

CONTRACT NAME - Overview

MARKET DESCRIPTION

- Long Term, full time, direct care Physical Therapist services for the Department of Public Welfare, Polk Center, Pa

CONTRACT INFO

Contract	4400001650
Supplier	Columbus Medical Services DBA The Columbus Organization
Validity Dates	02/04/08 – 02/03/11
Commodity Manager	Jean Halbleib
Contact Information	Tel: (717) 346 3834 Jhalbleib@state.pa.us
✓ Contract is within Procurement at http://www.dgs.state.pa.us/	

PRICING HIGHLIGHTS

- Pricing is fixed for the term of the contract
- Competitive sealed bid
- Single Award

PARTICIPATION PROCESS

This contract is for the **sole** use of the Department of Public Welfare, Polk Center.



FULLY EXECUTED - CHANGE 1

Contract Number: 4400001650

Contract Change Effective Date: 01/29/2008

Valid From: 02/04/2008 To: 02/03/2011

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

Purchasing Agent

Name: Halbleib Jean

Phone: 717-346-3834

Fax: 717 346-3820

Your SAP Vendor Number with us: 170893

Supplier Name/Address:

COLUMBUS MEDICAL SERVICES LLC
DBA THE COLUMBUS ORGANIZATION
1012 West Ninth Avenue
King of Prussia 19406 US

Supplier Phone Number: 610-592-0292

Supplier Fax Number: 888-379-2524

Please Deliver To:

To be determined at the time of the Purchase Order unless specified below.

Contract Name:

DPW, Polk Center, Physical Therapist

Payment Terms

NET 30

Solicitation No.:

Issuance Date:

Supplier Bid or Proposal No. (if applicable):

Solicitation Submission Date:

This contract is comprised of: The above referenced Solicitation, the Supplier's Bid or Proposal, and any documents attached to this Contract or incorporated by reference.

Item	Material/Service Desc	Qty	UOM	Price	Per Unit	Total
*** Validity Period Changed ***						
1	Physical Therapist	0.000	Hour	63.85	1	0.00
	<i>Valid from 02/04/2008 to 02/03/2011</i>					
	Price(Contract/Bid)	63.85	USD	1	H	

General Requirements for all Items:

No further information for this Contract

Information:

Total Amount:

686,706.75

Currency: USD

Supplier's Signature _____

Title _____

Printed Name _____

Date _____

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I.1 IFB-001.1 Purpose (Oct 2006)

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) to meet the needs of DPW, POLK CENTER to satisfy a need for **PHYSICAL THERAPIST SERVICES** .

I.2 IFB-005.1 Type of Contract (Oct. 2006)

If the Issuing Office enters into a contract as a result of this IFB, it will be a ESTABLISHED PRICE CONTRACT contract containing the Contract Terms and Conditions as shown in Part V of this IFB.

I.3 IFB-008.1C No Pre-bid Conference (Oct. 2006)

There will be no pre-bid conference for this IFB. If there are any questions, please forward them to the Issuing Office prior to the bid opening date and time.

I.4 IFB-009.1 Questions (Nov. 2006)

Any questions concerning conditions and specifications must be directed to the Issuing Office.

I.5 IFB-010.1 Addenda to the IFB (Oct. 2006)

If the Issuing Office deems it necessary to revise any part of this IFB before the bid response date, the Issuing Office will post an addendum to its website at WWW.DGS.STATE.PA.US it is the Bidder's responsibility to periodically check the website for any new information or addenda to the IFB.

I.6 IFB-011.1B Submission of Bids – Electronic Submittal (Dec 12 2006)

- a. Bids are requested for the item(s) described in the Invitation For Bids and all the documents referenced in the form (collectively called the IFB). Bidders must submit their bids through the Commonwealth's electronic system (SRM).
- b. It is the responsibility of each bidder to ensure that its Bid is received through the electronic system prior to the date and time set for the opening of bids ("Bid Opening Time"). No Bid shall be considered if it arrives after the Bid Opening Time, regardless of reason for the late arrival.

Bids that are timely received in the Bid Opening Room prior to the Bid Opening Time shall be opened publicly in the presence of one or more witnesses at the time and place designated in this IFB for the Bid opening.

- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.

- d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

I.7 IFB-013.1A Non-Discrimination Program – Services Exceeding \$50,000 (Nov 2006)

Bidders must include with their bid submittals a completed *MBE/WBE Subcontractor and Supplier Solicitation and Commitment Form*, (STD-168). Failure to complete the form and submit it with the bid may result in rejection of the bid as non-responsive

I.8 IFB-024.1 Bid Protest Procedure (Oct 2006)

- a. **Who May File the Protest.** Any Bidder or prospective bidder who is aggrieved in connection with the IFB or award of the contract solicitation or award of a contract may file a protest. Protests relating to cancellation of invitations for bids and protests relating to the rejection of all bids are not permitted. A Bidder is a person that submits a bid in response to the IFB. A prospective bidder is a person that has not submitted a bid in response to the IFB.

b. **Time for Filing.**

- 1) If a protest is submitted by a prospective bidder, the protest must be filed before bid opening time or proposal receipt date.
- 2) If a protest is filed by a Bidder, the protest must be filed within seven days after the protesting Bidder knew or should have known of the facts giving rise to the protest EXCEPT THAT IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT OR PURCHASE ORDER WAS AWARDED. Date of filing is the date of receipt of protest.
- 3) Untimely filed protests shall be disregarded.

c. **Form of Protest.**

- 1) A protest must be in writing and filed with the agency head (or designee) of the purchasing agency.
- 2) A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
- 3) The protesting party may submit with the protest any documents or information deemed relevant.

- d. **Notice of Protest** If award has been made, the agency head (or designee) shall notify the successful Bidder or contractor of the protest. 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 and may file their agreement/disagreement with the purchasing agency within three (3) days after receipt of notice of the protest.

