




FULLY EXECUTED
Contract Number: 4400004646
Contract Effective Date: 04/22/2009
Valid From: 06/01/2009 To: 05/31/2010

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

Purchasing Agent
Name: Vega Lisa
Phone: 717-346-4290
Fax: 717 346-3820

Your SAP Vendor Number with us: **163713**

Supplier Name/Address:
HAWORTH INC 
One Haworth Ctr
Holland MI 49423-9570 US

Please Deliver To:

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

Supplier Phone Number: 7175452119
Supplier Fax Number: 717-545-2119

Contract Name:
SYSTEMS/METAL CASE & WOOD CASE GOODS

Payment Terms
NET 30

Solicitation No.: **6100009708**

Issuance Date: 02/19/2009

Supplier Bid or Proposal No. (if applicable): 6500015260

Solicitation Submission Date: 03/12/2009

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

| Item | Material/Service Desc | Qty | UOM | Price | Per Unit | Total |
|------|--|-------|-----|-------|----------|-------|
| 1 | SYSTEMS/METAL CASE GOODS Item Text "SEE ATTACHED EXCEL SPREADSHEETS FOR ADDITIONAL INFORMATION" | 0.000 | | 0.00 | 1 | 0.00 |
| 3 | ADDITIONAL SERVICES | 0.000 | | 0.00 | 1 | 0.00 |
| 4 | LEASING | 0.000 | | 0.00 | 1 | 0.00 |

General Requirements for all Items:

Information:

Supplier's Signature _____
Printed Name _____

Title _____
Date _____



FULLY EXECUTED
Contract Number: 4400004646
Contract Effective Date: 04/22/2009
Valid From: 06/01/2009 To: 05/31/2010

Supplier Name:
HAWORTH INC

Header Text

MANUFACTURER: HAWORTH

SYSTEMS/METAL CASE GOODS: 61%

SEE ATTACHED OVERVIEW FOR ADDITIONAL INFORMATION

No further information for this Contract

Information:

Table of Contents

| | |
|--|----|
| PART I - GENERAL INFORMATION | 3 |
| I.1 IFB-001.1 Purpose (Oct 2006) | 3 |
| I.2 IFB-008.1C No Pre-bid Conference (Oct. 2006) | 3 |
| I.3 IFB-009.1 Questions (Nov. 2006) | 3 |
| I.4 IFB-010.1 Addenda to the IFB (Oct. 2006)..... | 3 |
| I.5 IFB-011.1B Submission of Bids – Electronic Submittal (Dec 12 2006)..... | 3 |
| I.6 IFB-024.1 Bid Protest Procedure (Oct 2006)..... | 4 |
| I.7 IFB-025.1 Electronic Version of this IFB (Oct 2006)..... | 5 |
| I.8 IFB-027.1 COSTARS Program (Dec 12 2006)..... | 6 |
| I.9 IFB-029.1 Prices (Dec 6 2006)..... | 7 |
| I.10 IFB-030.1 Approved Equal (Nov 2006)..... | 7 |
| I.11 IFB-031.1 Alternates (Nov 2006)..... | 8 |
| I.12 IFB-032.1 New Equipment (Nov 2006)..... | 8 |
| I.13 I-IFB-033.1 Modification or Withdrawal of Bid (Nov 2006) | 8 |
| I.14 I-IFB-034.1 Rejection of Bids (Nov 2006) | 10 |
| PART II - REQUIREMENTS | 11 |
| II.1 IFB-006.1b COSTARS Program Questionnaire - Electronic Submission (Oct 2006) | 11 |
| II.2 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006) | 11 |
| II.3 II-IFB-012.1 RETURN GOODS POLICY (NOV 2006)..... | 11 |
| II.4 II-IFB-016.1 POST-SUBMISSION DESCRIPTIVE LITERATURE (Dec 2006)..... | 11 |
| II.5 II-IFB-017.1b Reciprocal Limitations Act – Electronic Submittal (February 2007)..... | 11 |
| PART III - SELECTION CRITERIA..... | 12 |
| III.1 III-IFB-001.1a Mandatory Responsiveness Requirements (Oct 2006) | 12 |
| III.2 III-IFB-006.1c Notification of Selection - By Manufacturer (Oct 2006) | 12 |
| III.3 III-IFB-007.1 Awards (Nov 2006)..... | 12 |
| III.4 III-IFB-008.1 Tie Bids (Nov 2006) | 12 |
| III.5 III-IFB-009.1 Prompt Payment Discounts (Nov 2006) | 12 |
| III.6 III-IFB-010.1 OPTION FOR SEPARATE COMPETITIVE BIDDING PROCEDURE (NOV 2006) | 12 |
| III.7 III-IFB-014.1 REBATES (Nov 2006) | 13 |
| PART IV - WORK STATEMENT..... | 14 |
| IV.1 IFB-001.1a SPECIFICATIONS (Nov 2006)..... | 14 |
| PART V - CONTRACT TERMS and CONDITIONS | 15 |
| V.1 CONTRACT-001.1b Contract Terms and Conditions (Nov 30, 2006)..... | 15 |
| V.2 CONTRACT-002.1a Term of Contract – Contract (Jan 2008) | 15 |
| V.3 CONTRACT-002.2b Renewal of Contract Term – Mutual (Nov 30 2006)..... | 15 |
| V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006) | 15 |
| V.5 CONTRACT-003.1a Signatures – Contract (March 2007) | 15 |
| V.6 CONTRACT-004.1a Definitions (Dec 12 2006)..... | 16 |
| V.7 CONTRACT-005.1a Purchase Orders (Feb 2007) | 17 |
| V.8 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)..... | 18 |
| V.9 CONTRACT-007.02 Estimated Quantities (Nov 30 2006)..... | 18 |
| V.10 CONTRACT-007.3 Prior Notice (Oct 2006)..... | 18 |
| V.11 CONTRACT-008.1a Warranty. (Oct 2006) | 18 |
| V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006)..... | 18 |
| V.13 CONTRACT-009.1d Ownership Rights (Oct 2006) | 19 |
| V.14 CONTRACT-010.1a Acceptance (Oct 2006)..... | 19 |
| V.15 CONTRACT-011.1a Compliance With Law (Oct 2006) | 20 |
| V.16 CONTRACT-013.1 Environmental Provisions (Oct 2006)..... | 20 |
| V.17 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006) | 20 |
| V.18 CONTRACT-014.3 Enforcement (Oct 2006)..... | 20 |
| V.19 CONTRACT-015.1 Compensation (Oct 2006) | 20 |
| V.20 CONTRACT-015.2 Billing Requirements (Dec 5 2006) | 20 |
| V.21 CONTRACT-015.3 Invoice Requirement – SAP Purchase Orders (Feb 2007)..... | 21 |
| V.22 CONTRACT-016.1 Payment (Oct 2006) | 21 |
| V.23 CONTRACT-016.2 ACH Payments (Aug 2007) | 22 |
| V.24 CONTRACT-017.1 Taxes (Dec 5 2006)..... | 22 |

| | |
|--|----|
| V.25 CONTRACT-018.1 Assignment of Antitrust Claims (Oct 2006) | 22 |
| V.26 CONTRACT-019.1 Hold Harmless Provision (Nov 30 2006)..... | 22 |
| V.27 CONTRACT-020.1 Audit Provisions (Oct 2006) | 23 |
| V.28 CONTRACT-021.1 Default (Dec 12 2006)..... | 23 |
| V.29 CONTRACT-022.1 Force Majeure (Oct 2006)..... | 24 |
| V.30 CONTRACT-023.1a Termination Provisions (Oct 2006)..... | 25 |
| V.31 CONTRACT-024.1 Contract Controversies (Oct 2006) | 25 |
| V.32 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)..... | 26 |
| V.33 CONTRACT-026.1 Other Contractors (Oct 2006)..... | 26 |
| V.34 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Oct 2006)..... | 27 |
| V.35 CONTRACT-028.1 Contractor Integrity Provisions (Oct 2006)..... | 27 |
| V.36 CONTRACT-029.1 Contractor Responsibility Provisions (Oct 2006) | 29 |
| V.37 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)..... | 30 |
| V.38 CONTRACT-031.1 Hazardous Substances (Oct 2006) | 30 |
| V.39 CONTRACT-032.1 Covenant Against Contingent Fees (Oct 2006) | 32 |
| V.40 CONTRACT-033.1 Applicable Law (Oct 2006)..... | 32 |
| V.41 CONTRACT- 034.1b Integration (Nov 30 2006)..... | 32 |
| V.42 CONTRACT-034.2b Order of Precedence - IFB (Dec 6 2006) | 33 |
| V.43 CONTRACT-035.1a Changes (Oct 2006)..... | 33 |
| V.44 CONTRACT-037.1b Confidentiality (Oct 2006) | 33 |
| V.45 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)..... | 34 |
| V.46 CONTRACT-051.1 Notice (Dec 2006)..... | 34 |

PART I - GENERAL INFORMATION

PART I - GENERAL INFORMATION

I.1 IFB-001.1 Purpose (Oct 2006)

The Commonwealth of Pennsylvania (Commonwealth) is issuing this Invitation for Bids (IFB) to meet the needs of DEPARTMENT OF GENERAL SERVICES to satisfy a need for **Sytems/Metal Case & Wood Case Goods** .

