime Contractor Responsibilities.** The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Offeror to be the sole point of contact with regard to contractual matters.

**I-19. Proposal Contents.**

- A. Confidential Information.** The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. Commonwealth Use.** All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S.

§ 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Refer to **Appendix B – Trade Secret/Confidential Proprietary Information Notice Form** of the RFP for a Trade Secret Confidential Proprietary Information Notice Form that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to Part II of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

#### **I-20. Best and Final Offers.**

- A.** While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, the Issuing Office may do one or more of the following, in any combination and order:
1. Schedule oral presentations;
  2. Request revised proposals;
  3. Conduct a reverse online auction; and
  4. Enter into pre-selection negotiations.
- B.** The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors, which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
  2. Those Offerors, which the Issuing Office has determined in accordance with **Part III, Section III-5**, from the submitted and gathered financial and other information, do not possess the financial capability, experience or qualifications to assure good faith performance of the contract.
  3. Those Offerors whose score for their technical submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

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

- C.** The Evaluation Criteria found in **Part III, Section III-4**, shall also be used to evaluate the Best and Final offers.
- D.** Price reductions offered through any reverse online auction shall have no effect upon the Offeror’s Technical Submittal. Dollar commitments to Small Diverse Businesses can be

reduced only in the same percentage as the percent reduction in the total price offered through any reverse online auction or negotiations.

**I-21. News Releases.** Offerors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

**I-22. Restriction of Contact.** From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.

**I-23. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-23.**

**I-24. Term of Contract.** The term of the contract will commence on the Effective Date and will end five (5) years after the effective date. The Commonwealth shall have the option to renew the Contract for ten (10) additional 1-year renewal terms. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

**I-25. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these

items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.

- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

#### **I-26. Notification of Selection.**

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

into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.

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

**I-27. Debriefing Conferences.** Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See Section I-28 of this RFP).

**I-28. RFP Protest Procedure.** The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Supplier%20Service%20Center/Pages/default.aspx>.

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

**I-29. Information Technology Policies.**

This RFP is subject to the Information Technology Policies (ITP's) issued by the Office of Administration, Office for Information Technology (OA-OIT). ITP's may be found at <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=416&PageID=210791&mode=2>

All proposals must be submitted on the basis that all ITPs are applicable to this procurement. It is the responsibility of the Offeror to read and be familiar with the ITPs. Notwithstanding the foregoing, if the Offeror believes that any ITP is not applicable to this procurement, it must list all such ITPs in its technical submittal, and explain why it believes the ITP is not applicable.

The Issuing Office may, in its sole discretion, accept or reject any request that an ITP not be considered to be applicable to the procurement. The Offeror's failure to list an ITP will result in its waiving its right to do so later, unless the Issuing Office, in its sole discretion, determines that it would be in the best interest of the Commonwealth to waive the pertinent ITP.

## PART II

### PROPOSAL REQUIREMENTS

Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Offerors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal and all Small Diverse Business cost data should be kept separate from and not included in the Technical Submittal. Each Proposal shall consist of the following **three** (3) separately sealed submittals:

- A. Technical Submittal, which shall be a response to RFP **Part II, Sections II-1 through II-6;**
- B. Small Diverse Business participation submittal, in response to RFP **Part II, Section II-7;** and
- C. Cost Submittal, in response to RFP **Part II, Section II-8.**

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

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

**II-1. Statement of the Problem.** State in succinct terms your understanding of the problem presented or the service required by this RFP.

**II-2. Overview of Offeror Organization(s).** Offerors must provide a description of the intermediary and service provider (if they are separate entities), including the mission, programs, and organizational structure of each Offeror entity. Additionally, the overview of Offeror organization(s) must include:

- A. Explanation of how the Offeror plans to allocate responsibilities and meet the stated requirements for the intermediary and service provider functions as outlined in Section 1. If multiple organizations are responding to this RFP jointly as a single Offeror, please describe the nature of the relationship and provide details on any

partnership agreement(s). Identify the organization that will serve as the fiscal agent for funds;

- B.** Identification of any other organizations that will have a significant role in the delivery of services and will receive funds from the PFS initiative, including but not limited to subcontractors or consultants;
- C.** Description of the Offeror's organizational infrastructure, as it relates to the Offeror's capacity to implement the proposed PFS program, including information on the expertise and experience of key executives, staff, and directors;
- D.** Description of the Offeror's prior experience collaborating with public and/or private entities for service delivery, as well as with funding entities, highlighting specific prior involvement with the Commonwealth and/or other programs of comparable size and complexity;
- E.** Description of the Offeror's prior experience with performance-based service delivery and with the collecting, tracking, and reporting of data to measure performance and impact; and
- F.** Description of the Offeror's capacity to provide regular and on-demand reports to the Commonwealth on service provision, outcomes, overall project management, and other program-related topics as requested.

