

## GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

**1. SUBMISSIONS OF BIDS:** All bids must be submitted in a sealed envelope which is clearly marked "Bid" and includes the Department of General Services - assigned contract or purchase requisition number on the outside of the envelope. If a bid is not opened at the scheduled bid opening time because of the bidder's failure to mark the envelope as required, the bid will not be considered by the Department for award.

Bid prices must be typewritten or in ink. Bids must be signed in ink. Bids which are priced or signed in pencil will be rejected. It is the responsibility of each bidder to ensure that his bid is received at the bid opening room prior to the date and time set for the opening of bids, regardless of medium used. If a bidder decides to mail in his bid, he should allow adequate time for delivery. No bid shall be considered if it arrives at the bid opening room (shown on the cover sheet) after the date and time set for bid opening. In the event that, due to inclement weather, natural disaster, or other cause, the Department of General Services' offices are officially closed on the date scheduled for bid opening, the bid opening date shall be automatically postponed until the next Department of General Services business day, unless the bidders are otherwise notified by the Department of General Services. The bid opening time shall remain the same. If a bidder fails to return all of the sheets of this invitation for bid with its bid proposal, the bid may be rejected. Bids must be firm. If a bid is submitted with conditions or exceptions or not in conformance with the terms and conditions in this invitation for bid, it shall be rejected. The bid shall also be rejected if the product offered by the bidder is not in substantial conformance with the specifications as determined by the Department of General Services.

**2. BIDDERS' REPRESENTATION AND AUTHORIZATION:**

- a. Each bidder by making its bid represents that:
  - 1) The bidder has read and understands the terms and conditions of the bidding documents, which are listed in the Table of Contents, and the bid is made in accordance therewith.
  - 2) Except as specifically noted in the bid, the product(s) offered in the bid is in complete conformance with the specifications in the bidding documents without exceptions.
  - 3) The bidder understands and acknowledges that all information provided by, and representations made by, the bidder in the bid are material and important and will be relied upon by the Department of General Services in awarding the contract(s) or purchase order(s). Any misstatement shall be treated as fraudulent concealment from the Department of the true facts relating to the submission of this bid. A misrepresentation shall be punishable under Section 4904 of Title 18 P.C.S.A.
  - 4) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
  - 5) Neither the price(s) nor the amount of the bid, and neither the approximate price(s) nor the approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
  - 6) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
  - 7) The bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
  - 8) The bidder, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the bidder in its proposal.
  - 9) To the best of the knowledge of the person signing the bid for the bidder and except as otherwise disclosed by the bidder in its proposal, the bidder has no outstanding, delinquent liabilities to the Commonwealth including, but not limited to, any state tax liability or other debt of the bidder that is owed to the Commonwealth and not being contested on appeal.
  - 10) The bidder has not, under separate contract with a Commonwealth agency, made any recommendations to the

Commonwealth agency concerning: this invitation for bid, the need for the product(s) described in this invitation for bid, or the specifications for the product(s) described in this invitation for bid, and the product(s) to be purchased through this invitation for bid are for the use of that Commonwealth agency pursuant to those recommendations.

11) Each hardware, software or firmware item which uses date/time information and which is offered separately or as a component of another item or supply, shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations.

b. Each bidder by making its bid authorizes all Commonwealth agencies to release to the Department of General Services information related to liabilities to the Commonwealth, including but not limited to tax, unemployment compensation and workers' compensation liabilities.

c. If an award is made to the bidder, the bidder agrees that it intends to be legally bound to the contract which is formed between the Commonwealth and the bidder.

3. **QUESTIONS:** Any questions concerning conditions and specifications must be directed in writing to the Bureau of Purchases, to the attention of the Buyer referenced in this bidding document. Inquiries must reference date of bid opening and requisition or contract number and must be received no later than five (5) days prior to date of bid opening. Failure to comply with these conditions will result in the bidder waiving his right to dispute the bid specifications and conditions.

