

# SOURCE JUSTIFICATION FORM

Bureau of Procurement

The objective of this form is to capture all relevant documentation an Agency may have to assist the Department of General Services ("DGS"), Bureau of Procurement, in expediting the source justification review process. This form must be completed electronically, signed, and submitted with all relevant documentation to DGS. If a question is neither mandatory nor applicable, please indicate "N/A". Please use standard terminology and define acronyms.

## SECTION A

<b>1. Agency Name:</b>	Transportation		
<b>2. Procurement Description:</b> This description will appear on the eMarketplace website for public viewing	Statewide Automated Fuel Control System (AFCS) Maintenance and Repair		
<b>Materials Description:</b>			
<b>Services Description:</b>			
<b>IT-Materials Description:</b>			
<b>IT-Services Description:</b>	<p>Maintenance agreement for one hundred and four Automated Fuel Control System (AFCS) units located through the state. This agreement provides the following:</p> <ul style="list-style-type: none"> <li>• On-site maintenance and repair of the equipment, to return the equipment to normal operating order.</li> <li>• Support to the operation and use of the software and the AFCS itself.</li> <li>• Routine access to the AFCS to determine malfunctions and to report on the current status and performance of the system.</li> <li>• Allows PennDOT to purchase AFCS equipment and have equipment installed to automate non-automated fueling SITES at PennDOT stockpile locations.</li> <li>• To obtain replacement parts for existing PennDOT AFCS that are not covered under the existing PennDOT maintenance agreement.</li> </ul>		
<b>3. Materials Shopping Cart # or Services SPR#</b>	<b>Estimated Cost:</b>	\$100,001 - \$250K	
	<b>Initial Contract Term:</b>	2 YEARS	
	<b>Renewals:</b>	1 - 1 YEAR	
<b>4. Supplier - Name:</b>	TRAK Engineering INC.		
<b>Full Address:</b>	2901 CRESCENT DRIVE, TALLAHASSEE FL 32301-3535		
<b>Contact Name:</b>	EVA CHESTER/ KATHERINE BLYTH		
<b>Telephone:</b>	850-878-4585	<b>FAX:</b>	850-656-8265
<b>E-mail:</b>	echester@trakeng.com/ kblyth@trakeng.com		
<b>SRM Supplier #:</b>	169009		
<b>5. Delivery or service location:</b>	Statewide		

# SOURCE JUSTIFICATION FORM

Bureau of Procurement

## SECTION B

- 1. Sole Source:** Only known source - Not available from another supplier.
- 2. Single Source (*Material/Repair/Maintenance*):** Material or service MUST be compatible with existing equipment. Documentation must be provided from the manufacturer.
- 3. Single Source (*Used Equipment*):** Value set by 2 independant 3rd party appraisals.
- 4. Single Source (*Professional Expert*):** Describe in detail in Section C.
- 5. Exempt (*Law*):** A federal or state statute or regulation exempts the procurement from the competitive procedure. Any applicable information precluding the procurement from competitive procedures must be attached.
- 6. Feasibility:** Clearly not feasible to award the contract on a competitive basis.
- 7. No Substitute:** Require OEM material but may be competitively bid, i.e. distributors.

## SECTION C

**1. Describe the unique features of this procurement that prohibit a competitive environment. If applicable, attach a Statement of Work ("SOW").**

TRAK Automated Fuel hardware and software is manufactured, maintained and repaired exclusively by TRAK Engineering INC. They do not employ Authorized Service Representatives, dealers or distributors. The system is proprietary which requires all services and parts to be provided by TRAK Engineering.

**2. Document and attach the research that has been conducted to date to verify the supplier is the only known source.**

The Pennsylvania Department of Transportation (PennDOT) currently uses TRAK Engineering Fuel Management System hardware and software to provide the fleet secure access to their fuel supply at various fuel sites located through the Commonwealth. TRAK Engineering INC. is the original equipment manufacturer of all system hardware and is the sole source for replacement parts.

**3. Does the supplier utilize distributors, dealers, resellers, etc.? If "Yes," please identify.**

No. Software is proprietary.

**4. Are there compatibility requirements or compliance requirements with a warranty or service agreement? If "Yes," please explain.**

All hardware and software shall be provided by TRAK Engineering. TRAK's software is the only software on the market that is compatible with the hardware of TRAK's Fuel Management System.

**5. How has the material or service been procured in the past? Please provide previous source justifications, contracts, & PO's for this material or service.**

DGS Sole Source contract number 4400001600. Additionally, there is currently an ITR being routed for approval. RFQ# 6000114269 and PO# 4500377745 and 4300135570. Currently PO# 4300202096 is in place until December 31st, 2011. An EPO ITR that will cover services etc until this request is completed is currently in circulation for approvals as well.

# SOURCE JUSTIFICATION FORM

Bureau of Procurement

6. If procured through the IT ITQ process, please provide original \$ amount and contract period of order. Is this the final phase of the project?

N/A

7. If this is an upgrade, addition, alteration, etc., to an earlier procurement, please describe in detail.

N/A

8. What are the consequences of not approving this procurement?

The AFCS units record all dept. equipment fueling transactions and provide data that enables PennDOT to perform timely maintenance on our vehicles. The system also helps determine how much equipment to keep on inventory and assists in reducing overall fuel costs. If the AFCS breaks down, repairs cannot be completed and fueling information will not be recorded or transferred to the Dept. Equipment Management System. PennDOT's preventive Maintenance Program and Equipment Allocation is based on having this data. Additionally, each county would have to process a Sole Source to add the new automated fuel sites in addition to maintenance, repairs, etc if this procurement is not approved and completed. Its creation builds a document that all locations can simply procure off of.

9. If timing is a factor, what is the time factor and why?

Contract 4400001600 has expired. There are no other means of keeping this equipment up and working without this document being created. Also, the current contract in place, PO# 4300202096 is due to expire December 31st, 2011.

10. List any other information relevant to the acquisition of this procurement here or as an attachment.

N/A

11. For requests > \$100,000, has the supplier signed cost or pricing data certification and is the pricing breakdown attached?

The requested documentation WILL BE attached.

# SOURCE JUSTIFICATION FORM

Bureau of Procurement

## SECTION D

**IMPORTANT\***: The printed names on this form shall constitute the signatures of these individuals. Agencies must insure that these individuals review the completed form and give their consent to apply their printed name on this form. No handwritten signatures shall be required in order for the form to be considered "signed" by those individuals whose names appear in the signature section of the form.

### Shopping Cart Contact Person (Person whom DGS will contact regarding the Shopping Cart):

<b>Name:</b>	Constance Williamson	<b>P-Group:</b>	KW2	<b>Date:</b>	12-06-11
<b>Title:</b>	Purchasing Agent I	<b>Telephone:</b>		<b>Fax:</b>	

### Agency Contact Person: Person in your agency that DGS can contact for additional information, etc.

<b>Name:</b>	Mark Reigle	<b>Title:</b>	Roadway Programs Manager	<b>Date:</b>	12-06-11
<b>Telephone:</b>		<b>Fax:</b>		<b>Email:</b>	mreigle@pa.gov

### Approving Authority (Agency Head or Deputy reviewing and approving this request): Approving Authority connotes approval of the source justification and the cost or pricing data certification.

<b>Name:</b>	Russell S. Christie	<b>Title:</b>	Deputy Secretary for Highway	<b>Date:</b>	12-06-11
<b>Telephone:</b>		<b>Fax:</b>			

### Additional Approvals (if required by Agency):

<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>
<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>
<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>
<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>
<b>Name:</b>	<b>Title:</b>	<b>Date:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>

Table of Contents

PART I - GENERAL INFORMATION ..... 3

I.1 I-SPR-001.2 Purpose (Dec. 2006) ..... 3

I.2 I-SPR-005.1 Type of Contract (Dec. 2006)..... 3

I.3 I-SPR-011-2b Submission of Supplier Pricing Request Forms - Electronic Submittal (Dec. 2006) ..... 3

I.4 I-SPR-013.1A Non-Discrimination Program – Services Exceeding \$50,000 (Dec 2006)..... 3

I.5 I-SPR-029.2 Prices – Sole Source (Dec 2006) ..... 3

PART II -SUBMITTAL REQUIREMENTS..... 4

II.1 II-SPR-008.1b Lobbying Certification and Disclosure – Electronic Submission (Dec 2006)..... 4

PART III - WORK STATEMENT ..... 5

III.1 III-SPR-001.1B Statement of Work (Dec 2006)..... 5

PART IV - TERMS AND CONDITIONS ..... 6

IV.1 CONTRACT-001.1c Contract Terms and Conditions – Stand-Alone (Nov 30 2006)..... 6

IV.2 CONTRACT-002.1a Term of Contract – Contract (March 2011)..... 6

IV.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006)..... 6

IV.4 CONTRACT-002.2d Renewal of Contract Term; Adjusted Prices - Fixed Percentage (Nov 30 2006)..... 6

IV.5 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006) ..... 6

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

IV.7 CONTRACT-004.1b Definitions – IT (Nov 30 2006) ..... 7

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

IV.9 CONTRACT-006.1 Independent Prime Contractor (Oct 2006)..... 8

IV.10 CONTRACT-007.01b Delivery of Services (Nov 30 2006)..... 9

IV.11 CONTRACT-007.02 Estimated Quantities (Nov 30 2006) ..... 9

IV.12 CONTRACT-008.1b Warranties (Nov 30 2006) ..... 9

IV.13 CONTRACT-009.1a Patent, Copyright, Trademark, and Trade Secret Protection (Nov 30 2006)..... 9

IV.14 CONTRACT-009.1b Ownership Rights (Dec 12 2006) ..... 11

IV.15 CONTRACT-010.1b Inspection and Acceptance (Oct 2006)..... 16

IV.16 CONTRACT-011.1a Compliance With Law (Oct 2006)..... 17

IV.17 CONTRACT-012.1 Contract Scope (Oct 2006) ..... 18

IV.18 CONTRACT-013.1 Environmental Provisions (Oct 2006) ..... 18

IV.19 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006)..... 18

IV.20 CONTRACT-014.3 Enforcement (Oct 2006) ..... 18

IV.21 CONTRACT-015.1 Compensation (Oct 2006)..... 19

IV.22 CONTRACT-015.2 Billing Requirements (Dec 5 2006)..... 19

IV.23 CONTRACT-015.3 Invoice Requirement – SAP Purchase Orders (Feb 2007) ..... 19