I.2 IFB-008.1C No Pre-bid Conference (Oct. 2006)

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

I.3 IFB-009.1 Questions (Nov. 2006)

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

I.4 IFB-010.1 Addenda to the IFB (Oct. 2006)

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

I.5 IFB-011.1B Submission of Bids – Electronic Submittal (Dec 12 2006)

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

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

- c. Bids must be firm. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB Form, it shall be rejected. The Bid shall also be rejected if the items offered by the Bidder are not in conformance with the specifications as determined by the Commonwealth.
- d. The Bidder, intending to be legally bound hereby, offers and agrees, if this Bid is accepted, to provide the awarded items at the price(s) set forth in this Bid at the time(s) and place(s) specified.

I.6 IFB-024.1 Bid Protest Procedure (Oct 2006)

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

- b. **Time for Filing.**
 - 1) If a protest is submitted by a prospective bidder, the protest must be filed before bid opening time or proposal receipt date.

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

 - 3) Untimely filed protests shall be disregarded.

- c. **Form of Protest.**
 - 1) A protest must be in writing and filed with the agency head (or designee) of the purchasing agency.

 - 2) A protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.

 - 3) The protesting party may submit with the protest any documents or information deemed relevant.

- d. **Notice of Protest** If award has been made, the agency head (or designee) shall notify the successful Bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all Bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the purchasing agency within three (3) days after receipt of notice of the protest.

- e. **Stay of Procurement.** The head of the purchasing agency (or designee) shall immediately decide, upon receipt of the protest, whether or not the solicitation or award shall be stayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. The Issuing Office shall not proceed further with the IFB or with the award of the contract, and shall suspend performance under the contract if awarded, unless the agency head of the purchasing agency makes a written determination that the protest is clearly without merit or that award of the contract/purchase order without delay is necessary to protect the substantial interests of the Commonwealth.

- f. **Procedures.**
 - 1) **Contracting Officer Response.** Within fifteen (15) days of the receipt of a protest, the contracting officer

may submit a written response to the head of the purchasing agency (or designee). The response may include any documents or information that the contracting officer deems relevant to the protest.

2) **Protesting Party Reply.** Within ten (10) days of the date of the contracting officer response, the protesting party may file a written reply.

3) **Review.** The head of the purchasing agency (or designee) shall:

a) Review the protest and any response or reply.

b) Request and review any additional documents or information he deems necessary to render a decision.

c) Give the protesting party and the contracting officer reasonable opportunity to review and address any additional documents or information requested by the agency head.

d) In his sole discretion, conduct a hearing.

e) Within sixty (60) days of the receipt of the protest, issue a written determination stating the reasons for the decision.

f) If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.

4) **"Clearly Without Merit" Determinations.** If the head of the purchasing agency (or designee) determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the head of the purchasing agency (or designee) shall immediately issue the decision as required by Subparagraph h below.

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

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

1) State the reasons for the decision.

2) If the protest is denied, inform the protesting party of its right to file an appeal in Commonwealth Court within fifteen (15) days of the mailing date of the decision.

3) If it is determined that the solicitation or award was contrary to law, enter an appropriate order.

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

I.7 IFB-025.1 Electronic Version of this IFB (Oct 2006)

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

I.8 IFB-027.1 COSTARS Program (Dec 12 2006)

Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. Section 1902, authorizes local public procurement units and state-affiliated entities (together, "COSTARS Purchasers") to participate in Commonwealth procurement contracts that the Department of General Services ("DGS") may choose to make available to COSTARS Purchasers DGS has identified this Contract as one suitable for COSTARS Purchaser participation.

- A. Only those COSTARS Purchasers registered with DGS may participate as COSTARS Purchasers in a Commonwealth contract. Several thousand COSTARS Purchasers are currently registered with DGS; therefore, the Contractor agrees to permit only to DGS-registered COSTARS members to make COSTARS purchases from this Contract.
1. A "local public procurement unit" is:
- Any political subdivision;
 - Any public authority;
 - Any tax exempt, nonprofit educational or public health institution or organization;
 - Any nonprofit fire, rescue, or ambulance company; and
 - To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.
2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes the Pennsylvania Turnpike Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement System, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Higher Educational Facilities Authority and the State System of Higher Education.
- B. COSTARS Purchasers have the option to purchase from a Contract awarded under this procurement, from any DGS contract established exclusively for COSTARS Purchasers in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that any prospect COSTARS Purchaser will place an order under this Contract, and that it is within the sole discretion of the registered COSTARS Purchaser whether to procure from this Contract or to use another procurement vehicle.
- C. DGS is acting as a facilitator for COSTARS Purchasers who may wish to purchase under this Contract. Registered COSTARS Purchasers who participate in this Contract and issue purchase orders ("POs") to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a Purchaser unless substantial interests of the Commonwealth are involved.
- D. Registered COSTARS Purchasers electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.

E. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth day of the succeeding Contract quarter.

1. Until such time as DGS may provide the Contractor written notice of automated report filing, the Contractor shall either e-mail the reports to GS-PACostars@state.pa.us or send the reports on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 6th Floor Forum Place, 555 Walnut Street, Harrisburg, PA 17101. When DGS has instituted automated reporting, the Contractor shall comply with DGS's written notice and instructions on automated Contract reports. DGS will provide these instructions with sufficient advance time to permit the Contractor to undertake automated reporting.
2. The Contractor shall include on each report the Contractor's name and address, the Contract number, and the period covered by the report. For each PO received, the Contractor shall include on the report the name of each COSTARS-Registered Purchaser that has used the Contract along with the total dollar volume of sales to the specific Purchaser for the reporting period.
3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

F. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.dgs.state.pa.us/costars

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.dgs.state.pa.us/costars, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
555 Walnut Street , 6th Floor
Harrisburg , PA 17101
Telephone: 1-866-768-7827
E-mail GS-PACostars@state.pa.us

I.9 IFB-029.1 Prices (Dec 6 2006)

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

I.10 IFB-030.1 Approved Equal (Nov 2006)

Whenever an item is defined in this IFB by trade name and catalogue number of a manufacturer or vendor, the term 'or approved equal,' if not inserted therewith shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a 'no substitute' is requested. When a 'no substitute' is requested, the Issuing Office will consider Bids for the referenced product only. The term 'or approved equal' is defined as meaning any other make which, in the sole opinion of the Issuing Office, is of such character, quality, and performance equivalence as to meet the standard of quality of products specified for which it is to be used equally as well as that specified. A Bidder quoting on a product other than the referenced product shall: a) furnish complete identification in its Bid of the product it is offering by trade name, brand and/or model number; b) furnish descriptive literature and data with respect to the substitute product it proposes to furnish; and c) indicate any known specification deviations from the referenced product.

I.11 IFB-031.1 Alternates (Nov 2006)

A Bidder who wants to offer an alternate must notify the Issuing Office in writing, at least five (5) days prior to the scheduled Bid opening, that the Bidder intends to offer an alternate in its Bid. An "alternate" is a product that deviates from the requirements of the specifications in its composition, qualities, performance, size dimension, etc. The written notification from the Bidder must include a complete description of the alternate and must identify the product's deviations from the specifications. Upon receipt of the notification, the Issuing Office will determine whether the alternate is acceptable. If the Issuing Office, in its discretion, determines that the alternate is acceptable, the Issuing Office will issue a change notice to the invitation for bids that revises the specifications. If no change notice is issued revising the specification, a Bid offering the alternate will not be considered for award.

