

REQUEST FOR QUALIFICATION

FOR

Bond and Commercial Paper Trustee and Related Services

ISSUING OFFICE

Pennsylvania Infrastructure Investment Authority (PENNVEST)

RFQ NUMBER

2015-2

DATE OF ISSUANCE

November 2, 2015

**REQUEST FOR QUALIFICATION
FOR**

Bond and Commercial Paper Trustee and Related Services

RFQ Number 2015 -2

TABLE OF CONTENTS

	CALENDAR OF EVENTS	page iii
Part I	GENERAL INFORMATION	page 1
Part II	INFORMATION REQUIRED	page 6
Part III	MINIMUM QUALIFICATIONS; REMOVAL	page 12
Part IV	WORK STATEMENT	page 13

APPENDIX A, STANDARD CONTRACT TERMS AND CONDITIONS

APPENDIX B, DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

APPENDIX C, PROPOSAL COVER SHEET

CALENDAR OF EVENTS

:

Activity	Responsibility	Date
Deadline to submit questions via email to	Trustees	Monday, November 9, 2015
Answers to Trustee questions posted to the PENNVEST website http://www.pennvest.state.pa.us no later than 2 pm on this date.	PENNVEST	Monday, November 16, 2015
Submit sealed response by 2 pm to RFQ at PENNVEST, Room 434 Forum Building, 607 South Drive, Harrisburg, PA 17120, Attention Beverly Reinhold.	Trustees	Monday, November 23, 2015

PART I

GENERAL INFORMATION

I-1 Purpose. The Pennsylvania Infrastructure Investment Authority (PENNVEST) seeks to hire one or more banking institutions to serve as bond and/or commercial paper trustee, registrar and paying agent (Trustee Services Provider). PENNVEST is issuing this Request for Qualification (RFQ) to qualified banks to provide sufficient information to enable them to prepare and submit their qualifications to serve as Trustee Services Provider to PENNVEST.

I-2 Background. The purpose of PENNVEST is to provide affordable financing for certain eligible drinking water, wastewater, stormwater and nonpoint-source projects. PENNVEST utilizes funds obtained from several sources along with loan repayments and return on investments to fulfill its mission. PENNVEST intends to issue extendable commercial paper (“ECP”) to maintain liquidity for its programs funded under two separate indentures; the Amended and Restated Indenture dated June 1, 2015, securing revenue bonds, notes and other obligations under the PENNVEST/Commonwealth Funded Loan Pool Program (the “State Indenture”) and an indenture to secure revenue bonds, notes and other obligations under the Clean Water State Revolving Fund (“CWSRF”) and the Drinking Water State Revolving Fund (“DWSRF”) programs (the “Federal Indenture”). Cumulatively, PENNVEST has authorization to issue up to \$615 million of commercial paper to support its programs under the State and Federal Indentures. The CWSRF and the DWSRF programs are entirely unleveraged and no revenue bonds, notes or other obligations including but not limited to commercial paper, have been issued under the Federal Indenture as of this date. When they are issued, the revenue bonds, notes and other obligations including any commercial paper issued under the Federal Indenture will be payable from certain funds held under the Federal Indenture, consisting primarily of loan repayments under the CWSRF and DWSRF programs, federal capitalization grants and state match from either the State Indenture or other funds available to PENNVEST. ECP or any other type of commercial paper issued under the Federal Indenture may also be payable from the proceeds from revenue bonds, notes or other obligations issued under the federal indenture. As to the State Indenture, revenue bonds, notes or other obligations including but not limited to commercial paper issued under the State Indenture are payable from certain funds held under the State Indenture comprised predominantly of pledged loan repayments and non-pledged proceeds of state funded loans. ECP or any other type of commercial paper issued under the State Indenture may also be payable from the proceeds from revenue bonds, notes or other obligations issued under the Indenture or state issued general obligation bond proceeds. In addition, PENNVEST intends to issue guarantees to various municipal entities which will serve as credit enhancement for the guaranteed bonds and loans and for which the Trustee Services Provider will have monitoring responsibility under both the State and the Federal Indentures. If the borrowing entity’s trustee is not PENNVEST’s Trustee Services Provider, that trustee will be responsible for confirming the receipt of monthly debt service installment payments.