IV.24 CONTRACT-016.1 Payment (Oct 2006)..... 19

IV.25 CONTRACT-016.2 ACH Payments (Aug 2007)..... 20

IV.26 CONTRACT-017.1 Taxes (Dec 5 2006)..... 20

IV.27 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)..... 20

IV.28 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006) ..... 21

IV.29 CONTRACT-020.1 Audit Provisions (Oct 2006)..... 21

IV.30 CONTRACT-021.1 Default (Dec 12 2006) ..... 21

IV.31 CONTRACT-022.1 Force Majeure (Oct 2006)..... 23

IV.32 CONTRACT-023.1b Termination (Dec 6 2006)..... 23

IV.33 CONTRACT-024.1 Contract Controversies (Oct 2011)..... 25

IV.34 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)..... 25

IV.35 CONTRACT-026.1 Other Contractors (Oct 2006) ..... 26

IV.36 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Aug 2010) ..... 26

IV.37 CONTRACT-028.1 Contractor Integrity Provisions (March 2011)..... 27

IV.38 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)..... 31

IV.39 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)..... 32

IV.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006) ..... 33

IV.41 CONTRACT-033.1 Applicable Law (Oct 2006) ..... 33

IV.42 CONTRACT- 034.1b Integration (Nov 30 2006) ..... 33

IV.43 CONTRACT-034.2c Order of Precedence - SPR (Dec 13 2006) ..... 33

IV.44 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)..... 33

IV.45 CONTRACT-035.1b Changes (Oct 2006) ..... 33

IV.46 CONTRACT-036.1 Background Checks (Feb 2008) .....	34
IV.47 CONTRACT-037.1a Confidentiality (Oct 2006).....	34
IV.48 CONTRACT-038.1 Limitation of Liability (Nov 30 2006).....	35
IV.49 CONTRACT-039.1 Virus; Malicious, Mischievous or Destructive Programming (Oct 2006).....	36
IV.50 CONTRACT-045.1 Insurance - General (Dec 12 2006).....	36
IV.51 CONTRACT-051.1 Notice (Dec 2006).....	37
IV.52 CONTRACT-052.1 Right to Know Law (Feb 2010).....	37

## **PART I - GENERAL INFORMATION**

### **PART I - GENERAL INFORMATION**

#### **I.1 I-SPR-001.2 Purpose (Dec. 2006)**

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Supplier Pricing Request to request a written offer from the vendor to meet the needs of DEPARTMENT OF TRANSPORTATION to satisfy the need for SS7844610ED, Maintenance, Fuel System .

#### **I.2 I-SPR-005.1 Type of Contract (Dec. 2006)**

If the Issuing Office enters into a contract as a result of this SPR, it will be a Established Price Contract contract containing the Contract Terms and Conditions as shown in Part IV of this SPR.

#### **I.3 I-SPR-011-2b Submission of Supplier Pricing Request Forms - Electronic Submittal (Dec. 2006)**

Supplier pricing is requested for the item(s) described in this Supplier Pricing Request and all the documents referenced in the form (collectively called the SPR). The vendor must submit its response to the Supplier Pricing Request through the Commonwealth's electronic system (SRM).

#### **I.4 I-SPR-013.1A Non-Discrimination Program – Services Exceeding \$50,000 (Dec 2006)**

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

#### **I.5 I-SPR-029.2 Prices – Sole Source (Dec 2006)**

If a contract is entered into with the vendor, the vendor will be required to provide the awarded item(s) at the prices quoted in its response to the Supplier Pricing Request.

## **PART II -SUBMITTAL REQUIREMENTS**

### **PART II -SUBMITTAL REQUIREMENTS**

#### **II.1 II-SPR-008.1b Lobbying Certification and Disclosure – Electronic Submission (Dec 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. Vendors 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 SPR. The completed and signed Lobbying Certification Form and the Disclosure of Lobbying Activities Form should be submitted with the Response. Commonwealth agencies will not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

**PART III - WORK STATEMENT**

PART III - WORK STATEMENT

**III.1 III-SPR-001.1B Statement of Work (Dec 2006)**

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

## **PART IV - TERMS AND CONDITIONS**

### **PART IV - TERMS AND CONDITIONS**

#### **IV.1 CONTRACT-001.1c Contract Terms and Conditions – Stand-Alone (Nov 30 2006)**

The Contractor and the Commonwealth agree that the following terms and conditions are part of the Contract:

#### **IV.2 CONTRACT-002.1a Term of Contract – Contract (March 2011)**

The initial term of the Contract shall be 2 year(s).

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

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

#### **IV.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006)**

The Contract may be mutually renewed for a maximum of 3 additional 1 year term(s), so long as the Commonwealth provides written notice to Contractor of its intention to extend the Contract by letter dated not less than 060 days prior to the expiration of the term of the agreement, or any extension thereof, and the Contractor consents to the renewal not less than 030 days prior to the expiration of the term of the agreement or any extension thereof. The renewal may be exercised as individual or multiple year terms(s). Any renewal will be under same terms, covenants and conditions. No further document is required to be executed to renew the term of the contract.

#### **IV.4 CONTRACT-002.2d Renewal of Contract Term; Adjusted Prices - Fixed Percentage (Nov 30 2006)**

The Contract may be renewed for a maximum of 3 additional 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, provided, however, that the rates under the contract may be increased 2.00 % during each renewal term. No further document is required to be executed to renew the term of the contract.

#### **IV.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.

#### **IV.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.

#### **IV.7 CONTRACT-004.1b Definitions – IT (Nov 30 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.

#### **IV.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 acknowledgement 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.

#### **IV.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.

**IV.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.**

**IV.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.

**IV.12 CONTRACT-008.1b Warranties (Nov 30 2006)**

The Contractor warrants that the Services and Developed Works will conform in all material respects to the functional specifications for the Developed Works and/or the requirements of the Contract. The warranty period for the Services and Developed Works shall be one hundred eighty (180) days from final acceptance. The Contractor shall correct any non-conformity within the warranty period specified herein.

- a. The Contractor hereby represents and warrants to the Commonwealth that the Contractor will not cause, or take any action that may directly or indirectly cause a disruption of the Commonwealth's operations.
- b. In the event of any nonconformity with the foregoing warranties, the Commonwealth will provide written notification of such nonconformity to the Contractor and the Contractor, at no cost to the Commonwealth, shall within ten (10) days notice of the nonconformity, commence work to remedy the nonconformity and shall work diligently, at no charge to the Commonwealth, until such time as the deliverable conforms, in all material respects, to the functional specifications of the Developed Works set forth in this Contract.
- c. Contractor warrants that it has the necessary legal rights, including licenses to third party products, tools or materials, to perform the Services and deliver the Developed Materials under this Contract.
- d. THE FOREGOING EXPRESS WARRANTIES ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND NO OTHER WARRANTIES, EXPRESS OR IMPLIED, SHALL APPLY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- e. All non-expired warranties shall survive termination of the Contract.

**IV.13 CONTRACT-009.1a Patent, Copyright, Trademark, and Trade Secret Protection (Nov 30 2006)**

- a. The Contractor shall hold the Commonwealth harmless from any suit or proceeding which may be brought by a third party against the Commonwealth, its departments, officers or employees for the alleged infringement of any United States or foreign patents, copyrights, or trademarks, or for a misappropriation of trade secrets arising out of performance of this Contract, including all work, services, materials, reports, studies, and computer programs provided by the Contractor, and in any such suit or proceeding will satisfy any final award for such infringement, including costs. The Commonwealth agrees to give Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act 71 P.S. 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 the terms it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. No settlement which prevents the Commonwealth from continuing to use the Developed Materials as provided herein shall be made without the Commonwealth's prior written consent. In all events, the Commonwealth shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing. It is expressly agreed by the Contractor that, in the event it requests that the Commonwealth to provide support to the Contractor in defending any such claim, the Contractor shall reimburse the Commonwealth for all expenses (including attorneys' fees, if such are made necessary by the Contractor's request) incurred by the Commonwealth for such support. If OAG does not delegate the defense of the matter, the Contractor's obligation to indemnify ceases. The Contractor will, at its expense, provide whatever cooperation OAG requests in the defense of the suit.
- b. The Contractor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Contractor certifies that, in all respects applicable to this Contract, it has exercised and will continue to exercise due diligence to ensure that all works produced under this Contract do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties. The Contractor also agrees to certify that work produced for the Commonwealth under this contract shall be free and clear from all claims of any nature.
- c. If the defense of the suit is delegated to the Contractor, the Contractor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.
- d. If, in the Contractor's opinion, the products, materials, reports, studies, or computer programs furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, at its option and expense, substitute functional equivalents for the alleged infringing products, materials, reports, studies, or computer programs or, at the Contractor's option and expense, obtain the rights for the Commonwealth to continue the use of such products, materials, reports, studies, or computer programs.
- e. If any of the products, materials, reports, studies, or computer programs provided by the Contractor are in such suit or proceeding held to constitute infringement and the use or publication thereof is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to publish or continue use of such infringing products, materials, reports, studies, or computer programs, replace them with non-infringing items, or modify them so that they are no longer infringing.
- f. If the Contractor is unable to do any of the preceding, the Contractor agrees to pay the Commonwealth:
  - (1) any amounts paid by the Commonwealth less a reasonable amount based on the acceptance and use of the deliverable;
  - (2) any license fee less an amount for the period of usage of any software; and

- (3) the prorated portion of any service fees representing the time remaining in any period of service for which payment was made
- g. The obligations of the Contractor under this Section continue without time limit and survive the termination of this contract.
- h. Notwithstanding the above, the Contractor shall have no obligation for:
  - (1) modification of any product, service, or deliverable provided by the Commonwealth;
  - (2) any material provided by the Commonwealth to the Contractor and incorporated into, or used to prepare, a product, service, or deliverable;
  - (3) use of the product, service, or deliverable in other than its specified operating environment;
  - (4) the combination, operation, or use of the product, service, or deliverable with other products, services, or deliverables not provided by the Contractor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Contractor did not provide;
  - (5) infringement of a non-Contractor product alone.
  - (6) the Commonwealth's distribution, marketing or use beyond the scope contemplated by the Contract; or
  - (7) the Commonwealth's failure to use corrections or enhancements made available to the Commonwealth by the Contractor at no charge.
- i. The obligation to indemnify the Commonwealth, under the terms of this Section, shall be the Contractor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

#### **IV.14 CONTRACT-009.1b Ownership Rights (Dec 12 2006)**

##### **a. Ownership of Properties**

- (1) All "Developed Works" shall be owned according to the provisions set forth in this paragraph.
- (2) All software owned by the Commonwealth or its licensors ("Commonwealth Software") as of the Effective Date, shall be and shall remain the exclusive property of the Commonwealth or its licensors, and Contractor shall acquire no rights or interests in the Commonwealth Software or Tools or that of its licensors except as described in this paragraph or in another provision set forth in this Contract. The Contractor shall not use any Commonwealth Software, Commonwealth Tools or software or tools of its licensors for any purpose other than for completion of work to be performed under this Contract.

