MANUAL
FOR PREPARING AND PROCESSING
CONTRACTS FOR
GOODS AND SERVICES
OFFICE OF CHIEF COUNSEL
OFFICE OF UNIVERSITY LEGAL COUNSEL
OF THE
PENNSYLVANIA STATE SYSTEM OF HIGHER
EDUCATION
COMMONWEALTH OF PENNSYLVANIA

INTRODUCTION

This is the fourth edition of the Manual for Preparing and Processing Contracts for Goods and Services. It can be readily accessed electronically at http://www.passhe.edu/content/?/office/counsel/procurement/procurement. When necessary, updates and general procurement news will be posted on the web page of the Office of University Legal Counsel at http://www.passhe.edu/content/?/office/counsel/procurement.

This manual replaces all prior editions issued by the Office of Chief Counsel.

As always, should you have any questions as to information within this manual or pertaining to procurement matters generally, please contact your University Legal Counsel.

JEFFREY COOPER
Chief Counsel
Pennsylvania State System of Higher Education
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SECTION I.  LEGAL REVIEW OF CONTRACTS:

A. Why the Necessity of Legal Review?

The Commonwealth Attorneys Act authorizes the Office of Attorney General (OAG) to review and approve the contracts, deeds and leases of all Commonwealth agencies. The Act also authorizes the OAG to prepare contract forms and pre-approve such documents that are prepared in accordance with any issued instructions.

In order to ensure the contracts generated by the Pennsylvania State System of Higher Education (State System) are acceptable in form and legality, contracts are first reviewed and approved by the Office of Legal Counsel. Upon approval by university legal counsel, contracts are then forwarded to the OAG as mandated by the Commonwealth Attorneys Act.

**State System/University contract officers must read this manual including all the appendices in its entirety.** Conformity to the directions in this manual is necessary for legal approval both by the Office of University Legal Counsel and the OAG.

B. What Constitutes a Contract?

“Contracts” and “agreements” are similar concepts. The degrees of liability, obligations, and legal enforcement are the same for both. The position of the OAG is that the term “contract” is all-inclusive. A contract exists whenever a Commonwealth agency enters into an arrangement with another party that requires mutual obligations and an exchange of consideration (i.e., something of value, typically money). Arrangements, such as affiliation agreements, might or might not require a university to pay money or receive money, but are still considered contracts. With limited exceptions, university legal counsel must review and approve contracts and agreements entered into by the State System and its universities.

Some university personnel have expressed the view that if the university is not expending funds, it is merely engaged in an “agreement” and not a contract. For example, there have been misunderstandings in the past that grant agreements or affiliation agreements are not really

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1 Whenever the term “university” appears in the manual in regards to contract preparation and requirements, such instructions are also applicable to the Office of the Chancellor of the State System of Higher Education and its components.
contracts at all and therefore, require no legal review. **Grant agreements and affiliation agreements are not exempt** from legal review. **All contracts/agreements, unless specifically exempted by this manual, are subject to legal review.**

An agreement between Commonwealth agencies is often referred to as a Memorandum of Understanding, or MOU. *(See Section II. C-E.)* In the past, some universities have referred to other agreements as a “Memorandum of Understanding” even though a private entity is a party. Despite the document’s title, if it is not solely an arrangement between Commonwealth agencies, then an agreement should be considered a contract, no matter what other name it is given and is subject to review and signature by university legal counsel.

The following contracts **require** the review and signature of University Legal Counsel:

- All Blueback Contracts
- Service Purchase Contracts (SPCs) in excess of $1500
- Contract Amendments
- Contract Renewals
- Leases
- Licenses
- Deeds
- Agreements of Sale
- Fiscal Adjustments
- Grants
- Affiliation Agreements that are not approved templates
- Yearly work orders for the System-wide fire suppression project
- Memoranda of Understanding/Interagency Agreements with Commonwealth agencies
- Agreements establishing affiliated entities
- Sole Source Certifications
- Emergency Certifications

The following documentation **requires** the review and signature of University Legal Counsel and the Office of Attorney General:

- All Blueback Contracts
- Service Purchase Contracts (SPCs) in excess of $20,000
• Amendments of any amount
• Leases
• Licenses
• Deeds
• Agreements of Sale
• Fiscal Adjustments
• Grants
• Agreements establishing affiliated entities

The following documentation requires the signature of University Legal Counsel, the Office of Attorney General and the Office of General Counsel:

• All contracts in excess of $500,000

C. Contracts Subject to Legal Review

Legal review and approval is required for any contract between a university and another party unless the contract is less than one thousand five hundred dollars ($1,500.00). If the contract is less than that amount, there is no need for legal review provided that:

• The pre-approved Form STD-278P (SPC) is used without change in the substantive terms and conditions.