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

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

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

- a. Bid Modification Prior to Bid Opening. Bids may be modified only by written notice or in person prior to the exact hour and date specified for Bid opening.
 - 1) If a Bidder intends to modify its Bid by written notice, the notice must specifically identify the Bid to be modified and must be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the modification to modify the Bid on behalf of the Bidder. The Bid modification must be received in a sealed envelope. The sealed envelope must identify the assigned Collective Number and the Bid Opening Time, and should state that enclosed in the envelope is a Bid modification
 - 2) If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her

authorization to modify the Bid on behalf of the Bidder. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of an agency employee. (The agency employee will observe the actions taken by the individual to modify the Bid, but will not read the Bid or the modification).

- b. Bid Withdrawal Prior to Bid Opening. Bids may be withdrawn only by written notice or in person prior to the exact hour and date specified for Bid opening.
- 1) If a Bidder intends to withdraw its Bid by written notice, the notice shall specifically identify the Bid to be withdrawn and shall be signed by the Bidder. The Bidder must include evidence of authorization for the individual who signed the bid withdrawal to withdraw the bid on behalf of the Bidder. Except as provided in Subparagraph c, below, bid withdrawals received after the exact hour and date specified for the receipt of Bids shall not be accepted.
 - 2) If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification and provide evidence of his/her authorization to withdraw the Bid on behalf of the Bidder.
- c. Bid Withdrawal After Bid Opening. Bidders are permitted to withdraw erroneous Bids after Bid opening only if the following conditions are met:
- 1) The Bidder submits a written request for withdrawal.
 - 2) The Bidder presents credible evidence with the request that the reason for the lower Bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the Bid.
 - 3) The request for relief and supporting evidence must be received by the Issuing Office within three (3) business days after Bid opening, but before award of the contract.
 - 4) The Issuing Office shall not permit a Bid withdrawal if the Bid withdrawal would result in the award of the contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.
 - 5) If a Bidder is permitted to withdraw its Bid, the Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.
- d. Firm Bid. Except as provided above, a Bid may not be modified, withdrawn, or cancelled by any Bidder for a period of sixty (60) days following the time and date designated for Bid opening, unless otherwise specified by the Bidder in its Bid. If the lowest responsible Bidder, as determined by the Issuing Office, withdraws its Bid prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to the Commonwealth for all costs and damages associated with the re-award or re-bid including the difference between the Bidder's price and the actual cost that the Commonwealth pays for the awarded items.
- e. Clarification and Additional Information. After the receipt of Bids, the Issuing Office shall have the right to contact Bidders for the purpose of seeking:

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

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

The Issuing Office reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid if the best interests of the Commonwealth are thereby served.

PART II - REQUIREMENTS

PART II - REQUIREMENTS

II.1 IFB-006.1b COSTARS Program Questionnaire - Electronic Submission (Oct 2006)

Offerors should complete and submit the COSTARS Program Questionnaire Form, which is attached to and made a part of this IFB, and submit it with its proposal. The completed COSTARS Program Questionnaire Form should be submitted as part of the Bid Response.

II.2 II-IFB-008.1b Lobbying Certification and Disclosure – Electronic Submission. (Oct 2006).

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

II.3 II-IFB-012.1 RETURN GOODS POLICY (NOV 2006)

Each bidder must submit a copy of their return goods policy with their bid.

II.4 II-IFB-016.1 POST-SUBMISSION DESCRIPTIVE LITERATURE (Dec 2006)

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

II.5 II-IFB-017.1b Reciprocal Limitations Act – Electronic Submittal (February 2007)

This procurement is subject to the Reciprocal Limitations Act. Bidders must complete and submit with the Bid Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this IFB. The completed State of Manufacture Chart should be submitted as part of the Bid Reponse

PART III - SELECTION CRITERIA

PART III - SELECTION CRITERIA

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

To be eligible for selection, a bid must be:

- a. Timely received from a Bidder;
- b. Properly signed by the Bidder.

III.2 III-IFB-006.1c Notification of Selection - By Manufacturer (Oct 2006)

Award will be made to the qualified bidders offering the greatest discount from the referenced price list. Discount(s) will be taken from the best price column. Only one award will be made for each particular manufacturer's list of items. Bidders who are not manufacturers must submit a letter from the manufacturer stating that the bidder is an authorized dealer in Pennsylvania for the manufacturer.

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

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

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

All tie bids will be broken by the Issuing Office.

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

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

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

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

III.7 III-IFB-014.1 REBATES (Nov 2006)

Any rebate applicable at the time of bid should be taken into consideration by the bidder in calculating its bid price. Bidders must specifically state in their bid proposal, when applicable, that rebates have been considered in arriving at the bid price. Following award, the Commonwealth will assign to the awarded bidder, any rebates which the bidder stated that he took into consideration. If the bidder fails to include such a statement, the Commonwealth will receive the full benefit of the manufacturer's rebate.

PART IV - WORK STATEMENT

PART IV - WORK STATEMENT

IV.1 IFB-001.1a SPECIFICATIONS (Nov 2006)

The Commonwealth is seeking bids to procure the item(s) set forth in the attached document entitled "Specifications."

PART V - CONTRACT TERMS and CONDITIONS

PART V - CONTRACT TERMS and CONDITIONS

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

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

V.2 CONTRACT-002.1a Term of Contract – Contract (Jan 2008)

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 Commonwealth contracting procedures) or b) the "Valid from" date printed on the Contract, whichever is later.

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

The Contract may be mutually renewed for a maximum of 2 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.

V.4 CONTRACT-002.3 Extension of Contract Term (Nov 30 2006)

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

V.5 CONTRACT-003.1a Signatures – Contract (March 2007)

The Contract shall not be a legally binding contract until the fully-executed Contract has been sent to the Contractor.

No Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date. The Contractor hereby waives any claim or cause of action for any service or work performed prior to the Effective Date.

The Contract will not include an "ink" signature by the Commonwealth. The electronically-printed name of the Purchasing Agent represents the signature of that individual who has the authority, on behalf of the Commonwealth, to bind the Commonwealth to the terms of the Contract. If the Contract output form does not have "Fully Executed" at the top of the first page and does not have the name of the Purchasing Agent printed in the appropriate box, the Contract has not been fully executed.

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

fully-executed Contract.

The Commonwealth and the Contractor specifically agree as follows:

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

V.6 CONTRACT-004.1a Definitions (Dec 12 2006)

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

- a. Agency The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. Contracting Officer The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. Days Unless specifically indicated otherwise, days mean calendar days.
- d. Developed Works or Developed Materials All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. Documentation All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

f. Services All Contractor activity necessary to satisfy the Contract.

V.7 CONTRACT-005.1a Purchase Orders (Feb 2007)

Commonwealth agencies 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.

a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.

b. The parties agree that no writing shall be required in order to make the order legally binding. The parties hereby agree not to contest the validity or enforceability of a Purchase Order or acknowledgement issued electronically under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any Purchase Order or acknowledgement issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of Purchase Orders or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the order or acknowledgement were not in writing or signed by the parties. A purchase order or acknowledgment shall be deemed to be 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.

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

use of the Commonwealth Purchasing Card.

V.8 CONTRACT-007.01a Supplies Delivery (Nov 30 2006)

All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.

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

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

V.10 CONTRACT-007.3 Prior Notice (Oct 2006)

The Contractor is required to notify the Commonwealth Delivery Location when shipment is to be made in order that a Commonwealth representative may be present to receive the Contract Item(s) when they are delivered.

V.11 CONTRACT-008.1a Warranty. (Oct 2006)

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

V.12 CONTRACT-009.1c Patent, Copyright, and Trademark Indemnity (Oct 2006)

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the contract.

The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract.

This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same.

As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action.

If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract.

If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing.

If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

V.13 CONTRACT-009.1d Ownership Rights (Oct 2006)

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

V.14 CONTRACT-010.1a Acceptance (Oct 2006)

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

neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

V.15 CONTRACT-011.1a Compliance With Law (Oct 2006)

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

V.16 CONTRACT-013.1 Environmental Provisions (Oct 2006)

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

V.17 CONTRACT-014.1 Post-Consumer Recycled Content (Oct 2006)

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified on the Department of General Services website at WWW.DGS.STATE.PA.US on the date of submission of the bid, proposal or contract offer.