##### **b. Definitions**

- (1) Software - For purposes of this Contract, the term "software" means a collection of one or more programs, databases or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- (2) Data - For purposes of this Contract, the term "data" means any recorded information, regardless of form, the media on which it may be recorded, or the method of recording.
- (3) Technical Data - For purposes of this Contract, the term "technical data" means any specific information necessary for the development, production or use of the Commonwealth Software.

c. Commonwealth Property - Non-Exclusive, License Grant and Restrictions

During the term of this Contract, Commonwealth grants to Contractor for the limited purpose of providing the Services covered under this Contract, a limited, nonexclusive, nontransferable, royalty-free right (subject to the terms of any third party agreement to which the Commonwealth is a party) to do the following:

- (1) Obtain access to and use of the Commonwealth Software in accordance with the terms of this Contract.
- (2) Reproduce the Commonwealth Software for archival purposes or for other purposes expressly provided for under this Contract.
- (3) Modify the Commonwealth Software consistent with the terms and conditions of this Contract provided that Contractor agrees to assign to the Commonwealth, its rights, if any, in any derivative works resulting from Contractor's modification of the Commonwealth Software. Contractor agrees to execute any documents required to evidence this assignment and to waive any moral rights and rights of attribution provided for in paragraph 106A of Title 17 of the United States Code, the Copyright Act of 1976.
- (4) Allow the Contractor's subcontractors approved by the Commonwealth to obtain access to the Commonwealth Software for the purposes of complying with the terms and conditions of this Contract; provided, however, that neither Contractor nor any of its subcontractors may decompile or reverse engineer, or attempt to decompile or reverse engineer, any of the Commonwealth Software. Commonwealth hereby represents that it has the authority to provide the license grant and rights set forth in this paragraph.
- (5) To the extent that Contractor uses Commonwealth Software, Commonwealth Tools or software or tools of its licensor, Contractor agrees to protect the confidentiality of these works and maintain these proprietary works with the strictest confidence.

d. Impact of Third Party Agreements

Subject to the terms of any third party agreement to which the Commonwealth is a party, (i) the Commonwealth shall, at no cost to Contractor, provide Contractor with access to the Commonwealth Software in the form in use by Commonwealth as of the Effective Date of this Contract and, (ii) Contractor, as part of the Services to be rendered under this Contract, shall compile and, as changes are made, update a list of all of the Commonwealth Software then in use by Contractor or any of its subcontractors in connection with Contractor's performance of the Services required by this Contract.

e. Reservation of Rights

All rights, not expressly granted here to Contractor on a nonexclusive basis, including the right to grant non-exclusive licenses and other rights are reserved by the Commonwealth.

f. Termination of Commonwealth License Grant

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, all rights granted to Contractor in this paragraph shall immediately cease. Contractor shall, at no cost to Commonwealth, deliver to Commonwealth all of the Commonwealth Software and Tools (including any related source code then in Contractor's possession or under its control) in the form in use as of the Effective Date of such expiration or termination. Within fifteen (15) calendar days after termination, Contractor shall provide the Commonwealth with a current copy of the list of Commonwealth Software in use as of the date of such expiration or termination. Concurrently therewith, Contractor shall destroy or erase all other copies of any of the Commonwealth Software then in Contractor's possession or under its control unless otherwise instructed by Commonwealth, in writing; provided, however, that Contractor may retain one archival copy of such Commonwealth Software and Tools, until final resolution of any actively asserted pending disputes between the Parties, such retention being for the sole purpose of resolving such disputes.

g. Effect of License Grant Termination

Consistent with the provisions of this paragraph, Contractor shall refrain from manufacturing, copying, marketing, distributing, or use of any Commonwealth Software or any other work which incorporates the Commonwealth Software. The obligations of this paragraph shall survive any termination of this Contract.

h. Use of Contractor-Owned Software All software owned by Contractor (Contractor Software) and tools owned by Contractor (Contractor Tools) prior to the Effective Date of this Contract shall be and shall remain the exclusive property of Contractor. The Commonwealth shall acquire no rights or interests in the Contractor Software or the Contractor Tools by virtue of this Contract except as set forth in this paragraph.

i. Definition of Contractor Tools

Contractor Tools is defined as any tools, both in object code and source code form, which Contractor has previously developed, or which Contractor independently develops or licenses from a third party, excluding any tools that Contractor creates pursuant to this Contract. Contractor Tools includes but is not limited to, methodologies, information, concepts, toolbars for maneuvering between pages, search engines, JAVA applets, and ActiveX controls.

**j. Required Reports, Records and Inventory of Contractor Tools and Contractor Software**

(1) Contractor must provide a list of all Contractor Tools and Contractor Software to be delivered in connection with the deliverables or Developed Materials prior to commencing any work under the Contract. Contractor must also provide a list of all other Contractor Tools and Contractor Software intended to be used by Contractor to provide the services under this Contract but will not become part of or necessary for the use of the Developed Materials. All Contractor Tools and Contractor Software necessary to use deliverables or Developed Materials shall be delivered to the Commonwealth along with the license set forth in subparagraph f. Contractor may amend these lists from time to time while the Contract is being carried out or upon its completion. Any Contractor Tools or Contractor Software not included on the lists will be deemed to have been created under this Contract.

(2) During the term of this Contract, Contractor shall maintain at its principal office books of account and records showing its actions under this Contract. Upon reasonable notice by Commonwealth, Contractor shall allow Commonwealth to inspect these records and accounts for purposes of verifying the accuracy of

such accounts and records.

- (3) In the event that Contractor fails to list a Contractor Tool or Contractor Software, but is able to demonstrate that such tool or software was independently developed by Contractor prior to the Effective Date of this Contract, Contractor shall retain complete ownership of such Contractor Tool or Contractor Software that is necessary to use the deliverables or Developed Works, provided that notice is given to the Commonwealth prior to use on the Contract.

**k. Expiration or Termination NonExclusive License Grant - Non-Commercial Contractor Tools and Software**

Upon the expiration or termination for any reason of Contractor's obligation to provide the Services under this Contract, and at the request of Commonwealth, Contractor shall (i) grant to Commonwealth a paid-up, nonexclusive, nontransferable license to use, modify, prepare derivative works and unless Commonwealth terminates this Contract without cause, grant to third parties engaged by Commonwealth the right to use, modify, and prepare derivative works based upon all or any portion of the non-commercially available Contractor Software and the non-commercially available Contractor Tools owned by Contractor and used by Contractor in connection with the Services, the foregoing rights being granted to the extent reasonably necessary to facilitate Commonwealth's or such third party's completion of and maintenance of the Services to be provided by Contractor under this Contract immediately prior to such expiration or termination and (ii) deliver to Commonwealth the object code version of such non-commercially available Contractor Software and such non-commercially available Contractor Tools in the form used by Contractor in connection with the Services immediately prior to such expiration or termination to allow the Commonwealth to complete and maintain such work. If Commonwealth enters into a contract that allows for the use of the Contractor Software or Contractor Tools for which a license is granted under this paragraph, the Commonwealth will include a provision in that contract that limits the use of the Contractor Software or Contractor Tools as delineated in this paragraph.

**l. Rules of Usage for Developed Works**

- (1) If Developed Works modify, improve, or enhance application software programs or other materials generally licensed by the Contractor, then such Developed Works shall be the property of the Contractor, and Contractor hereby grants Commonwealth an irrevocable, nonexclusive, worldwide, fully paid-up license (to include source code and relevant documentation) in perpetuity to use, modify, execute, reproduce, display, perform, prepare derivative works from and distribute, within the Commonwealth, of such Developed Works. For purposes of distribution under the license grant created by this paragraph, Commonwealth includes any government agency, department, instrumentality, division, unit or other office that is part of the Commonwealth of Pennsylvania, together with the State System of Higher Education (including any of its universities), any county, borough, commonwealth, city, municipality, town, township special purpose district, or other similar type of governmental instrumentality located within the geographical boundaries of the Commonwealth of Pennsylvania. If federal funds are used in creation of the Developed Works, the Commonwealth also includes any other state government as well as the federal government.
- (2) If Developed Works modify, improve, or enhance application software or other materials not licensed to the Commonwealth by the Contractor, then such modifications, improvements and enhancements shall be the property of the Commonwealth or its licensor. To the extent Commonwealth owns the software or other materials, it hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. To the extent Commonwealth has a license to the software or other materials, and to the extent that it, in its sole discretion determines it is able to do so the Commonwealth will grant to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform and distribute copies of such Developed Works.
- (3) If Developed Works have been funded by Commonwealth, to any extent, with either Commonwealth or

federal funds, and the Developed Works do not include pre-existing materials generally licensed by the Contractor, then the Commonwealth shall have all right, title, and interest (including ownership of copyright and trademark) to such Developed Works and the Commonwealth hereby grants to Contractor an irrevocable, nonexclusive, worldwide, fully paid-up license to use, modify, execute, reproduce, display, perform, prepare derivative works from, and distribute copies of such Developed Works. The Commonwealth shall exclusively own all software products first developed under the terms of this contract by the Contractor, its subcontractors or other third party vendors that are specifically developed for, engineered and integrated into the Developed Works.

m. Copyright Ownership - Works Developed as Part of the Scope of Work for the Project, including Developed Works developed by Subcontractors, are the sole and exclusive property of the Commonwealth and shall be considered "works made for hire" under the United States Copyright Act of 1976, as amended, 17 United States Code. In the event that the Developed Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, Contractor agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title, and interest in and to such Developed Works to Commonwealth. Contractor further agrees that it will have its Subcontractors assign, and upon their authorship or creation, expressly and automatically assign all copyright interest, proprietary rights, trade secrets, and other right, title, and interest in and to the Developed Works to the Commonwealth. Commonwealth shall have all rights accorded an owner of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Developed Works in multiple copies, the right to distribute, copies by sales or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the Creative Works and the right to display the Developed Works. The Contractor further agrees that it will include this requirement in any subcontractor or other agreement with third parties who in any way participate in the creation or development of Developed Works. Upon completion or termination of this Contract, all working papers, files and other documentation shall immediately be delivered by Contractor to the Commonwealth. Contractor warrants that the Developed Works are original and do not infringe any copyright, patent, trademark, or other intellectual property right of any third party and are in conformance with the intellectual property laws of the United States

n. Patent Ownership

(1) Contractor and its subcontractors shall retain ownership to patentable items, patents, processes, inventions or discoveries (collectively, the Patentable Items) made by the Contractor during the performance of this Contract. Notwithstanding the foregoing, the Commonwealth shall be granted a nonexclusive, nontransferable, royalty free license to use or practice the Patentable Items. Commonwealth may disclose to third parties any such Patentable Items made by Contractor or any of its subcontractors under the scope of work for the Project that have been previously publicly disclosed. Commonwealth understands and agrees that any third party disclosure will not confer any license to such Patentable Items.

