

**INSTRUCTIONS
TO
BIDDERS**
For Electronic Bidding



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

2017 Edition

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**FAILURE TO COMPLY WITH THESE INSTRUCTIONS MAY RESULT IN THE
REJECTION OF THE BID AS NOT RESPONSIVE.**

SECTION 1. E-BUILDER CONSTRUCTION MANAGEMENT SOFTWARE. To improve productivity and efficiency, and to streamline the process of construction management in the digital age, the Department of General Services will utilize the e-Builder Enterprise Software Program (e-Builder) for electronic bidding. Bidders are required to create a user profile within E-Builder by clicking on the advertisement located in PA e-marketplace at www.emarketplace.state.pa.us. A video tutorial is available on the e-Builder site for first time users to learn how to navigate e-Builder. Technical support is also available via email at support@e-builder.net or by phone at 1-888-288-5717.

SECTION 2. WORK TO BE PERFORMED. The Work to be performed is described in the Contract Documents. The Contract Documents are available via e-Builder in the Bid Documents folder.

SECTION 3. FAMILIARITY WITH PROPOSED WORK. The Bidder is responsible for examining the nature and location of the Work, the conformation of the ground, the soil and rock conditions, and the character, quality and quantity of the materials that will be required. The geotechnical report prepared for the Department, if one has been performed for the project, is available for review by all bidders under the Bid Documents folder in e-Builder. The Bidder shall also examine the proposed Contract Documents, including the plans, specifications, the General Conditions, Special Conditions (if applicable), Administrative Procedures, and all other documents and data pertaining to the Project. After the award of the contract, the Contractor may not submit any claim alleging insufficient data, incorrectly assumed conditions, or misunderstanding with regard to matters for which no such clarification was sought during the bidding phase of the Project, as described further in the General Conditions of the Construction Contract.

SECTION 4. INTERPRETATION OF CONTRACT DOCUMENTS.

- A. Questions during the bid stage **shall be submitted via e-Builder** under the Questions/Reponses tab in the Project's Invitation to Bid. All questions related to the proposed Work or proposed contract documents must be submitted in e-Builder **no later than close of business ten (10) days prior to the Bid Opening Date**. Only questions received no later than ten (10) days prior to the date fixed for the opening of bids will be considered by the Department. If a question is submitted within 10 days of the bid opening date, the Department may, in its sole discretion, answer the question. Questions submitted outside of e-Builder **will not** be considered for response.
- B. **NEITHER THE DEPARTMENT, THE PROFESSIONAL NOR ANY REPRESENTATIVE OF THE CLIENT AGENCY SHOULD BE ASKED TO PROVIDE ANY ORAL OR WRITTEN INTERPRETATION TO ANY BIDDER REGARDING INTERPRETATION OF THE CONTRACT DOCUMENTS. ANY CONVERSATION OR WRITING BETWEEN A BIDDER AND EITHER THE DEPARTMENT, THE PROFESSIONAL, OR THE REPRESENTATIVE OF THE CLIENT AGENCY FOR WHOM THE PROJECT IS BEING CONSTRUCTED, SHOULD NOT BE RELIED UPON BY ANY BIDDER, IS NOT BINDING UPON THE DEPARTMENT, AND SHALL NOT BECOME PART OF THE CONTRACT DOCUMENTS UNLESS THE INFORMATION SUBSEQUENTLY APPEARS IN AN ADDENDUM ISSUED IN E-BUILDER.**
- C. The Department's response to any Question will be in the form of an Addendum issued in e-Builder. All bidders that have created a user profile in e-Builder will be notified as addenda are issued. . **If an addenda is issued prior to bid opening but after the bidder had submitted their bid, the bidder will need to resubmit their bid through e-Builder prior to the bid opening date and time.** All addenda become a part of the Contract Documents, and all Bidders on any portion of the contract for the Project are bound by all addenda issued on the project. Bidder will be required to acknowledge all Addenda prior to submitting a bid.

SECTION 5. SUBMISSION/SIGNING OF BIDS. All bids shall be submitted in e-Builder prior to the date and time scheduled for bid opening. Only e-Builder submissions will be accepted by the Department. Mail (regular or express), **email or any other type of delivery of the bid submissions will not be accepted by the Department and will be returned to sender.**

- A. **Base Bids.** All base bids will be considered as separate and distinct bids. If a base bid is left blank or a zero (0) is present, the Department will interpret this to mean the Bidder did not submit a bid on that base bid, but this will not invalidate any remaining base bids. When submitting your Base Bids in e-Builder, disregard the "Base Bid Total" amount in the Bid Summary table.
- B. **Acknowledgments.** Before submitting a bid in e-Builder, Bidder must acknowledge the statements contained under the Custom Field tab by typing an answer as instructed. Bidders will not be permitted to proceed unless this step is completed.

Bidders must confirm/submit the bid by entering their e-Builder username and password when prompted. **After a bidder confirms/submits the bid on the Confirm Bid screen, the bid may be modified in e-Builder and re-submitted by the Bidder but cannot be completely withdrawn without permission granted by the Department (See Section 7).**

SECTION 6. AWARD TO A FOREIGN BUSINESS. No contract will be awarded to a Bidder which is a foreign corporation, a foreign limited liability company, a foreign limited partnership, or which is operating under a fictitious or assumed name unless the Bidder has complied with, or agreed to comply with, the registration requirements under the Business Corporation Law of 1988 (15 Pa. C.S. §4121-§4131) and/or the Limited Liability Company Law of 1994 (15 Pa. C.S. §8981-§8982), and/or the Partnership Code (15 Pa. C.S. §8581-§8590), and/or the Fictitious Names Act (54 Pa. C.S. §301-§332).

SECTION 7. WITHDRAWAL OR MODIFICATION OF A SUBMITTED BID PRIOR TO BID OPENING.

- A. **Complete Withdrawal Before Bid Opening Date and Time.** For a Bid to be withdrawn before the date and time of bid opening, the Bidder must submit this request via the Questions box in e-Builder.
- B. **Modification of a Bid Before Bid Opening Date and Time.** If, before the date and time of bid opening, a Bidder wishes to modify its bid already submitted through e-Builder, the Bidder must re-access their submitted bid, modify their Base Bid amount(s), and re-submit. If you do not re-submit the modified bid, the previous bids are still effective.

SECTION 8. BID OPENING PROCEDURE. Bids will be opened in e-Builder by two (2) representatives of the Department who enter their user name and password into the program to confirm their presence at the date and time designated in the Notice, or as close after this time as reasonably possible. The Department will not, under any circumstances, open a bid before the bid opening date and time. The bid opening is viewable to the public via web conference. Information regarding the web conference can be found on the Notice to Bidders in e-Builder. DGS will also publish the web conference link on its publicly accessible website. The amount of each bid, together with the name of each Bidder will be recorded under the Bid Tabulation tab in e-Builder. The Bid Tabulation shall be considered unofficial and shall be open to public inspection during the web conference. The Bid Tabulation, listing the Bidders and their bid amount, will be available in e-Builder and posted to the Department's publicly accessible website within two (2) calendar days of the bid opening.