- e. **Stay of Procurement.** The head of the purchasing agency (or designee) shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after the

award, whether the performance of the contract should be suspended. The Issuing Office shall not proceed further with the IFB or with the award of the contract, and shall suspend performance under the contract if awarded, unless the agency head of the purchasing agency makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interests of the Commonwealth.

f. Procedures.

- 1) **Contracting Officer Response.** Within fifteen (15) days of the receipt of a protest, the contracting officer may submit a written response to the head of the purchasing agency (or designee). The response may include any documents or information that the contracting officer deems relevant to the protest.
- 2) **Protesting Party Reply.** Within ten (10) days of the date of the contracting officer response, the protesting party may file a written reply.
- 3) **Review.** The head of the purchasing agency (or designee) shall:
 - a) Review the protest and any response or reply.
 - b) Request and review any additional documents or information he deems necessary to render a decision.
 - c) Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.
 - d) In his sole discretion, conduct a hearing.
 - e) Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.
 - f) If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.
- 4) **"Clearly Without Merit" Determinations.** If the head of the purchasing agency (or designee) determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the head of the purchasing agency (or designee) shall immediately issue the decision as required by Subparagraph h below.

g. Settlement. The Issuing Office has the authority to settle and resolve bid protests.

h. Decision. The head of the purchasing agency (or designee) shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:

- 1) State the reasons for the decision.
- 2) If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.
- 3) If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

The agency head (or designee) shall send a copy of the decision to the protesting party and any other person determined by the agency head (or designee) to be affected by the decision.

I.9 IFB-025.1 Electronic Version of this IFB (Oct 2006)

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

I.10 IFB-029.1 Prices (Dec 6 2006)

The bid submitted by the successful Bidder will be incorporated into any resulting Contract and the Bidder will be required to provide the awarded item(s) at the prices quoted in its Bid.

I.11 IFB-031.1 Alternates (Nov 2006)

A Bidder who wants to offer an alternate must notify the Issuing Office 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 that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, 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 Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award.

I.12 IFB-032.1 New Equipment (Nov 2006)

Unless otherwise specified in this invitation for bids, all products offered by Bidders must be new or remanufactured. A 'new' product is one that 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 Issuing Office, differ in appearance from a new item; and 3) has the same warranty as a new item. Unless otherwise specified in this invitation for bids, 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.

I.13 I-IFB-033.1 Modification or Withdrawal of Bid (Nov 2006)

- a. Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.

- 1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification
 - 2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).
- b. Bid Withdrawal Prior to Bid Opening. Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.
- 1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.
 - 2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
- 1) The Bidder submits a written request for withdrawal.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.
 - 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. Firm Bid. Except as provided above, 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 Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB 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 awarded items.

e. Clarification and Additional Information. After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:

- 1) Clarification of the Bid which confirms the Issuing Office's understanding of statements or information in the Bid or;
- 2) Additional information on the items offered; provided the IFB does not require the rejection of the Bid for failure to include such information.

I.14 I-IFB-034.1 Rejection of Bids (Nov 2006)

The Issuing Office 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 the best interests of the Commonwealth are thereby served.

II.1 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006).

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 IFB. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Bid Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

II.2 II-IFB-016.1 POST-SUBMISSION DESCRIPTIVE LITERATURE (Dec 2006)

The Commonwealth may, during its evaluation of the bids, require any bidder to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

III.1 III-IFB-001.1a Mandatory Responsiveness Requirements (Oct 2006)

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;

b. Properly signed by the Bidder.

III.2 III-IFB-006.1a Method of Award (Oct 2006)

It is the intent of the Commonwealth to make a single award of item(s) listed in the IFB. The Commonwealth reserves the right to award by line item if it determines that it is in the best interest of the Commonwealth to do so.

III.3 III-IFB-007.1 Awards (Nov 2006)

Unless all Bids are rejected, and except as otherwise provided by law, award will be made, through the issuance of a Purchase Order, to the lowest responsible and responsive Bidder. Unless otherwise specified by the Issuing Office in the IFB form the Commonwealth reserves the right to award by item or on a total Bid basis, whichever is deemed more 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 corrected. As a condition for receipt of award of a contract/purchase order, the lowest responsible and responsive Bidder must be registered in the Commonwealth of Pennsylvania's Vendor Master file. In order to register, bidders must visit the PA Supplier Portal at <https://www.pasupplierportal.state.pa.us/> or call the Customer Support Center at 877-435-7363 or 717-346-2676.

III.4 III-IFB-008.1 Tie Bids (Nov 2006)

All tie bids will be broken by the Issuing Office.

III.5 III-IFB-009.1 Prompt Payment Discounts (Nov 2006)

Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Bidder, however, the Issuing Office will take advantage of such offer.

III.6 III-IFB-010.1 OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE (NOV 2006)

The Commonwealth reserves the right to purchase products or services covered under this Contract through a separate competitive bidding procedure, whenever Commonwealth deems it in the best interest of the Commonwealth. The right will generally be exercised only when a specific need for a large quantity of the product or service exists or when the price offered is significantly lower than the Contract price.

IV.1 IFB-001.1b STATEMENT OF WORK (Nov 2006)

The Commonwealth is seeking bids to procure the services set forth in the attached document entitled "Statement of Work."

V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)

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

V.2 CONTRACT-002.1a Term of Contract – Contract (March 2007)

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

b. The Commencement Date shall be the later of the "Valid from" date shown on the Contract output form or the Effective Date (as defined below).

c. The Effective Date shall be the Effective Date printed on the Contract output form after the Contract has been fully executed by the Commonwealth (fully executed by the Commonwealth means that it has been signed and approved as required by Commonwealth contracting procedures).