**II-3. Work Plan.** Describe in narrative form your technical plan for accomplishing the work. Use the Requirements, Program Criteria and Program Description sections in **Part IV** of this RFP as your reference point. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained. Indicate the number of person hours allocated to each task. Include a Program Evaluation and Review Technique (PERT) or similar type display, time related, showing each event. If more than one approach is apparent, comment on why you chose this approach.

**II-4. Offeror Qualifications.** Only qualified Offerors are eligible to enter into a contract with the Commonwealth pursuant to this RFP. Qualified Offerors are those that fulfill all of the requirements of an intermediary and service provider, as listed below. The intermediary and service provider roles may be assumed by a single entity or separate entities, provided that the Offeror can effectively carry out the functions of both roles. Describe how you will meet these requirements.

**A. Intermediary Qualifications.** The intermediary for a PFS performance contract must be a not-for-profit organization that is able to enter into a contract with the Commonwealth. The intermediary must demonstrate that it has the requisite experience and qualifications to perform the following functions:

- 1.** Raise the necessary operating funds from commercial and/or philanthropic sources;

2. Maintain relationships with funders, including meeting any reporting requirements;
3. Develop the proposed PFS program, including identifying the target population, designing the intervention, selecting target outcomes, budgeting, financial modeling, and operational planning;
4. Manage a performance-based program that involves collecting, monitoring, analyzing, and reporting outcome data as well as implementing course-corrections to improve outcomes;
5. Coordinate and manage partnerships, including willingness, capability, and experience working collaboratively with state government and service providers; and
6. Dedicate full-time staff to the development of the program as the Commonwealth's partner. Staff assigned to this program must have expertise in the policy area targeted by the proposed program.

**B. Service Provider Qualifications.** The provider delivering services under the PFS performance contract must demonstrate the following qualifications:

1. Provide a service or program that is evidence-based and produces measurable outcomes that benefit the target population;
2. Demonstrate experience with performance-based service payment and service delivery;
3. Have the ability to work with multiple partners, including with state government and an independent evaluator;
4. Have the capacity for, and experience with, tracking and monitoring outcome and process data; and
5. Have the capacity and flexibility to adapt or refine an intervention to meet outcome targets.

**II-5. Financial Capability.** Describe your company's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three (3) fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a Dun & Bradstreet comprehensive report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Offeror's financial capability.

**II-6. Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in **Part V**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part V**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections set out in its proposal, the Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part V**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part V or to other provisions of the RFP as specifically identified above.**

**II-7. Small Diverse Business Participation Submittal.**

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

A Small Diverse Business verified by BSBO as a Small Diverse Business must provide a photocopy of its DGS issued certificate entitled "Notice of Small Business Self-Certification and Small Diverse Business Verification" indicating its diverse status.

- B.** In addition to the above certificate, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:
- 1.** *All* Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
  - 2.** *All* Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:
    - a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;

- b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
- c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
- d) The location where each Small Diverse Business will perform services.
- e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.
- f) A subcontract or letter of intent signed by the Offeror and the Small Diverse Business (SDB) for each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. In addition, the subcontract or letter of intent must identify the fixed percentage commitment and associated estimated dollar value that each SDB will receive based on the total value of the initial term of the contract as provided in the Offeror's Cost Submittal. Attached is a letter of intent template (**Appendix C – Small Diverse Business Letter of Intent**) which may be used to satisfy these requirements.
- g) The name, address and telephone number of the primary contact person for each Small Diverse Business.

- 3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.
- 4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.

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

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

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

**II-8. Cost Submittal.** The information requested in this **Part II, Section II-8** shall constitute the Cost Submittal. The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the technical submittal.