SECTION 9. REJECTION OF BID. The Department reserves the right to reject any or all bids or parts thereof. A bid may be rejected if it shows any omission, alterations of form, scope of work, additions or deductions not called for, conditional language or uninvited alternate bids, or irregularities of any kind. The Department reserves the right, however, to waive technical defects or irregularities on bids. The Department may reject the bid of any Bidder failing to meet the requirements of these Instructions to Bidders or any other requirements of Bidders set forth in the Contract Documents. The reasons for rejection will appear next to the Bidder's name on the Bid Tabulation, which will be made available in e-Builder and published on the Department's publicly accessible website within two (2) days of the bid opening.

SECTION 10. WITHDRAWAL OF BIDS AFTER BID OPENING. Within three (3) days after the opening of the bids, but before award, a Bidder may request permission to withdraw its entire bid or a particular Base Bid if it submits a Bid Withdrawal Form. The Bid Withdrawal Form must be completed and emailed as indicated on the Bid Withdrawal Form. The Bid Withdrawal Form is available under the Bid Documents tab in e-Builder. The Form must be downloaded before a bid is confirmed/submitted. Bidders who did not download the Bid Withdrawal Form prior to submitting a bid may obtain a Form by contacting the Bidding Contact listed in the Notice to Bidders. The request will not be considered received unless it is directed as set out in this section. With the request for withdrawal, the Bidder must submit evidence that the reason for withdrawal is 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 its bid. The evidence should be attached to the email with the Form at the time the request is submitted.

SECTION 11. EXPERIENCE QUESTIONNAIRE AND FINANCIAL STATEMENT PROVIDED ON REQUEST. At the Department's request, or if specifically required by the Invitation to Bid, Bidders shall attach an experience questionnaire and financial statement with the Department on the form provided by the Department in the Supporting Documentation tab in the Invitation to Bid for the Project. The questionnaire and statement shall be certified to be true and correct by an affidavit sworn to or affirmed before a Notary Public, or other officer empowered to administer oaths or affirmations. Falsification of any requested information shall result in a rejection of the bid as not responsible and/or cancellation of the Contract Award.

SECTION 12. REFUSAL TO SUBMIT REQUESTED INFORMATION. If the Bidder fails, refuses or neglects to submit any requested information within the time stated in any request, the Bidder will fail to qualify as a responsible Bidder and their Bid shall be rejected as not responsible and/or their Contract Award will be rescinded. Such event may result in the Bidder being entered into the Contractor Responsibility Program.

SECTION 13. COLLUSIVE BIDS WILL BE REJECTED. The bids of any Bidder or Bidders who engage in collusive bidding or bid-rigging as discussed in the Antibid-Rigging Act will be rejected. 62 Pa. C.S. §§ 4501 – 4509. Any Bidder who commits a prohibited act under the Antibid-Rigging Act will be prosecuted to the fullest extent of the law

SECTION 14. BID PROTEST PROCEDURE. The Commonwealth Procurement Code (62 Pa. C.S. §1711.1, as amended) governs the protest procedure, which is summarized below. In the event this general description conflicts with the statute, the statutory language controls.

A. Who may File. Any Bidder or prospective Bidder who is aggrieved in connection with the bid or the award of a contract resulting from the bid may file a protest.

1. Prospective Bidder is an entity that has not submitted a bid in response to the Notice to Bidders.
2. Bidder is an entity that has submitted a bid in response to the Notice to Bidders.

B. Time Limits.

1. If a protest is filed by a prospective Bidder, a protest must be filed prior to the bid opening date and time established in the Notice to Bidders by either:
 - i. **E-Builder.** Prospective Bidders may complete and submit a Protest Form. The Form is available under the Bid Documents tab in the Invitation to Bid for the Project, The Form, along with any supporting documentation, must be emailed as indicated on the Bid Protest Form; or
 - ii. Prospective Bidders may file a protest, in writing, with the Contracting Officer, Department of General Services, 3rd Floor Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103.

2. If a protest is filed by a Bidder, the protest must be filed within seven (7) days after the protesting Bidder knew or should have known of the facts giving rise to the protest, **except** in no event may a protest be filed later than 7 days after the Bid Tabulation is available in e-Builder and posted to the DGS website. Bidders must file protests by either:
 - i. **E-Builder.** Bidders may complete and submit a Protest Form. The Form is available under the Bid Documents tab in the Invitation to Bid for the Project. The Form, along with any supporting documentation, must be emailed as indicated on the Bid Protest Form.
 - ii. Protest may be filed, in writing, with the Contracting Officer, Department of General Services, 3rd Floor Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103,
 3. Filed – shall be defined as the date upon which the Protest Form is submitted in e-Builder or, if a written protest is filed, the date upon which the Department receives the written protest.
 4. If the Bidder fails to file/submit a bid protest or files/submits an untimely protest, then they shall be deemed to have waived the right to protest the solicitation or award of the contract in any forum. Untimely protests will be disregarded by the Department.
- C. The Department may cancel an invitation for bids or may reject all bids at any time prior to the time a contract is executed by all parties when it is in the best interests of the Commonwealth. The Bidder may not submit a protest relating to cancellation of the bid or rejection of all bids.
- D. A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.
- E. The full text of the Bid Protest Procedure can be found at 62 Pa. C.S §1711.1 *et seq.*

SECTION 15. BIDDER CERTIFIED NOT UNDER DEBARMENT. The Bidder must certify in e-Builder that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Bidder cannot so certify, then the Bidder agrees to submit along with the bid a written explanation of why such certification cannot be made. Written explanations, if provided, should be attached to the Supporting Documents Tab under the Invitation to Bid for the Project.

SECTION 16. SUBCONTRACT WITH DEBARRED OR SUSPENDED FIRM. If the successful Bidder enters into subcontracts or employs any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts or employment.

SECTION 17. REIMBURSEMENT OF COSTS OF INSPECTOR GENERAL INVESTIGATION. The Bidder/Contractor shall reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of 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 result in the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

SECTION 18. CURRENT LIST OF SUSPENDED AND DEBARRED CONTRACTORS. The Bidder/Contractor may obtain the current list of suspended and debarred Contractors by referring to the Department's website.