I-3 Issuing Office. This RFQ is being issued by PENNVEST through its Finance Department. All questions relating to the RFQ must be directed to PENNVEST pursuant to the process identified in Section I-10 below. Only questions submitted in accordance with that process will be addressed.

I-4 Scope. This RFQ contains instructions governing Statements of Qualifications to be submitted in response to this RFQ.

I-5 Problem Statement. PENNVEST intends to issue ECP to maintain liquidity for its state and federal programs funded under its State and Federal indentures. The combined ECP programs and any other type of commercial paper program may have up to \$615 million of commercial paper outstanding at any time. In addition, PENNVEST intends to issue guarantees to various municipal entities which will serve as credit enhancement for the guaranteed bonds and for which the Trustee Services Provider will have monitoring responsibility. If the guaranty recipient's trustee is not PENNVEST's Trustee Services Provider, that trustee will be responsible for confirming the receipt of monthly debt service installment payments.

PENNVEST requires a Trustee Services Provider to administer funds and accounts created under the State and Federal Indentures for PENNVEST's commercial paper programs and any revenue bonds, notes or other obligations issued under either the State or Federal Indentures. PENNVEST's ECP programs contain an automatic extension provision that states that PENNVEST will notify the Trustee Services Provider by 12:00 pm that it intends to extend the then effective maturity date of the commercial paper and that even if the notice is not received and the payment of principal and interest has not yet occurred, the commercial paper will still be considered to have extended automatically.

Another of the Trustee Services Provider's major responsibilities will be processing payments to PENNVEST's borrowers for installment payments under their loan agreements. PENNVEST prefers a Trust Services Provider who will be able to process these payments via ACH as opposed to electronic transfer. The Trustee Services Provider should be able to accept electronic payment instructions without requiring manual signatures. In addition, to facilitate processing data into accounting statements, PENNVEST would request that the Trustee Services Provider customize reports to allow for tracking transactions in accordance with the corresponding indenture.

PENNVEST will also require short-term investment services for proceeds associated with the issuance of revenue bonds and other available funds held under the State and Federal Indentures. PENNVEST will provide direction to the Trustee Services Provider on the investment of those funds. The Trustee Services Provider will further comply with the provisions of each indenture to maintain certain records relating to the ECP or any other type of commercial paper programs and any revenue bonds, notes or other obligations issued under the State or Federal Indenture and to act on behalf of commercial paper, bond, note or other obligation holders to enforce the covenants contained within the State and Federal Indenture.

I-6 Type of Contract. It is proposed that if the Issuing Office enters into a contract as a result of this RFQ, it will be a fixed price contract containing the Standard Contract Terms and Conditions as shown in Appendix A, these terms will become part of any negotiated contract.

I-7 Rejection of Statements of Qualification. PENNVEST reserves the right, in its sole and complete discretion, to reject any and all Statements of Qualification received as a result of this RFQ.

I-8 Subcontracting. No subcontracting is allowed.

I-9 Incurring Costs. PENNVEST is not liable for any costs incurred in preparation and submission of any Statements of Qualifications in response to this RFQ.

I-10 Questions & Answers. Questions may only be submitted in writing to clarify any points in this RFQ which may not be clearly understood. Written questions must be submitted by email with RFQ 2015-2 in the subject line to breinhold@pa.gov. All written questions must be received by 2PM local time on November 9, 2015. All questions and written responses will be posted to the PENNVEST web site as an addendum to and become a part of this RFQ 2015-2.

I-11 Addenda to the RFQ. If it becomes necessary to revise any part of this RFQ before the response date, addenda will be posted to the PENNVEST web site under the original RFQ document. It is the responsibility of anyone intending to submit a statement of qualification to periodically check the website for any new information or addenda.

I-12 Response Date. To be considered to serve as Trustee Services Provider, Statements of Qualification must be delivered to PENNVEST Finance Department, Room 434 Forum Building, 607 South Drive, Harrisburg, PA 17120, Attention: Beverly Reinhold, by 2:00PM on Monday, November 23, 2015.

Please note that use of US mail, Fed Ex, UPS or other delivery service does not guarantee delivery to this address by the time for submission. Respondent should allow sufficient time for delivery to ensure timely receipt of responses.