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

The Contract may be renewed for a maximum of 2additional 1 year term(s), so long as Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter prior to the expiration of the term of the agreement, or any extension thereof. The Commonwealth may exercise the renewal as individual year or multiple year term(s). Any renewal will be under the same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

V.4 CONTRACT-002.2g Renewal of Contract Term; Adjusted Prices - Custom (Oct 2006)

See Statement of Work

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

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

V.6 CONTRACT-003.1a Signatures – Contract (March 2007)

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

The Contract will not include an "ink" signature by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed"

at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

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

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract to be legally enforceable.
- b. The parties agree that no writing shall be required in order to make the Contract legally binding, notwithstanding contrary requirements in any law. The parties hereby agree not to contest the validity or enforceability of a genuine Contract or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine Contract or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of a genuine Contract or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the Contract or acknowledgement were not in writing or signed by the parties. A Contract or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated for such documents.
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

V.7 CONTRACT-004.1a Definitions (Dec 12 2006)

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.

V.8 CONTRACT-005.1b Agency Purchase Orders (Dec 12 2006)

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

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

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable
- b. The parties agree that no writing shall be required in order to make the order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A purchase order or acknowledgment shall be deemed to be for all purposes if it is transmitted to the location designated for such documents
- c. Each party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

Purchase Orders under five thousand dollars (\$5,000) in total amount may also be made in person or by telephone using a Commonwealth Purchasing Card. When an order is placed by telephone, the Commonwealth agency shall provide the agency name, employee name, credit card number, and expiration date of the card. Contractors agree to accept payment through the use of the Commonwealth Purchasing Card.

V.9 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)

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

V.10 CONTRACT-007.01b Delivery of Services (Nov 30 2006)

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

V.11 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)

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

V.12 CONTRACT-008.1a Warranty. (Oct 2006)

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one 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.

V.13 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006)

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.

V.14 CONTRACT-009.1d Ownership Rights (Oct 2006)

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

V.15 CONTRACT-010.1a Acceptance (Oct 2006)

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

V.16 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

V.17 CONTRACT-013.1 Environmental Provisions (Oct 2006)

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to: the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. Section 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. Section 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. Section 693.1.

V.18 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006)

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 on the date of submission of the bid, proposal or contract offer.

V.19 CONTRACT-014.3 Enforcement (Oct 2006)

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

V.20 CONTRACT-015.1 Compensation (Oct 2006)

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

V.21 CONTRACT-015.2 Billing Requirements (Dec 5 2006)

The Contractor shall include in all of its invoices the following minimum information:

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

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment

will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

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

V.22 CONTRACT-015.3 Invoice Requirement – SAP Purchase Orders (Feb 2007)

Unless otherwise specified or unless the Contractor has been authorized by the Commonwealth for Electronic Invoicing, Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an invoice itemized by purchase order line item to the address referenced on the Purchase Order promptly after the item(s) are delivered. The invoice should include only amounts due under the Purchase Order. The Purchase Order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, hourly rates and the Purchase Order or task order to which it refers.

V.23 CONTRACT-016.1 Payment (Oct 2006)

- 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.

V.24 CONTRACT-017.1 Taxes (Dec 5 2006)

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance

taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

V.25 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)

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

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

- 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.

V.27 CONTRACT-020.1 Audit Provisions (Oct 2006)

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

V.28 CONTRACT-020.2 Single Audit Act of 1984 (Dec 6, 2006)

In compliance with the Single Audit Act of 1984, the Contractor agrees to the following:

- a. This Contract is subject to audit by federal and state agencies or their authorized representative in accordance with the auditing standards promulgated by the Comptroller General of the United States and specified in Government Auditing Standards, 1994 Revisions (Yellow Book).
- b. The audit requirement of this Contract will be satisfied if a single audit is performed under the provisions of

the Single Audit Act of 1984, 31 U.S.C. Section 7501, et seq, and all rules and regulations promulgated pursuant to the Act.

- c. The Commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial/compliance, economy/efficiency, or program results nature, if deemed necessary.

The Contractor further agrees to comply with requirements that may be issued by the state agency upon receipt of additional guidance received from the federal government regarding the Single Audit Act of 1984.

V.29 CONTRACT-021.1 Default (Dec 12 2006)

- 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.

V.30 CONTRACT-022.1 Force Majeure (Oct 2006)

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

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving

that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

V.31 CONTRACT-023.1a Termination Provisions (Oct 2006)

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 for 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 Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.32 CONTRACT-024.1 Contract Controversies (Oct 2006)

- 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.
- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

V.33 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)

- a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

V.34 CONTRACT-026.1 Other Contractors (Oct 2006)

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

V.35 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Oct 2006)

During the term of the Contract, the Contractor agrees as follows:

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate 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 against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. 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.

V.36 CONTRACT-028.1 Contractor Integrity Provisions (Oct 2006)

- a. For purposes of this clause only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.
 - 1) **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.
 - 2) **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.

3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4) **Financial interest** means:

a) Ownership of more than a five percent interest in any business; or

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

5) **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.

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

c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

d. 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.

e. 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.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her 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 the Contract except as provided therein.

g. 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.

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

i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. 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 refers to or concern the Contract. 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.

- k. 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 nonuse 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.

V.37 CONTRACT-029.1 Contractor Responsibility Provisions (Oct 2006)

- a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers 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, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- 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 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, which 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

V.38 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. Section 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. Section 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.

V.39 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

V.40 CONTRACT-033.1 Applicable Law (Oct 2006)

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

V.41 CONTRACT- 034.1b Integration (Nov 30 2006)

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

V.42 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006)

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

V.43 CONTRACT-037.1b Confidentiality (Oct 2006)

The Contractor agrees to protect the confidentiality of the Commonwealth's information. 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 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.