SECTION 19. ASSIGNMENT OF ANTITRUST CLAIMS. The successful Bidder/Contractor and the Commonwealth recognize that, in actual economic practice, overcharges by the Contractor's suppliers, resulting from the violations of State or Federal antitrust laws, are, in fact, borne by the Commonwealth. As part of the consideration for the award of this contract, and, intending to be legally bound, the successful Bidder/Contractor assigns to the Commonwealth all right, title and interest in, and to, any claims contractor now has, or may hereafter acquire, under State or Federal antitrust laws relating to the goods or services, which are the subject of this contract.

SECTION 20. NONDISCRIMINATION/SEXUAL HARASSMENT. The successful Bidder/Contractor shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix A.

SECTION 21. CONTRACTOR INTEGRITY PROVISIONS. The successful Bidder/Contractor shall comply with the Integrity Provisions, which are attached hereto as Appendix B.

SECTION 22. CONTRACTOR RESPONSIBILITY PROVISIONS. All Bidders and the successful Bidder/Contractor shall comply with the Responsibility Provisions, which are attached hereto as Appendix C.

SECTION 23. AMERICANS WITH DISABILITIES ACT. The successful Bidder/Contractor shall comply with The Americans with Disabilities Act Provisions, which are attached hereto as Appendix D.

SECTION 24. ENHANCED MINIMUM WAGE PROVISIONS. The successful Bidder/Contractor shall comply with the Enhanced Minimum Wage Provisions, which are attached hereto as Appendix E.

SECTION 25. OFFSET PROVISION. The successful Bidder/Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

SECTION 26. PROJECT WAGES. The successful Bidder/Contractor shall comply with the provisions, duties, obligations, remedies and penalties of the Pennsylvania Prevailing Wage Act, 43 P.S. §§ 165-1 et seq., which is incorporated herein by reference. To the extent that the project has federal funds involved, the Davis-Bacon Act may apply.

SECTION 27. STEEL PRODUCTS PROCUREMENT ACT. The successful Bidder/Contractor agrees to comply with the provisions of the Steel Products Procurement Act of March 3, 1978, P.L. 6 as amended (73 P.S. §1881 *et seq.*). Information regarding the Act's requirements, including a list of exempt products, is available on the Department's web site at <http://www.dgs.pa.gov/Businesses/Design-and-Construction/Steel-Products-Act-Exemptions/Pages/default.aspx>.

SECTION 28. PRODUCT DISCRIMINATION. Successful Bidders agree to comply with the following Acts regarding Product Discrimination:

A. Reciprocal Limitation Act.

1. Background Requirements of the Reciprocal Limitations Act. The Act (62 Pa.C.S. (2008 Sup.) § 107) requires the Department:
 - i. In the award of contracts, exceeding \$10,000, for the erection, construction, alteration, improvement or repair of any building or other public work, or the purchase or lease of any goods, supplies, equipment, printing or materials, to give resident Bidders a preference against a nonresident Bidder from any state that gives or requires a preference to Bidders from that state. The amount of the preference shall be equal to the amount of the preference applied by the state of the nonresident Bidder. A resident Bidder is a person, partnership or corporation or other business entity authorized to transact business in Pennsylvania and having a bona fide establishment for transacting business within Pennsylvania at

which it was transacting business on the date when bids for the public contract were first solicited.

- ii. In the erection, construction, alteration, improvement or repair of any public building or other public work, and in all purchases of goods, supplies, equipment, printing or materials, not to specify, use or purchase any goods, supplies, equipment, printing or materials which are produced, manufactured, mined, grown or performed in any state that prohibits the specification for, use, or purchase of such items in or on its public building or other works, when such items are not produced, manufactured, mined, grown or performed in such state.

2. List of Discriminating States.

- i. States which apply preference favoring in-state Bidders and the amount of such preference, (that may affect this contract), as found by the Department.

<u>STATE</u>	<u>PREFERENCE</u>
Arizona	5% (construction materials from Arizona resident dealers only)
Montana	3%
West Virginia	2.5% for construction, repair or improvements of any buildings
Wyoming	5%

- ii. **States which prohibit the use of out-of-state goods, supplies, equipment, materials or printing and the prohibition (that may effect this contract), as found by the Department.**

<u>STATE</u>	<u>PREFERENCE</u>
Georgia	Forest products only
Indiana	Coal
New Jersey	For Bidders for the following items: major household appliances, chain link fence, portable sanitation units, glass, glazier supplies, storage batteries, carpet and cushion, shades, room air conditioning, electrical supplies, plumbing supplies, hardware supplies, fasteners, lumber, building supplies, audio-visual/video equipment, fire extinguishers, fire hose, motor oils, fuel oil, photographic supplies, Venetian blinds, drapes, paper towel dispensers, water hose
New Mexico	Construction

3. Calculations of Preference.

- i. In calculating the preference, the amount of a bid submitted by a Pennsylvania Bidder shall be reduced by the percentage preference which would be given to a nonresident Bidder by its state of residence. Similarly, the amount of a bid offering Pennsylvania goods, supplies, equipment, materials and printing shall be reduced by the percentage preference which would be given to another Bidder by the state where the goods, supplies, equipment, materials or printing are produced, manufactured, mined, grown or performed.

B. Trade Practices Act.

In accordance with the Trade Practices Act (71 P.S. §773.101 *et seq.*) the Contractor shall not use, or permit to be used, in the Work any aluminum or steel products made in a foreign country that discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted for a project. Penalties for violation of this paragraph may be found in the Trade Practices Act. Penalties include becoming ineligible for award of any Public Works contracts for a period of three years.

- 1. **Brazil:** Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheet.
- 2. **Spain:** Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet; hot-rolled carbon steel bars and cold-formed carbon steel bars.
- 3. **South Korea:** Welded carbon steel pipes and tubes; hot-rolled carbon steel plate and hot-rolled carbon steel sheet and galvanized steel sheet.
- 4. **Argentina:** Carbon steel wire rod and cold-rolled carbon steel sheet.

SECTION 29. SMALL DIVERSE BUSINESS PARTICIPATION

A. Overview - Minimum Participation Level.

- 1. The Department has established one minimum participation level (MPL) for utilization of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBEs), Service-Disabled Veteran Business Enterprises (SDVBEs), Disability-Owned Business Enterprise (DOBE), and LGBT Business Enterprise (LGBTBE) (together referred to hereinafter as Small Diverse Businesses) subcontractors, manufacturers, and suppliers for this project. This Small Diverse Business Participation (MPLs) applies when the amount bid exceeds \$50,000.
 - i. The MPL for each Prime Contractor is set forth in the Notice to Bidders in the following form:

		MPL
.1	General Construction	____%
.2	HVAC	____%
.3	Plumbing	____%
.4	Electrical	____%

- 2. If the Bidder is a Small Diverse Business firm, DGS will not credit the value of the Bidder's contract toward meeting the MPLs. All Bidders (including Bidders which are SDB) are required to comply with these Instructions to Bidders regarding Small Diverse Business Participation.