I-13 Statements of Qualifications. To be considered, the party interested in qualification for the PENNVEST Trustee Services Provider should submit a response using the format provided in Part II of this RFQ. Each Statement of Qualification should be submitted in 6 hard copies and 1 CD copy to PENNVEST Finance Department, Attention Beverly Reinhold. No other distribution of Statements of Qualifications will be made by the interested party. Each page should be numbered consecutively for ease in reference. Statements of Qualification must include the interested party's Federal Identification Number and be signed by an official authorized to bind the interested party.

I-14 Economy of Preparation. Statements of Qualifications should be prepared simply and economically, providing straight forward, concise description of the Trustee Services Provider's ability to provide services as a Trustee Services Provider for the PENNVEST programs. For submissions, the body (in response to Part II-1) of the response should not exceed 15 pages 12 point font, excluding required tables.

I-15 Discussion(s) for Clarification. Trustee Services Providers submitting Statements of Qualifications may be required to make an oral or written clarification of their proposals to PENNVEST to ensure thorough mutual understanding. PENNVEST will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

I-16 Statement of Qualification Contents. In accordance with the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq, if a proposal submission contains confidential proprietary

information or trade secrets, a signed written statement to this effect from an authorized representative of the submitting party must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted in response to Part II of this RFQ such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26). For more information regarding the RTKL and what is a trade secret or confidential information and how that information must be treated to qualify as the same, visit the Office of Open Records' website at www.openrecords.state.pa.us.

I-17 Debriefing Conferences. Interested parties whose firms are not selected to be the PENNVEST Trustee Services Provider will be notified of the names of the entity or entities selected to provide Trustee Services and given the opportunity to be debriefed upon their request. If so requested, PENNVEST will schedule the debriefing through the Issuing Officer. No comparisons will be made during any debriefing between the requester and any qualified Trustee Services Provider.

I-18 News Releases. Parties submitting Statements of Qualification in response to this RFQ shall not issue news releases, internet postings, advertisements or any other public communication pertaining to the same without prior written approval of the Issuing Officer.

I-19 Term of Contract. The term of the contract will commence on the Effective Date after the contract has been fully executed by the Trustee Services Provider and by PENNVEST and all Commonwealth approvals have been obtained. The selected Trustee Services Provider shall not start performance of any work prior to the Effective Date of the contract and PENNVEST shall not be liable to pay for any service or work performed or expenses incurred before the Effective Date of the contract. The contract shall terminate upon 60 days written notice by either party.

I-20 Representations and Authorizations. By submitting its Statement of Qualifications, each Trustee Services Provider understands, represents, and acknowledges that:

- A. All information provided and representations made by the party submitting the Statement of Qualifications are material and important, and the PENNVEST may rely upon the contents of the submission in qualifying the Trustee Services Provider and any subsequent award of contract(s). Any misstatement, omission or misrepresentation shall be treated as fraudulent concealment from PENNVEST of the true facts relating to the submission of this Statement of Qualifications and shall be punishable under 18 Pa. C.S. § 4904.
- B. To the best knowledge of the person signing the Statement of Qualifications on behalf of the interested Trustee Services Provider, the Trustee Services Provider, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding, proposing or qualifying for or on any public contract, except as disclosed by the Trustee Services Provider in its Statement to Qualifications.

- C. To the best of the knowledge of the person signing the Statement of Qualifications for the Trustee Services Provider in response to this RFQ and except as the Trustee Services Provider has otherwise disclosed in its proposal, the Trustee Services Provider has no outstanding, delinquent obligations to PENNVEST or the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- D. The Trustee Services Provider submitting the Statement of Qualifications in response to this RFQ is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Trustee Services Provider cannot so certify, then it shall submit along with its Statement of Qualifications a written explanation of why it cannot make such certification.
- E. The Trustee Services Provider submitting the Statement of Qualifications in response to this RFQ has not, under separate contract with PENNVEST, made any recommendations to PENNVEST concerning the need for the services described in this RFQ. .
- F. Each Trustee Services Provider, by submitting a Statement of Qualifications, authorizes Commonwealth agencies to release to PENNVEST information concerning the Trustee Services Provider's obligations to the Commonwealth including, but not limited to, taxes, unemployment compensation and workers' compensation liabilities.

I-21 Lamont Financial Services Corporation is serving as PENNVEST's Independent Registered Municipal Advisor.