V.18 CONTRACT-014.3 Enforcement (Oct 2006)

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

V.19 CONTRACT-015.1 Compensation (Oct 2006)

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

V.20 CONTRACT-015.2 Billing Requirements (Dec 5 2006)

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

- Vendor name and "Remit to" address, including SAP Vendor number;
- Bank routing information, if ACH;

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

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

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

V.21 CONTRACT-015.3 Invoice Requirement – SAP Purchase Orders (Feb 2007)

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

V.22 CONTRACT-016.1 Payment (Oct 2006)

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from

the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.

V.23 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.

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

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23-23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

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

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

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

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.

- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

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

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

V.28 CONTRACT-021.1 Default (Dec 12 2006)

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 5) Improper delivery;
 - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;

- 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of the Contract;
 - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

V.29 CONTRACT-022.1 Force Majeure (Oct 2006)

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

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

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

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

V.30 CONTRACT-023.1a Termination Provisions (Oct 2006)

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

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph a.

V.31 CONTRACT-024.1 Contract Controversies (Oct 2006)

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

- b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

V.32 CONTRACT-025.1 Assignability and Subcontracting (Oct 2006)

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

V.33 CONTRACT-026.1 Other Contractors (Oct 2006)

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

V.34 CONTRACT-027.1 Nondiscrimination/Sexual Harassment Clause (Oct 2006)

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

- a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.
- c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

V.35 CONTRACT-028.1 Contractor Integrity Provisions (Oct 2006)

- a. For purposes of this clause only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.
- 1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - 2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 - 3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - 4) **Financial interest** means:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - 5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
- e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

V.36 CONTRACT-029.1 Contractor Responsibility Provisions (Oct 2006)

- a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including

overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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

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

V.37 CONTRACT-030.1 Americans with Disabilities Act (Oct 2006)

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

V.38 CONTRACT-031.1 Hazardous Substances (Oct 2006)

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

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Subparagraphs (1) through (4):
- 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and

- c) The name, address, and telephone number of the manufacturer.
- 2) Hazardous mixtures:
- a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
 - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
 - d) A hazard warning, and
 - e) The name, address, and telephone number of the manufacturer.
- 3) Single chemicals:
- a) The chemical name or the common name,
 - b) A hazard warning, if appropriate, and
 - c) The name, address, and telephone number of the manufacturer.
- 4) Chemical Mixtures:
- a) The common name, but if none exists, then the trade name,
 - b) A hazard warning, if appropriate,
 - c) The name, address, and telephone number of the manufacturer, and
 - d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V.43 CONTRACT-035.1a Changes (Oct 2006)

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

V.44 CONTRACT-037.1b Confidentiality (Oct 2006)

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

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

- i. already known to the recipient at the time of disclosure;
- ii. independently generated by the recipient and not derived from the information supplied by the disclosing party;
- iii. known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- iv. disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

- v. required to be disclosed by the recipient by law, regulation, court order, or other legal process.

V.45 CONTRACT-046.1 Manufacturer's Price Reduction (Oct 2006)

If, prior to the delivery of the awarded item(s) by the Contractor, a price reduction is announced by the original equipment manufacturer, a comparative price reduction will be given to the Commonwealth by the Contractor.

V.46 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.

LEASING TERMS AND CONDITIONS

I. General.

- A. Lease options. To the extent that the Contractor offers the Commonwealth or any purchasing agency ("Lessee") the option to lease any items covered by the Contract, these Leasing Terms And Conditions shall, in addition to the other terms and conditions of the Contract, govern the lease. The Contractor may offer both standard leases and lease/purchases. These transactions shall be referred to as "Leases" in these Leasing Terms and Conditions. If a Lessee desires a Lease, the Lessee shall indicate its election to lease contract items on the PO issued to the Contractor ("Lease PO"). By issuing a Lease PO, the Lessee explicitly agrees to these Leasing Terms and Conditions. Any items covered by a Lease shall be called "Leased Property" in these Leasing Terms and Conditions.
- B. Assignments. The Contractor may assign, without Lessee consent, any Lease to a third party ("Initial Assignee") who will fund the purchase of the Leased Property. The Initial Assignee may take title to, and assume the right to receive all rental payments for, the Leased Property. The Contractor shall notify the Lessee of any Lease assignment in its acknowledgment of the Lease PO to the Lessee, providing the Lessee with a copy of the assignment agreement between the Contractor and the Initial Assignee.
- C. Leased Property. Notwithstanding any provisions to the contrary in the Contract, in the event of a Lease assignment to an Initial Assignee, the Initial Assignee shall be bound only to the Contractor's obligations specified in these Leasing Terms and Conditions. An Initial Assignee shall not be responsible for any of the Contractor's additional representations, warranties, covenants, or obligations under the Contract Documents. By issuing a Lease PO, the Lessee waives any claims it may have under the Lease against the Initial Assignee for any loss, damage, or expense caused by, defect in, or use or maintenance of any Leased Property. The Lessee acknowledges that the Initial Assignee is not the supplier of the Leased Property and is not responsible for their selection or installation. After the ordering Lessee executes, and the Initial Assignee receives, an acceptance certificate in conformity with the provisions of Subsection I.D. of these Leasing Terms and Conditions, if the Leased Property is in whole or in part unsatisfactory for any reason, the Lessee shall, nevertheless, continue to make rental payments under the applicable Lease and shall make any claim against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee of the Initial Assignee.
- D. Acceptance. After a Lessee executes and the Initial Assignee receives an acceptance certificate in the form attached as Exhibit 1 to these Terms and Conditions ("Acceptance Certificate"):
1. The Lessee shall, regardless of whether any portion of the Leased Property is unsatisfactory for any reason, nevertheless, continue to make rental payments under the Lease and shall make any claim relating to the Leased Property against the Contractor or the manufacturer, not against the Initial Assignee or any subsequent assignee; and
 2. The rights of the Initial Assignee and any subsequent assignee to receive rental payments are absolute and unconditional and shall not be affected by any defense or right of set-off.
 3. If the Leased Property is delivered in more than one delivery, unless otherwise specified in the Contract Documents for this procurement, the Lessee will provide separate acceptance certificates for each delivery of Leased Property, and the Lessee will make periodic payments for the Leased Property corresponding to the amount of the Leased Property delivered and accepted 30 days prior to the payment due date.

II. Lease Terms.

The Contractor may provide any Leased Property under the Contract for any term up to 120 months, including a Fair Market Value Option for Lease/Purchases. The Lessee shall identify the term selected, as well as its election of either a Lease or Lease/Purchase option, on the PO.

III. Term.

The Lease term shall commence on the date the Lessee accepts the equipment and/or Leased Property by executing the Acceptance Certificate, and the term shall continue for the length specified on the Lease PO. If the Leased Property is provided in separate deliveries, the term for each delivery shall expire the specified time after the date of the Lessee's execution of the acceptance certificate as provided in Subsection I.D. of these Leasing Terms and Conditions

IV. Payments.

- A. Full term intention. The Lessee shall pay the applicable monthly or annual rent payment for the Leased Property for the full Lease term unless the Lessee terminates the Lease, either for Contractor Default under Section V.J.2. of these Leasing Terms and Conditions or for nonappropriation of funds as specified in Subsection B. of this Section IV.
- B. Nonappropriation. The Lessee's obligation is payable only and solely from funds allotted for the purpose of the Lease. If sufficient funds are not appropriated for continuation of performance under any Lease for any fiscal year subsequent to the one in which the Lessee issued the Lease PO, the Lessee may return the Leased Property to the Contractor/Initial Assignee (as applicable), and thereafter the Contractor/Initial Assignee shall release the Lessee of all further obligations under the Lease, provided:
1. The Lessee delivers unencumbered title to the Leased Property to the Contractor or Initial Assignee (if applicable);
 2. The Lessee returns the Leased Property to the Contractor/Initial Assignee in good condition, reasonable wear and tear excepted; and
 3. The Lessee gives 30 days written notice of the failure of appropriations to the Contractor/Initial Assignee, along with a certification that the Leased Property are not being replaced by similar Property from another vendor. In the event the Lessee returns the Leased Property for failure of appropriations, the Lessee shall pay all amounts then due under the Lease through the end of the fiscal year for which sufficient funds were appropriated for the Lease.