3. Bidders are not required to submit a form regarding the MPL or solicitation efforts with the Bid Package.
4. The Administrative Procedures, which are included in the Contract Documents, have a chapter titled "Small Diverse Business Participation." Should there be any conflict between these Instructions to Bidders and the Administrative Procedures, the Administrative Procedures govern.
5. Upon Notice of Award, the successful bidder shall have the option of choosing to "Opt-in" or creating and maintaining documentation on its "Good Faith Effort" to meet the Project's MPL. (See: subsection B(1) below). The Contractor will have the full duration of their contract to meet the MPL.
6. The Contractor's commitments toward the MPL will be calculated and credited as follows:
 - i. **ONLY DGS-CERTIFIED SMALL DIVERSE BUSINESSES SHALL BE USED TO CALCULATE THE CONTRACTOR'S COMMITMENTS TO THE MPL.**
 - ii. A Contractor's Small Diverse Business participation level is calculated by adding all dollar commitments to DGS-certified Small Diverse Business subcontractors of all tiers, DGS-certified Small Diverse Business manufacturers, and DGS-certified Small Diverse Business suppliers and dividing that total amount by the total contract award price. Small Diverse Business dollar commitments will not be double counted (see Section 5(vii) below).
 - iii. Small Diverse Business subcontractors performing at least sixty percent (60%) of the subcontract with their own employees will be credited toward the MPL at 100 percent of the total dollar value of the subcontract/supply contract. Any Small Diverse Business subcontract, where the subcontractor performs less than 60% of the subcontract, will not be credited toward the MPL.
 - iv. Small Diverse Business stocking suppliers are credited at 60 percent of the total cost of the materials or supplies purchased. A stocking supplier is a regular dealer that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - v. Small Diverse Business nonstocking suppliers are credited at only the amount of the fee or commission charged by the Small Diverse Business nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees or commissions are reasonable and not excessive as compared with fees customarily allowed for similar services and with the understanding that under no circumstances shall the credit, for a Small Diverse Business nonstocking supplier, exceed 10% of the purchase order cost. A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer's representative or a stocking supplier. In order for a nonstocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; AND determining quality and quantity; AND ordering materials; AND paying for the materials) and the fee or commission must be provided with the purchase order and the Small Diverse Business Utilization Report. Industry practices and other relevant factors will be considered.
 - vi. Small Diverse Business manufacturers are credited at 100 percent of the total cost of the materials or supplies purchased.

- vii. All Small Diverse Business participation shall include all tiers of design and/or construction.
 - 1. The Contractor is allowed to use contract amounts at any tier of supply or subcontracting provided that the Small Diverse Business is the initial Small Diverse Business firm in the organizational hierarchy. Therefore, if the Contractor or any of its non-Small Diverse Business Subcontractors or Suppliers makes a commitment to a Small Diverse Business, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated as indicated in Section 5 and credited toward the Contractor's Minimum Participation Level.
 - 2. The dollar value of any commitment to a Small Diverse Business cannot be double counted. In the event that the Small Diverse Business whose entire subcontract value is counted towards the Contractor's Participation Level then subcontracts a portion of the work or supplies associated with this subcontract to another Small Diverse Business, the dollar value of the subcontract with/to this lower tier Small Diverse Business is NOT counted in the Contractor's Participation Level in order to prevent the duplicate counting of Small Diverse Business commitment dollars. In this case, the dollar value of this subsequent Small Diverse Business subcontract has already been included within the scope of work and dollar value of the Small Diverse Business commitment already counted as a part of the Contractor's Participation Level.

B. Upon Notice of Award.

- 1. The successful bidder shall, upon Notice of Award and receipt of the Construction Contract, determine whether to choose "opt-in" or to provide "Good Faith Effort" documentation of its efforts to meet the MPL by initialing the appropriate selection in Article 9 of the Construction Contract. (See Administrative Procedures for further information.)
 - i. Opt-in – A successful bidder selecting "Opt-in" agrees to meet or exceed the Project's MPL by the time of the Close-out Inspection of the project.
 - ii. Good Faith Effort – A successful bidder selecting "Good Faith Effort" agrees to document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors, manufacturers, and suppliers greater than \$10,000 throughout the duration of the Project.
- 2. Article 9 of the Construction Contract lists both "Opt-in" and the "Good Faith Effort" options. The successful bidder shall select and initial the option of their choice. Failure to select an option will be deemed an incomplete Contract and DGS may consider this a failure to execute the Contract (See Sections 31 and 32).

C. Upon Contract Execution.

- 1. If Opt-in was selected, the Contractor has until the time of Close-Out Inspection to meet or exceed the MPL for the Project. This will be tracked through the Small Diverse Business Utilization Report submitted with each Application for Payment.
- 2. If the Good Faith Effort was selected, the Contractor must create and maintain documentation of its reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors and suppliers greater than \$10,000 throughout the duration of the Project. At a minimum, such documentation shall include the following ("Good Faith Effort documentation"):

- i. A certification that the contractor accessed the DGS web site database of DGS-certified Small Diverse Businesses to identify DGS-certified Small Diverse Businesses for the subcontract or purchase order.
- ii. A record of all companies solicited for the subcontract or purchase order that can perform the scope of work to be subcontracted or supply to be delivered, identifying any DGS-certified Small Diverse Businesses. If a subcontractor is not properly licensed or otherwise capable of performing the scope of work, they are not eligible to receive the subcontract. (A painting subcontractor, for example, may not be eligible to receive a subcontract to perform electrical work.)
- iii. A record of all quotes received showing company name and address, contact person, telephone number, Small Diverse Business status, subcontractor, manufacturer, or supplier, scope of work to be performed or supply to be delivered, and the amount of the quote and identification of the selected subcontractor/manufacturer/supplier.
- iv. A certification that the contractor negotiated fairly with responsive DGS-certified Small Diverse Businesses and, if commitments were not made, that such non-commitment related to the Small Diverse Business' capability or price.

Upon notice from DGS, the Contractor will be required to submit, within ten (10) calendar days from the date such notice is received, the above Good Faith Effort documentation for review and compliance. Failure to submit such documents within the timeframe provided will result in a noncompliance entry into the Commonwealth's Contractor Responsibility Program and may be considered a substantial breach of the Contract, as determined by the Department.

3. Small Diverse Business Utilization Report

- i. The Contractor, regardless of the option it selects, shall submit a Small Diverse Business Utilization Report with each Application for Payment. Each Small Diverse Business Utilization Report must have current data (totals to date) identifying at least each element as follows:

- 1. Detailed information including but not limited to any subcontracts and purchase orders documenting the dollar value commitments, commission, or fees to Small Diverse Business firms to be used toward the satisfaction of the Project's MPL. All Small Diverse Businesses identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.
- 2. Detailed information regarding any work that is claimed to be self-performed by the Contractor and therefore allegedly not eligible for subcontracting to a Small Diverse Business.