I-22 Use of Electronic Versions of this RFQ. This RFQ is being made available by electronic means. If a Trustee Services Provider utilizes the electronic RFQ, they accept full responsibility to insure they are utilizing the most current version as posted on the PENNVEST web site. In the event of a conflict between a version of the RFQ used by the Trustee Services Provider and the version of the RFQ used by PENNVEST, the latest version posted on the PENNVEST web site shall govern.

I-23 Internet Capability. The Trustee Services Provider must be able to conduct business through a high-speed broadband connection using Microsoft Internet Explorer 10.0 or higher. The connection is necessary in order to conduct work with PENNVEST. PENNVEST maintains critical information in web-based format, which the Trustee Services Provider must be able to view, and to do web transaction based participation. In addition, the Trustee Services Provider may be required to download no-cost third-party products that are imbedded into PENNVEST application configurations such as Adobe Reader and Flash to properly view and use the application as intended.

I-24 Security and Access. If PENNVEST contracts with the Trustee Services Provider, that Trustee Services Provider will have access to P E N N V E S T ' s facilities, networks, database environments, and information systems to the extent necessary to perform project tasks. As such the Trustee Services Provider must follow all Commonwealth and PENNVEST security policies and procedures concerning such accesses. For example, the Trustee Services Provider may be required to provide a PATCH Background Check

administered through the Commonwealth State Police, and to accept and sign a PENNVEST Confidential Data and Information Handling Agreement and/or Right to Present Agreement.

I-25 Electronic Capabilities. To be qualified for participation as the PENNVEST Trustee Services Provider the Trustee Services Provider must be able to conduct business electronically and communicate using software and methods that are compatible to those of PENNVEST. PENNVEST requires the use of software and electronic communication tools that allow for email, virtual meetings, desktop video conferencing, and desktop sharing and collaboration over the Internet and within a virtual desktop environment. The Trustee Services Provider will be expected to conduct and participate in meetings, presentations, forums, and collaboration web sessions to perform project tasks.

PENNVEST maintains information utilizing Microsoft Office Suite 2010 including Word, Excel, Visio, Outlook 2010, and SharePoint 2013. The Trustee Services provider must maintain updated virus scan software for all attachments and electronic documents provided to PENNVEST. Written analysis, recommendations, documentation, and invoices must be provided in the electronic format that is compatible with and acceptable to PENNVEST. The Trustee Services Provider must allow the installation of desktop controls and similar plug-ins required for secured access and proper use of PENNVEST software environments to the extent necessary to perform project tasks.

I-26 Information and Records Handling. The nature of the work performed under any resulting contract will involve the management and use of sensitive information. All staff assigned to the contracted work by the Trustee Services Provider must sign a confidentiality statement to ensure this information is not published or otherwise disclosed, except to PENNVEST or for matters of public record. The Trustee Services Provider is responsible for ensuring that adequate measures are in place to minimize the access, copying and distribution of such information during work performed under this contract.

The Trustee Services Provider is responsible for proper management and disposal (i.e. shred, surrender) of both hard and electronic working copies of information and records during work on this contract, as well as any remaining information and records upon the completion of the contracted work. During the contracted work period, the Trustee Services Provider is responsible for adequate disposal of information and records in compliance with the PENNVEST Agency Specific Records Retention and Disposition Schedule.

PART II

INFORMATION REQUIRED

A Statement of Qualifications must be submitted in the format and order, including heading descriptions, outlined below. To be considered, the Statement of Qualification must respond to all requirements in this part of the RFQ. Additionally, institutions must be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at \$200,000,000 and shall be subject to supervision or examination by federal and/or state banking authorities. Respondents should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to their Statement of Qualifications.

PENNVEST reserves the right to request additional information which, in PENNVEST's opinion, is necessary to assure that the Trustee Services Provider's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFQ.