V. Leasing Terms and Conditions.

- A. Title. Title to the Leased Property shall not pass to the Lessee but shall remain in the Contractor or Initial Assignee, whichever applies; except in the case of a Lease/Purchase, the title shall pass upon payment of the final installment or other concluding payment option, after which neither the Contractor nor any assignee shall have any further interest in the Leased Property. The Lessee acknowledges that the Leased Property remains personal property during the Lease term and that the Leased Property shall not become a fixture or affixed to real property during that term. The Lessee shall keep the Leased Property free and clear of all encumbrances during the Lease term, excluding any Contractor or assignee security interest.
1. At the Contractor's or Initial Assignee's request, as applicable, the Lessee will join the Contractor/Initial Assignee in executing one or more financing statements pursuant to the Uniform Commercial Code or other registration law applicable to the location of any Leased Property.
 2. If the Contractor/Initial Assignee deems filing to be necessary or desirable, the Contractor/Initial Assignee shall pay the cost of filing the financing statement(s) in public offices.
- B. Risk of Loss. The Contractor shall assume and bear the risk of loss or damage to, or theft of, the Leased Property and all component parts while the Leased Property or parts are in the Lessee's possession, unless the Lessee could have prevented such loss, damage, or theft by exercising reasonable care or diligence in the use, protection, or care of the Leased Property or parts. No loss or damage to the Leased Property or parts shall impair any Contractor or Lessee obligation under the Lease, except as expressly provided in these Leasing Terms and Conditions. If the damage could not have been prevented by the Lessee's exercise of reasonable care or diligence, and the Contractor determines the Leased Property or parts can be economically

repaired, the Contractor shall repair or cause to be repaired all damages to the Leased Property or their parts. In the event that any of the Leased Property or their parts are stolen or destroyed, or if in the Contractor's opinion they are rendered irreparable, unusable, or damaged, the affected Leased Property shall be considered a total loss and the Lease shall terminate as to those Leased Property, and the Lessee's obligation to pay rent for the affected Leased Property shall be deemed to have ceased as of the date of the loss.

- C. Assignment. The Lessee shall not assign any Lease, or other interest in the Leased Property, nor shall the Lessee sublease the Leased Property, without the prior written consent of the Contractor or its assignee. The Contractor may assign, and/or grant security interests in whole, or in part, in the Lease PO and Leased Property to an Initial Assignee, who in turn may further assign and/or grant a security interest in a Lease or Leased Property to a subsequent assignee without the Lessee's consent. Any other Contractor assignment shall require the Lessee's prior written consent. Upon written notice to the Lessee, the Contractor may assign rental payments under any Lease or Lease/Purchase to a third party.
- D. Purchase Option. If the Lessee is not in default, it shall have the right at the expiration of the Lease term to buy the Leased Property "as is with no additional warranty" by tendering the purchase option amount the parties have established. For any Lease with a Fair Market Value Option, the fair market value of the equipment shall be established by the Contractor/Initial Assignee and shall not exceed the then-current purchase price of the Leased Property as established in the Contract. Upon the Lessee's exercise of a purchase option and payment of the required amount to the Contractor/Initial Assignee, all right, title, and interest in the Leased Property shall pass to the Lessee.
- E. Extension. If the Lessee does not elect to purchase the Leased Property at the expiration of a Lease term, and the Lessee is not in default under the Lease, the Lessee may elect to extend the Lease by written notification to the Contractor/Initial Assignee. The Lessee will make any elective extension under the same Leasing Terms and Conditions, including any rent payable (not less than fair market rental value), and will continue until the earlier of termination by either party upon one month's prior written notice, or five years from the date of installation.
- F. Return of Equipment. At the expiration or termination of a Lease for any Leased Property, or upon Contractor/Initial Assignee demand pursuant to Section V.J. of these Leasing Terms and Conditions, the Lessee shall promptly return the Leased Property, freight prepaid, to any location in the continental United States specified by the Contractor/Initial Assignee. The Lessee shall pay the required rent for the Leased Property until they have been shipped to the Contractor.

Except in the event of a total loss of any or all Leased Property as described in Subsection V.B. of these Leasing Terms and Conditions, the Lessee shall pay any costs the Contractor/Initial Assignee incurs to restore the Leased Property to good operating condition in accordance with the Contract specifications. All parts the Contractor/Initial Assignee may remove and replace shall become the Contractor's/Initial Assignee's property.

G. Warranties.

1. The Contractor/Initial Assignee, as applicable, grants to the Lessee the benefit of any and all manufacturer or supplier warranties for the Leased Property during the Lease term.
2. The Contractor/Initial Assignee and any subsequent assignee warrants that neither the Contractor/Initial Assignee or subsequent assignee, nor anyone acting or claiming through these parties by assignment or otherwise, shall interfere with the Lessee's quiet enjoyment of the Leased Property so long as no event of default as defined in Subsection V.J. of these Leasing Terms and Conditions shall have occurred and be continuing.

H. Liability.

1. The Lessee assumes all risks and liabilities for injury to or death of any person or damage to any property, arising out of the Lessee's possession, use, operation, condition, or storage of any Leased Property, whether such injury or death be of agents or employees of the Lessee or of third parties, and whether such property damage be to the Lessee 's property or the property of others; provided, however, that the damage or injury results from the negligent action or inaction of the Lessee, its agents or employees, and provided that judgment has been obtained against the Lessee, its agents or employees. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or any Lessee.
2. The Lessee shall, during the Lease term, either self-insure or purchase insurance to cover the risks it has assumed under Subsection 1. of this Section H., including but not limited to risks of public liability and property damage.

I. Financing and Prepayment.

1. If the Contractor is not the supplier of the Leased Property, the Contractor shall pay the charges for the Leased Property directly to the supplier. In the event the Contractor assigns the Lease to an Initial Assignee, the Contractor shall require the Initial Assignee to pay the charges directly to the Contractor or the supplier, as applicable. If the Contractor has assigned rental payments to an Initial Assignee, the Lessee's obligation to make rental payments for the Leased Property for which the Lessee has executed and delivered acceptance certificates shall not be affected by any discontinuance, return, or Lessee dissatisfaction with any Leased Property.
2. The Lessee may terminate the financing for any Leased Property by prepaying its remaining rental payments. The Lessee shall provide notice of the intended prepayment date, which shall be at least one month after the date of the notice. Depending on market conditions at the time, the Contractor/Initial Assignee may reduce the balance of the remaining rental payments to reflect the requested prepayment and shall advise the Lessee of the balance to be paid.

J. Default

1. If the Lessee does not make a required payment within 30 days after its due date and such nonpayment continues for 15 days after receipt of written notice from the Contractor/Initial Assignee that the Lessee is delinquent in payment; if the Lessee breaches any other provision under these Terms and Conditions and such breach continues for 15 days after receipt of written notice of the breach from the Contractor/Initial Assignee, then the Contractor/Initial Assignee may pursue and enforce the following remedies, individually or collectively:
 - a. Terminate the Lease.
 - b. Take possession of any or all Leased Property in the Lessee's possession, without any court order or other process of law. For such purpose, upon written notice of its intention to do so, the Contractor or its assignee may enter

upon the premises where the Leased Property may be and remove and repossess the Leased Property from the Premises without being liable to the Lessee in any action or legal proceeding. The Contractor/assignee may, at its option, sell the repossessed Leased Property at public or private sale for cash or credit. The Lessee shall be liable for the Contractor's/assignee's expenses of retaking possession, including without limitation the removal of the Leased Property and placing the Leased Property in good operating condition (if not in good operating condition at the time of removal) in accordance with the manufacturer's specifications. Repossessed Leased Property shall include only those items that were leased or lease/purchased under the PO.

- c. Recover from the Lessee all rental payments then due, plus the net present value of the amount of the remaining rental payments. The present value of such remaining rental payments shall be calculated using a discount rate equal to the average of the weekly two- and three-year Treasury Constant Maturities published by the Federal Reserve Board for the last calendar week of the month preceding the contractor's/assignee's termination of the applicable Lease PO. The Treasury Constant Maturities are published in Statistical Release .15 and may be accessed via the Federal Reserve Board's Internet website.
2. In the event of Contractor default, the Lessee may pursue one or more of the following remedies:
 - a. If the rental payments under the Lease have been assigned to an Initial Assignee, the Lessee shall continue to make rental payments for those Contract Items which have been delivered and for which the Lessee has provided acceptance certificates to the Contractor/Initial Assignee.
 - b. The Lessee may cancel, without liability for payment, its order for any Contract items which have not been delivered and for which it has not issued acceptance certificates. In this instance, the amount of the rental payments will be recalculated to take into consideration and pay for the actual number of Leased Property which were delivered and accepted. If no Leased Property have been delivered and accepted, the Lessee may terminate the Lease without liability for any payment.
 - c. If payments have not been assigned, the Lessee may set off or counterclaim any and all damages incurred by the Lessee as a result of the Contractor's default against the Lessee's obligation to make rental payments.