(2) Contractor shall not use any computer program, code, or any works developed by or for Contractor independently of this Contract ("Pre-Existing Materials") in the performance of the Services under this Contract, without the express written consent of the Commonwealth. Any Pre-Existing Materials used by Contractor for performance of Services under this Contract without Commonwealth consent shall be deemed to be Developed Works as that term is used in this paragraph. In the event that Commonwealth provides such consent, Contractor shall retain any and all rights in such Pre-Existing Materials.

o. Federal Government Interests

It is understood that certain funding under this Contract may be provided by the federal government. Accordingly, the rights to Developed Works or Patentable Items of Contractors or subcontractors hereunder will be further subject to government rights as set forth in 37 C.F.R. paragraph 401, and other applicable statutes.

p. Usage Rights for Know-How and Technical Information

Either Party, in the ordinary course of conducting business, may use any ideas, concepts, know-how, methodologies, processes, components, technologies, algorithms, designs, modules or techniques not otherwise covered by this paragraph relating to the Services which Contractor or Commonwealth (alone or jointly with the Commonwealth) develops or learns in connection with Contractor's provision of Services to Commonwealth under this Contract.

q. Commonwealth Intellectual Property Protection

Contractor acknowledges Commonwealth's exclusive right, title and interest, including without limitation copyright and trademark rights, in and to Commonwealth Software, Commonwealth Tools and the Developed Works developed under the provisions of this paragraph, shall not in any way, at any time, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title, and interest, and shall not use or disclose the Commonwealth Software, Commonwealth Tools, or the Developed Works without Commonwealth's written consent, which consent may be withheld by the Commonwealth for any reason. Further, Contractor shall not in any manner represent that Contractor has any ownership interest in the Commonwealth Software, Commonwealth Tools, or the Developed Works. This provision is a material part of this paragraph.

r. Contractor Intellectual Property Protection

Commonwealth acknowledges that it has no ownership rights in the Contractor Software or Contractor Tools other than those set forth in this Contract, or as may be otherwise granted in writing.

s. Source Code and Escrow Items Obligations

Simultaneously with delivery of the Developed Works to Commonwealth, Contractor shall deliver a true, accurate and complete copy of all source codes relating to the Developed Works. To the extent that the Developed Works include application software or other materials generally licensed by the Contractor, then the source code shall be placed in escrow, subject to the terms and conditions of an Escrow Agreement to be executed by the Parties and an Escrow Agent that is acceptable to the Commonwealth.

t. Contractor's Copyright Notice Obligations

Contractor will affix the following Copyright Notice to the Developed Works developed under this paragraph and all accompanying documentation: "Copyright [year] by the Commonwealth of Pennsylvania. All Rights Reserved." This notice shall appear on all tangible versions of the Developed Works delivered under this Contract and any associated documentation. It shall also be programmed into any all Developed Works delivered hereunder so that it appears at the beginning of all visual displays of such Developed Works.

#### **IV.15 CONTRACT-010.lb Inspection and Acceptance (Oct 2006)**

- a. Acceptance of Developed Materials will occur in accordance with the Deliverable Approval Plan submitted by the Contractor and approved by the Commonwealth. Upon approval of the plan by the Commonwealth the Deliverable Approval Plan becomes part of this Contract. If software or a developed system is the deliverable, the Deliverable Approval Plan must include an Acceptance Test Plan. The Acceptance Test Plan will provide

for a Final Acceptance Test, and may provide for Interim Milestone Acceptance Tests. Each Acceptance Test will be designed to demonstrate that the Developed Materials conform with the functional specification for the Developed Materials, if any, and/or the requirements of this Contract. Contractor shall notify the Commonwealth when the deliverable is completed and ready for acceptance testing. The Commonwealth will not unreasonably delay commencement of acceptance testing.

- b. Contractor shall certify, in writing, to the Commonwealth when a particular Deliverable milestone, interim or final, is completed and ready for acceptance (hereinafter Acceptance). Unless otherwise agreed to by the Commonwealth, the Acceptance period shall be ten (10) business days for interim milestones and thirty (30) days for final milestones. On or before the 10th business day for interim milestones or 30th business day for the final milestone, following receipt by the Commonwealth of Contractor's certification of completion of a particular milestone, the Commonwealth shall either: (1) provide the Contractor with Commonwealth's written conditional acceptance of the Developed Materials in the completed milestone, subject to the Commonwealth's final acceptance of the Developed Materials or (2) identify to Contractor, in writing, the failure of the Developed Materials to comply with the specifications, listing all such errors and omissions with reasonable detail.
- c. If the Developed Materials are in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's written conditional acceptance of the Developed Materials in the completed milestone. If the Developed Materials are not in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's written rejection of the Developed Materials in the completed milestone. If the Commonwealth fails to notify the Contractor in writing of any failures in the Acceptance period within the applicable Acceptance period, the Developed Materials shall be deemed accepted. Payment for Developed Materials will only be made if the Commonwealth has accepted the Developed Materials, either through written acceptance or through deemed acceptance.
- d. If the Developed Materials do not meet an accessibility standard, the Contractor must provide written justification for its failure to meet the standard. The justification must provide specific details as to why the standard has not been met. The Commonwealth may either waive the requirement as not applicable to the Commonwealth's business requirements or require that the Contractor provide an acceptable alternative. Any Commonwealth waiver of the requirement must be in writing.
- e. Upon Contractor's receipt of the Commonwealth's written notice of rejection, which must identify the reasons for the failure of the Developed Materials in a completed milestone to comply with the specifications, the Contractor shall have fifteen (15) business days, or such other time as the Commonwealth and Contractor may agree is reasonable, within which to correct all such failures, and resubmit the corrected Developed Materials, certifying to the Commonwealth, in writing, that the failures have been corrected, and that the Developed Materials have been brought into compliance with the specifications. Upon receipt of such corrected and resubmitted Developed Materials and certification, the Commonwealth shall have thirty (30) business days to test the corrected Developed Materials to confirm that they are in compliance with the specifications. If the corrected Developed Materials are in compliance with the specifications, then the Commonwealth shall provide the Contractor with Commonwealth's conditional acceptance of the Developed Materials in the completed milestone.
- f. If, in the opinion of the Commonwealth, the corrected Developed Materials still contain material failures, the Commonwealth may either:
  - (1) repeat the procedure set forth above; or
  - (2) terminate the contract.

#### **IV.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.

#### **IV.17 CONTRACT-012.1 Contract Scope (Oct 2006)**

- a. If the Contractor must perform work at a Commonwealth facility outside of the daily operational hours set forth by the Commonwealth, it must make arrangements with the Commonwealth to assure access to the facility and equipment. No additional payment will be made on the basis of lack of access, unless the Commonwealth fails to provide access as set out in the IFB.
- b. Except as set out in this Contract, the Contractor shall not offer for sale or provide Commonwealth agencies with any hardware or software (i.e., personal computers, file servers, laptops, personal computer packaged software, etc.). Contractor may recommend the use of tools such as hardware and software, without requiring agencies to purchase those tools. Software tools that are NOT on statewide contract will be acquired through purchase agreements, and the Contractor shall not be considered for award of such agreements if it has recommended their use.
- c. The Contractor shall review the standards set out in IT Bulletins. The Contractor shall ensure that Services procured under this Contract comply with the applicable standards. In the event such standards change during Contractor's performance, and the Commonwealth requests that Contractor comply with the changed standard, then any incremental costs incurred by Contractor to comply with such changes shall be paid for pursuant to a change order to the Contract.

#### **IV.18 CONTRACT-013.1 Environmental Provisions (Oct 2006)**

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

#### **IV.19 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.emarketplace.state.pa.us](http://www.emarketplace.state.pa.us) on the date of submission of the bid, proposal or contract offer.

#### **IV.20 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.

#### **IV.21 CONTRACT-015.1 Compensation (Oct 2006)**

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

#### **IV.22 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.

#### **IV.23 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.

#### **IV.24 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.

#### **IV.25 CONTRACT-016.2 ACH Payments (Aug 2007)**

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

#### **IV.26 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.

#### **IV.27 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006)**

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part

of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

#### **IV.28 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.

#### **IV.29 CONTRACT-020.1 Audit Provisions (Oct 2006)**

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

#### **IV.30 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.

#### **IV.31 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.

#### **IV.32 CONTRACT-023.1b Termination (Dec 6 2006)**

##### **a. For Convenience**

(1) The Commonwealth may terminate this Contract without cause by giving Contractor thirty (30) days prior written notice (Notice of Termination) whenever the Commonwealth shall determine that such termination is in the best interest of the Commonwealth (Termination for Convenience). Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance under this Contract is terminated either in whole or in part and the date on which such termination becomes effective. In the event of termination hereunder, Contractor shall receive payment for the following:

- (i) all services performed consistent with the terms of the Contract prior to the effective date of termination;
- (ii) all actual and reasonable costs incurred by Contractor as a result of the termination of the Contract; and

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any Subcontractor), loss of use of money, or administrative or overhead costs.

Failure to agree on any termination costs shall be a dispute handled in accordance with the Contract Controversies clause of this Contract.