I. General Qualification

- A. **Title Page.** Show the name of the Trustee Services Provider, address, telephone number, email address, name of contact person, date and subject (the subject should read STATEMENT OF QUALIFICATIONS TO PROVIDE BOND AND COMMERCIAL PAPER TRUSTEE AND RELATED SERVICES).
- B. **Table of Contents.** Include a clear indication of the material by section and by page number.
- C. **Cover Letter and Executive Summary.** This letter must be signed by an individual authorized to submit a Statement of Qualifications on behalf of the Trustee Services Provider and empowered to negotiate terms of contracts, render decisions and commit the Trustee Services Provider's resources. Further, the Executive Summary must summarize the work to be done and identify the resources available to act as PENNVEST's Trustee Services Provider. This section should summarize the key points of your submittal (limit to two pages).
- D. **General Information**
 - 1. Briefly describe your institution's presence in the public finance market generally and specifically in the Commonwealth of Pennsylvania. Where does your institution maintain corporate/municipal trust offices? What are your institution's plans for growth or contraction in the corporate/municipal trust business?
 - 2. Briefly describe your institution's experience with revolving loan funds or other pooled loan financings.
 - 3. Describe your institution's experience serving as a trustee services provider for other ECP programs.
 - 4. Describe your institution's ability to process payments utilizing ACH. Briefly describe any advantages or disadvantages associated with utilizing ACH for programs like PENNVEST's. Does your institution accept electronic payment

instructions without manual signatures? Does your institution offer any enhanced communication tools to provide trust account information electronically?

5. Does your institution provide any customized reporting features which may be available to assist PENNVEST in its reporting process for funds held by the trustee? Does your institution have any restrictions on the methods of communication with PENNVEST?

- E. Personnel.** Include the number of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the Project. For key personnel, include the employee's name and, through a resume or similar document, the Project personnel's education and experience. Indicate the responsibilities each individual will have in this Project and how long each has been with your company.
- F. References.** Provide contact names, numbers and information for three references of public agency issuers, including any in the infrastructure sector for which your institution currently provides similar trustee services. Please also provide three references for the trust officer and other key personnel that would be assigned to PENNVEST's account.
- G. Financial Capability.** Describe your organization's financial stability and economic capability to perform the contract requirements. Provide your company's financial statements (audited, if available) for the past three fiscal years. Financial statements must include the company's Balance Sheet and Income Statement or Profit/Loss Statements. Also include a rating report, if available. If your company is a publicly traded company, please provide a link to your financial records on your company website in lieu of providing hardcopies. PENNVEST reserves the right to request additional information it deems necessary to evaluate a Trustee Services Provider's financial capability.
- H. Technology** - As described in this RFQ, Trustee Services Providers must possess sufficient capacity to operate in compatible technology and document formats such that it may communicate openly, securely and directly via electronic dialogue with PENNVEST. The Trustee Services Provider must provide written acknowledgment of its ability to comply with these requirements. Please describe the measures and safeguards your firm would use to ensure compatibility with PENNVEST's information systems and to keep any of its employees, subcontractors or consultants from introducing a virus or malicious, mischievous or destructive programming into PENNVEST information systems and electronic records. Briefly describe your firm's business continuity of operations plan in the event of a disaster. Please describe the reporting capabilities of your information system, and the ability of the PENNVEST to access such reports and your current frequency of distribution of such reports. Include sample reports as an appendix.
- I. Objections and Additions to Standard Contract Terms and Conditions.** Identify which, if any, of the terms and conditions (contained in **Appendix A**)

you would like to negotiate and what additional terms and conditions you would like to add to the standard contract terms and conditions should PENNVEST extend a contract to you. Failure to make a submission under this paragraph will result in waiving the right to do so later, but PENNVEST may consider late objections and requests for additions if to do so, in PENNVEST's sole discretion, would be in the best interest of PENNVEST. PENNVEST may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. PENNVEST will not entertain any changes to any other provisions of the RFQ, nor shall the Trustee Services Provider request to completely substitute its own terms and conditions for **Appendix A**. All terms and conditions must appear in one integrated contract and will require form and legality review and approval by the Pennsylvania Office of General Counsel and the Office of Attorney General. PENNVEST will not accept references to the Trustee Services Provider's, or any other, online guides or online terms and conditions contained in any proposal.

Regardless of any objections to the attached terms and conditions, the Trustee Services Provider must submit its Statement of Qualifications on the basis of the terms and conditions set out in **Appendix A**. PENNVEST will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Appendix A or to negotiation of any other provisions of the RFQ**.