VI. Compliance with Internal Revenue Code.

- A. Tax Exempt Financing. If it intends to provide tax exempt financing, the Contractor/Initial Assignee must file, in timely fashion, any reports the Internal Revenue Service may require with respect to the order under the Internal Revenue Code (IRC). The Lessee shall cooperate with the Contractor/Initial Assignee in the preparation and execution of these documents. The Lessee shall also keep a copy of each notification of assignment with the Lessee's counterpart of the order and shall not, during the Lease term, permit the Leased Property to be directly or indirectly used for a private business use within the meaning of Section 141 of the IRC.
- B. Governmental status. Eligible Lessees include State entities or political subdivisions of a State for the purpose of Section 103(a) of the IRC as well as tax exempt non-profit corporations and entities under 501(c)(4) of the IRC. Any misrepresentation of a Lessee's status under the IRC shall constitute an event of default by the Lessee pursuant to Subsection V.J. of these Leasing Terms and Conditions. If the Internal Revenue Service rules that the Lessee does not so qualify under either Section 103(a) or 501(c)(4) of the IRC, or if the Lessee fails to cooperate with the Contractor/Initial Assignee in the preparation and execution of any reports required under Section 124 or 149 of the IRC (including 8038G and 8038GC forms), the Lessee will upon demand pay the Contractor/Initial Assignee a sum the Contractor/ Initial Assignee determines sufficient to return the Contractor/Initial Assignee to the economic status it would otherwise have received.

VII. Use and Location of, and Alterations to, Leased Property.

The Lessee shall keep the Leased Property within the confines of the Commonwealth of Pennsylvania and shall inform the Contractor/Initial Assignee upon request of the location of the Leased Property. The Lessee, at its own cost and expense, shall maintain the Leased Property in good operating condition and will not use or deal with the Leased Property in any manner which is inconsistent with the terms of the Contract or any applicable laws and regulations. The Lessee agrees not to misuse, abuse, or waste the Leased Property and the Lessee will not allow the Leased Property to deteriorate, except for ordinary wear and tear resulting from their intended use. No alterations, changes, or modifications to the Leased Property shall be made without the approval of the Contractor/Initial Assignee.

VIII. Warranty Disclaimer.

IN THE EVENT THE CONTRACTOR ASSIGNS A LEASE TO AN INITIAL ASSIGNEE, SUCH INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE MAKE NO WARRANTY (OTHER THAN A WARRANTY OF QUIET ENJOYMENT OF THE LEASED PROPERTY), EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO THE INITIAL ASSIGNEE AND ANY SUBSEQUENT ASSIGNEE, THE LESSEE TAKES THE EQUIPMENT AND ANY LEASED PROPERTY "AS IS." IN NO EVENT SHALL THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE HAVE ANY LIABILITY FOR, NOR SHALL THE LESSEE HAVE ANY REMEDY AGAINST, THE INITIAL ASSIGNEE OR ANY SUBSEQUENT ASSIGNEE FOR CONSEQUENTIAL DAMAGES, LOSS OF SAVINGS, OR LOSS OF USE.

IX. Governing Law; Severability.

- A. All Leases made under these Leasing Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, except that the parties agree that Article 2A of the Uniform Commercial Code shall not apply or govern transactions under these Leasing Terms and Conditions.
- B. If any provision of these Leasing Terms and Conditions is held to be invalid or unenforceable, all other provisions shall remain in effect.

X. Notices.

Service of all notices under these Leasing Terms and Conditions shall be sufficient if delivered to the Lessee at the address set forth in the applicable PO, or to the Contractor/Initial Assignee at the address set forth in its acknowledgment of the PO, including any attached document. Notices by mail shall be effective when deposited in the U.S. mail, properly addressed, with sufficient paid postage. Notices delivered by hand or by overnight courier shall be effective when actually received.

XI. Terms.

These Leasing Terms and Conditions are in addition to the other terms and conditions of the Contract, except to the extent the Contractor assigns a PO to an Initial Assignee, in which case the Initial Assignee shall be bound to the obligations of the Contractor only as specified in these Leasing Terms and Conditions. To the extent that there is a conflict between the other terms and conditions of the Contract and these Leasing Terms and Conditions, these Leasing Terms and Conditions shall prevail to the extent that the Lessee has elected the lease option.

XII. Acceptance Certificate.

The acceptance certificate required in Subsection I.D. of these Leasing Terms and Conditions shall be in the following form:

Acceptance Certificate

Purchase order No. _____ dated _____, 20__, by and between
_____ (Contractor) and _____ (Lessee).

The undersigned certifies and represents to, and agrees with, the Contractor or its assignee as follows:

1. The Lessee has received and accepted the Leased Property identified on the attached schedule on the date specified below the signature on this page ("Acceptance Date").
2. The Lessee has conducted inspection and/or testing of the identified Leased Property as it deems necessary and appropriate and acknowledges that it accepts the identified Leased Property as of the Acceptance Date.
3. The Lessee is not in any event of default as defined in the Contract, and no event which would become an event of default has occurred and is continuing at the Acceptance Date.

(Lessee)

By: _____

Title

Date

SPECIFICATIONS

CONTRACT SCOPE/OVERVIEW:

This Contract will cover the requirements of Commonwealth Agencies for the supply and installation of New Office Furniture for those manufacturer lines awarded to the Supplier. This Office Furniture includes these major category segments: Systems/Metal Case Goods (includes filing & storage units) & Wood Case Goods (includes desks, filing & storage). Coverage under this contract shall be the entire state of Pennsylvania.

ELIGIBILITY:

In order to be eligible for award, a bidder must be the manufacturer of offered products or an authorized dealer or supplier of manufacturer's products. If a bidder is not the manufacturer of offered products, bidder must include with its bid a letter signed by the manufacturer stating the bidder is authorized to sell the manufacturer's products, and also provide a letter authorizing the dealer to bid the manufacturer line direct. The manufacturer will honor any responsibilities under warranty for products sold by bidder, if bidder fails to perform such service.

Bidders failing to provide signed, manufacturer's letter attesting to authorization to sell/bid manufacturer's product may result in rejection of bid.

AWARD:

This will be a multiple award contract by manufacturer. Awards will be made to the responsible bidders offering the greatest discount from the most recent manufacturer's official, dated price list, one copy of which must be submitted before award. One supplier will be responsible for the entire manufacturer's line. Price List name and date must be included with bid. Failure to comply may result in bid rejection. One award will be made for each particular manufacturer's complete line of available products.

SINGLE DISCOUNT:

Only one discount will be accepted. Where suppliers are offering multiple discounts, the Commonwealth will accept the greatest discount offered. Multiple discounts on a single price list must be averaged or the bid may be rejected. The percentage discount from the appropriate price list must contain a numeric figure not to exceed four (4) digits so that entry can be made on Commonwealth's computer (example: 26.15%).

MINIMUM PERCENTAGES:

1. Bidders **must** offer a minimum percent discount from published catalog price list of **60%** on Systems and Metal Case Goods and must submit a discount for both.
2. Bidders have the **option** to respond on wood case goods. If a supplier chooses to respond on Wood Case Goods, they must provide a minimum percent discount from published catalog price list of **50%**.

PRICE LISTS:

Price lists are submitted with the bid electronically, for the sole purpose of providing a reference to the various items on the price list and the manufacturer's price for each item. Any reference, which may appear on any price list, to any terms and conditions, such as, F.O.B. Shipping Point or prices subject to change, will not be part of any contract with the successful bidder(s) and will be disregarded by the Commonwealth. Contractors agree to supply the Commonwealth with copies of the Catalogues and Price Lists as requested by using agencies. Each item shown shall be identified with the catalog number, type of fabric, and colors available. This shall be provided and attached on a CD/Disk. All price lists/catalogs must be identified in bid.

PRODUCT UPDATE:

The Awarded Suppliers may update the contract price lists at the beginning of the renewal period to reflect new products, manufacturer's price changes, and deletion of discontinued products.

Suppliers shall submit a letter to the appropriate Commodity Specialist requesting review and approval of the updated price list. The Supplier shall itemize all changes in a clear and concise fashion. It is the responsibility of the supplier to adequately justify changes.

All requests must be accompanied by the manufacturer's latest, official, published price list along with a letter of verification from the manufacturer. Suppliers will be notified in writing by the Commodity Specialist indicating approval or disapproval of the requested update. If approved, a contract change notice will be issued putting the updated price list on contract it will then be the responsibility of the supplier to distribute the price list to the users.