The obligations stated in this Section do not apply to information:

- i. already known to the recipient at the time of disclosure;
- ii. independently generated by the recipient and not derived from the information supplied by the disclosing party;
- iii. 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;
- iv. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- v. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

V.44 CONTRACT-037.2a Sensitive Information (Oct 2006)

The Contractor shall not publish or otherwise disclose, except to the Commonwealth and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the consent of such person or establishment. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract or Purchase Order for any purpose not connected with the parties' Contract or Purchase Order responsibilities except with the written consent of such recipient, recipient's attorney, or recipient's parent or guardian pursuant to applicable state and federal law and regulations.

Contractor will comply with all federal or state laws related to the use of information that constitutes personal health information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, in order

to address the provision of PHI to the Contract, by signing this Contract or Purchase Order, the Contractor agrees to the terms of the Business Associate Agreement, which is attached to and made a part of this Contract or Purchase Order. If the Issuing Agency is a Covered Entity as defined in HIPAA, it will fill in the blanks in Business Associate Agreement as part of the Contract or Purchase Order. It is understood that the Business Associate Agreement is only applicable if PHI is provided to the Contractor.

Contractor will be responsible to remediate any improper disclosure of information. Such remediation may include, but may not be limited to, credit monitoring for individuals for whom information has been released and reimbursement of any costs incurred by individuals for whom information has been released. Costs for which Contractor is responsible under this paragraph are not subject to any limitation of liability set out in this Contract or Purchase Order.

V.45 CONTRACT-037.2b Health Insurance Portability and Accountability Act (HIPAA) Compliance (Oct 2006)

1. The Pennsylvania Department of Public Welfare and Department of Insurance (collectively, Covered Entity) and the Contractor intend to protect the privacy and provide for the security of certain Protected Health Information (PHI) to which Business Associate may have access in order to provide goods or services to or on behalf of Covered Entity, in accordance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the HIPAA Privacy Rule (Privacy Rule), 45 CFR Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 CFR Parts 160, 162 and 164.
2. The Contractor may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, which PHI can be used or disclosed only in accordance with this Appendix and the standards established by HIPAA and the Privacy Rule.
3. The Contractor may receive PHI from Covered Entity, or may create or obtain PHI from other parties for use on behalf of Covered Entity, that is in electronic form, which PHI must be handled in accordance with this Appendix and the standards established by HIPAA and the Security Rule, beginning as soon as practicable but in no event later than the effective date of the Security Rule.
4. For purposes of this contract provision the following words as found in these provisions shall have the following definitions:
 - a) "Business Associate" shall have the meaning given to such term under the Privacy and Security Rules, including but not limited to, 45 CFR Section 160.103.
 - b) "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 CFR Section 160.103.
 - c) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
 - d) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.
 - e) "Protected Health Information" or "PHI" means any information, transmitted or recorded in any form or medium; (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, including, but not limited to 45 CFR Section 164.501.
 - f) "Security Rule" shall mean the Security Standards at 45 CFR Parts 160, 162 and

g) Terms used, but not otherwise defined, in this Appendix shall have the same meaning as those terms in 45 CFR Parts 160, 162 and 164.

5. Stated Purposes For Which Business Associate May Use Or Disclose PHI. The Parties hereby agree that Business Associate shall be permitted to use and/or disclose PHI provided by or obtained on behalf of Covered Entity for the following stated purposes, except as otherwise limited in this Agreement:

PROGRAM MUST Include a statement describing the stated purposes that Business Associate may use or disclose the PI-TI. These uses and disclosures must be within the scope of the Appendix. 45 CFR Section 164.504(e) (2) (i). If the work statement is sufficiently specific and will suffice, the following statement may be used instead.

Stated Purposes For Which Business Associate May Use Or Disclose PHI. Except as otherwise limited in this Agreement, Business Associate shall be permitted to use or disclose PHI provided by or obtained on behalf of Covered Entity to perform those functions, activities, or services for, or on behalf of, Covered Entity which are specified in this Agreement's Appendix A (Statement of Work), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

6. Additional Purposes For Which Business Associate May Use Or Disclose Information. In addition to the Stated Purposes, Business Associate may use or disclose PHI provided by, or created or obtained on behalf of Covered Entity for the following additional purposes(s) (*Note that this is an optional section - must decide whether or not to include it*):

a) Use of Information For Management, Administration And Legal Responsibilities. Business Associate is permitted to use PHI if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of the Business Associate except as otherwise limited in this Agreement.

b) Disclosure Of Information For Management, Administration And Legal Responsibilities. Business Associate is permitted to disclose PHI provided by, or created or obtained on behalf of Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, except as otherwise limited in this Agreement, provided:

i) The disclosure is required by law: or

ii) The Business Associate obtains reasonable assurances in writing from any third party to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party, the third party will use appropriate safeguards to prevent other use or disclosure of the information, and the third party agrees to immediately notify the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

c) Data Aggregation Services. Business Associate may also be permitted to use or disclose PHI to provide data aggregation services, as that term is defined by 45 CFR Section 164.501, if specific authorization is received from the Covered Entity.

7. BUSINESS ASSOCIATE OBLIGATIONS:

a) Limits On Use And Further Disclosure Established By Appendix And Law. Business Associate hereby agrees

that the PHI provided by, or created or obtained on behalf of Covered Entity shall not be further used or disclosed other than as permitted or required by this Appendix or as required by law.