- J. Cost Submittal.** The information requested in this subsection (J) shall constitute a non binding Cost Submittal which may be subject to negotiation. The Trustee Services Provider should not include any assumptions in their cost submittals. If you include assumptions in the cost submittal, PENNVEST may reject the proposal. The Trustee Services Provider should direct in writing to PENNVEST pursuant to Part I, Section I-9, of this RFQ any questions about whether a cost or other component is included or applies. All Trustee Services Providers will then have the benefit of PENNVEST's written answer so that all Statements of Qualifications are submitted on the same basis.

The Cost Submittal shall include:

Fee Structure: Please provide a proposed fee schedule for all up-front and ongoing fees. Please include a schedule clearly stating when fees will be due and payable. In addition, please indicate the firm your institution intends to utilize as trustee's counsel (and the lead partner assigned to the relationship) and provide a cap on counsel fees and expenses.

Please itemize all fees for services that you would expect to receive if selected to provide Trustee Services. These fees should include what the Trustee Services Provider would charge for the following:

- i. Acceptance Fees
- ii. Registration Fees
- iii. Annual Administrative Fee
- iv. Transaction Costs (please detail)
- v. Other Fees or Expenses (if any).

- K. Domestic Workforce Utilization Certification.** Complete and sign the Domestic Workforce Utilization Certification contained in **Appendix B** of this RFQ. Trustee Services Providers who seek consideration for this RFQ must submit in hardcopy the signed Domestic Workforce Utilization Certification Form in the same sealed envelope with the Statement of Qualifications.

- L. Potential Conflict of Interest.** Identify any relationships or activities that might present a conflict of interest if your organization is selected to provide Trustee Services as described in this RFQ.

PART III

ONGOING COMPLIANCE WITH MINIMUM QUALIFICATIONS; REMOVALS

The Trustee Services Provider is responsible for notifying PENNVEST in writing if they no longer meet any of the minimum qualifications or if they have a significant change in personnel and experience being applied to the PENNVEST account. PENNVEST reserves the right to reconfirm qualifications from time to time.

Any firm may be removed as Trustee Services Provider or suspended for reasons that include but are not limited to the following:

- a. Disqualification because of legal proceedings
- b. Unacceptable performance in any Trustee Services as determined by an evaluation by PENNVEST
- c. Being the subject of disciplinary action by the Commonwealth or any Federal regulatory or quasi adjudicatory authorities.
- d. Filing for protection under federal or state bankruptcy laws
- e. Failure to meet Minimum Qualifications listed in Section II.

PART IV

WORK STATEMENT

IV-1. Objectives.

- A. General.** PENNVEST seeks to hire one or more banking institutions as their Trustee Services Provider(s) to act as trustee, registrar and paying agent for PENNVEST for programs under PENNVEST's Federal and State Indentures. PENNVEST is issuing this RFQ to qualified banks to provide sufficient information to enable them to prepare and submit their qualifications to serve as Trustee Services Provider to PENNVEST.

In the near term, as stated in Section I-2 above, PENNVEST intends to issue ECP to maintain liquidity for its programs funded under the State Indenture and the Federal Indenture and cumulatively, PENNVEST has authorization to issue up to \$615 million of commercial paper to support its programs under those Indentures. Not only are the CWSRF and the DWSRF programs entirely unleveraged with absolutely no revenue bonds, notes or other obligations including but not limited to commercial paper outstanding; the State Indenture also has no commercial paper outstanding at this time.

When issued, the revenue bonds, notes and other obligations including any commercial paper issued under the Federal Indenture will be payable from certain funds held under the Federal Indenture, consisting primarily of loan repayments under the CWSRF and DWSRF programs, federal capitalization grants and state match from either the State Indenture or other funds available to PENNVEST. ECP or any other type of commercial paper issued under the Federal Indenture may also be payable from the proceeds from revenue bonds, notes or other obligations issued under the federal indenture.

As to the State Indenture, revenue bonds, notes or other obligations including but not limited to commercial paper issued under the State Indenture are payable from certain funds held under the State Indenture comprised predominantly of pledged loan repayments and non-pledged proceeds of state funded loans. ECP or any other type of commercial paper issued under the State Indenture may also be payable from the proceeds from revenue bonds, notes or other obligations issued under the Indenture or state issued general obligation bond proceeds.

In addition, PENNVEST intends to issue guarantees to various municipal entities which will serve as credit enhancement for the guaranteed bonds and loans and for which the Trustee Services Provider will have monitoring responsibility under both the State and the Federal Indentures. If the borrowing entity's trustee is not PENNVEST's Trustee Services Provider, that trustee will be responsible for confirming the receipt of monthly debt service installment payments.