Offerors must submit a Budget that reflects the operating costs of each organization participating in the offeror's proposed PFS program. In addition to serving as the Cost Submittal for purposes

of proposal evaluation, the Offeror's Budget will also serve as the basis for negotiations on compensation terms for any contract awarded pursuant to this RFP. Failure to submit a Budget in accordance with the requirements in this section may render the Offeror's entire proposal non-responsive and ineligible for award.

- A. Total Costs to Offeror.** Include any relevant service delivery costs, capital-raising costs, project management costs, personnel costs, legal costs, evaluation costs, and any overhead costs for implementing the proposed program.
- B. Savings to the Commonwealth.** Include estimates of savings and benefits accruing to the Commonwealth as a result of the Offeror's proposed program.
- C. Funding Sources.** Identify likely sources of operating capital (including commercial and philanthropic). Offerors may submit letters of interest from funding sources as an appendix to the Cost Submittal.
- D. Budget Narrative.** Provide a narrative describing how cost estimates were developed.
- E. Assumptions.** For the purposes of constructing a Budget in response to this RFP, Offerors should make the following assumptions:
  - 1. The proposed program will be expected to serve a number of individuals over the duration of the service delivery period that is sufficient to permit a rigorous evaluation of outcomes, relative to a counterfactual;
  - 2. A period of up to one year for planning and program start-up may be included prior to service delivery. Following the service delivery period, the program may extend for at least two years in order to complete service delivery, collect data, and measure outcomes;
  - 3. Offerors should propose other outcome-based savings and benefits, provided they are able to present reasonable estimates of these savings and benefits. Sources for all cost estimates must be cited in the Offeror's Budget narrative; and
  - 4. If Offerors make any other assumptions in their Cost Submittals, they should identify and explain such assumptions in the Budget Narrative.

**II-9. Domestic Workforce Utilization Certification.** Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix D – Domestic Workforce Utilization Certification** of this RFP. Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal.

**II-10. Lobbying Certification and Disclosure.** With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000 or an award of a federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000 all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. Offerors must complete and return the Lobbying Certification Form and the Disclosure of Lobbying Activities Form, which are attached to and made a part of this RFP **Appendix E - Lobbying Certification and Disclosure of Lobbying Activities Form**. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted in the same sealed envelope with the Technical Submittal. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

## PART III

### CRITERIA FOR SELECTION

**III-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal must :

- A. Be timely received from an Offeror;
- B. Be properly signed by the Offeror; and
- C. Include separate proposals for each Lot for which the Offeror is submitting a proposal.

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

**III-3. Evaluation.** The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BSBO will evaluate the Small Diverse Business participation submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

**III-4. Evaluation Criteria.** The table below describes the evaluation criteria that the Commonwealth will apply for the purpose of scoring proposals. Requirements outlined in the evaluation criteria must be met by at least one of the Offeror organizations if the Offeror is a partnership of multiple organizations. The following criteria will be used in evaluating each proposal:

- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as **65 %** of the total points. The final Technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:  
<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

**Evaluation will be based upon the following:**

<i>Criteria for PFS Partner Organization</i>	
<p><b>1. Organizational Capacity</b></p> <ul style="list-style-type: none"> <li>● Experience working with the target population and providing the proposed services</li> <li>● Track record of achieving significant outcomes</li> <li>● Flexibility to innovate and adapt programming to meet outcome targets</li> </ul>	
<p><b>2. Ability to Raise the Necessary Operating Capital</b></p> <ul style="list-style-type: none"> <li>● Demonstrated capacity or experience with fundraising and managing investor relations, including meeting any reporting requirements</li> <li>● Strategy for raising funds for a PFS performance contract, including anticipated participation by commercial and/or philanthropic funders</li> </ul>	
<p><b>3. Partnership Management and Capacity to Develop PFS Program</b></p> <ul style="list-style-type: none"> <li>● Demonstrated track record of success partnering with government</li> <li>● Willingness and ability to collaborate and coordinate with multiple partners, including state government and an independent evaluator, to develop a PFS program and achieve consensus on contract deliverables</li> <li>● Expertise to appropriately specify target population, intervention, target outcomes, budget, financial model, and operational plan</li> <li>● Capacity to dedicate full-time staff, with appropriate experience and relevant issue expertise, to the PFS program</li> <li>● Reasonable allocation of functions among any organizations partnering as a joint offeror to this RFP</li> </ul>	
<p><b>4. Capacity for Managing a Performance-based Program</b></p> <ul style="list-style-type: none"> <li>● Capacity for collecting, monitoring, analyzing, and reporting outcome data as well as implementing course corrections as may be necessary</li> <li>● Demonstrated success managing a performance-based program</li> </ul>	
<i>Criteria for Proposed PFS Program</i>	
<p><b>5. Clearly Defined Outcomes, Target Population, and Intervention Model</b></p> <ul style="list-style-type: none"> <li>● Proposed outcomes are measurable, evaluable (relative to a counterfactual), and achievable based on the proposed services</li> <li>● Target population is well defined, appropriate, and includes sufficient individuals to permit a rigorous evaluation of outcomes</li> <li>● Process for identifying, selecting, and enrolling program participants is clearly explained, including any necessary modifications for a PFS program</li> <li>● Number of individuals to be served by year, number served over the course of the entire program, and average length of time each participant is served are stated</li> <li>● Intervention model is well described, appropriate for the target population and outcomes, and is based on a clearly stated theory of change</li> </ul>	