- b) **Appropriate Safeguards.** Beginning as soon as practicable but in no event later than the effective date of the Security Rule, Business Associate shall establish and maintain appropriate safeguards to prevent any use or disclosure of PHI other than as provided for by this Appendix. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that is created, received, maintained, or transmitted on behalf of the Covered Entity.
- c) **Reports Of Improper Use Or Disclosure.** Business Associate hereby agrees that it shall report to within two (2) days of discovery any use or disclosure of PHI not provided for or allowed by this Appendix.
- d) **Reports Of Security Incidents.** Beginning as soon as practicable but in no event later than the effective date of the Security Rule, Business Associate shall report to within two (2) days of discovery any security incident of which it becomes aware.
- e) **Subcontractors And Agents.** Business Associate hereby agrees that any time PHI is provided or made available to any subcontractors or agents, Business Associate shall provide only the minimum necessary PHI for the purpose of the covered transaction and shall first enter into a subcontract or contract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Appendix.
- f) **Right Of Access To PHI.** Business Associate hereby agrees to allow an individual who is the subject of PHI maintained in a designated record set, to have access to and copy that individual's PHI within ten (10) business days of receiving a written request from the Covered Entity. Business Associate shall provide PHI in the format requested, unless it cannot readily be produced in such format, in which case it shall be provided in standard hard copy. If any individual requests from Business Associate or its agents or subcontractors access to PHI, Business Associate shall notify Covered Entity of same within five (5) business days. Business associate shall further conform with and meet all of the requirements of 45 CFR Section 164.524.
- g) **Amendment And Incorporation Of Amendments.** Within ten (10) business days of receiving a request from Covered Entity for an amendment of PHI maintained in a designated record set, Business Associate shall make the PHI available and incorporate the amendment to enable Covered Entity to comply with 45 CFR Section 164.526. If any individual requests an amendment from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity of same within ten (10) business days.
- h) **Provide Accounting Of Disclosures.** Business Associate agrees to maintain a record of all disclosures of PHI in accordance with 45 CFR Section 164.528. Such records shall include, for each disclosure, the date of the disclosure, the name and address of the recipient of the PHI, a description of the PHI disclosed, the name of the individual who is the subject of the PHI disclosed, the purpose of the disclosure, and shall include disclosures made on or after the date which is six (6) years prior to the request or April 14, 2003, whichever is later. Business Associate shall make such record available to the individual or the Covered Entity within ten (10) business days of a request for an accounting of disclosures.
- i) **Access To Books And Records.** Business Associate hereby agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of Health and Human Services or designee for purposes of determining compliance with the HIPAA Privacy Regulations.
- j) **Return Or Destruction Of PHI.** At termination of this Agreement, Business Associate hereby agrees to return

or destroy all PHI provided by or obtained on behalf of Covered Entity. Business Associate agrees not to retain any copies of the PHI after termination of this Agreement. If return or destruction of the PHI is not feasible, Business Associate agrees to extend the protections of this Appendix to limit any further use or disclosure until such time as the PHI may be returned or destroyed. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.

- k) Maintenance of PHI. Notwithstanding Section 5(j) of this Appendix, Business Associate and its subcontractors or agents shall retain all PHI throughout the term of the Agreement and shall continue to maintain the information required under Section 5(h) of this Appendix for a period of six (6) years after termination of the Agreement, unless Covered Entity and Business Associate agree otherwise.
- l) Mitigation Procedures. Business Associate agrees to establish and to provide to Covered Entity upon request, procedures for mitigating, to the maximum extent practicable, any harmful effect from the use or disclosure of PHI in a manner contrary to this Appendix or the Privacy Rule. 45 CFR Section 164.530(1)). Business Associate further agrees to mitigate any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Appendix or the Privacy Rule.
- m) Sanction Procedures. Business Associate agrees that it shall develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Appendix or the Privacy Rule.
- n) Grounds For Breach. Any non-compliance by Business Associate with this Appendix or the Privacy or Security Rules will automatically be considered to be a breach of the Agreement, if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.
- o) Termination by Covered Entity. Business Associate authorizes termination of this Agreement by the Covered Entity if the Covered Entity determines, in its sole discretion, that the Business Associate has violated a material term of this Appendix.
- p) Failure to Perform Obligations. In the event Business Associate fails to perform its obligations under this Appendix, Covered Entity may immediately discontinue providing PHI to Business Associate. Covered Entity may also, at its option, require Business Associate to submit to a plan of compliance, including monitoring by Covered Entity and reporting by Business Associate, as Covered Entity in its sole discretion determines to be necessary to maintain compliance with this Appendix and applicable law.
- q) Privacy Practices. The Department will provide and Business Associate shall immediately begin using any applicable form, including but not limited to, any form used for Notice of Privacy Practices, Accounting for Disclosures, or Authorization, upon the effective date designated by the Program or Department. The Department retains the right to change the applicable privacy practices, documents and forms. The Business Associate shall implement changes as soon as practicable, but not later than 45 days from the date of notice of the change.

8. OBLIGATIONS OF COVERED ENTITY:

- a) Provision of Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR Section 164.520, as well as changes to such notice.
- b) Permissions. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI of which Covered Entity is aware, if such changes affect Business Associate's permitted or required uses and disclosures.

- c) Restrictions. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

V.46 CONTRACT-045.1 Insurance - General (Dec 12 2006)

The Contractor is required to have in place during the term of the Contract and any renewals or extensions thereof, the following types of insurance, issued by companies acceptable to the Commonwealth and authorized to conduct such business under the laws of the Commonwealth of Pennsylvania:

- A. **Worker's Compensation Insurance** for all of the Contractor's employees and those of any subcontractor, engaged in work at the site of the project as required by law.

- B. **Public Liability and Property Damage Insurance** to protect the Commonwealth, the Contractor, and any and all subcontractors from claims for damages for personal injury (including bodily injury), sickness or disease, accidental death and damage to property including the loss of use resulting from any property damage, which may arise from the activities performed under the Contract or the failure to perform under the Contract, whether such performance or non-performance be by the Contractor, by any subcontractor, or by anyone directly or indirectly employed by either. The minimum amounts of coverage shall be \$250,000 per person and \$1,000,000 per occurrence for bodily injury, including death, and \$250,000 per person and \$1,000,000 per occurrence for property damage. Such policies shall be occurrence rather than claims-made policies and shall not contain any endorsements or any other form designated to limit and restrict any action by the Commonwealth, as an additional insured, against the insurance coverage in regard to work performed for the Commonwealth.