- (2) The Contractor shall cease work as of the date set forth in the Notice of Termination, and shall be paid only for such services as have already been satisfactorily rendered up to and including the cease work date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such services performed thereafter in the thirty (30) day period of termination, if such services are requested by the Commonwealth, for the collection, assembling, and transmitting to the Commonwealth of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the work required under this Contract.
- (3) The above shall not be deemed to limit the Commonwealth's right to terminate this Contract for any reason as permitted by the other provisions of this Contract, or under applicable law.

b. Non-Appropriation

Any payment obligation or portion thereof of the Commonwealth created by this Contract is conditioned upon the availability and appropriation of funds. When funds (state 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. The Contractor shall be reimbursed in the same manner as that described in this section related to Termination for Convenience to the extent that appropriated funds are available.

c. Default

A party may, in addition to its other rights under this Contract, terminate this Contract in whole or in part by providing written notice of default to the other party if the other party materially fails to perform its obligations under the Contract and does not cure such failure within thirty (30) days or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period (or such longer period as the aggrieved party may specify in writing) after receipt of written notice from the aggrieved party specifying such failure. The Contracting Officer shall provide any notice of default or written cure notice for Contract terminations.

- (1) Subject to the Limitation of Liability clause of this Contract in the event the Commonwealth terminates this Contract in whole or in part as provided in this section, the Commonwealth may procure services similar to those so terminated, and the Contractor, in addition to liability for any liquidated damages, shall be liable to the Commonwealth, as the Commonwealth's sole and exclusive remedy for such default, for the difference between the Contract price for the terminated portion of the services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated services, provided that the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this section.
- (2) Except with respect to defaults of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control of the Contractor. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism, and unusually severe weather. The Contractor shall notify the Contracting Officer immediately in writing of its inability to perform because of a cause beyond the control of the Contractor.
- (3) Nothing in this section shall abridge the Commonwealth's right to suspend, debar, or take other administrative action against the Contractor.

- (4) If it is later determined that the Commonwealth erred in terminating the Contract for default, then the Contract shall be deemed to have been terminated for convenience under Subsection (a).
- (5) If this Contract is terminated as provided by this section, the Commonwealth may, in addition to any other rights provided in this Subsection, and subject to the Ownership Rights clause of this Contract, require the Contractor to deliver to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such reports and other documentation as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Payment for such reports and documentation will be made consistent with the Contract.

#### **IV.33 CONTRACT-024.1 Contract Controversies (Oct 2011)**

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

#### **IV.34 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.

#### **IV.35 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.

#### **IV.36 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Aug 2010)**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, 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.
2. 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.
3. The Contractor and each subcontractor 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.
4. The Contractor and each subcontractor 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.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by

the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD -21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD -28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD -21 within the past 12 months may, within the 15 days, request an exemption from the Form STD -21 submission requirement from the contracting agency.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

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

#### **IV.37 CONTRACT-028.1 Contractor Integrity Provisions (March 2011)**

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

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.

**6.** Contractor, its affiliates, agents and employees shall not, 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 Commonwealth official or employee.

**7.** Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.

**8.** Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

**9.** Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:

**a.** Approved in writing by the Commonwealth prior to its disclosure; or

**b.** Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or

**c.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

**d.** Necessary for purposes of Contractor's internal assessment and review; or

**e.** Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or

**f.** Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or

**g.** Otherwise required by law.

**10.** Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
  - (1) obtaining;
  - (2) attempting to obtain; or
  - (3) performing a public contract or subcontract.

Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

- c. Violation of federal or state antitrust statutes.
- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

**11.** If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641 of the Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a.** Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b.** Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

**12.** Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.

**13.** When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

**14.** Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

**15.** Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

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

**17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

- a.** "Confidential information" means information that a) is not already in the public domain;
- b)** is not available to the public upon request; c) is not or does not become generally known to

Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.

**b.** “Consent” means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.

**c.** “Contractor” means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.

**d.** “Financial interest” means:

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

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

**e.** “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.

**f.** “Immediate family” means a spouse and any unemancipated child.

**g.** “Non-bid basis” means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

**h.** “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

#### **IV.38 CONTRACT-029.1 Contractor Responsibility Provisions (Nov 2010)**

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

**1.** The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such

subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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

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

#### **IV.39 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.

#### **IV.40 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006)**

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

#### **IV.41 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.

#### **IV.42 CONTRACT- 034.1b Integration (Nov 30 2006)**

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

#### **IV.43 CONTRACT-034.2c Order of Precedence - SPR (Dec 13 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 SPR; and the Contractor's response to the SPR.

#### **IV.44 CONTRACT-034.3 Controlling Terms and Conditions (Aug 2011)**

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

#### **IV.45 CONTRACT-035.1b Changes (Oct 2006)**

- a. At any time during the performance of the Contract, the Commonwealth or the Contractor may request a change to the Contract. Contractor will make reasonable efforts to investigate the impact of the change request on the price, timetable, specifications, and other terms and conditions of the Contract. If the Commonwealth is the requestor of the change, the Contractor will inform the Commonwealth if there will be any charges for the Contractor's services in investigating the change request prior to incurring such charges. If the Commonwealth and the Contractor agree on the results of the investigation and any necessary amendments to the Contract, the Contract will be modified to take into account the agreed changes and the change will be implemented. If the parties cannot agree upon the results of the investigation or the necessary amendments to the Contract, the contracting officer may unilaterally order the work to be done, and the matter will be handled in accordance with CONTRACT CONTROVERSIES clause of this Contract. The change request will be evidenced by a Purchase Order issued by the Commonwealth. No work may begin on the change request until the Contractor has received the Purchase Order.
- b. Changes outside the scope of this Contract shall be accomplished through the Commonwealth's normal procurement procedures, and may result in an amended Contract or a new contract. No payment will be made for services outside of the scope of the Contract for which no amendment has been executed, prior to the provision of the services.

#### **IV.46 CONTRACT-036.1 Background Checks (Feb 2008)**

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

#### **IV.47 CONTRACT-037.1a Confidentiality (Oct 2006)**

- a. The Contractor agrees to guard the confidentiality of the Commonwealth with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for

information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.

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

- (1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- (2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
- (3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- (4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- (5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

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

#### **IV.48 CONTRACT-038.1 Limitation of Liability (Nov 30 2006)**

a. Except to the extent that the required Contractor insurance coverage under the Insurance clause exceeds the Contract value, the Contractor's liability to the Commonwealth under this Contract shall be limited to the value of this Contract. This limitation will apply, except as otherwise stated in this Section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to damages for:

- (1) bodily injury;
- (2) death;
- (3) intentional injury;
- (4) damage to real property or tangible personal property for which the Contractor is legally liable; or
- (5) the Contractor's indemnity of the Commonwealth for patent, copyright, trade secret, or trademark protection.

- b. In no event will the Contractor be liable for lost profits, lost revenue or lost savings. Except as set out in Virus; Malicious, Mischievous or Destructive Programming clause the Contractor will not be liable for damages due to lost records or data, unless otherwise specified in the RFP. Notwithstanding the foregoing, the Contractor shall provide reasonable assistance to the Commonwealth in restoring such lost records or data to their most recent backup copy.

#### **IV.49 CONTRACT-039.1 Virus; Malicious, Mischievous or Destructive Programming (Oct 2006)**

- a. Notwithstanding any other provision in this Contract to the contrary, the Contractor shall be liable for any damage to any data and/or software owned or licensed by the Commonwealth if the Contractor or any of its employees, subcontractors or consultants introduces a virus or malicious, mischievous or destructive programming into the Commonwealth's software or computer networks and has failed to comply with the Commonwealth software security standards. The Commonwealth must demonstrate that the Contractor or any of its employees, subcontractors or consultants introduced the virus or malicious, mischievous or destructive programming. The Contractor's liability shall cease if the Commonwealth has not fully complied with its own software security standards.
- b. The Contractor shall be liable for any damages incurred by the Commonwealth including, but not limited to, the expenditure of Commonwealth funds to eliminate or remove a computer virus or malicious, mischievous or destructive programming that result from the Contractor's failure to take proactive measures to keep virus or malicious, mischievous or destructive programming from originating from the Contractor or any of its employees, subcontractors or consultants through appropriate firewalls and maintenance of anti-virus software and software security updates (such as operating systems security patches, etc.).
- c. In the event of destruction or modification of software, the Contractor shall eliminate the virus, malicious, mischievous or destructive programming, restore the Commonwealth's software, and be liable to the Commonwealth for any resulting damages.
- d. The Contractor shall be responsible for reviewing Commonwealth software security standards and complying with those standards.
- e. The Commonwealth may, at any time, audit, by a means deemed appropriate by the Commonwealth, any computing devices being used by representatives of the Contractor to provide services to the Commonwealth for the sole purpose of determining whether those devices have anti-virus software with current virus signature files and the current minimum operating system patches or workarounds have been installed. Devices found to be out of compliance will immediately be disconnected and will not be permitted to connect or reconnect to the Commonwealth network until the proper installations have been made.
- f. The Contractor may use the anti-virus software used by the Commonwealth to protect Contractor's computing devices used in the course of providing services to the Commonwealth. It is understood that the Contractor may not install the software on any computing device not being used to provide services to the Commonwealth, and that all copies of the software will be removed from all devices upon termination of this Contract.
- g. The Commonwealth will not be responsible for any damages to the Contractor's computers, data, software, etc. caused as a result of the installation of the Commonwealth's anti-virus software or monitoring software on the Contractor's computers.

#### **IV.50 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.

#### **IV.51 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.

#### **IV.52 CONTRACT-052.1 Right to Know Law (Feb 2010)**

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

b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the

Commonwealth.

c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:

1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

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

# FUEL MANAGEMENT SYSTEM SPECIFICATIONS

## A. **DEFINITIONS** -The following terms shall have the following meaning.

1. "Equipment" shall include the following components:
2. "Fuel Sentry" shall mean the fuel control terminals, including the card reader unit and associated software, components and wiring including the Data Converter, which allow access to the fuel via mag cards, activate the fuel pumps, collect and store all fueling related data, and pass the data via the Data Converter through the phone line to the Central "Collector" Computer defined below.
3. "Central Collector Computer" shall mean the PC Desktop unit, including the monitor, CPU, CD RW and other standard drives and peripherals. the internal modem and external Data Converter and all associated wiring, the WINNCC software and alt operating system software which performs the daily polling operation, creates various reports, and maintains transaction, personnel, and equipment information. This shall be located at the Equipment Division in Harrisburg.
4. "Armband" shall mean the hand- held Processing Units and the Control Modules mounted in the tanker trucks and all associated wiring and cabling for collection, processing, and transmission of fueling data collected via the tanker truck fuelings.