<ul style="list-style-type: none"> <li>• Development of a practical work plan for implementing the PFS program, which addresses the timing of service delivery, observation, measurement of outcomes, evaluation, and determination of payment</li> </ul>
<p><b>6. Strength of Evidence Base Supporting Program Impact</b></p> <ul style="list-style-type: none"> <li>• Proposed services have strong, credible evidence that supports their link to target outcomes; results that have been demonstrated with more rigorous methods, such as randomized controlled trials, or replicated in multiple evaluations, will be considered as more qualified</li> <li>• Existing evidence supports the feasibility of scaling up services beyond the initial target population if the PFS program is successful</li> <li>• Any impediments, limitations, or challenges to scaling up the proposed program are noted.</li> </ul>
<p><b>7. Safeguards against Harm to the Target Population</b></p> <ul style="list-style-type: none"> <li>• Safeguards to protect the target population from harm, including steps to avoid perverse incentives, are clearly described</li> <li>• Contingency plan if services are unexpectedly discontinued is outlined</li> </ul>

**B. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **15%** of the total points. For this RFP, the Cost Submittal will be evaluated on a qualitative basis, using the following criteria:

1. Program generates quantifiable savings and benefits that accrue to the Commonwealth that are greater than the total costs of the PFS program; interventions will be rated higher that produce savings and benefits that are greater and materialize in earlier time periods;
2. Budget comprehensively outlines all costs associated with the PFS program, including service, legal, personnel, evaluation, and overhead costs;
3. External cost estimates are fully cited and from reputable sources;
4. Budget, including costs and projected Commonwealth savings and benefits, is realistic and allows for adequate return on investment at target outcomes to incentivize funder participation; and
5. Funding sources are identified; responses will be rated higher that are more specific.

**C. Small Diverse Business Participation:**

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

1. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
2. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
3. A significant subcontracting commitment is a minimum of five percent (5%) of the total contract value.
4. A subcontracting commitment less than five percent (5%) of the total contract value is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

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

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

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

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

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

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

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

percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional}}{\text{Points Available*}} = \frac{\text{Awarded/Additional}}{\text{SDB Points}}$$

*Priority Rank 1 = 50 Additional Points Available*

*Priority Rank 3 = 100 Total Points Available*

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

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

- B. Domestic Workforce Utilization:** Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFP. The maximum amount of bonus points available for this criterion is 3% of the total points for this RFP.

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

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

Offerors who seek consideration for this criterion must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Technical Submittal. The certification will be included as a contractual obligation when the contract is executed.

**III-5. Offeror Responsibility.** To be responsible, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

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

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**;
- B. The Offeror's financial information must demonstrate that the Offeror possesses the financial capability to assure good faith performance of the contract. The Issuing Office will review the Offeror's previous three financial statements, any additional information received from the Offeror, and any other publicly-available financial information concerning the Offeror, and assess each Offeror's financial capacity based on calculating and analyzing various financial ratios, and comparison with industry standards and trends.: and
- C. The Offeror must be able to demonstrate that it has the capacity to raise adequate operating funds for the proposed PFS program(s).

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

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

### **III-6. Final Ranking and Award.**

- A. After any best and final offer process conducted, the Issuing Office will combine the evaluation committee's final technical scores, BSBO's final small diverse business participation scores, the final cost scores, and (when applicable) the domestic workforce utilization scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B. The Issuing Office will rank responsible offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; **PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT**

SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT HIGHEST OVERALL SCORE.