Prior to commencement of the work under the Contract and at each insurance renewal date during the term of the Contract, the Contractor shall provide the Commonwealth with current certificates of insurance. These certificates or policies shall name the Commonwealth as an additional insured and shall contain a provision that the coverage's afforded under the policies will not be cancelled or changed until at least thirty (30) days written notice has been given to the Commonwealth.

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

V.47 CONTRACT-051.1 Notice (Dec 2006)

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, 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.

Attachment B
Polk Physical Therapist Statement of Work

CONTRACT SCOPE/OVERVIEW

This contract (Identified here and in the other documents as the "Contract") will cover the requirements of full time, long term, direct care Licensed Physical Therapist services for the Department of Public Welfare's Polk Center. Polk Center is located in Venango County of Northwestern Pennsylvania serving people with developmental disabilities. Polk Center address is:

Department of Public Welfare, Polk Center, Main Street, Polk, PA 16342.

Physical Therapist will provide Physical Therapy services to a defined group of consumers in a supportive and stable work setting and work with one Physical Therapy Aide and one Physical Therapy Assistant.

As an Intermediate Care Facility for people with Mental Retardation, the Polk Center provides 24-hour supported living, medical care and programming. An interdisciplinary team of staff provides a wide array of quality services to the adults who make Polk Center their home.

The Polk Center currently serves 333 individuals who are challenged with mental retardation, mental health issues, physical disabilities, neurological disorders, and general health concerns. The average age population is age 57.

TERM OF THE CONTRACT

The Contract shall commence on the Effective Date (as defined herein) and expire (3) three years from the effective date of the contract.

The Effective Date shall be fixed by the Issuing Officer after the Contract has been fully executed by the Bidder and all approvals required by Commonwealth contracting procedures have been obtained.

DPW ADDENDUM

This contract incorporates the Department of Public Welfare (DPW) Addendum found at <http://www.dpw.state.pa.us/business/vendorinfo/003674057.hm> for the Department of Public Welfare Purchase Orders issued from this contract.

ADJUSTMENT OF PRICE OPTION

Bidders may adjust their prices at each renewal period. A bidder seeking to adjust its prices shall submit a letter to the DGS Contract Officer requesting to modify their prices up to the percentage increase in Table 5. COMPENSATION (NOT SEASONALLY ADJUSTED): Employment Cost Index for total compensation, for private industry workers, by occupational group and industry. <http://stats.bls.gov/news.release/eci.t05.htm> Scroll to "Industry and Occupation group" **Healthcare and Social Assistance, (10)**. The list is published every quarter. Example: The percent (%) change for 12 months ending

Attachment B
Polk Physical Therapist Statement of Work

December 2006 was 4.1 %. The bidder may increase their prices up to this percentage, any increase would be added to the bidders current DGS approved rate. The bidder shall provide a printed or electronic copy of the most recent applicable table at the time of request with its price increase request. The bidder must submit their written request forty five (45) days prior to the expiration of the contract DGS Procurement reserves the right to negotiate and/ or deny an increase to the bidder. It is the responsibility of the bidder to adequately justify any price change requests. If approved, a Contract change notice will be issued replacing the old price list with the updated price list to the Contract. The effective date of the change will be the date the change notice is issued.

At no time will Bidders be allowed to unilaterally change the prices on the Contract. Approval must be granted by the contract administrator and will not be final until approval is obtained in writing and a change notice is issued. Orders will be monitored to ensure compliance.

SENSITIVE INFORMATION

The bidder shall not publish or otherwise disclose, except to the Commonwealth and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any particular person or establishment can be identified, except with the consent of such person or establishment. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a Commonwealth program affected by or benefiting from services under this Contract for any purpose not connected with the parties' Contract responsibilities except with the written consent of such recipient, recipient's attorney, or recipient's parent or guardian pursuant to applicable state and federal law and regulations.

Bidder will comply with all federal or state laws related to the use of information that constitutes personal health information (PHI) as defined by the Health Insurance Portability and Accountability Act (HIPAA). Further, in order to address the provision of PHI to the Contract, by signing this Contract, the bidder agrees to the terms of the Business Associates Agreement, which is incorporated into this contract by this reference. The Business Associates Agreement (HIPAA Form) is found on Attachment L

If the Issuing Agency is a Covered Entity as defined in HIPAA, it will fill in the blanks in the HIPAA Form as part of the PO. It is understood that the HIPAA Form is only applicable if PHI is provided to the Contractor.

Each resource shall be required to sign a statement regarding confidentiality of patient records and guaranteeing patient rights.

Attachment B
Polk Physical Therapist Statement of Work

BACKGROUND CHECKS:

The bidder must, at its expense, arrange for a background check for any employee, 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/psplib/psplib/psplib/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.

Where the applicant is not, and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, the Commonwealth shall require the applicant to submit with the application a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's under Department of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109). For the purpose of this paragraph, the applicant shall submit a full set of fingerprints to the State Police, which shall forward them to the Federal Bureau of Investigation for a national criminal history check. The information obtained from the criminal record check shall be used by the Commonwealth to determine the applicant's eligibility. The Commonwealth shall insure confidentiality of the information.