## B. **SERVICE HOURS**

1. The standard service hours will be Monday through Friday, from 8:00 a.m. to 6:00 p.m.

## C. **SCOPE FOR PREVENTATIVE MAINTENANCE**

1. Provided the Equipment and Software are installed, used and maintained in accordance with specifications and instructions provided by Contractor to PennDOT, Contractor hereby agrees to provide on-site maintenance and repair of the Equipment, to return the Equipment to normal operating order, (collectively referred to hereafter as "Repair"); provide support for the operation and use of the Software and the Fuel Management System, and routine access to the Fuel Management System to determine an malfunctions (Support); and provide reports on the current status and performance of the Fuel Management System ("Reporting") (all the above collectively referred to hereinafter as "Service").
2. Preventative maintenance covers replacement parts identified as parts that have broken or worn out through normal use and are necessary for servicing.
3. In order to maintain the equipment in efficient operating condition, the Contractor agrees to furnish support and parts for the equipment, unlimited telephone support, and all software updates.
  - a) The Contractor will maintain and provide an "equipment list" to PennDOT.
4. Preventative Maintenance Repairs

## FUEL MANAGEMENT SYSTEM SPECIFICATIONS

- a) Contractor shall, if repairs cannot be made remotely, send Contractor service personnel to the site of the Equipment, to repair or replace Equipment or parts of the Equipment.
- b) Contractor may replace parts and Equipment on an exchange basis if such parts and Equipment are new, or in Contractor's judgment, equivalent to new in performance.
- c) This Work Plan includes all expenses and costs for Repairs incurred by Contractor on Fuel Management Systems, to return the Equipment to normal operating order, and includes travel and labor expenses for service.
- d) Contractor shall advise each County Fuel Management System caretakers or District Fuel Management System coordinator by e-mail, telephone, or personally, before any Repairs are started in said District or county, and when Repairs are completed in said District or County.
- e) Contractor shall provide enough technical personnel in order to comply with the Response Times (as defined hereinafter).

### **D. SCOPE FOR REPAIRS AND/OR REPLACEMENT PARTS NOT COVERED UNDER PREVENTATIVE MAINTENANCE**

1. The contractor shall provide a price list showing the unit cost for the list of parts required to automate a typical PennDOT fuel facility. This price list shall be good for two (2) years, which is the initial term of the contract. If PennDOT chooses to renew the contract, the Contractor may provide a new price list to PennDOT for review and approval.
2. The preventative maintenance does not include oil pumps, oil reels, oil nozzles, or the piping used to carry the oil to the dispensing location from the reservoir.
3. In the event the Contractor identifies any necessary repair(s) and/or replacement part(s) that is not covered under the preventative maintenance, the Contractor shall cease work and notify the County Fuel Management System caretakers or District Fuel Management System Coordinator, or his/her designee. This must be done **prior to starting** the repair and/or ordering/providing any replacement part(s).
4. The County Fuel Management System caretakers or District Fuel Management System Coordinator, or his/her designee, will determine if the repair(s) and/or replacement part(s) can be completed through this contract.
5. The Contractor shall not proceed with any repair(s) and/or replacement part(s) not covered under the preventative maintenance without a fully executed updated Purchase Order.
6. The resulting Purchase Order (PO) will reflect an estimated replacement parts allowance for parts not covered through the preventative maintenance. The Contractor shall not assume approval to charge for replacement parts against the estimated replacement

## FUEL MANAGEMENT SYSTEM SPECIFICATIONS

parts allowance. Charges against the estimated replacement parts allowance require the approval of PennDOT **prior to incurring costs**. The Contractor shall contact PennDOT to review the replacement parts charges. PennDOT may either approve or deny the charges.

### E. WARRANTY EXPIRATION FOR FUEL SENTRIES

1. The Contractor will notify PennDOT at least 30 days in advance of any upcoming warranty expirations.
2. The Contractor will provide a quote to PennDOT to include the expired fuel sentry(ies) to the preventative maintenance agreement.
3. PennDOT will need to review and approve the quote, update the Purchase Order, and provide a fully executed Purchase Order to the Contractor before the expired fuel sentry will be covered under the preventative maintenance agreement.

### F. NEW INSTALLATIONS

1. The Contractor will be required to submit a quote to PennDOT for each new installation for review and approval by PennDOT. The quote must contain a cost breakdown and a total amount for the installation.
2. Upon approval, PennDOT will provide a fully executed Purchase Order to the Contractor. Each Purchase Order will be a deliverable for the total amount of the approved quote.
3. The Contractor may not begin a new installation without a fully executed Purchase Order.
4. The Contractor shall provide all parts, labor, and software to integrate fueling data into the existing PennDOT automated fuel system network. The Contractor costs shall include setup, training, and a one year warranty on all parts and labor. Setup costs shall include labor for installation and travel to the installation site.

### G. SUPPORT

1. Contractor will provide Support and latest updates for Contractor proprietary Software necessary to maintain and operate the Fuel Management System.
2. Contractor provided Support will include:
  - a) In the event of a new release of Contractor proprietary Software, Contractor shall Install the new release of Software at each location to which the new Software applies, ONLY IF THE NEW SOFTWARE VERSION ENHANCES THE SYSTEM CAPABILITIES AND IS COMPATIBLE WITHOUT CHANGES TO EXISTING HARDWARE OR IF THE NEW VERSION OF SOFTWARE ENHANCES SAFETY ASPECTS OF THE SYSTEM. Software will be installed within 30 days of the new release to upgrading software.

## FUEL MANAGEMENT SYSTEM SPECIFICATIONS

- b) The Contractor will perform administrative and configuration of all Fuel Management System server/CPU/RPU, software to include the Contractor's proprietary software, operating system, and database. Problems shall be fixed remotely (if practicable). On-site repairs shall be coordinated with the county or district caretaker.
- c) Work with PennDOT Central Office Fuel Management System Coordinator in resolving conflicts with application software.

### H. ESTIMATED QUANTITIES

1. In the event any established line item on the resulting Fully Executed Purchase Order (PO) requires an increase in quantity, the Contractor shall not proceed with any work until PennDOT has provided a fully executed updated Purchase Order reflecting the increased quantity.

### I. COORDINATION

1. Services to be provided under this Agreement will be coordinated with the Central Office Fuel Management System Coordinator and/or the District or County Fuel Management System Coordinator.

### J. MISCELLANEOUS

1. The Contractor shall assign a Project Manager to this Agreement and shall provide the name and phone number of the Project Manager to PennDOT. The Project Manager will be responsible for the Contractor's faithful execution of this Agreement.

### K. PENNDOT OBLIGATIONS

1. PennDOT will provide Contractor with a complete listing of county and district Fuel Management System Caretakers, and the central office Fuel Management System Coordinator, including telephone numbers and fax numbers.
2. PennDOT will complete initial troubleshooting to determine if a problem is with the Contractor's equipment, the fuel dispensing equipment, or the telephone lines. PennDOT will be responsible for the installation of the agreed upon user replaceable components whenever practicable.
3. When requested by the Contractor, PennDOT will return non-working parts to the Contractor within 20 working days of receiving the replacement part. The non-working parts will be returned using a "RA" number provided by the Contractor.

### L. SERVICE REQUEST AND RESPONSE TIME

1. PennDOT will send all requests for maintenance or reports of malfunctions of the Fuel Management System via e-mail, facsimile, or phone call to the Contractor. The time and date imprinted on the received e-mail or fax shall be used as the start time for

## FUEL MANAGEMENT SYSTEM SPECIFICATIONS

measurement of response time to service the Fuel Management System.

2. Upon receipt of the Service Request from the PennDOT, the Contractor will analyze the reported malfunction and Initiate a Service response to said Service Request. In the event the Contractors can resolve the malfunction via remote access to the Fuel Management System via telephone, the Contractor will do so within the Response Time (as defined hereinafter). When on-site Service is required in order to resolve the malfunction, the Contractor will dispatch service personnel to the site and said service personnel will be on-site at the location of the malfunction within the Response Time. If the contractor determines a replacement unit must be mailed to the site, the new unit shall be mailed with the response time.
3. The Contractor shall respond to Service Requests according to the following response times:
  - a) The response time shall be within two (2) business days.
  - b) Response times will be measured from the time and date imprinted on the Service Request.
  - c) Once the service is complete the Contractor or will notify the County Fuel Management System caretakers or District Fuel Management System Coordinator, or his/her designee, who will verify that the malfunction has been corrected and sign the work order form. The action item will be closed.
4. All associated software and Equipment listed above will be covered by this Service Contract in the event this contract is terminated prior to the two (2) years with one (1) renewal contract period, the contractor shall maintain ownership of upgraded Control Models mounted in the fuel tanker trucks At the end of the contract period, PennDOT shall become owner of the aforementioned Control Modules.

### **M. EMERGENCIES**

1. PennDOT will handle emergency service calls on a case by case basis. Emergency services calls are not covered under this contract.

### **N. CONFIRMATION OF SERVICES**

1. On completion of each task, the Contractor must submit a Confirmation of Service, OS-501 to PennDOT's Project Manager, which will confirm that the service has been rendered. Once the project manager confirms acceptance of deliverables, the Offeror shall invoice PennDOT for authorized work performed. All invoice documentation will be submitted in hardcopy format and mailed to the remit address found on the please bill to section of each purchase order.



# Commonwealth of Pennsylvania

Date: **01/26/2012**  
Subject: **Maintenance, Fuel System**  
Solicitation Number: **6100021018**  
Opening Date/Time: **01/26/2012 at 1200 hrs**  
Addendum Number: **1**

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To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation "Addendum" as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

*List any and all changes:*

The expiration date of the SPR has been extended from the original date of, January 26<sup>th</sup>, 2012 at 12 pm to the new date of, January 27<sup>th</sup>, 2012 at 11 am.

Additionally, the Opening date is also being changed from the original date of, January 26<sup>th</sup>, 2012 at 12:01 pm to the new date of, January 27<sup>th</sup>, 2012 at 11:01 pm.