3. Construction Subcontracts and Purchase Orders:

- a. All Subcontract/Purchase Orders awarded to date are \$_____
- b. Commitments to Small Diverse Businesses totals to date:
 - i. \$ _____(dollars)
 - ii. % _____(percentage)
- c. For each Small Diverse Business subcontract and purchase order awarded since the previous Application for Payment the:

- i. Identity and status of the Small Diverse Business as a MBE/WBE/VBE/SDVBE that will be performing the work; and
 - ii. The type of work, service, or material to be performed/supplied; and
 - iii. The amount paid to date on each Small Diverse Business subcontract/purchase order this month; and
 - iv. The designation of Small Diverse Business stocking suppliers as either a MEP (i.e., mechanical, electrical, and plumbing) stocking suppliers or a General Construction stocking supplier; and
 - v. The fee or commission paid to the nonstocking supplier. No MPL credit will be given if the fee or commission is not listed and, the maximum credit shall not exceed 10 percent of the purchase order cost.
- ii. Failure to submit a Small Diverse Business Utilization Report with each Application for Payment will result in an incomplete Application for Payment and it being returned to the Contractor. An incomplete Application for Payment will not be processed.

D. Resources.

1. The Department is available for technical assistance to all Bidders submitting bids for this contract. Department certification of an entity as a Small Diverse Business means only that the applicant for certification has submitted information that qualifies it as a Small Diverse Business in terms of its ownership and control. It does not imply, and no Bidder shall infer, that the Department has in any way investigated or approved the entity's competence to perform work.
2. Contact the Bureau of Small Business Opportunities at (717) 783-3119.

Bureau of Small Business Opportunities
 611 North Office Building
 Harrisburg, Pennsylvania 17125

SECTION 30. PRE-AWARD OF CONTRACT. Once DGS determines the apparent lowest responsible bidder, the Bidder must comply with the Public Works Employment Verification Act, 43 P.S. §§ 167.1-167.11, by submitting to the Department a Commonwealth Public Works Verification Form ("Form") prior to the award of the Contract. The Bidder shall either attach the Form to the bid in e-Builder under the Supporting Documentation tab of the Invitation to Bid for the Project or within five (5) days after receipt of notice to provide the Form. Failure or refusal to provide the Form will be considered a refusal to comply with the bidding requirements, result in rejection of the bid and the Bidder may be entered into the Contractor Responsibility Program.

The Form and relevant information are located on the Department's web page at www.dgs.state.pa.us. The Form is also available in e-Builder under the Bid Documents in the Invitation to Bid for the Project.

SECTION 31. AWARD OF CONTRACT. If DGS awards a Contract, it will be made to the lowest responsible Bidder within sixty (60) days from the Bid Opening Date. This 60-day period may be extended by written consent of the lowest responsible Bidder(s). Notice of Award of Contract will be made via e-Builder. If the lowest Bidder is allowed to withdraw its bid, declines to extend the bid or refuses the Award of Contract, the Department may award the Contract to the next lowest responsible Bidder or reject all bids and re-bid the Contract. **There will be no Contract with the Department until all parties have fully executed the Contract.**

- A. Letter of Intent To Contract** – The Department may, in its sole discretion on particular projects, elect to issue a binding Letter of Intent To Contract via e-Builder. An apparent low bidder who receives a Letter of Intent may rely upon the letter to start the scope of off-site activities described in the Letter and to incur costs in preparation of the performance of the Contract.

SECTION 32. EXECUTION OF CONTRACT, SMALL DIVERSE BUSINESS PARTICIPATION, BOND AND RETURN OF INSURANCE CERTIFICATES. Within ten (10) days after receipt of the Contract in e-Builder, the successful Bidder, must:

- A.** Select the Small Diverse Business Participation MPL option in Article 9 of the Contract; and
- B.** Download, sign* and upload the Contract to e-Builder as instructed; and
1. * The Contract must be signed by a senior corporate officer which titles include the Chairperson, President, Vice President, Senior Vice President, Executive Vice President, Assistant Vice President, Chief Executive Officer and Chief Operating Officer. If another person signs the Contract, then evidence of that person's authority to sign the Contract on the corporation's behalf must accompany the Contract. This evidence can be in the form of a corporate resolution, an internal corporate delegation document, or a letter from one of the senior officers or the Secretary, authorizing the signatory to sign on behalf of the corporation. The letter must be on a corporate letterhead. This evidence of signature authority can be uploaded in the Attached Documents Tab in e-Builder.
- C.** Download, sign (as discussed in 32.B.i) and upload the Contract Bond, or Bonds, to e-Builder in the penal sum equal to the amount of the awarded Contract, for the faithful performance of the Contract, and to cover the prompt payment in full for all materials furnished and labor supplied or performed and equipment actually rented (but not sold.) The Bond, or Bonds, must be executed by a surety company or companies licensed to do business in Pennsylvania; and,
- D.** Sign and attach all insurance certificates required by the General and/or Special Conditions to the Contract in e-Builder.
- E.** Mail the original signed Contract, Contract Bond(s), insurance certificates, and any evidence of signature authority to the Department of General Services, Bureau of Pre-Construction, Arsenal Building, 1800 Herr Street, Harrisburg, PA 17103 for verification by the Department.
- F.** After all Commonwealth signatures (handwritten or electronic) are obtained and the Contract is fully executed, the Department will forward a notification to you via e-Builder.
- G.** Understand and agree that a stamped "APPROVED ELECTRONICALLY" or similar wording by the Commonwealth on the Contract signature page constitutes a valid, binding contract with the Commonwealth and represents that all approvals required by Commonwealth contracting procedures have been obtained. The fully executed Contract may not contain "ink" signatures by the Commonwealth.

SECTION 33. FAILURE TO EXECUTE CONTRACT. Failure or refusal of the Contractor to accept the Award of Contract or properly execute the Contract Documents including selecting an MPL option in Article 9 and/or to furnish the required Contract Bond and/or to furnish the required insurance certificates within the 10-day time will be viewed as a refusal to accept the Award. In the event any of these documents are not attached in e-Builder or if the original documents are not provided as required by Section 32 of these Instructions, , the successful bidder shall be entered into the Contractor Responsibility Program.

If the successful Bidder fails to execute the Contract Documents and provide the original documents as required, the Department may award the Contract to the next lowest responsible Bidder, or reject all bids and re-bid the Contract.

SECTION 34. PROOF OF SURETY'S RESPONSIBILITY ON CONTRACT BOND. The surety company, which is designated by the lowest responsible Bidder for the faithful performance of the contract and prompt payment of materials, equipment and labor, shall, with its Contract Bond, furnish to the Department a certificate showing that the amount of the Bond is within the limit of net retention, or evidence that appropriate reinsurance or other security has been obtained in conformance with Section 661 of the Pennsylvania Insurance Company Law of 1921 (40 P.S. § 832).