Before the Issuing Agency will permit access to the Awarded Bidder, the Awarded Bidder must provide written confirmation that the criminal background check has been conducted. If, at any time, it is discovered that the Awarded Bidders 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 Awarded Bidder shall not assign that employee to any Commonwealth facility, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Issuing Agency consents to the access, in writing, prior to the access. The Issuing Agency may withhold its consent in its complete discretion. Failure of the Awarded Bidder to comply with the terms of this paragraph on more than one occasion or Awarded Bidder's failure to appropriately address any single failure to the satisfaction of the Issuing Agency may result in default of the Awarded Bidder under its Contract or under the PO.

The Commonwealth specifically reserves the right of the Issuing Agency to conduct its own criminal background check over and above that described herein.

Attachment B
Polk Physical Therapist Statement of Work

NON-COMPETE

Bidder agrees that at the termination of this Contract it will not enforce any non-compete or similar employment restrictions that it may have in place against any resources placed at Commonwealth facilities under this Contract who wish to remain at a Commonwealth facility and are able to come to terms with the successor bidder(s), or directly with the Commonwealth, for continuing their placement.

QUANTITIES NEEDED

Contractor will provide one (1) Physical Therapist to begin work within 30 days of written notification of award of contract. Upon request for additional services, bidder will have 45 days from written request to have in place one additional Physical Therapist.

Awarded Bidder will present Polk Center with potential candidate's resumes that shall be sufficient enough to enable the Polk Center a variety of candidates that are willing and available to provide long term services.

Polk Center will review resumes submitted by bidder and conduct a personal interview with selected candidates. Interviews will be coordinated between the bidder and Polk Center. Background checks must be completed before a candidate is interviewed.

Upon selection of a qualified and available candidate, Polk Center will notify the supplier after credentials are verified.

Agency reserves the sole right to determine the suitability of a candidate's past work/education experience.

Polk Center will allow the contracted Physical Therapist non paid time off from a regular scheduled work day up to 10 days. The contracted Physical Therapist may use this time for sick or scheduled time off from a normal scheduled work day.

The contracted Physical Therapist will coordinate non paid leave with the Polk Center. Any additional non-paid time off in addition to the 10 allowed will be mutually agreed upon by the Contractor and Polk Center.

In the event the contracted physical therapist is absent more than 10 consecutive working days the bidder is responsible to provide a qualified replacement (Locum Tenen) to the facility meeting the bid requirements until such time the full time physical therapist returns at the same hourly rate bid.

Attachment B
Polk Physical Therapist Statement of Work

MINIMUM QUALIFICATIONS:

Current, valid, unrestricted Physical Therapist license as issued by the Commonwealth of Pennsylvania State Board Of Physical Therapy.

Prefer Physical Therapist with experience in serving clients with developmental disabilities.

Proof of a current PPD (within six months)

HOURS:

Total work day consists of 8 hours

Monday thru Friday

7.5 hours per day paid work time

½ hour unpaid lunch

Two (2) 15 minute paid breaks

GENERAL LICENSE REQUIREMENTS

The Awarded Bidder must maintain personnel files on Physical Therapist documenting current licensure and certifications are in good standing and verification of lack of criminal record. The bidder will be responsible to ensure that the Physical Therapist meets the minimum job qualifications and are able to perform in accordance with the job description. The Bidder must provide to the contract administrator or designee, copies of current licenses/certification within required time frame to meet Medicare regulations and during a Medicare Audit of the Center. During the term of the contract, the awarded bidder must submit copies of any certificate / licensure renewals and shall inform the facility immediately of any change in the status of certifications/licensing to include notification of any and all restrictions imposed due to participation in any professional health monitoring program.

MANDATORY TRAINING

The Physical therapist will receive approximately 3 days of paid training at the rate bid.

PERFORMANCE STANDARDS

The Commonwealth Agencies reserve the right to reject or remove any contract staff if they cannot perform their duties at an acceptable level in order to meet the hospitals/facilities standards of patient care and practice.

Attachment B
Polk Physical Therapist Statement of Work

DRESS CODE

Polk Center will provide a photo identification badge with the following:

- Name of the resource,
- Job title
- Name of Employer
- Identified as contract staff

ID must be worn at all times when on duty and must be clearly visible and readable to other staff and residents. Resource shall dress in a responsible manner that displays professionalism at all times.

DGS CONTRACT OFFICER

All matters relating to the bid or contract should be directed to:

Jean Halbleib

Commodity Specialist

Department of General Services

Phone 717-346-3834

Email: Jhalbleib@state.pa.us

Any questions regarding the purchase orders shall be directed to the contact person listed for the respective agency/facility on the purchase order or the agency/facility contract administrator.

Attachment C

Physical Therapist statement of work

MINIMUM QUALIFICATIONS:

- Current, valid, unrestricted Physical Therapist license as issued by the Commonwealth of Pennsylvania State Board Of Physical Therapy.
- Prefer Physical Therapist with experience in serving clients with developmental disabilities.
- Proof of a current PPD (within six months)
- Basic Computer Skills (Excel-Word-Outlook)

Required Knowledge, Skills, and Abilities

- Knowledge of the modern principles, techniques, materials, and equipment used in physical therapy discipline programs.
- Knowledge of individual and group behavior and effective ways of working with those with developmental disabilities and/or physical or mental illnesses, some of whom may have additional disabilities.
- Ability to establish and maintain effective working relationships with patients/individuals and their family members in order to secure their cooperation in the prescribed treatments
- Ability to make adjustments and minor repairs to standard physical therapy equipment, Orthotics and to assist in planning necessary modifications where required.
- Must possess a level of knowledge and skill to independently carry out the responsibilities of physical therapist.
- Knowledge of the possible hazards to those receiving therapy service during treatment and the necessary precautionary and remedial measures to offset anxiety/frustration/panic/trauma.
- Knowledge of human anatomy and physiology.