4. **PRICES:** Successful bidders will be required to deliver awarded products at the prices quoted in their bid. If, after award of the contract or purchase order, an awarded bidder is the beneficiary of an unanticipated general or special price decrease from the manufacturer of the awarded items, the awarded bidder must pass the price decrease on to the Commonwealth. If the awarded bidder's generally-available sales price for any awarded product is, upon the date of installation, lower than the contract or purchase order price for such product, the awarded bidder must sell the product to the Commonwealth at the lower price.

5. **TAXES:** The Commonwealth is exempt from all Federal excise and transportation taxes (to the extent authorized in the Internal Revenue Code of 1954, as amended), the Fair Trade law, and Pennsylvania sales and use taxes for tangible personal property. 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. Nothing in this paragraph is meant to exempt a construction contractor from the payment of sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance of its construction contract. If the Commonwealth is required by law to pay any excise tax and then seek a refund or credit, the contractor may add the amount of the tax to the bid price as a separate item.

6. **APPROVED EQUAL:** Whenever a product is defined in this invitation by trade name and catalogue number of a manufacturer or contractor, the term "or approved equal," if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a "no substitute" is requested. When a "no substitute" is requested, the Department of General Services will consider bids for the referenced product only. The term "or approved equal" is defined as meaning any other make which, in the sole opinion of the Department of General Services, is of such character, quality and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. The bidder quoting on a product other than the referenced product shall furnish complete identification on the bid proposal of the product he is offering by trade name, brand and/or model number. The bidder shall also furnish descriptive literature and data with respect to the substitute product he proposes to furnish. Bidders offering a substitute shall also indicate any known specification deviations from the referenced product.

7. **ALTERNATES:** A bidder who wants to offer an alternate must notify the Bureau of Purchases (attention the buyer referenced in the bidding document) in writing, at least five (5) days prior to the scheduled bid opening, that the bidder intends to offer an alternate in its bid. An "alternate" is a product which deviates from the requirements of the

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specifications in its composition, qualities, performance, size, dimensions, etc. The written notification from the bidder must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Department of General Services will determine whether the alternate is acceptable. If the department, in its discretion, determines that the alternate is acceptable, the department will issue a change notice to the invitation for bid which revises the specifications. If no change notice is issued revising the specification, the bid offering the alternate will not be considered for award.

**8. NEW EQUIPMENT:** Unless otherwise specified in this invitation for bid, all products offered by the bidder must be new or remanufactured. A "new" product is one which will be used first by the Commonwealth after it is manufactured or produced. A "remanufactured" product is one which: 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in the opinion of the Commonwealth, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bid, used or reconditioned products are not acceptable. This clause shall not be construed to prohibit bidders from offering products with recycled content, provided the product is new or remanufactured.

**9. MODIFICATION OR WITHDRAWAL OF BID:**

a. Bids may only be modified by written notice received at the bid opening room prior to the exact hour and date specified for bid opening. The written notice shall specifically identify the bid to be modified and shall be signed by the bidder. The bid modification must be received in a sealed envelope and the envelope must identify the purchase requisition or contract number, the bid opening date, and should state that enclosed in the envelope is a bid modification. Offers and modifications of bids received after the exact hour and date specified for receipt of bids shall not be considered.

b. Bids may be withdrawn by written, facsimile, or telegraphic notice received at the bid opening room prior to the exact hour and date specified for bid opening. The notice shall specifically identify the bid to be withdrawn and shall be signed by the bidder. If by telegram, written confirmation over the signature of the bidder must have been mailed and postmarked on or before the date and time set for bid opening. A bid may also be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact hour and date set for the opening of bid. Request for the withdrawal of a bid received after the exact hour and date specified for bid opening will not be considered.

c. A bid may not be modified, withdrawn, or cancelled by any bidder for a period of sixty (60) days following the time and date designated for bid opening, unless otherwise specified by the bidder in its bid. If the lowest responsible bidder, as determined by the Department of General Services, withdraws its bid prior to the expiration of the award period or fails to comply with the requirements set forth in this invitation for bid and the bid proposal, including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the bidder's price and the actual cost that the Commonwealth pays for the item(s).

d. After the receipt of bids, the Department of General Services shall have the right to contact bidders for the purpose of seeking:

1) Clarification of the bid which confirms the Department's understanding of statements or information in the bid or;

2) Additional information on the product offered; provided the invitation for bid does not require the rejection of the bid for failure to include such information.

