

Overview for Contract

Prior to utilizing a contract, the user should read the contract in it's entirety.

DESCRIPTION

Live Scan is a system for the electronic submission of fingerprints and the subsequent automated background check and response. Live scan technology replaces the process of recording an individual's fingerprint patterns manually through a rolling process using ink and a standard 8" x 8" fingerprint card with that of capturing the ridge impressions digitally in an electronic format.

It is used with the Pennsylvania with the State Police AFIS that sends fingerprints to the FBI's IAFIS the system and must meet a number of Standards.

CONTRACT INFO

Contract Numbers	4600010077
Number of Suppliers	1-Identix
Validity Period	05/01/06 – 04/30/08
DGS Point of Contact	Susan Rojas Phone: 717-346-8187 Fax: 717-346-3820 E-Mail: srojas@state.pa.us

PRICING HIGHLIGHTS

- Please see Attachment A of the contract in SAP for pricing.

PROCESS TO PURCHASE

- ✓ All agencies will place their purchase orders through SAP.

SPECIAL CONTRACT TERMS AND CONDITIONS

CONTRACT SCOPE/OVERVIEW: This Collective No.CN00019544 (identified here and in the other documents as the "Contract") will cover the requirements of the Commonwealth of Pennsylvania for the Automated Fingerprint Identification System (AFIS) called Live Scan.

ORDER OF PRECEDENCE: These Special Contract Terms and Conditions supplement the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* and Contractor terms and conditions attached to and incorporated into the Contract (Attachments A—F). To the extent that these Special Contract Terms and Conditions conflict with the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* and Attachment A--F, these Special Contract Terms and Conditions shall prevail.

TERM OF CONTRACT: The Contract shall commence on the Effective Date no earlier than 05/01/06 and expire on 04/30/08.

OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE: The Department of General Services reserves the right to purchase supplies covered under this Contract through a separate competitive bidding procedure, whenever the department deems it to be in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the supply exists or the price offered is significantly lower than the Contract price.

ADDRESS OF PURCHASE ORDER: Commonwealth agencies may issue purchase orders against this Contract for supplies required by the agencies (using agencies). Please state below where the Purchase Orders should be sent (name, address, city, state, zip code).

Identix Incorporated
5600 Rowland Road
Minnetonka, MN 55343

Contact person: Jeff Carroll
Telephone Number: (952) 932-0888
Fax Number: (952) 932-7181
E-mail Address: jeff.carroll@identix.com

PAYMENT: Subsection b of Section 9 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* is not applicable to this Contract since Commonwealth Purchasing Cards may not be utilized under this Contract.

WARRANTY: Section 11 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* is replaced with Attachment F, *Identix Limited Warranty and Available Warranty Upgrade Services* of this Contract.

PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY: Section 13 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* has been replaced with the following language:

The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will

satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the *Commonwealth Attorneys Act* 71 P.S. § 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 the terms 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. No settlement which prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.

The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.

If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs 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, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.

If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, 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 pay the Commonwealth:

1. Any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;

2. Any license fee less an amount for the period of usage of any software; and
3. The prorated portion of any service fees representing the time remaining in any period of service for which payment was made.

The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.

Notwithstanding the above, the Contractor shall have no obligation for:

1. Modification of any product, service, or deliverable provided by the Commonwealth;
2. Any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
3. Use of the product, service, or deliverable in other than its specified operating environment;
4. The combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
5. Infringement of a non-Contractor product alone;
6. The Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
7. The Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.

The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

OWNERSHIP RIGHTS: Section 14 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* has been replaced with the following language:

The Commonwealth shall have authority to 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.

HOLD HARMLESS PROVISION: Section 16 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* has been replaced with the following language:

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. §

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.

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.