Description of Duties/Competency standards for Physical Therapist

Physical Therapy Treatment Planning:

- Administers medically prescribed physical therapy treatments to patients/individuals by the application of accepted treatment modalities such as massage, therapeutic exercises, adaptive equipment and/or mechanical devices such as parallel bars or walking ramps, hydrotherapy, heat therapy, and electric therapy.
- Performs diagnostic tests and evaluations on referred patients/individuals to determine nature and extent of disabilities, to develop appropriate physical therapy treatment plans, and to review patient/individual progress.
- Evaluates effectiveness of treatment plans

Attachment C

Physical Therapist statement of work

- Reports/documents patient progress/lack of progress
- Coordinates PT service delivery during the work shift
- Collaborates with the physician(s), team members, the patient and his/her family members using patient centered approaches that support the mission, vision and values of the facility in which patient is cared for
- Provides PT expertise to the interdepartmental treatment team members
- Participates in development of post-hospitalization care plans as needed.
- Assesses, recommends, and assists in obtaining necessary adaptive equipments.
- Maintains equipment in proper working condition and requests needed repairs.
- Checks orthotic, prosthetic, and assistive devices for proper fit and repairs, and recommends required modifications.
- Assists staff by demonstrating proper lifting and/or positioning techniques, as necessary, for the safety and comfort of patients/individuals being served.
- Participates in advanced and specialized training in physical therapy treatment procedures.
- Supervises PT Assistant and PT Aides within the licensing scope.
- Applies up-to-date professional knowledge and technology to the provision of patient care
- Participates in the facility committees and state wide work groups, as assigned.
- Participate in the facility policy/procedure development with PT expertise.

Staff Education

- Plans, develops, and provides staff training in the area of lifting, repositioning, and personal care as needed.
- Utilizes resource materials
- Provides health promotion / maintenance activities through teaching, guidance and counseling

Competency Maintenance Activities

- Attends and participates in ongoing mandatory facility and departmental training programs
- Attends in-service/out-service training programs
- Identifies personal training needs

Oral and Written Communications

- Interacts with patients and their family members effectively
- Contributes to the development of the Individual Support Plans in the interdisciplinary team process
- Writes/prints legibly
- Documents specific, accurate and complete information in the individual charts as specified in the facility policy

Attachment C

Physical Therapist statement of work

- Provides accurate and legible written work/incident related statements as required
- Maintains confidentiality of patient information
- Reports problems accurately using the chain of command
- Reports/documents patient incidents and employee accidents
- Keeps conversations free from discriminatory, abusive or sexually harassing comments
- Provides input and feedback for staff, committee, and improvement team meetings
- Interacts with colleagues in a collaborative manner to promote effective working relationships
- Utilizes current software program provided by the facility for documentation, data collection, tracking, and monitoring progresses of treatments.

Critical Thinking

- Organizes, prioritizes and plans patient care assignments
- Prescribes, coordinates and delegates PT services
- Prioritizes work tasks to be accomplished
- Utilizes available staffing and equipment resources
- Recognizes/anticipates patients' needs
- Anticipates/recognizes patient safety needs
- Maintains awareness of unit conditions to maintain safe environment for individuals.

Professional Conduct

- Demonstrates professional conduct with coworkers/patients
- Demonstrates ethical behavior in the work place
- Maintains a non-discriminatory work environment
- Abides by the Governor's Code of Conduct and DPW Personnel Regulations, policies and procedures, and State Hospital/Nursing policies and procedures
- Adheres to scheduled work hours
- Complies with sign in/out procedures
- Adheres to established procedures for reporting off work in accordance with mandated time frames
- Has no unexcused instance of failure to contact the immediate supervisor or designee to notify him/her of absence
- Reports all work-related accidents
- Monitors compliance of subordinate staff regarding adherence to scheduled work hours and sign in/sign out procedures

Employee Performance Reviews

- May be assigned lead worker
- Observes staff work performance

Attachment C

Physical Therapist statement of work

- Provides input to the departmental supervisor for completing employee performance evaluations for assigned subordinate staff
- Holds staff accountable to complete assigned work
- Monitors work rule policy and procedure compliance and compliance with facility regulations

Staff Competence

- Provides ongoing orientation, education and on-the-job training to subordinate staff and other disciplines as applicable
- Assesses the competence of subordinate staff
- Reports deficiencies to the Supervisor
- Develops strategies to assist staff to improve quality of services
- Monitors/assigns unit staff to attend training programs

Performance Improvement

- Identifies unit improvement opportunities
- Participates / supports facility's performance improvement initiatives
- Performs other related duties as assigned

Attachment D
Bidder Contact Information

THIS DOCUMENT IS REQUIRED TO BE RETURNED WITH YOUR BID SUBMISSION:

BIDDERS CONTACT PERSON FOR PURPOSES OF BID QUESTIONS AND VENDOR NUMBER QUESTIONS:

INDIVIDUAL NAME: Donald Mooney, Executive Vice President
COMPANY NAME: Columbus Medical Services
ADDRESS: 1012 West Ninth Avenue, King of Prussia, PA 19406
PHONE: 800-229-5116
FAX: 888-379-2524
EMAIL: dmooney@columbusorg.com
FEDERAL TAX I.D. # 75-2690132
VENDOR NUMBER# 170893

The bidder will designate a person who shall be familiar with the contract and authorized to act on the bidders behalf in resolving any issues relating to the contract and who shall be available to the facility during regular business hours

BIDDERS CONTACT PERSON FOR THE PURPOSE OF PROVIDING RESOURCES IN ACCORDANCE WITH THE BID STATEMENT OF WORK:

INDIVIDUAL NAME: Donald Mooney, Executive Vice President
COMPANY NAME: Columbus Medical Services
ADDRESS: 1012 West Ninth Avenue, King of Prussia, PA 19406
PHONE: 800-229-5116
FAX: 888-379-2524
EMAIL: dmooney@columbusorg.com