**For electronic solicitation responses via the SRM portal:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- To attach the Addendum, download the Addendum and save to your computer. Move to "My Notes", use the "Browse" button to find the document you just saved and press "Add" to upload the document.
- Review the Attributes section of your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

**For solicitations where a "hard copy" (vs. electronic) response is requested:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- If you have already submitted a response to the original solicitation, you may either submit a new response, or return this Addendum with a statement that your original response remains firm, by the due date to the following address:

N/A

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Very truly yours,

Name: Constance Y. Williamson  
Title: Purchasing Agent I  
Phone: 717.787.3959  
Email: cowilliams@pa.gov



# Commonwealth of Pennsylvania

Date: **01/20/2012**  
Subject: **Maintenance, Fuel System**  
Solicitation Number: **6100020838**  
Opening Date/Time: **01/23/2012 at 1100 hrs**  
Addendum Number: **2**

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To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation "Addendum" as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

*List any and all changes:*

The expiration date of the SPR has been extended again from the date of, January 23<sup>rd</sup>, 2012 at 11 am to the new date of, January 24<sup>th</sup>, 2012 at 11 am.

Additionally, the Opening date is also being changed from the date of, January 23<sup>rd</sup>, 2012 at 11:30 am to the new date of, January 24<sup>th</sup>, 2012 at 11:30 am.

**For electronic solicitation responses via the SRM portal:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- To attach the Addendum, download the Addendum and save to your computer. Move to "My Notes", use the "Browse" button to find the document you just saved and press "Add" to upload the document.
- Review the Attributes section of your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

**For solicitations where a "hard copy" (vs. electronic) response is requested:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- If you have already submitted a response to the original solicitation, you may either submit a new response, or return this Addendum with a statement that your original response remains firm, by the due date to the following address:

N/A

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Very truly yours,

Name: Constance Y. Williamson  
Title: Purchasing Agent I  
Phone: 717.787.3959  
Email: cowilliams@pa.gov



# Commonwealth of Pennsylvania

Date: **01/24/2012**  
Subject: **Maintenance, Fuel System**  
Solicitation Number: **6100020838**  
Opening Date/Time: **01/24/2012 at 1100 hrs**  
Addendum Number: **3**

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To All Suppliers:

The Commonwealth of Pennsylvania defines a solicitation "Addendum" as an addition to or amendment of the original terms, conditions, specifications, or instructions of a procurement solicitation (e.g., Invitation for Bids or Request for Proposals).

*List any and all changes:*

The expiration date of the SPR has been extended again from the date of, January 24<sup>th</sup>, 2012 at 11 am to the new date of, January 25<sup>th</sup>, 2012 at 11 am.

Additionally, the Opening date is also being changed from the date of, January 24<sup>th</sup>, 2012 at 11:30 am to the new date of, January 25<sup>th</sup>, 2012 at 11:30 am.

**For electronic solicitation responses via the SRM portal:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- To attach the Addendum, download the Addendum and save to your computer. Move to 'My Notes', use the "Browse" button to find the document you just saved and press "Add" to upload the document.
- Review the Attributes section of your solicitation response to ensure you have responded, as required, to any questions relevant to solicitation addenda issued subsequent to the initial advertisement of the solicitation opportunity.

**For solicitations where a "hard copy" (vs. electronic) response is requested:**

- Attach this Addendum to your solicitation response. Failure to do so may result in disqualification.
- If you have already submitted a response to the original solicitation, you may either submit a new response, or return this Addendum with a statement that your original response remains firm, by the due date to the following address:

N/A

Except as clarified and amended by this Addendum, the terms, conditions, specifications, and instructions of the solicitation and any previous solicitation addenda, remain as originally written.

Very truly yours,

Name: Constance Y. Williamson  
Title: Purchasing Agent I  
Phone: 717.787.3959  
Email: cowilliams@pa.gov

**MBE/WBE SUBCONTRACTOR AND SUPPLIER SOLICITATION & COMMITMENT FORM**

Bureau of Minority and Women Business Opportunities

**IMPORTANT NOTE:** The purpose of this Form is to document the bidder's compliance with the Commonwealth's non-discrimination program and to determine whether the bidder has discriminated in the selection of subcontractors and suppliers. Failure to complete this Form and submit it with the bid will be sufficient cause for rejection of the bid as NOT RESPONSIVE. Bidders must solicit BOTH MBE and WBE supplier participation for any work the bidders intend to subcontract or for any materials required to perform the contract.

<b>Your Company Information:</b>	<b>Company Name:</b>	Trak Engineering, Inc.			<b>Contact Person:</b>	Katherine Blyth
	<b>Address:</b>	2901 Crescent Drive, Tallahassee, FL				
	<b>Tel #:</b>	850-878-4585 x 325	<b>Fax #:</b>	850-656-8265	<b>E-Mail:</b>	sales@trakeng.com
	<b>SAP Vendor #:</b>	169009				
<b>Contract/Solicitation Information:</b>	<b>Contract/Solicitation Number:</b>	6100021018	<b>Bid Opening Date:</b>	01/27/2012	<b>Bid Amount (Bid Base #1):</b>	223639.93

**ALL FIRMS SOLICITED OR WHICH HAVE PROVIDED UNSOLICITED QUOTES MUST BE INCLUDED ON THIS FORM**

(1) Subcontractor/Supplier Company Information • Company Name, Address, Zip Code • Tel. No. with Area Code • Contact Person's Name	(2) MBE, WBE or MWBE	(3) Type of Work to be Performed and/or Material to be Supplied	(4) Total Dollar Amount of Quote Received	(5) Total Commitment Dollar Amount
We have no subcontracting on this project	Select One			
	Select One			
	Select One			
	Select One			

**NOTE: Minimum Participation Levels (MPLs): MBE – 5%; WBE – 3%**  
A presumption of non-discrimination may be made if the dollar commitments to MBEs / WBEs reflect these minimum participation

(1)	Enter the official subcontractor or supplier's company name exactly as it appears on the Dept. of General Services (DGS) website list of certified MBEs/WBEs. Do not use D/B/A (Doing Business As) name.
(2)	Indicate whether the firm is DGS certified MBE or WBE. If the firm is both, the bidder will receive credit for the firm as either an MBE or a WBE.
(3)	Briefly describe the specific type of work to be performed and/or materials to be supplied by the listed DGS certified MBE or WBE. In order to count towards reaching the MPLs, bidders must solicit DGS certified MBEs/WBEs in the areas in which they are certified. For example, if an MBE/WBE is certified for electrical supplies and the bidder lists plumbing supplies, the bidder will not receive credit. Geographical location may not be used as a reason for limiting solicitation.
(4)	Enter the total dollar (\$) amount of the quote received. If the quote was received in the form of unit prices or hourly rates, a total dollar amount must still be provided. If the subcontractor did not respond to the bidder, the bidder must indicate "No Response." Copies of all MBE/WBE quotes must be submitted with the bid.

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Bureau of Minority and Women Business Opportunities

(5) Enter the total dollar (\$) amount of the contractual commitment made to the listed MBE/WBE. If the bidder does not use the total quote from a MBE/WBE because a lower priced quote was received, the bidder must submit a copy of the lower priced quote with its bid. On partial commitments, the bidder must explain why only a partial commitment was made and must submit a copy of the lower priced quote.

If the Bidder does not intend to utilize any subcontractors or suppliers in the performance of this contract, please check this box.

**CONFIRMATION CHECKLIST FOR SUBMISSION OF FORM STD-168 AND OTHER DOCUMENTATION**

- The Bidder must complete and submit Form STD-168 with its bid. If the supplier is providing their response through SRM, this completed form may be electronically attached and submitted with the bid.
- Along with the Form STD-168, the Bidder must include all solicited and unsolicited quotes received by the Bidder from MBEs and WBEs as long as the quotes are within the scope of work.
- The Bidder's contact with MBE/WBE subcontractors and suppliers should be a minimum of (10) days prior to bid opening date. This will ensure that MBEs/WBEs have sufficient time to prepare a quote. Ten days is a guide; however, adequate time must be provided to all subcontractors and suppliers to respond.

If the minimum participation levels (MPLs) for this project are not achieved, you must provide a written explanation explaining the failure to achieve the MPLs for MBEs and/or WBEs. Failure to do so will result in rejection of the bid.

If there are any questions/comments concerning this form, please contact the issuing agency contracting officer. If additional forms are needed, you are permitted to photocopy form. If the supplier is providing their response through SRM, this completed form may be electronically attached and submitted with the bid.

**OFFICIAL USE ONLY**

<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	Comments:
Reviewer:	Date:	

**COST OR PRICING DATA CERTIFICATION**

Contract or Purchase Requisition No. 6100021018

Date: 01/27/2012

I, Katherine Blyth(Individual's Name), hereby certify that I am Director of Marketing & Sales(Title) for Trak Engineering, Inc. (Contractor's Name) and that I am authorized to make this Certification on behalf of Trak Engineering, Inc. (Contractor's Name). I hereby certify that the contract price is based upon:

- Established catalog prices (copies of the applicable catalog pages showing the established catalog prices are enclosed).
- Established market prices (the amounts of contract prices offered to other Contractor customers and the name of the Contractor customers are enclosed).
- Statute or regulation (the citation for the statute or regulation and the date and short description of its provisions are enclosed).
- Submitted cost or pricing data. To the extent that the contract price is based upon submitted cost or pricing data, I certify, on behalf of the Contractor, that to the best of my knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of the date specified above. The Contractor, understands that in addition to any other remedies or criminal penalties, the contract price shall be adjusted to exclude any significant sums by which the Commonwealth finds that the price was increased because the cost or pricing data furnished by the Contractor was inaccurate, incomplete, or not current as of the date specified above.

I understand that any misrepresentation in this Certification shall be punishable under Section 4904 of Title 18 P.C.S.A.