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

## PART IV

### WORK STATEMENT

**IV-1. Objectives.** Please refer to Part I-4

**IV-2. Nature and Scope of the Project.** For the purpose of this RFP there will be three (3) Lots as described below:

**Minimum Program Parameters.** For all Lots, in order for the proposed intervention to have sufficient scope, the Commonwealth requires that total costs for any single PFS performance contract must not be less than \$5 million. Total contract costs include all program costs, outcome evaluation and validation costs, and maximum funder return for the entire length of the contract. Any program implemented pursuant to this RFP must serve a number of individuals that is sufficient to permit a rigorous evaluation of outcomes, relative to a counterfactual. The Commonwealth requires a minimum service delivery period of one year, but strongly recommends that service delivery occur over a multi-year period. Programs may require a planning and start-up period of up to one year prior to the service delivery period, as well as up to two years following service delivery for measurement of outcomes. The Commonwealth reserves the right to determine the duration of contracts in accordance with its sole judgment on how best to achieve the goals of the RFP.

The Commonwealth may make multiple awards pursuant to this RFP. The Commonwealth makes no guarantee that a contract, or any obligation to purchase any services, will result from this RFP. The Commonwealth reserves the right to assign certain obligations under the contract entered into pursuant to this RFP to one or more Commonwealth agencies or entities, as may be appropriate.

The Issuing Office reserves the right to procure independent evaluation and validation services for any PFS program separate from this RFP.

**LOT 1 - Early Childhood Education:** Provide services that expand access to high-quality pre-kindergarten for three- and four-year-olds from low-income families.<sup>3</sup>

Children who participate in high-quality pre-kindergarten (“pre-k”) perform better in school, graduate from high school at higher rates, and earn more throughout their lives compared to peers who do not have access to high-quality pre-k programs. Since 2003, Pennsylvania has been among the states that offer full-day pre-k to three- and four-year-olds. Evidence shows that the Commonwealth’s hallmark pre-k program, Pennsylvania Pre-K Counts, is working. In 2013-14, third graders from low-income families who had been enrolled in Pre-K Counts outperformed a comparison group of their low-income peers in both math and reading.

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<sup>3</sup> For the purposes of this RFP, “low-income families” are defined as those earning up to three times the federal poverty level.

The future success of Pennsylvania’s children depends on dramatically expanding access to proven early learning programs like Pre-K Counts. Today, only one out of three Pennsylvania children in families earning up to three times the federal poverty level, or \$71,550 for a family of four, is enrolled in high-quality pre-k. To advance the goal of universal high-quality pre-kindergarten for Pennsylvania’s three- and four-year-olds, the Commonwealth is interested in using PFS as a tool to expand high-quality pre-k for low-income families

Priority outcomes include, but are not limited to, increased preparedness for kindergarten, increased academic performance in reading and math, and decreased utilization of special education services.

**LOT 2 - Public Safety:** Provide services that reduce recidivism.

An essential element of any “reentry” system is that formerly incarcerated individuals return to their communities prepared to live safe and successful lives. For many individuals exiting state correctional facilities, the promise of successful reentry into their communities goes unfulfilled. In Pennsylvania, the three-year recidivism rate is approximately 60 percent, with rates in some counties exceeding 70 percent. The cost of recidivism is not only borne by the formerly incarcerated and their communities, but also by Pennsylvania taxpayers.

The Commonwealth aims to promote public safety and save taxpayer dollars by implementing a PFS program that reduces recidivism in Pennsylvania. Priority outcomes include, but are not limited to, reduced recidivism, increased employment and job retention, increased high school graduation and/or GED certification, and reduced substance abuse for ex-offenders. Offerors may propose services that achieve outcomes through a variety of approaches, including: employment, education and vocational training, supportive housing, substance abuse treatment, cognitive behavioral therapy, and family therapy. Services employing approaches that are not listed may also be proposed.

**LOT 3 - Health and Human Services:** Provide services that improve the health and well-being of Pennsylvanians.

The Commonwealth is interested in pursuing a PFS program that improves the health and well-being of Pennsylvanians. Offerors may propose services addressing issues that include, but are not limited to, the following: evidence-based home visiting services as defined by the federal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program; substance abuse and addiction; chronic homelessness; supportive housing; child well-being; long-term living; and home- and community-based services. Although the Issuing Office is willing to consider proposals for a variety of programs within the Health and Human Services program area, Offerors should recognize that responsive proposals must: (1) identify an empirically measurable outcome for a clearly defined target population; (2) present credible evidence supporting the effectiveness of the proposed intervention; and (3) identify measurable cost savings that accrue to the Commonwealth.