PENNVEST requires the Trustee Services Provider(s) to administer funds and accounts created under the State and Federal Indentures for PENNVEST's programs including but

not limited to its commercial paper programs and the imminent issuance of ECP as well as any revenue bonds, note or other obligations issued thereunder.

One of the Trustee Services Provider's major responsibilities will be processing payments to PENNVEST's borrowers for installment payments under their loan agreements. PENNVEST prefers a Trust Services Provider who will be able to process these payments via ACH as opposed to electronic transfer. The Trustee Services Provider should be able to accept electronic payment instructions without requiring manual signatures. In addition, to facilitate processing data into accounting statements, PENNVEST would request that the Trustee Services Provider customize reports to allow for tracking transactions in accordance with the corresponding indenture. PENNVEST will also require short-term investment services for proceeds associated with the issuance of revenue bonds. PENNVEST will provide direction to the Trustee Services Provider on the investment of those funds. The Trustee Services Provider will further comply with the provisions of each indenture to maintain certain records relating to the commercial paper and the bonds and to act on behalf of commercial paper and bond holders to enforce the covenants contained within each indenture.

B. Specific. PENNVEST will review and evaluate each respondent's qualifications based on, among other things, the criteria set forth below (not necessarily listed in order of priority):

- The firm's ability to provide the requested Trustee Services.
- The firm's plan for staffing, managing and administering the PENNVEST relationship on a day-by-day basis and the qualifications of the persons doing so.
- The firm's experience in acting as trustee for issuers and/or programs similar in size and purpose as PENNVEST's, including providing trustee services for high grade conduit government issuers.
- The financial strength and size of the firm and its commitment to and past experience servicing as a municipal/corporate trustee.
- References from high grade state and local government issuers.
- Fee structure.

IV-2. Additional Requirements.

A. Emergency Preparedness.

To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

1. Describe how you anticipate such a crisis will impact your operations.
2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:

- a) Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
- b) Identified essential business functions and key employees (within your organization) necessary to carry them out
- c) Contingency plans for:
 - i.) How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - ii.) How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
- d) How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.
- e) How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

IV-3. Tasks.

All tasks and reports are to be made available in an electronic format acceptable to PENNVEST and compatible with PENNVEST's information system as defined in Part I of this RFQ. The Trustee Services Provider shall be responsible for serving as Trustee Services Provider for PENNVEST's state and/or federal indenture.

IV-4. Reports and Project Control.

- A. **Task Plan.** A work plan for each task that identifies the work elements of each task, the resources assigned to the task, and the time allotted to each element and the deliverable items to be produced. Where appropriate, a PERT or GANTT chart display should be used to show project, task, and time relationship.
- B. **Status Report.** A six month progress report covering activities, problems and recommendations. This report should be keyed to the work plan the Offeror developed in its proposal, as amended or approved by the Issuing Office.
- C. **Problem Identification Report.** An "as required" report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Offeror recommendations with supporting rationale.

D. **Monthly Bank Statements.** Bank statements on all accounts will be provided to both PENNVEST and the Comptroller's Office, in paper or electronically, at their option.

E. **Annual Final Report.** An annual report will be submitted at the end of the state fiscal year (July 1 through June 30). This fiscal year end report will be submitted 45 days after the end of the end of the prior fiscal year to the Issuing Office. The Annual Final Report will detail the following:

- Abstract or summarize the result of the study or service in terminology that will be meaningful to management and others generally familiar with the subject areas.
- Describe data collection and analytical and other techniques used during the study.
- Summarize findings, conclusions and recommendations developed in each task.
- Include all supporting documentation; e.g., flow-charts, forms, questionnaires, etc.
- Recommend a time-phased work plan for implementing the recommendations.

**STANDARD CONTRACT
TERMS AND CONDITIONS – PAPER CONTRACT**

1. TERM OF CONTRACT

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 fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

2. EXTENSION OF CONTRACT TERM

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

3. DEFINITIONS

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.

4. INDEPENDENT PRIME CONTRACTOR

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

5. DELIVERY

- a. **Supplies Delivery:** 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.
- b. **Delivery of Services:** The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

6. ESTIMATED QUANTITIES

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.