SECTION 35. REINSURANCE. If the surety has entered into an agreement for reinsurance under the foregoing paragraph, the bond shall be supported by a duplicate original of the reinsurance agreement. The reinsurance agreement must contain a "direct liability to insured" clause, enabling the Department to maintain an action against the company reinsured jointly with the reinsurer, and, upon recovering judgment against such reinsured, to have recovery against such reinsurer, for payment to the extent to which it is liable under such reinsurance and in discharge thereof.

SECTION 36. VETERAN'S PREFERENCE. The Department strongly encourages that, all things being equal, contractors give preference in employment on projects of the Department to veterans of the Armed Services of the United States of America.

SECTION 37. SMALL BUSINESS SUPPLIER PREFERENCE. The Department strongly encourages that, all things being equal, contractors give preference in material/equipment purchases on projects of the Department to Small Business Suppliers.

SECTION 38. ENVIRONMENTAL STATEMENT. According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa. C.S. §§ 101-4509, all invitations for bids and requests for bids for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the projects.

SECTION 39. APPLICABLE LAWS. The Bidder is hereby notified that this Project is subject to those statutes, rules and regulations shown on the following list and the Work must be carried out in compliance with these statutes, rules and regulations.

STATE LAW

I. Purdon's Statutes - Title 3 (Agriculture)

Fertilizer Act, Act of Dec. 13, 2001, 3 Pa. C.S.A. § 6701, et seq.

Soil and Plant Amendment Act, Act of Dec. 13, 2001, 3 Pa. C.S.A. § 6901, et seq.

PA Pesticide Control Act of 1973, Act of March 1, 1974 as amended, 3 P.S. § 111.21, et seq.

Agricultural Liming Materials Act, Act of March 17, 1978, as amended, 3 P.S. § 132-1, et seq.

The PA Plant Pest Act of 1992, Act of December 16, 1992 as amended, 3 P.S. § 258.1, et seq.

Noxious Weed Control Law, Act of April 7, as amended, 3 P.S. § 255.1, et seq.

Conservation District Law, Act of May 15, 1945 as amended, 3 P.S. § 849, et seq.

(Relating to weather modification), Act of January 19, 1968, as amended, 3 P.S. § 1101, et seq.

II. Purdon's Statutes - Title 16 (Counties)

(Relating to land use), Act of January 13, 1966 as amended, 16 P.S. § 11941, et seq.

III. Purdon's Statutes - Title 18 (Crimes and Offenses)

The Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S.A. § 101, et seq.

IV. Purdon's Statutes - Title 24 (Education)

Public School Code of 1949, Act of March 10, 1949, as amended, 24 P.S. § 7-731, et seq.

V. Purdon's Statutes - Title 30 (Fish)

The Fish and Boat Code, Act of October 16, 1980, as amended, 30 Pa. C.S.A. § 101, et seq.

VI. Purdon's Statutes - Title 32 (Forests, Waters and State Parks)

(Relating to water power and water supply permits), Act of June 14, 1923, as amended, 32 P.S. § 591, et seq.

Water Well Drillers License Act, Act of May 29, 1956, as amended, 32 P.S. § 645.1, et sec.

(Relating to Flood Control), Act of August 7, 1936, as amended, 32 P.S. § 653, et seq.

Flood Plain Management Act, Act of October 4, 1978, as amended, 32 P.S. § 679.101, et seq.

Storm Water Management Act, Act of October 4, 1978, as amended, 32 P.S. § 680.1, et seq.

Dam Safety and Encroachments Act, Act of November 26, 1978, as amended, 32 P.S. § 693.1, et seq.

(Relating to Stream Clearance), Act of June 5, 1947, as amended, 32 P.S. § 701, et seq.

(Relating to Potomac River Pollution), Act of May 29, 1945 (P.L. 1134, § 1), as amended, 32 P.S. 741 et seq. *Repealed in Part.* Section 4 of Act 1981, May 1, P.L. 22 No. 9, repeals this section to "the extent it required one of the members of the Interstate Commission on the Potomac River Basin to be a member of the Pennsylvania Commission on Interstate Cooperation."

(Relating to Schuylkill River pollution), Act of June 4, 1945, as amend., 32 P.S. § 751.1, et seq.

(Relating to Delaware River pollution) Act of April 19, 1945 as amend. 32 P.S. § 815.31, et seq.

Delaware River Basin Compact, Act of July 7, 1961, as amended, 32 P.S. § 815.101, et seq.

Ohio River Valley Water Sanitation Compact, Act of April 2, 1945, as amended, 32 P.S. § 816.1, et seq.

Great Lakes Basin Compact, Act of March 22, 1956, as amended, 32 P.S. § 817.1, et seq.

Brandywine River Valley Compact, Act of September 9, 1959, as amend. 32 P.S. § 818, et seq.

Wheeling Creek Watershed Protection and Flood Prevention District Compact, Act of August 2, 1967, as amended, 32 P.S. § 819.1, et seq.

Susquehanna River Basin Compact, Act of July 17, 1968, as amended, 32 P.S. § 820.1, et seq.

Chesapeake Bay Comm. Agreement, Act of June 25, 1985, as amended, 32 P.S. § 820.11, et seq.

(Relating to Preservation and Acquisition of Land for Open Space Uses), Act of January 19, 1968, as amended, 32 P.S. § 5001, et seq.

Land and Water Conservation and Reclamation Act, Act of January 19, 1968, § 2), as amended, 32 P.S. § 5101, et seq.

Bluff Recession and Setback Act, Act of May 13, 1980, as amended, 32 P.S. § 5201, et seq.

Wild Resource Conservation Act, Act of June 23, 1982, as amended, 32 P.S. § 5301, et seq.

VII. Purdon's Statutes - Title 34 (Game)

The Game and Wildlife Code, Act of July 8, 1986, as amended, 34 Pa. C.S.A. § 101, et seq.

VIII. Purdon's Statutes - Title 35 (Health and Safety)

(Related to public eating and drinking places), Act of May 23, 1945, as amended, 35 P.S. 655.1 et seq. *Repealed in Part.* Section 6(b) of Act 1994, repealed this section in so far as it is inconsistent with said act (3 Pa. C.S.A. § 6501, et seq.).

The Public Bathing Law, Act of June 23, 1931, as amended, 35 P.S. § 672, et seq.

(Related to the protection of public water supply), Act of June 22, 1937, as amended, 35 P.S. § 691.1, et seq.

PA Safe Drinking Water Act, Act of May 1, 1984, as amended, 35 P.S. § 721.1, et seq.