### **IV-3. Requirements.**

**Contractor Capabilities.** The Issuing Office will only consider proposals from Offerors that are capable of meeting all service provision, project management, and capital-raising functions required by PFS performance contracts. See Part III, Section 1 for the full list of required functions. It is permissible for a single entity to propose to take on all three roles; for a lead organization to propose to fulfill one of the roles and to obtain the additional capacity necessary to fulfill the other roles through pre-specified consulting or subcontracting arrangements; or for a joint-entity of multiple partnering organizations to propose to take on all three roles (with or without subcontracting arrangements).

Possible Offeror structures include, but are not limited to: (1) an independent service provider with program management and capital-raising capabilities; (2) a service provider with program management capabilities that subcontracts with a consultant to support capital-raising; (3) a financial intermediary with program management and capital-raising capabilities that subcontracts with one or more service providers; and (4) a partnership between a service provider and a financial intermediary with capital-raising capabilities that together have program management capabilities.

**IV-4. Program Criteria.** Provide a detailed description of the Offeror's proposed program in narrative form. The Offerors' proposed PFS programs must meet each of the following criteria:

- A. Budget Savings and Benefits.** PFS programs must deliver services that result in demonstrated, achievable, and quantifiable budget savings and benefits to the Commonwealth, net of the maximum payments that the Commonwealth may be obligated to make under a given PFS performance contract.
- B. Strong Evidence Base.** Offerors must demonstrate a strong evidence base supporting the proposed program's positive impact on the target population, including evidence that one or more proposed outcomes are tied to savings that accrue to the Commonwealth. Evidence derived from more rigorous methods or corroborated by multiple evaluations will be considered more qualified in the selection process.
- C. Evaluability and Scalability.** Offerors must demonstrate the feasibility of measuring and reporting outcomes and impacts associated with the proposed program, including the potential for designing and obtaining the necessary data for a rigorous counterfactual analysis. The proposed program must feasibly be able to serve a sufficient number of individuals over the course of the service delivery period to support and enable a robust evaluation for determining program impacts and triggering success payments. Additionally, Offerors should present evidence supporting the feasibility of scaling up service delivery beyond the initial target population if the proposed program is successful.
- D. Harm Avoidance.** Proposed programs must include safeguards against harm to the target population, including steps taken to avoid creating perverse incentives.

**IV-5. Program Description.** Offerors must provide a detailed description of their proposed program that clearly identifies the relevant program area to which it is directed. In particular, this element of the technical proposal should:

- A.** Describe the target population to be served, as well as any geographic focus areas, if applicable. Provide an estimate of the number of persons to be served annually over the duration of the contract. In doing so, explain the specific methods that will be used to identify the target population and to select, engage, and retain program participants. Also explain any modifications to current or ongoing processes that may be necessary for a PFS program. Describe your understanding of the developmental, support, and service needs of this population that will need to be addressed in order to achieve sustainable positive program outcomes;
- B.** Describe the program delivery model, including which services would be delivered, where the services would be delivered, and by whom. Provide a clear and specific process for determining the type, level, and duration of assistance for each program participant and the expected average benefits to be provided to eligible participants. Additionally, identify for which services the Offeror intends to be the primary provider, and for which, if any, services the Offeror intends to contract with one or more subcontractors;
- C.** Identify expected outcomes for the treatment population. Describe the evidence base underlying the recommended program model as well as any proof of concept for the proposed programming;
- D.** Identify the anticipated outcome metric(s) as well as the means and methodology for measuring, evaluating, and documenting program impacts (e.g. creation of a randomized control group). Describe ability to track and analyze data for performance measurement;
- E.** Describe the planned approach to raising funds for the project, from a combination of commercial and philanthropic sources, to cover operating costs and absorb risk if necessary. Identify how the Offeror intends to conduct ongoing program administration and project management;
- F.** Provide a detailed work plan and implementation schedule, including key milestones and deliverables. Address the timing of planning, start-up, service delivery, observation, measurement of outcomes, evaluation, and determination of payment for a PFS performance contract;
- G.** Assess the future scalability of services beyond the proposed PFS program, if the proposed PFS program is successful, as well as any potential limitations to scaling;
- H.** Recommend a governance structure for the PFS performance contract that: (1) ensures that service providers with expertise on the target population have a significant role in decision making; (2) ensures that the Commonwealth will have sufficient oversight and

participation in decision making to allow it to protect the population being served from harm and to verify that the program delivery models are consistent with the intentions of this RFP; and (3) allows sufficient flexibility for the Offeror to produce the desired amount of learning, innovation, and performance-based management;