DEFAULT: Subsection a, clauses 1), 2), 8) and 9), of Section 19 of the *Standard Contract Terms and Conditions for Department of General Services Statewide Contracts for Supplies (GSPUR-12E (SAP) Rev. 05/07/04)* has been amended as follows:

- 1) Failure to deliver the awarded item(s) within the time specified in the Contract or contract purchase order or as otherwise specified, and awarded items(s) have not been received by the Commonwealth within 10 days of the original scheduled delivery date;
- 2) Improper delivery that is not corrected within 10 days after notification;
- * * *
- 8) Failure to protect, to repair, or to make good any damage or injury to property within 15 days of notification; or
- 9) Material breach of any provision of this Contract.

OUT-OF-WARRANTY REPAIRS/SERVICE; TRAVEL: The Commonwealth will be charged the Contractor's current time and materials charges for out-of-warranty repairs or services not covered by a maintenance agreement. Travel and subsistence costs must be identified separately and may not exceed Commonwealth Travel Policy limits published in the most current version of Management Directive 230.10 Amended, *Travel and Subsistence Allowances*, which can be found at <http://www.oa.state.pa.us/oac/cwp/view.asp?A=12&Q=121208>. All travel costs must be approved by the using agency prior to travel.

WARRANTIES AND MAINTENANCE AGREEMENTS: Attachments E and F (*Identix Limited Warranty and Available Warranty Upgrade Services; and Identix Incorporated System Maintenance Terms and Conditions*) remain in effect from the acceptance date as identified in the *Contractor's Acceptance Sign-Off Sheet* until the expiration of the time period specified in the purchase order. For the purposes of Attachments E and F, the choice of law and termination provisions of this Contract also survive until the expiration of the time period specified in the purchase order. A sample of the *Contractors Acceptance Sign-Off Sheet* is attached as Attachment D.

Purchase orders that include maintenance must include as an attachment a *Maintenance Agreement Addendum*, a sample of which is attached as Attachment G. The electronically-printed name of the purchaser on the purchase order serves as the authorized Commonwealth signature on the *Maintenance Agreement Addendum*.



All using Agencies of the Commonwealth, Political Subdivision,
Authorities, Private Colleges and Universities

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Contract Number: 4600010077
Creation Date: 04/27/2006

Purchasing Agent:
 Name: Susan Rojas
 Phone: 717-346-8187
 Fax: 717-783-6241
 E-mail: srojas@state.pa.us
 Valid from/to: 05/01/2006 - 04/30/2008

Your vendor number with us: 179827

Vendor Name/Address:
 IDENTIX INCORPORATED
 5600 ROWLAND ROAD
 MINNETONKA MN 55343-4315

Please Deliver To:

 *** TBD AT TIME OF PURCHASE ORDER ***

 *** UNLESS SPECIFIED BELOW ***

Your Quotation: _____ Date: _____
 Collective No.: CN00019544
 Our Quotation: 6000099816

Payment Terms: NET 30

The Commonwealth of Pennsylvania, through the Department of General Services, accepts the submission of the Bidder/Contractor for the awarded item(s) at the price(s) set forth below in accordance with: 1) the RFQ submitted by the Bidder/Contractor, if any; 2) the documents attached to this Contract or incorporated by reference, if any, and 3) the contract terms and conditions stored on the website address at www.dgs.state.pa.us for this type of Contract as of the date of the RFQ, if any, or other solicitation for this Contract, all of which, as appropriate, are incorporated herein by reference. When the Bidder/Contractor receives an order from a Commonwealth agency, the order constitutes the Bidder/Contractor's authority to furnish the item(s) to the agency at the time(s) and place(s) specified in the order. RFQ, as used herein, means Request for Quotations, Invitation for Bids, Invitation to Qualify, or Request for Proposals, as appropriate.

Item	Description	Quantity	UOM	Price	Per Unit	TOTAL
00010	LIVE SCAN BOOKING STATION					
	243646	0	EA	0.00	EA	0.00
	*** Description changed ***					
	NO FURTHER INFORMATION FOR THIS CONTRACT					

Currency: USD

999,999,999.00
 ESTIMATED VALUE