7. WARRANTY

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.

8. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

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.

9. OWNERSHIP RIGHTS

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.

10. ACCEPTANCE

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.

11. PRODUCT CONFORMANCE

The Commonwealth reserves the right to require any and all Contractors to:

- a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- b. Supply published manufacturer product documentation.
- c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.
- e. Provide customer references.
- f. Provide a product demonstration at a location near Harrisburg or the using agency location.

12. REJECTED MATERIAL NOT CONSIDERED ABANDONED

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

13. COMPLIANCE WITH LAW

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

14. ENVIRONMENTAL PROVISIONS

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. § 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. § 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. § 693.1.

15. POST-CONSUMER RECYCLED CONTENT

- a. 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.

- b. **Recycled Content Enforcement:** 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.

16. COMPENSATION

- a. **Compensation for Supplies:** The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.
- b. **Compensation for Services:** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

17. BILLING REQUIREMENTS

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

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

18. PAYMENT

- 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.
- c. The Commonwealth will make contract payments through Automated Clearing House (ACH).
 - 1) 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).
 - 2) 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.

- 3) 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.

19. TAXES

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. 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.

20. ASSIGNMENT OF ANTITRUST CLAIMS

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.

21. COMMONWEALTH HELD HARMLESS

- 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.

22. AUDIT PROVISIONS

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.

23. DEFAULT

- 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.

24. FORCE MAJEURE

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.

25. TERMINATION PROVISIONS

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 from 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 the 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 Subparagraph a.

26. CONTRACT CONTROVERSIES

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

27. ASSIGNABILITY AND SUBCONTRACTING

- 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.

28. OTHER CONTRACTORS

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.

29. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- a. 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.
- b. 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.
- c. 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.

- d. 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.
- e. 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.
- f. 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.
- g. 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 these provisions.
- h. 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.

30. 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 if 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.

31. CONTRACTOR RESPONSIBILITY PROVISIONS

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.

- a. 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.
- b. 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.
- 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, 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.
- 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 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.
- 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

32. AMERICANS WITH DISABILITIES ACT

- a. 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 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. § 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.

33. HAZARDOUS SUBSTANCES

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 Paragraph (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.

34. COVENANT AGAINST CONTINGENT FEES

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.

35. APPLICABLE LAW

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.

36. INTEGRATION

This Contract, including all referenced documents, 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.

37. ORDER OF PRECEDENCE

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 solicitation; and the Contractor's response to the solicitation.

38. CONTROLLING TERMS AND CONDITIONS

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

39. CHANGES

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 the Contract Controversies Provision.

40. BACKGROUND CHECKS

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

requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

41. CONFIDENTIALITY

- a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
- b. The obligations stated in this Section do not apply to information:
 - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
 - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
 - 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

42. NOTICE

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.

43. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

APPENDIX B
DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each Statement of Qualifications will be considered based upon the organizations commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive correspondingly less consideration.

In order to be eligible for any consideration as toward satisfying this criterion, Trustee Services Providers must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed.

Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ [title] of _____ [name of Contractor] a _____ [place of incorporation] corporation or other legal entity, ("Contractor") located at _____ [address], having a Social Security or Federal Identification Number of _____, do hereby certify and represent to the Commonwealth of Pennsylvania ("Commonwealth") (Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom

OR

_____ percent (____%) [Contractor must specify the percentage] of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

_____ [Use additional sheets if necessary]

The Department of General Services [or other purchasing agency] shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

APPENDIX C

**APPENDIX C - PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Infrastructure Investment Authority (PENNVEST)
RFQ# 2015-2**

Enclosed in six separately sealed submittals is the Statement of Qualification of the Trustee Services Provider identified below.

Trustee Services Provider Information:	
Name	
Mailing Address	
Website	
Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-Mail Address	
Federal ID Number	
SAP/SRM Vendor Number	

Submittals Enclosed and Separately Sealed:	
-	Statement of Qualifications

<i>Signature</i>	
Signature of an official authorized to bind the Trustee Services Provider to the provisions contained in the Trustee Services Provider's proposal:	
Printed Name	
Title	

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE STATEMENT OF QUALIFICATIONS MAY RESULT IN THE REJECTION OF THE STATEMENT OF QUALIFICATIONS.