At no time are awarded suppliers allowed to unilaterally change products or pricing. Orders will be monitored to ensure compliance.

SUPPLEMENTAL PRICE LISTS:

The Department of General Services may, in its sole discretion, allow contractors to add supplemental price lists to their contracts during the contract year for additional or improved items only. All requests to add supplemental price lists to contracts must be in writing and submitted, along with a copy of the supplemental price list, to the Issuing Office. The Department of General Services will review and, in its discretion, approve or disapprove the request. Items on any supplemental price lists cannot be sold to Commonwealth Agencies under this contract until the written request is approved by the Department of General Services.

AGENCY ORDERING REQUIREMENTS:

Agencies using this contract must following the following ordering procedures depending upon the total estimated cost of the project:

1. **Projects under \$50,000:** If the estimated cost of the project is less than \$50,000, the using agency may go directly to a Supplier on contract for a quote. The using agency must document its selection of the Supplier for the contract file.
2. **Projects \$50,000 to \$1 Million:** If the estimated cost of the project exceeds \$50,000 but is less than \$1 million, the using agency is required to send out notification to all Suppliers on the Contract regarding the procurement and invite them to attend a site visit of the project and submit a quote. This notification may be through electronic mail and should contain the project requirements. The notification shall also include the quote requirement, including but not limited to a cost submittal and a disadvantaged business submittal. The disadvantaged business submittal shall include information explaining the vendor's approach to maximizing Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) participation. The disadvantaged business submittal should include which portions of the project would be performed by the MBE/WBE and what percentage of the total project such portions encompass.

The inclusion or lack of MBE/WBE participation will be considered by the using agency in making its best value determination.

Only those Suppliers that attend the site visit will be able to submit a quote. The using agency shall evaluate each quote and make a determination of best value from those quotes received. If the using agency makes a best value determination based on any other factor than low cost, such determination must be documented for the contract file and presented to the Department of General Services for a final determination.

3. **Projects exceeding \$1 Million:** If the estimated cost of the project exceeds \$1 million, the using agency must submit the project specifications to the Bureau of Procurement and the Bureau will determine the appropriate procurement method for the project.

The Department reserves the right to purchase products or services covered under this contract through a separate competitive procedure whenever the Department determines that it is the best interest of the Commonwealth.

SERVICES:

Suppliers may offer to provide additional related services in conjunction with the furniture items they are offering to supply to the Commonwealth under this contract. The additional related services are limited to: design layout of furniture being moved from one area to another; storage of furniture until new buildings or building renovations are completed; and relocation and/or reconfiguration of manufacturers' lines of furniture.

The suppliers that included with their bids a list of all the above services offered by them along with the associated prices are indicated in the item sheets and are attached to the contract. These services and their associated prices will not be used in bid evaluation and award of the contract. The prices will provide using agencies with better capability to determine best value in the selection of a manufacturer's product. These services are over and above the services already built into the furniture bid prices. The Commonwealth does, however, reserve the right to restrict the services, which can be procured under the contract and not to include any services if either the prices are unacceptable or services are outside of the acceptable scope of additional services. Any price updates for these services are subject to the "Option to Renew" clause and the "Price Lists" clause.

Also included in the additional services are Union Hourly Rates. The Supplier must use Union Labor Rates for installation in areas/buildings that are Union covered or when a determination that the provisions of the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 thru 165-17, apply to the installation.

STORAGE OF FURNITURE:

The Contractor must have the ability to provide storage of furniture until new buildings or building renovations are completed. Storage charges shall not accrue until ninety (90) calendar days after scheduled delivery date and the using agency has indicated they still cannot accept delivery.

COMMUNICATION WITH DEALER NETWORK:

The Contractor must communicate with the manufacturer and its other dealers and subcontractors concerning proper quotations and invoicing to Commonwealth agencies. Invoices must reflect list prices for all parts/components in the ordered Office Furniture and show the discount percentage taken from list prices.

WARRANTIES:

All warranties include labor costs. Warranty work can be performed either on-site or at an off-site location (the manufacturer or authorized distributor's facility), whichever would provide for the fastest response (turn-around time). The Contractor guarantees that the provided equipment will be standard new equipment. All items of furniture delivered under this Contract shall be guaranteed for materials and workmanship as follows:

System & Metal Case Goods:

All Products, including Parts and Workmanship – minimum of 10 years.

Operational Mechanisms and Electrical Components – minimum of 10 years.

Fabric and Laminate - 3 years.

Woodcase Goods:

Standard warranty as noted in Terms & Conditions

If defects occur during this time, the Contractor shall replace or correct without cost to the Commonwealth, except where it is clearly shown that the defect is due to misuse and not to faulty manufacture.

DESIGN SERVICES SPECIFICATIONS:

The Contractor must provide design services for furniture purchases at no additional charge. The design firm may also be required to identify in generic terms other free-standing furniture required for a project, such as file cabinets, tables, chairs, and floor to ceiling partitions, etc.

1. General Requirements. Design Services shall also be performed with ergonomic concerns being considered. Designs generally will consist of specifying the furniture required for the project to be ordered from the Contract. All design must be completed utilizing an Auto CAD computer aided planning system. The Commonwealth is willing to accept the standard system the design firm uses but training must be provided to Commonwealth personnel at no additional charge. It is mandatory that the Contractor provide CAD drawings in print and disk.

The Contractor shall adhere to all Commonwealth policies and work rules when working at a Commonwealth location. This includes facility regulations, such as elevator capacity, dock regulations, floor load capacity, etc. Parking expense will be the responsibility of the Contractor.

The Contractor is expected to complete the design phase of a project in a time frame agreed between the Contractor and the using agency, which could include timeframes dictated by the construction or renovation of leased space. It is expected that the Contractor will assign the appropriate skill type and number of designers required for a particular project, to ensure timely delivery of all aspects of design services.

2. Specific Requirements For Design Services. Listed below are the specific requirements for design services performed by the Contractor:

a. Building Measurements: The Contractor is required to take field measurements prior to designing the project. If measurements are provided by an agency, the Contractor shall confirm they are correct.

b. Project Management: Each project will be assigned a project manager by the using agency, if necessary. The agency project manager shall approve each step of the design process prior to progression of the project to the installation phase.

c. Pre-Design Review Meeting: The agency project manager will schedule a pre-design review meeting with the Contractor to discuss general agency design requirements. The Contractor is to identify a design coordinator for the project. This person will be the contact person for the agency project manager. The agency project manager will provide the design coordinator with an inventory of any special equipment specifications, and will also discuss space utilization and the number and general types of workstations to be designed.

Also discussed will be any other information to be considered in the design process, such as special considerations for public contact, locations of any special groups or large areas, security areas, handicap employee offices, the particular agencies space standards, and also a list of the various products covered under the Contract and the products covered under any other Commonwealth contracts (such as file cabinets, tables, chairs, floor to ceiling partitions, etc.). The Contractor is responsible for working with the agency project manager and/or the landlord of Commonwealth leased space to identify specific requirements such as elevator capacity, loading dock regulations, etc., for the facility in which the work is being performed.

For projects that will include the re-utilization of some existing furniture, the Contractor is required to do an inventory of all existing furniture as part of this step.

d. Preliminary Design Plan: The Contractor will then prepare a preliminary design plan showing in detail the position of all new furniture required from the Contract, as well as specifying in generic terms other new free-standing furniture required such as file cabinets, tables, chairs, and floor to ceiling partitions, which will be purchased from other Commonwealth of PA contracts. This plan shall be to 1/8" or 1/4" scale.

After development of the preliminary design plan, the agency project manager is allowed to make one to four (1 to 4) sets of changes, based on program changes, etc., prior to finalization of the preliminary design plan. If more than 4 sets of changes are necessary the Contractor can charge for Design Services per the rate defined in Part B, Additional Services. The agency project manager shall approve, in writing, the final plan prior to proceeding.

e. Installation Design Plan: The Contractor will then prepare an installation design plan, showing in detail all new Office Furniture required for the project, wall heights, colors, types of panels (solid, glass, acoustical), electrical outlets, telephone outlets, word processing/computer outlets, as well as, in generic terms, other new free-standing furniture required such as file cabinets, tables, chairs, and floor to ceiling partitions, which will be purchased from other Commonwealth of PA contracts.