- I. Describe safeguards against harm that the Offeror will provide for the target population during the course of the intervention and suggest a contingency plan for participating individuals should services be discontinued for any reason;
- J. Identify any questions or concerns related to the Commonwealth's program goals set forth in this RFP, and/or obstacles to achieving such goals, including Offeror capacity gaps. Successful execution of a PFS performance contract will require systems to support performance management, as well as the ability to measure outcomes and secure funding. The Issuing Office understands that fulfilling all these requirements will likely require the coordinated efforts of multiple entities. References to capacity gaps will be used to ensure that all necessary roles and functions are provided by the partnership of organizations entering into a PFS performance contract; and
- K. Provide full citations for any referenced data or sources.

**IV-6. Contract Turnover.** Upon expiration or termination of the Project, the selected Offeror shall provide for a smooth and timely turnover of its services to the Department and its contractors, as applicable. In addition, the selected Offeror must:

- A. Provide a final detailed description of the turnover plan for approval by the Department and initiated four (4) months prior to the last day of the Project;
- B. Cooperate with the Department, and supply the Department and/or its successor contractor with all information required by the Department and/or its successor contractor during the turnover process; and
- C. Pay all costs related to the transfer of materials and responsibilities as a normal part of doing business with the Department.

**IV-7. Reports and Project Control.**

- A. **Status Report.** A quarterly progress report covering activities, problems and recommendations. This report should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office.
- B. **Ad-Hoc Reporting.** The selected Offeror will provide ad-hoc reports as requested by the Office of the Budget.

**IV-8. Additional Contract Terms.** All references to a "Purchase Order" in the terms and conditions contained in **Part V** of the RFP shall be substituted with either the term Contract, or the phrase "formal written notice to proceed" as appropriate.

#### **IV-9. Contract Requirements—Small Diverse Business Participation.**

All contracts containing Small Diverse Business participation must also include a provision requiring the selected contractor to meet and maintain those commitments made to Small Diverse Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BSBO. All contracts containing Small Diverse Business participation must include a provision requiring Small Diverse Business subcontractors to perform at least **50%** of the subcontracted work.

The selected contractor's commitments to Small Diverse Businesses made at the time of proposal submittal or contract negotiation shall, to the extent so provided in the commitment, be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted to BSBO, which will make a recommendation to the Contracting Officer regarding a course of action.

If a contract is assigned to another contractor, the new contractor must maintain the Small Diverse Business participation of the original contract.

The selected contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BSBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Diverse Business subcontractors and suppliers. Also, this information will serve as a record of fulfillment of the commitment the selected contractor made and for which it received Small Diverse Business participation points. If there was no activity during the quarter then the form must be completed by stating "No activity in this quarter."

**NOTE: EQUAL EMPLOYMENT OPPORTUNITY AND CONTRACT COMPLIANCE STATEMENTS REFERRING TO COMPANY EQUAL EMPLOYMENT OPPORTUNITY POLICIES OR PAST CONTRACT COMPLIANCE PRACTICES DO NOT CONSTITUTE PROOF OF SMALL DIVERSE BUSINESS STATUS OR ENTITLE AN OFFEROR TO RECEIVE CREDIT FOR SMALL DIVERSE BUSINESS UTILIZATION.**

#### **IV-10. Emergency Preparedness.**

To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

- A.** Describe how you anticipate such a crisis will impact your operations.
- B.** Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:

1. Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
2. Identified essential business functions and key employees (within your organization) necessary to carry them out
3. Contingency plans for:
  - a. How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
  - b. How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
4. How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
5. How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

## **PART V**

### **STANDARD CONTRACT TERMS AND CONDITIONS**

#### **1. TERM OF CONTRACT**

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 fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

#### **2. EXTENSION OF CONTRACT TERM**

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

#### **3. DEFINITIONS**

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

- a. 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".
- b. Contracting Officer: The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days: Unless specifically indicated otherwise, days mean calendar days.
- d. 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.
- e. Documentation: All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.
- f. Services: All Contractor activity necessary to satisfy the Contract.