**10. REJECTION OF BIDS:** The Secretary of General Services reserves the right to reject any and all bids, to waive technical defects or any informality in bids, and to accept or reject any part of any bid if, in his judgment, the best interests of the Commonwealth are thereby served.

**11. AWARDS:** Unless all bids are rejected, and except as otherwise provided by law, award will be made to the lowest responsible bidder. Unless otherwise specified by the Commonwealth in this invitation for bid,

the Commonwealth reserves the right to award by item or on a total bid basis, whichever is deemed most advantageous to the Commonwealth. In cases of discrepancies in prices, the unit price will be binding unless the unit price is obviously in error and the extended price is obviously correct, in which case the erroneous unit price will be disregarded.

**12. TIE BIDS:** All tie bids will be broken by the Secretary of General Services or his designee. Preference shall be given to products manufactured in the United States.

**13. PROMPT PAYMENT DISCOUNTS:** Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any bidder, however, the Commonwealth will take advantage of such offer.

**14. ASSIGNMENT OF ANTITRUST CLAIMS:** The awarded bidder (contractor) and the Commonwealth recognize that in actual economic practice, overcharges by 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 this 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 thereafter acquire under state or federal antitrust laws relating to the products which are the subject of this contract.

**15. ASSIGNMENT OF CONTRACT:** No contract may be assigned or transferred without the written consent of the Department of General Services.

**16. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY:** The contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patents, copyrights and trademark infringement in the United States of any of the products provided. 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 the defense of any such action. The contractor shall pay all damages, expenses and cost finally awarded therein against the Commonwealth. 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. If any of the products provided by the contractor in such suit or proceeding are held to constitute infringement and the use thereof is enjoined, the contractor shall, at his own expense and at his option, either procure the right to continue use of such infringement products, replace them with non-infringing 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 successful bidder without its written consent.

**17. WARRANTY:** The contractor warrants that all products provided will be free and clear of any defects in workmanship or materials and that the products supplied will conform to the specifications.

**18. DELIVERY:** All products shall be delivered F.O.B. Destination with any delivered duty paid (DDP). The contractor agrees to bear the risk of loss, injury or destruction of products ordered which occur prior to receipt by the Commonwealth. Such loss, injury or destruction shall not release contractor from any contractual obligations. Except as otherwise provided in Paragraph 19, all products must be delivered within the time period specified on the order. Time is of the essence and, in addition to any other remedies contained in this invitation for bid, the order is subject to termination for failure to deliver as specified. In the event of termination, the Commonwealth shall have the right to purchase in the open market a corresponding quantity of the products and the contractor shall be responsible for any excess cost to the Commonwealth. Unless otherwise

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stated by the bidder or indicated in the Special Conditions of the invitation for bid, delivery must be made within thirty (30) days after award.

**19. FORCE MAJEURE:** The contractor shall not be responsible for delays in shipment occasioned by unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or the public enemy, acts of the Commonwealth, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the contractor notify the Director of the Bureau of Purchases promptly in writing of any cause for delay and the Director of the Bureau of Purchases concurs that the delay was beyond the control and without the fault or negligence of the contractor. If reasonably possible, the contractor shall make other arrangements for performance during such stoppage. Following restoration of operations, the contractor shall make every reasonable effort to deliver the products as soon as possible.

**20. INSPECTION AND REJECTION:** No product received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect said product. Any product 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 products or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The decision of the Secretary of General Services or his designee shall be final. It shall thereupon become the duty of the contractor to remove rejected products from the premises without expense to the Commonwealth within fifteen (15) days notification. Rejected products 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 products. Upon notice of rejection, the contractor shall immediately replace all such rejected products 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 purchase in the open market a corresponding quantity of such products, and deduct from any monies due or that may thereafter become due to the contractor, the difference between the price stated in the contract or purchase order and the actual cost thereof to the Commonwealth.