The installation design plan shall be to 1/8" or 1/4" scale and is due after the approval of the preliminary design plan. No changes in the approved installation design plan will be allowed prior to occupancy except for safety code regulations authorized by the agency project manager or changes necessitated due to lessor requested changes and approved by the agency project manager.

f. Itemized Parts List (Bill Of Materials): The Contractor will then provide the agency project manager with an itemized parts list (bill of materials) specifying in detail all new Office Furniture required for the project that will be ordered from the Contract, including product numbers, quantities, colors, etc. A summation quote as to the total number and cost per workstations, interview booths, etc. will also be required.

For projects that will include the re-utilization of some existing furniture and an inventory of the existing furniture has been done, the Contractor shall provide the agency project manager with a list of all existing furniture to be re-utilized in the project. This list shall be in addition to the itemized parts list (bill of materials) of new furniture required for the project and the generic list of new free-standing furniture required for the project and covered under other contracts, both described above.

g. Prior To Installation: The Contractor shall identify the location of electric receptacles, voice and data jacks.

h. Availability During Installation : The Contractor shall be available to answer questions and provide consultation, including installation inspections, if required in order to verify that the installation of the furniture is being installed in accordance with the approved design.

i. Design Services Approval: Each step of the project must be approved, in writing, by the agency project manager prior to proceeding to the next step. All plans are to be submitted in accordance with the established time frames. All plans shall be submitted in compliance with Commonwealth of PA space standards using accepted drafting standards. The Commonwealth of PA reserves the right to require all plans to be submitted in multiples of three. The Commonwealth of PA also reserves the right to require all plans for a particular project to be submitted in an electronic format including CD format and e-mail. When requested, all plans and diskettes shall be submitted in a format that is compatible with the Auto CAD computer aided planning system in an acceptable electronic format including CD format and e-mail, which shall become the property of the Commonwealth of PA. The Commonwealth reserves the right to be able to make additional copies of the Contractor's plans as needed.

SAFETY AND PERFORMANCE STANDARDS:

Systems and Seating must meet the latest ANSI/BIFMA Safety and Performance Standards. Reference: BIFMA Office Seating Standard X5.1-2002; BIFMA Panel Systems Standard X5.6-2003; and Ergonomic Guidelines G1-2002.

DISPOSAL OF PACKAGING:

The Contractor must dispose of shipping material and packaging at the time of installation. Recycling of shipping and packaging material is required when possible.

TIMELY DELIVERY:

Timely delivery in accordance with the terms and conditions of the Contract is essential. The Contractor shall immediately notify the using agency and the Department in writing if any situation delays or threatens to delay the timely performance of any order. The notification shall include the Contractor's best possible delivery time for the using agency's approval. If the using agency does not approve the alternate delivery date(s) (with or without obtaining consideration from the Contractor), the Commonwealth shall have the right to cancel the order (s) in whole or in part without further liability on the Commonwealth's part. The Department also has the right to purchase the goods elsewhere and/or hold the Contractor accountable for all damages and direct costs resulting from the Contractor's unacceptable delivery date(s). If unapproved late deliveries are made, the using agency may cancel the order(s) in whole or in part, purchase the goods elsewhere, and/or hold the Contractor accountable for all damages and direct costs resulting from the Contractor's failure to deliver on schedule.

Acceptance of a late delivery by the using agency shall not constitute a waiver of the using agency's claim for any damage that the late delivery may have caused. The using agency also has the right to require multiple deliveries to the same site within the same time frame.

PACKAGING, ASSEMBLY, LABELING, AND PALLETIZING REQUIREMENT:

1. Packaging: All major components shall be boxed and/or packaged as specified by the user agency, if different from manufacturer's standard practice. All major components shall be packaged ready for installation, including all necessary parts and hardware. For example, panels, hanging shelving units, flipper doors, hanging lateral file drawers, etc. must be packaged with side rails, top rails, locks, guides, etc. Screws, clips, connectors, and all other necessary hardware required to install an item must be individually packaged and included with the primary item. All cartons used shall be similar in size to the particular item included in the carton, i.e. a 6-foot carton should not be used to package a 4-foot panel. The general rule of thumb is that the carton shall not exceed the product by more than 5 inches (approximately).

Blanket wrapping is acceptable for orders being delivered directly to the ordering agency for immediate installation. Blanket wrapping is NOT ALLOWED for orders delivered to a warehouse operation.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

When palletizing is required (warehouse) or requested, there shall be no additional cost to the Commonwealth for the pallets.

2. Assembly: All items shall be delivered ready to install. Items shall not require any major pre-installation assembly. For example, panels, hanging shelving units, flipper doors, hanging lateral file drawers, etc. shall consist of primary component parts such as side rails, top rails, locks, guides, etc. Screws, clips, connectors, and all other necessary hardware required to install an item can be unattached but must be individually packaged and included with the primary item. Requiring minor assembly of connectors, etc. after removal from the box is acceptable. Items that are totally broken down into small components are UNACCEPTABLE.

3. Labeling: All boxes/packages shall be properly labeled. Labeling shall include, but is not limited to: name of the product and short description (i.e. 48" x 60" panel, etc.), manufacturer's catalog number, Agency Purchase Order number, quantity, and color.

4. Palletizing: Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturers standard 2-way or 4-way shipping pallets are acceptable.
- Maximum height: 74"; including pallet. This also applies to stacked pallets.
- Maximum weight: 2,000 pounds; per single unstacked pallet, including pallet.
- Pallets are to be securely banded and/or shrink-wrapped. Loads shall not exceed the size of the pallet, and material shall not overhang pallets.
- Material shall be palletized in such a manner that will make receiving of goods easily identifiable, without unloading pallet and merchandise. Mixing of commodities will not be allowed, unless identification is easily performed. Like items and colors are always to be palletized together. Boxes shall be stacked on pallets with the labels facing the outside.
- There shall be no additional cost for palletizing.

Other shipments, including those directly to an installation location, MAY also be requested as palletized deliveries, and if requested, shall also conform to the above requirements. For orders that include installation or warehousing, the pallets belong to the Contractor.

RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
- b. Unless the Contractor provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the Contractor using the Contractor information provided by the Contractor in SRM [or “the legal contact information provided in this Contract”] if the agency needs the Contractor’s assistance in any matter arising out of the Right to Know Law (“RTKL”). The Contractor shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
- c. Upon notification from the Commonwealth that the Commonwealth requires the Contractor’s assistance in responding to a RTKL request for records in the Contractor’s possession, the Contractor shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Contractor’s possession which arises out of the Contract that the Commonwealth requests (“Requested Information”) and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Contractor fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.
- d. The Commonwealth’s determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Contractor agrees not to challenge the Commonwealth’s decision to deem the Requested Information a Public Record. 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, the Contractor will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Contractor’s written statement, the Commonwealth still decides to provide the Requested Information, Contractor will not challenge or in any way hold the Commonwealth liable for such a decision.
- e. The Commonwealth will reimburse the Contractor for any costs associated with complying with this provision 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.
- f. Contractor agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. 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. 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.

INQUIRIES:

Direct all questions concerning this Bid to the Commodity Specialist named herein:

Lisa A. Vega, Commodity Specialist
Department of General Services
Forum Place
555 Walnut Street, 6th Floor
Harrisburg, PA 17101
Telephone: (717) 346-4290
Fax: (717) 783-6241
E-mail: lvega@state.pa.us

ITEM SHEET

Additional Services

| ITEM | MANUFACTURER LINE | Hourly Rate (\$/hr.) for Design Layout of Furniture Being Moved from One Area to Another | Hourly Rate (\$/hr.) for Re-Configuration / Relocation Services of Furniture Being Moved from One Area to Another | Overtime/Holiday Hourly Rate (\$/hr.) for Re-Configuration / Relocation Services of Furniture Being Moved from One Area to Another | Union Labor Hourly Rate (\$/hr.) for Installation of Furniture in Union Covered Areas | Storage Rate per day for Storage of Goods Beyond 90 days after Scheduled Delivery Date & Notification from User of Inability to Accept Delivery | VENDOR NAME & VENDOR NUMBER |
|------|-------------------|--|---|--|---|---|---|
| 1 | Haworth Inc | \$43.00-115.00/hr | \$ 43.00-115.00/hr | \$58.00-\$140.00hr | \$73.50-118.00/hr | .75-\$1.56 dependent on area | Multiple dealers across Pa c/o Haworth Inc |
| 2 | | | | | | | |
| 3 | | | | | | | |