PA Sewage Facilities Act, Act of January 24, 1966 as amended, 35 P.S. § 750.1, et seq. Repealed in Part. Section 15 of Act 1990, July 1, repealed this section insofar as it relates to fee payments.

PA Solid Waste-Resource Recovery Development Act, Act of July 20, 1974, as amended, 35 P.S. § 755.1, et seq.

(Related to pollution from abandoned mines), Act of December 15, 1965 as amended, 35 P.S. § 760.1, et seq.

Low-Level Radioactive Waste Disposal Act, Act of February 9, 1988, as amended, 35 P.S. § 7130.101, et seq.

(Related to Camp Regulation), Act of November 10, 1959 as amended 35 P.S. § 3001, et seq.

Air Pollution Control Act, Act of January 8, 1960, as amended 35 P.S. § 4001, et seq.

Solid Waste Management Act, Act of July 7, 1980 as amended, 35 P.S. § 6018.101, et seq. *Repealed in Part.* Section 905(b) of Act 1988, Feb. 9, the Low-Level Radioactive Waste Disposal Act (35 P.S. § 7130.101, et seq.), repealed this section insofar as it is inconsistent with said act.

Radiation Protection Act, Act of July 10, 1984, as amended, 35 P.S. 7110.101, et seq. *Repealed in Part.* Section 17(b) of Act 1992, Dec. 18, provides that this section is repealed insofar as it is inconsistent with said act.

Worker and Community Right-to-Know Act, Act of October 5, 1984 as amended, 35 P.S. § 7301, et seq.

IX. Purdon's Statutes - Title 36 (Highways and Bridges)

State Highway Law, Act of June 1, 1945, as amended, 36 P.S. § 670-101, et seq. *Repealed in Part.* Section 4 of Act 1985, July 3, repealed this act insofar as it's inconsistent with said act.

Junkyards along Highways), Act of July 28, 1966, as amended, 36 P.S. § 2719.1, et seq.

Highway Vegetation Control Act of December 20, 1983 as amended, 36 P.S. § 2720.1, et seq.

X. Purdon's Statutes – Title 37 APPENDIX (Historical & Museums)

History Code, Act of May 26, 1988, as amd, 37 Pa. C.S.A. § 101, et seq.

XI. Purdon's Statutes - Title 43 (Labor)

(Related to General Safety), Act of May 18, 1937, as amended, 43 P.S. § 25-1, et seq.

Seasonal Farm Labor Act, Act of June 23, 1978, as amended, 43 P.S. § 1301.101, et seq.

XII. Purdon's Statutes - Title 52 (Mines and Mining)

The Coal Mine Sealing Act of 1947, Act of June 30, 1947, as amended, 52 P.S. § 28.1, et seq.

Coal Refuse Disposal Control Act of September 24, 1968, as amended, 52 P.S. § 30.51, et seq.

(Related to Coal Land Improvement), Act of July 19, 1965, as amended, 52 P.S. § 30.101, et seq.

(Related to Mine Fires & Subsidence), Act of April 3, 1968, as amd. 52 P.S. § 30.201, et seq.

PA Anthracite Coal Mine Act, Act of November 10, 1965 as amended, 52 P.S. § 70-101, et seq.

(Related to discharge of coal into streams), Act of June 27, 1913 as amended, 52 P.S. § 631, et seq.

(Caving-in, Collapse, Subsidence), Act of May 27, 1921, as amended, 52 P.S. §661, et seq.

(Related to Subsidence), Act of September 20, 1961 as amended, 52 P.S. § 672.1, et seq.

Anthracite Strip Mining and Conservation Act, Act of June 27, 1947 as amended, 52 P.S. § 681.1, et seq. Repealed in Part. Section 16 of Act 1971, Nov. 30, provided that this section repealed insofar as it is inconsistent with Act No. 147.

(Related to control and drainage of water from coal formations), Act of July 7, 1955 as amended, 52 P.S. § 682, et seq.

PA Bituminous Coal Mine Act, Act of July 17, 1961 as amended, 52 P.S. § 701-101, et seq.

(Related to Abandoned Mines), Act of May 7, 1935, as amended, 52 P.S. § 809, et seq.

(Related to maps and plans of mines), Act of June 15, 1911, as amended, 52 P.S. § 823.

Surface Mining Conservation and Reclamation Act, Act of May 31, 1945 as amended, 52 P.S. § 1396.1 et seq. Repealed in Part. Section 27 of Act 1984, Dec. 19, provides that, except as provided in § 3304 of this title, this section "is repealed to the extent that it applies to the surface mining of minerals other than bituminous and anthracite coal."

The Bituminous Mine Subsidence and Land Conservation Act, Act of April 27, 1966, as amended, 52 P.S. § 1406.1, et seq.

(Related to cave-in or subsidence of surface above mines), Act of July 2, 1937, as amended, 52 P.S. § 1407, et seq.

(Related to Coal Stripping), Act of June 18, 1941 as amended, 52 P.S. § 1471, et seq.

(Related to Coal under State Lands), Act of June 1, 1933 as amended, 52 P.S. § 1501, et seq.

(Related to Mining Safety Zones), Act of Dec. 22, 1959 as amended, 52 P.S. § 3101, et seq.

(Related to Coal Mine Subsidence Insurance Fund), Act of August 23, 1961 as amended, 52 P.S. § 3201, et seq.

Interstate Mining Compact, Act of May 5, 1966 as amended, 52 P.S. § 3251, et seq.

Noncoal Surface Mining Conservation and Reclamation Act, Act of December 19, 1984, as amended, 52 P.S. § 3301, et seq.

XIII. Purdon's Statutes - Title 58 (Oil and Gas)

Oil and Gas Conservation Law, Act of July 25, 1961 as amended, 58 P.S. § 401, et seq.

PA Used Oil Recycling Act, Act of April 9, 1982, as amended, 58 P.S. § 471, et seq.

Coal & Gas Resource Coord. Act, Act of Dec. 18, 1984, as amended, 58 P.S. § 501, et seq.

Oil and Gas Act, Act of December 19, 1984, as amended, 58 P.S. § 601.101, et seq. Repealed in part. Section 4 of Act 1985, July 11, repealed this act insofar as inconsistent with said act.

XIV. Purdon's Statutes Title 63 (Professions and Occupations)

Sewage Treatment Plant and Waterworks Operators' Certification Act, Act of November 18, 1968 as amended, 63 P.S. § 1001, et seq.

XV. Purdon's Statutes - Title 64 (Public Lands)

PA Appalachian Trail Act, Act of April 28, 1978, as amended, 64 P.S. § 801, et seq.

XVI. Purdon's Statutes - Title 71 (State Government)

The Administrative Code of 1929, Act of April 9, 1929 as amended, 71 P.S. § 51, et seq.