• The cost of approved services to be provided by any one contractor over the term of the contract, including amendments, is less than one thousand five hundred dollars ($1,500.00). At the discretion of the Vice President for Finance and Administration, or his/her designee, certain types of services may require prior approval by the comptroller before the agency enters into a contract. The agency comptroller will inform the agency, in writing, of any services requiring prior approval.

• Additionally, purchase orders for goods of any value do not require approval by university legal counsel.

A zero dollar contract is to be reviewed by university legal counsel due to the fact that it generally includes more complex performance requirements or other obligations in lieu of payment. Some such zero cost contracts also contain exclusivity clauses which permit no other business entity from entering into this economic opportunity afforded by a university (i.e., graduation photography). These contracts, for example, require formal bidding. Therefore, because a contract results in no expenditure on the part of the university, that fact alone does not
remove it from legal review. Close consultation with university legal counsel is always recommended

D. The Legal Review Process

Contracts and sole source certifications submitted to the Office of University Legal Counsel are logged in upon arrival. For the sake of consistency, contracts are generally distributed to the attorney assigned to manage the affairs of that particular university. It is the policy of the Office of University Legal Counsel to sign and forward or return routine contracts and sole source certifications within two (2) business days of receipt. In order to maintain this policy, attorneys other than the university legal counsel assigned to a particular university may at times receive another university’s contracts for review. These situations typically arise when the assigned attorney is out of the office for two (2) consecutive days.

If a contract fails to meet the standards contained in this manual, it will be returned to the university with a cover letter explaining the necessary corrections. Any corrections must be initialed by all parties who originally executed the contract, and the contract is to be returned for a second review by university legal counsel.

Once signed by university legal counsel, all contracts that require the signature of the OAG are logged out and forwarded for review by the OAG. If approved, the OAG will return the contract to the Office of University Legal Counsel where it is again logged in. Contracts are then stamped with an effective date, logged out to the universities and the process is then complete. Should for any reason the OAG reject the contract, it must be corrected by the University as requested, initialed by all parties who originally executed the contract and resubmitted to the Office of University Legal Counsel. University legal counsel will then forward the contract to the OAG for a second review. SPC contracts not exceeding $20,000.00 submitted for legal review that are rejected will only require the signature of university legal counsel upon resubmission.

The OAG may take up to thirty (30) days to approve or reject a contract. Throughout this process, university legal counsel tracks the location of the contract via its office log. No action by a contractor regarding a tentative contract should be taken until all parties have executed it, including all appropriate Commonwealth legal offices. “After-the-fact” contracts (i.e., contracts submitted after the goods and services have been provided) will be rejected unless the contract meets the strict statutory requirements of an emergency contract. This is extremely important because the OAG will not give legal approval to late contracts and neither can
university legal counsel. Additionally, since no Commonwealth agency can pay on an unlawful contract, the contractor’s only alternative is to proceed against the university through the Pennsylvania Board of Claims. This is particularly undesirable because the Legislature has directed agencies to pay interest on debts more than forty-five (45) days old and has authorized the Board of Claims to assess counsel’s fees against Commonwealth agencies. (See Section XIII.C. for a further discussion of the Board of Claims).

A contract transmittal form, used for sending contracts to the OAG, is found in V. of this manual and accessible in an electronic format at:
http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=2036

Except for affiliation agreements, you must provide a federal identification number and an identifying contract number for all submitted contracts.

The OAG requires that signature pages be flagged with plastic indicator flags or some other marker for this purpose. OAG and university legal counsel will sign only the original and two (2) copies of a blueback contract. Please do not send more than this number for review without explanation.

If required, after review and approval by university legal counsel, a contract may first be sent to the Office of General Counsel (OGC). Only contracts in excess of five hundred thousand dollars ($500,000.00) for any given contract term are sent to OGC. This limit is subject to change, and a notice will be issued if and when changes occur. **At least an extra thirty (30) days should be added by the university for the processing of contracts that require the additional approval from OGC.**

Both OAG and OGC reserve the right, at their discretion, to inspect and sign any contract regardless of amount.
SECTION II. COMMON TYPES OF CONTRACTS:

A. Blueback Contracts and Service Purchase Contracts: When to Use Each

The Service Purchase Contract (SPC), Form STD-278P, is a standard Commonwealth form that should be used for straightforward purchases of services, rental of equipment or such as installation of equipment purchased. It is available in an electronic format at http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/std278p.doc. The SPC is used when the university contracts for goods and for services, including but not limited to, maintenance of equipment; consultants; speakers and program evaluators; temporary use of lodging and conference facilities.