**21. PAYMENT:**

a. The Commonwealth shall put forth reasonable efforts to make payment within thirty (30) days after delivery of the product or receipt of a properly completed invoice, whichever is later. Payment may be delayed if the payment amount on an invoice is not based upon the price per unit of measure as stated in the purchase order. If any payment is not made within forty-five (45) days, 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 products furnished by the contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after delivery, and to reject the products 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 debt of the contractor or its subsidiaries that it owed to the Commonwealth and not being contested on appeal against any payments due the contractor under this or any other contract with the Commonwealth.

b. Commonwealth agencies 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.

**22. DISPUTES:** In the event of a disagreement or dispute in regard to the interpretation or construction of any clause, paragraph or items of the invitation for bid, purchase order or contract, such disagreement shall be referred in writing by the contractor to the Director of the Bureau of Purchases for his determination. He shall reduce his decision to writing and furnish a copy thereof to the contractor. The decision of the Director shall be final and conclusive unless, within thirty (30) days after receipt of

such copy, the contractor furnished the Director of the Bureau of Purchases with written notice of his intent to file a claim with the Commonwealth Board of Claims. The contractor shall proceed diligently with the performance of the contract in a manner consistent with the interpretation of the Director of the Bureau of Purchases.

**23. HOLD HARMLESS:** The contractor shall be responsible for and agrees to indemnify and hold harmless, the Commonwealth of Pennsylvania from damages to property or injuries (including death) to any person(s) and any other losses, damages, expenses, claims, demands, suits and actions by any party against the Commonwealth arising out of the negligent, or equally or more culpable, conduct by the contractor, its agents, subcontractors and employees during the term of or in connection with the products furnished and any work performed by the contractor.

**24. TERMINATION:** The Commonwealth shall have the right to terminate the contract, purchase order or any field purchase order issued pursuant to the contract for any of the following reasons:

a. Contractor's failure to perform or inadequate performance of its obligations under the contract, purchase order or field purchase order if such failure to perform or inadequate performance is not cured within ten (10) days (or such longer period as the Commonwealth may authorize in writing) after receipt of written notice from the Commonwealth specifying such failure or inadequacy.

b. Non-availability of funds, state and/or federal, to the Commonwealth.

c. For the convenience of the Commonwealth. In this instance, the contractor shall be reimbursed for the costs and expenses which it incurred prior to the effective date of the termination. In no event shall the contractor be entitled to recover any amount for loss of profits.

**25. HAZARDOUS SUBSTANCES:** Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied by the contractor. 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:
  - (i) the chemical name or common name,
  - (ii) a hazard warning, and
  - (iii) the name, address and telephone number of the manufacturer.
- 2) Hazardous mixtures:
  - (i) the common name, but if none exists, then the trade name,
  - (ii) the chemical or common name of special hazardous substances comprising .01% or more of the mixture,
  - (iii) the chemical or common name of hazardous substances consisting 1.0% or more of the mixture.
  - (iv) a hazard warning, and
  - (v) the name, address and telephone number of the manufacturer.
- 3) Single chemicals:
  - (i) the chemical name or common name,
  - (ii) a hazard warning, if appropriate, and
  - (iii) the name, address and telephone number of the manufacturer.
- 4) Chemical mixtures:
  - (i) the common name, but if none exists, then the trade name,
  - (ii) a hazard warning, if appropriate,
  - (iii) the name, address and telephone number of the manufacturer, and
  - (iv) the chemical name or common name of either the top five substances by volume or those substances constituting 5.0% or more of the mixture.

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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:

- 1) NFPA 704, Identification of the Fire Hazards of Materials.
- 2) National Paint and Coatings Association: Hazardous Materials Identification System.
- 3) American Society for Testing and Materials, Safety Alert Pictorial Chart.
- 4) 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.