#### **4. INDEPENDENT PRIME CONTRACTOR**

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

#### **5. DELIVERY**

- a. **Supplies Delivery:** All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.
- b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

#### **6. ESTIMATED QUANTITIES**

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

#### **7. WARRANTY**

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 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.

#### **8. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY**

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 agrees 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 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.

## **9. OWNERSHIP RIGHTS**

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.

## **10. ACCEPTANCE**

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.

#### **11. PRODUCT CONFORMANCE**

The Commonwealth reserves the right to require any and all Contractors to:

- a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- b. Supply published manufacturer product documentation.
- c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.
- e. Provide customer references.
- f. Provide a product demonstration at a location near Harrisburg or the using agency location.

#### **12. REJECTED MATERIAL NOT CONSIDERED ABANDONED**

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

#### **13. COMPLIANCE WITH LAW**

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

#### **14. ENVIRONMENTAL PROVISIONS**

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 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. § 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. § 693.1.

#### **15. POST-CONSUMER RECYCLED CONTENT**

- a. 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 on the Department of General Services website at [www.dgs.state.pa.us](http://www.dgs.state.pa.us) on the date of submission of the bid, proposal or contract offer.

- b. **Recycled Content Enforcement:** 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.

## 16. COMPENSATION

- a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.
- b. **Compensation for Services:** 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.

## 17. BILLING REQUIREMENTS

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:

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

## **18. PAYMENT**

- a. 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.
- b. 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.
- c. The Commonwealth will make contract payments through Automated Clearing House (ACH).
  - 1) Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their 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.

## **19. TAXES**

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

## **20. ASSIGNMENT OF ANTITRUST CLAIMS**

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.

## **21. COMMONWEALTH HELD HARMLESS**

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives 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 OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

## **22. AUDIT PROVISIONS**

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

### **23. DEFAULT**

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

amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;

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

#### **24. FORCE MAJEURE**

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental

entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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.

## **25. TERMINATION PROVISIONS**

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

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

## **26. CONTRACT CONTROVERSIES**

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.
- b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

## **27. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

## **28. OTHER CONTRACTORS**

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

## **29. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. 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.

- d. 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.
- e. 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.
- f. 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.
- g. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- h. 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.

### **30. CONTRACTOR INTEGRITY PROVISIONS**

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

- 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:

- 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. 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 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.

### **31. CONTRACTOR RESPONSIBILITY PROVISIONS**

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

licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

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

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

### **32. AMERICANS WITH DISABILITIES ACT**

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the “General Prohibitions Against Discrimination,” 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor’s failure to comply with the provisions of subparagraph a above.

### **33. HAZARDOUS SUBSTANCES**

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the “Worker and Community Right to Know Act” (the “Act”) and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
  - 1) Hazardous substances:
    - a) The chemical name or common name,
    - b) A hazard warning, and
    - c) The name, address, and telephone number of the manufacturer.
  - 2) Hazardous mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
    - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
    - d) A hazard warning, and
    - e) The name, address, and telephone number of the manufacturer.
  - 3) Single chemicals:

- a) The chemical name or the common name,
  - b) A hazard warning, if appropriate, and
  - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
- a) The common name, but if none exists, then the trade name,
  - b) A hazard warning, if appropriate,
  - c) The name, address, and telephone number of the manufacturer, and
  - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

- b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to

the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

#### **34. COVENANT AGAINST CONTINGENT FEES**

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.

#### **35. APPLICABLE LAW**

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

#### **36. INTEGRATION**

This Contract, including all referenced documents, 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.

#### **37. ORDER OF PRECEDENCE**

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

#### **38. CONTROLLING TERMS AND CONDITIONS**

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

#### **39. CHANGES**

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

#### **40. BACKGROUND CHECKS**

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

#### **41. CONFIDENTIALITY**

- a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
- b. The obligations stated in this Section do not apply to information:
  - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
  - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
  - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
  - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
  - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

#### **42. NOTICE**

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is

confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

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

#### **43. RIGHT TO KNOW LAW**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.