*Katherine Blyth*

(Signature of Certifying Officer)

Trak Engineering, Inc.  
(Contractor's Name)

Katherine Blyth  
(Name of Certifying Officer)

2901 Crescent Drive  
(Contractor's Address)

Director of Marketing & Sales  
(Title of Certifying Officer)

Tallahassee, FL 32301  
(Contractor's Address)





Price Quote - ATTACHMENT A		
Part #	PART DESCRIPTIONS	Price
AMFU	Automated Mobile Fueling with ARM Radio	\$4,720.00
I-AMFU	Automated Mobile Fueling Install	\$1,500.00
Kit-AMFU	ARM Radio w/cover, pc download cable & power cord	\$1,545.00
COVER	Cover, Sentry	\$309.00
DC	Data Converter	\$515.00
DC01	Data Converter with Key Encoder	\$595.00
FS060	Hose Control	\$450.00
I-HOSE	Hose Control Install	\$300.00
IP-S	IP Serial Device – standard (Moxa) (Include DB9 Cable)	\$450.00
MOS06	Manual Override Switch	\$88.58
I-Pulser	Pulser Installation	\$250.00
FS100	Sentry VI System	\$4,995.00
I-FS	Sentry VI Install	\$1,500.00
FS100-CR	Sentry Card Reader – magnetic strip	\$515.00
TNKINF	Tank Motor Interface (RS232 cable)	\$515.00
Part #	MISC. PART DESCRIPTIONS	Price
FAMFU	Fully Automated Mobile Fueling with ARM Radio	\$5,795.00
D001	Door / Gate Open Unit – Sentry VI	\$2,795.00
I-DO	Door / Gate Open Installation	\$1,500.00
GC-05	Door / Gate Open Unit – SentryGOLD	\$3,950.00
FS060-F/A	Hose Control – Fully Automated	\$750.00
IP-W	IP Serial Device – wireless WiFi (Maxstream)	\$772.70
FS09	Key, Trak Memory Chip, EE	\$2.90
KE03	Card Encoder (Magnetic Cards)	\$721.00
CD-MB	Magnetic Cards-blank	\$1.00
Pulser-FR	Pulser for Fill-Rite Dispenser	\$82.40
SG07	SentryGOLD System	\$5,995.00
FASG07	SentryGOLD System –Fully Automated	\$6,895.00
SG-COMPAT	SentryGOLD Compact Internal – for digital dispenser only	\$3,695.00
SG-MCARD	SentryGOLD Magnetic Card Reader	\$295.00
SG-FASG	SentryGOLD to Fully Automated SentryGOLD Upgrade	\$1,800
I-SG7	SentryGOLD Systems Installation	\$1,500.00
UPG0506	Sentry VI to SentryGOLD Upgrade	\$4,495.00
I-UPG0506	Sentry VI to SentryGOLD Installation	\$900.00
SRA1W	Sentry Radio Assembly – Wireless 1 Watt (set of 2)	\$927.00
SPKD	Spare Parts Kit – Deluxe Sentry VI - Contains, Control Panel, Key Reader, Barrier, Sentry Power Supply (SPU), Pump Control Module (PCM), Pulser Power Unit (PPU), Pulser mechanical, Data Converter	\$3,084.85
SPK7	Spare Parts Kit – SentryGOLD Contains: Compact, Data Converter, Key Reader, Pump Interface Card, Pulser Interface Card, and Communication Interface Card	\$2,995.00
WINCC	WinCC Fuel Management Software	\$995.00

I certify the attached pricing for Trak Engineering, Inc. November 7, 2011,

*Katherine Blyth*

Katherine Blyth, Director of Marketing and Sales



Corporate Sales: 2901 Crescent Drive, Tallahassee, FL 32301  
PH 850-878-4585 FAX 850-656-8265 www.trakeng.com





January 24, 2014

TRAK ENGINEERING  
ATTN: KATHERINE BLYTH  
2901 CRESCENT DRIVE  
TALLAHASSEE, FL 32301-3535

Re: Renewal Notification  
Purchase Order No. 4300333069

Dear Ms. Blyth:

Per the terms of the subject Purchase Order, the Department is interested in exercising the Option to renew clause contained in the Contract, Part IV Terms and Conditions section 3 – Renewal of Contract Terms – Mutual. The renewal period will be effective April 20, 2014 and terminate April 19, 2015. This is the first of three (3) renewal options for this contract.

In accordance with section IV.4 Renewal of Contract Term; Adjusted Prices-Fixed Percentage of the contract allows for a 2.00% price increase which may be included in the renewal.

We are requesting your concurrence as to the renewal of the above referenced Purchase Order. If you agree to the renewal, please indicate below by checking "Yes," and signing and dating where indicated. Your response is required no later than February 6, 2014. Please mail your response to the following address:

PennDOT – Fleet Management Division  
Attn: Donna Aughenbaugh  
17<sup>th</sup> Street and Arsenal Boulevard  
Harrisburg, PA 17120

Please keep a copy of this renewal letter for your files.

Sincerely,

*Donna Aughenbaugh*  
Donna Aughenbaugh, Purchasing Agent 1 (acting)  
Bureau of Maintenance and Operations, Fleet Management Division

I agree to the renewal of the above referenced document for the stated term of renewal. All terms and conditions shall remain the same as in the current Purchase Order.  Yes  No

\*Signature *Katherine Blyth* Date 2-21-14

*\*Only a person authorized to sign on behalf of the vendor may sign.*

Indicate Title (check one):

- Chairman
  - Vice President
  - Executive Vice President
  - Chief Executive Officer
  - Owner
  - Other Title: \_\_\_\_\_
- President
  - Senior Vice President
  - Assistant Vice President
  - Chief Operating Officer
  - General Partner

(Signature Resolution Required)



Corporate Sales: 2901 Crescent Drive, Tallahassee, FL 32301  
PH 850-878-4585 FAX 850-656-8265 www.trakeng.com



## Equipment Maintenance Agreement Quote

February 18, 2014

Pennsylvania DOT  
Attn: Mr. Mark Reigle  
17<sup>th</sup> and Arsenal Boulevard  
Harrisburg, PA 17120

By this agreement, the technical knowledge and skill of our customer service organization is made available to you to assure that your Fuel Management System is kept in efficient operating condition. For an annual fee, our factory-trained personnel will perform the service and maintenance on the equipment listed below for one year in accordance with the Terms and Conditions.

Current Equipment maintenance agreement expires **March 31, 2014**

The Effective Dates of this Equipment Maintenance Agreement would be:

**April 1, 2014 thru March 31, 2015**

### Equipment List

Description	Qty	Unit Rate	Total
Fuel Sentries	82	\$ 697.21	\$ 57,171.22
AMFU's	41	\$ 690.93	\$ 28,328.13
Central Controller	1	\$ 1,392.45	\$ 1,392.45
Software	1	\$ 622.16	\$ 622.16
<b>Total Cost</b>			<b>\$ 87,513.96</b>
<b>Monthly Payment Option Available</b>			<b>\$ 7,292.83</b>

### **Full Service** Sentry VI Maintenance Agreement

*This quote valid for 90 days*

*Please review the above equipment list for accuracy.*

*Any equipment that is not listed will not be covered under this agreement.*

*Fuel Sentries added during 2014-2015 will carry a one year warranty. Upon expiration of the warranty, a prorated Unit Rate, based on the number of remaining months will be calculated and billed separately*

Please be sure to contact me with any questions you may have regarding this quote. I look forward to working with you.

Sincerely,

Eva Chester  
(850) 878-4585 x315  
(850) 656-8265  
[echester@trakeng.com](mailto:echester@trakeng.com)



Corporate Sales: 2901 Crescent Drive, Tallahassee, FL 32301  
 PH 850-878-4585 FAX 850-656-8265 www.trakeng.com



Price Quote - ATTACHMENT A		
Part #	PART DESCRIPTIONS	Price
AMFU	Automated Mobile Fueling with ARM Radio	\$5,095.00
I-AMFU	Automated Mobile Fueling Install	\$1,600.00
Kit-AMFU	ARM Radio w/cover, pc download cable & power cord	\$1,600.00
COVER	Cover, Sentry	\$309.00
DC	Data Converter	\$535.00
DC01	Data Converter with Key Encoder	\$610.00
FS060	Hose Control	\$475.00
I-HOSE	Hose Control Install	\$315.00
IP-S	IP Serial Device – standard (Moxa) (Include DB9 Cable)	\$645.00
MOS06	Manual Override Switch	\$90.45
I-Pulser	Pulser Installation	\$270.00
FS100	Sentry VI System	\$5,095.00
I-FS	Sentry VI Install	\$1,545.00
FS100-CR	Sentry Card Reader – magnetic strip	\$535.00
TNKINF	Tank Motor Interface (RS232 cable)	\$545.00
Part #	MISC. PART DESCRIPTIONS	Price
FAMFU	Fully Automated Mobile Fueling with ARM Radio	\$5,925.00
D001	Door / Gate Open Unit – Sentry VI	\$2,855.00
I-DO	Door / Gate Open Installation	\$1,545.00
GC-05	Door / Gate Open Unit – SentryGOLD	\$3,800.00
FS060-F/A	Hose Control – Fully Automated	\$765.00
IP-W	IP Serial Device – wireless WiFi (Maxstream)	\$790.00
FS09	Key, Trak Memory Chip, EE	\$3.00
KE03	Card Encoder (Magnetic Cards)	\$745.00
CD-MB	Magnetic Cards-blank	\$1.00
Pulser-FR	Pulser for Fill-Rite Dispenser	\$85.00
SG07	SentryGOLD System	\$6,115.00
FASG07	SentryGOLD System –Fully Automated	\$7,035.00
SG-COMPAT	SentryGOLD Compact Internal – for digital dispenser only	\$3,770.00
SG-MCARD	SentryGOLD Magnetic Card Reader	\$305.00
SG-FASG	SentryGOLD to Fully Automated SentryGOLD Upgrade	\$1,840
I-SG7	SentryGOLD Systems Installation	\$1,545.00
UPG0506	Sentry VI to SentryGOLD Upgrade	\$5,095.00
I-UPG0506	Sentry VI to SentryGOLD Installation	\$950.00
SRA1W	Sentry Radio Assembly – Wireless 1 Watt (set of 2)	\$950.00
SPKD	Spare Parts Kit – Deluxe Sentry VI - Contains, Control Panel, Key Reader, Barrier, Sentry Power Supply (SPU), Pump Control Module (PCM), Pulser Power Unit (PPU), Pulser mechanical, Data Converter	\$3,150.00
SPK7	Spare Parts Kit – SentryGOLD Contains: Compact, Data Converter, Key Reader, Pump Interface Card, Pulser Interface Card, and Communication Interface Card	\$3,055.00
WINCC	WinCC Fuel Management Software	\$1,015.00

I certify the attached pricing for Trak Engineering, Inc. February 18, 2014,

  
 Eva Chester, Assistant Controller