FAILURE TO PROPERLY LABEL EACH INDIVIDUAL PRODUCT AND THE CARTON, CONTAINER OR PACKAGE IN WHICH THE PRODUCT IS SHIPPED SHALL RESULT IN THE REJECTION OF THE SHIPMENT UNDER PARAGRAPH 18.

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.

**26. GENERAL:**

a. This invitation for bid, the bid proposal and the notification award (including any purchase order or field limited purchase order) constitutes the complete agreement between the parties. The terms, conditions, and specifications contained in the invitation for bid cannot be waived, altered or modified except by written agreement of the parties.

b. The agreement shall be interpreted, construed, and enforced in accordance with the laws of and regulations promulgated by the Commonwealth of Pennsylvania. Any such laws or regulations promulgated hereafter which conflict with the provision in the agreement shall automatically preempt such provisions in the agreement and become a part of the agreement fully binding on the parties hereto.

c. The agreement shall be binding upon the parties hereto and their respective successors and assigns.

**NONDISCRIMINATION CLAUSE**

During the term of this contract, Contractor agrees as follows:

(1) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, sex or handicap. Such affirmative action shall include, but is not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(2) Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state all qualified applicants will receive

consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex or handicap.

(3) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement to other contract or understanding, a notice advising said labor union or worker's representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by contractor.

(4) It shall be no defense to a finding of noncompliance with this nondiscrimination clause that contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

(5) Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that contractor will be unable to meet its obligations under this nondiscrimination clause, contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(6) Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

(7) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

(8) Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

(9) Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.

(10) Contractor's obligations under this clause are limited to the contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

**CONTRACTOR INTEGRITY PROVISIONS****1. Definitions:**

a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

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 execution of this agreement.

c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a 5 percent interest.

d. Financial Interest means:

(1) ownership of more than a 5 percent interest in any business;

or

(2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

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e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.

7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non use of any one 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.

## CONTRACTOR RESPONSIBILITY PROVISIONS

1. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the contractor cannot so certify, then it agrees to submit along with the bid/proposal a written explanation of why such certification cannot be made.

2. If Contractor enters into subcontracts or employs under this contract any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions or renewals thereof, the

Commonwealth shall have the right to require the contractor to terminate such subcontracts or employment.

3. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the contractor's compliance with terms of this or any other agreement between the contractor and the Commonwealth which result in the suspension or debarment of the contractor. Such costs shall include, but 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 which do not result in the contractor's suspension or debarment.

4. The contractor may obtain the current list of suspended and debarred contractors by contacting the:

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

## PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

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

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act, 28 C.F.R. §35.101 et seq.*, the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing 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 the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. 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 paragraph 1. above.

## BID PROTEST PROCEDURE

1.1 **WHO MAY FILE THE PROTEST.** Any bidder whose bid is timely filed may file a protest. Where the alleged improprieties are apparent prior to bid opening, any potential bidder for the contract may file a protest.

1.2 **TIME AND PLACE FOR FILING.** (a) Protests on improprieties in solicitations are required to be filed before award; on any other grounds, within seven (7) days after contract award or within seven (7) days after the bidder has knowledge of the basis for the protest, whichever occurs first. Date of filing is the date of receipt of protest. (b) The Deputy Secretary for good cause may consider any untimely protest. (c) Protests must be in writing and filed with the appropriate Deputy Secretary in Harrisburg. The Deputy Secretary will assign the protest to a bureau for handling.

1.3 **NOTICE OF PROTEST.** The bureau shall notify the successful bidder of the protest if award has been made. If the protest is received before award and substantial issues are raised by the protest, all bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified. Any bidder or interested party may file their agreement/disagreement with the bureau within three (3) days after receipt of notice of protest.

1.4 **DELAY.** The Department will immediately decide on receipt of the protest whether or not the award of a contract shall be delayed, or if the protest is received within seven (7) days after the award, whether the performance of the contract should be suspended.

1.5 **PROCEDURES.** The Deputy Secretary may decide the merits of the protest on the written submitted documentation. However, if the Deputy Secretary deems the protest to be complex, an informal conference may be held before reaching a decision.