XVII. Purdon's Statutes - Title 72 (Taxation and Fiscal Affairs)

Project 70 Land Acquisition and Borrowing Act, Act of June 22, 1964 as amended, 72 P.S. § 3946.1, et seq.

(Related to pollution control services), Act of March 4, 1971 as amended, 72 P.S. § 7602.1, et seq.

XVIII. Purdon's Statutes - Title 73 (Trade and Commerce)

Infrastructure Development Act, Act of July 11, 1996, as amended, 73 P.S. § 393.21, et seq.

(Related to Explosives), Act of July 1, 1937 as amended, 73 P.S. § 151, et seq.; *Suspended in Part.* This section is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. See 71 P.S. § 751-35.

(Related to Explosives), Act of July 10, 1957 as amended, 73 P.S. § 164, et seq. *Suspended in Part.* Section 164 is suspended insofar as it is in conflict with the provisions of Reorganization Plan No. 8 of 1981. See 71 P.S. § 751-35.

(Related to Black Powder), Act of May 31, 1974, 73 P.S. § 169 et seq.

(Related to excavation and demolition), Act of Dec. 10, 1974 as amended, 73 P.S. § 176, et seq.

XIX. Purdon's Statutes - Title 75 (Vehicles)

Vehicle Code, Act of June 17, 1976, as amended., 75 Pa. C.S.A. § 101, et seq.

Snowmobile Law, Act of June 17, 1976, as amended, 75 Pa. C.S.A. § 7701, et seq.

(Related to hazardous materials transport), Act of June 30, 1984, 75 Pa. C.S.A. § 8301, et seq.

XX. Purdon's Statutes - Title 77 (Workmen's Compensation)

Workers' Compensation Act, Act of June 2, 1915 as amended, 77 P.S. § 1, et seq.

PA Occupational Disease Act, Act of June 21, 1939, as amended, 77 P.S. § 1201, et seq.

XXI. Other Statutes

(Relating to Medical Waste-Manifesting and Transporter Licensing), Act of July 13, 1988, 35 P.S. § 6019.1, et seq.

Municipal Waste Planning, Recycling and Waste Reduction Act, Act of July 28, 1988, 53 P.S. § 4000.1501.

Hazardous Sites Cleanup Act, Act of October 18, 1988, 35 P.S. § 6020.101.

XXII. Pennsylvania Constitution - Article I, Section 27

(Adopted May 18, 1971)

FEDERAL LAW

Acid Precipitation Act of 1980 (42 U.S.C. § 8901-8912).

Act to Prevent Pollution from Ships (33 U.S.C. § 1901-1915).

Americans with Disabilities Act, (42 U.S.C. § 12101-12213 and 47 U.S.C. § 225 and 611).

Asbestos Haz. Emerg. Response Act of 1986 [see Toxic Substances Control Act secs. 201-214 (15 U.S.C. § 2641-2656)].

Atomic Energy Act of 1954 (42 U.S.C. § 2014, 2021, 2021a, 2022, 2111, 2113, 2114).

Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. § 47501-47510).

Clean Air Act (42 U.S.C. § 7401-7642).

Clean Water Act [see Federal Water Pollution Control Act].

Coastal Zone Management Act of 1972 (16 U.S.C. § 1451-1466).

Comp.Env. Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601-9675).

Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001-11050).

Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. § 791-798).

Environmental Quality Improvement Act of 1970 (42 U.S.C. § 4371-4375).

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136-136y).

Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701-1784).

Federal Water Pollution Control Act (33 U.S.C. § 1251-1387)

Geothermal Energy R& Development, Demonstration Act of 1974 (30 U.S.C. § 1101-1164).

Global Climate Protection Act of 1987 (15 U.S.C. § 2901 note).

Hazardous Substance Response Revenue Act 1980 (see 26 U.S.C. § 4611, 4612, 4661, 4662).

Low-Level Radioactive Waste Policy Act (42 U.S.C. § 2021b-2021d).

Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1401-1445)

National Climate Program Act (15 U.S.C. § 2901-2908).

National Environmental Policy Act of 1969 (42 U.S.C. § 4321-4370f).

Noise Control Act of 1972 (42 U.S.C. § 4901-4918).

Nuclear Waste Policy Act of 1982 (42 U.S.C. § 10101-10270).

Outer Continental Shelf Land Act Amendments of 1978 (43 U.S.C. § 1801-1866).

Public Health Service Act (42 U.S.C. § 300f-300j-11).

Safe Drinking Water Act [Public Health Service Act 1401-1451 (42 U.S.C. § 300f-300j-26)].

Soil and Water Resources Conservation Act of 1977 (16 U.S.C. § 2001-2009).

Solid Waste Disposal Act (42 U.S.C. § 6901-6991i).

Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201-1328)

Toxic Substances Control Act (15 U.S.C. § 2601-2692).

Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. § 7901-7942).

Water Resources Research Act of 1984 (42 U.S.C. § 10301-10309).

APPENDIX A

NONDISCRIMINATION / SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
4. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers subject to *Title VII* of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of the provisions.
8. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for the 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.

APPENDIX B

CONTRACTOR INTEGRITY PROVISIONS

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

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

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

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

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

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

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

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

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

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

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

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

(1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;

(2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;

(3) had any business license or professional license suspended or revoked;

- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.

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

h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

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

APPENDIX C

CONTRACTOR RESPONSIBIITY PROGRAM

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

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

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

APPENDIX D

PROVISIONS CONCERNING THE *AMERICANS WITH DISABILITIES ACT*

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee, who will furnish or perform or seeks to furnish or perform, goods, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth of Pennsylvania (Commonwealth).

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

1. Pursuant to federal regulations promulgated under the authority of the *Americans with Disabilities Act*, 28 C. F. R. § 35.101 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this agreement or from activities provided for under this agreement. As a condition of accepting and executing this agreement, the contractor agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C. F. R. § 35.130, and all other regulations promulgated under *Title II* of the *Americans with Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the contractor's failure to comply with the provisions of paragraph 1.

APPENDIX E

ENHANCED MINIMUM WAGE PROVISIONS

1. **Enhanced Minimum Wage.** Contractor agrees to pay no less than \$10.15 per hour to its employees for all hours worked directly performing the services called for in this Contract, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
2. **Adjustment.** Beginning January 1, 2017, and annually thereafter, Contractor shall pay its employees described in Paragraph 1. above an amount that is no less than the amount previously in effect; increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication as determined by the United States Bureau of Labor Statistics; and rounded to the nearest multiple of \$0.05. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
3. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 - a. exempt from the minimum wage under the Minimum Wage Act of 1968;
 - b. covered by a collective bargaining agreement;
 - c. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 - d. required to be paid a higher wage under any state or local policy or ordinance.
4. **Notice.** Contractor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
5. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
6. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
7. **Subcontractors.** Contractor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.