The SPC is **not to be used if the transaction is complicated and involves many detailed terms and conditions**. With complicated or detailed transactions, the university’s contract officer must prepare an individually tailored contract that addresses all aspects of performance on which the university and the contractor have agreed. The individually drafted contract is often referred to as a “blueback” contract because multi-page contracts traditionally had a blue cover or backing. Review of Appendix K should clarify the format.

B. Agreements with Executive Commonwealth Agencies

As a general principle, because of understandings reached by the OAG and OGC, agreements between Commonwealth agencies are generally exempt from Attorney General review. This includes but is not limited to Interagency Memorandums of Understanding and agreements with and between independent agencies.

An agreement with an executive agency shall be titled “COMMONWEALTH INTERAGENCY MEMORANDUM OF UNDERSTANDING,” and must contain the following clauses:
This Memorandum is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or any other parties.

AND

Any dispute arising hereunder shall be submitted to the Office of General Counsel of the Commonwealth of Pennsylvania for final resolution.

The Interagency Memorandum of Understanding will be routed to university legal counsel just like any other contract.

Agreements with the following executive agencies, shall be subject to an MOU:

Department of Aging
Department of Agriculture
Department of Banking
Department of Community and Economic Development
Department of Conservation and Natural Resources
Department of Corrections
Department of Education
Department of Environmental Protection
Department of Health
Governor’s Council for the Arts
Governor’s Council for the Humanities
Housing Finance Agency
Department of Insurance
Department of Labor and Industry
Department of Military and Veterans’ Affairs
Department of Public Welfare
Office of Administration
Office of the Budget
Pennsylvania Public Television Network
Pennsylvania State Police
Department of Revenue
Department of State
Department of Transportation

If the agency suggests memorializing the agreement in a form other than as a Memorandum of Understanding, contact your university legal counsel to discuss the matter further.
C. **Agreements with Independent Agencies**

An agreement with an independent Commonwealth agency may be drafted as either a MOU or as an ordinary contract. How such an agreement is handled is left to the discretion of the university and the independent agency.

For purposes of this manual, the following agencies are independent agencies:

- Office of Attorney General
- Office of Auditor General
- Civil Service Commission
- Ethics Commission
- Fish and Boat Commission
- Game Commission
- Higher Education Assistance Agency (PHEAA)
- Historical and Museum Commission
- Human Relations Commission
- Labor Relations Board
- Liquor Control Board
- Milk Marketing Board
- Public Utilities Commission
- Securities Commission
- State Tax Equalization Board
- Turnpike Commission
- Department of Treasury

The foregoing lists of executive and independent agencies are not comprehensive. Please contact your university attorney if you are unsure of an agency’s status or how to proceed.

If the agency suggests memorializing the agreement in a form other than a Memorandum of Understanding, contact your university legal counsel to discuss the matter further.

D. **Agreements within the State System of Higher Education**

Agreements between different components of the State System of Higher Education are **not** contracts. The entire arrangement should be treated from start to finish as an internal transaction. These agreements are memorialized in the format of a “letter of understanding.” Such agreements differ from standard contracts in the following ways:

- Bidding is not required.
• As long as the agreement is solely between parts of the State System (agreements of two or more universities with each other or with the Office of the Chancellor) **under no circumstances** should the entities use a formal contract document or anything that even appears remotely to be a binding contract. The word “contract” should not be used within the agreement to describe it, because it is NOT a contract.

• The parties should formalize their expectations in a letter between authorized employees at the appropriate levels of authority. The Chancellor or president of the university can authorize any employee to engage in contracts generally or in particular kinds of contracts. Persons exercising such authority in the format of a Letter of Understanding should have written authorization from the Chancellor or president to do so.

• So long as no other entity except the Office of the Chancellor and/or State System universities are parties to the agreement, nothing in the letter (or any reply to it or other exchange of correspondence regarding it) should make reference to any rights, or remedies for breach, or manner of enforcement. The letter should state that the arrangement is not a legally binding contract and is not enforceable in a court or in the Board of Claims. The agreement may state that in the event of a dispute between two parties, advice and direction should be requested from the Office of the Chancellor or Office of Chief Counsel.

• All letters should be reviewed and signed by university legal counsel.

E. **Renewals**

A contract may be renewed without rebidding only if the original contract contains a renewal provision, and if the renewal is accomplished before the prior contract expires. If a renewal is not accomplished prior to a contract’s expiration, the expiration of the contract leaves nothing for the preparer to renew. Hence, the untimeliness of the renewal will require that the contracting process begin from scratch, which may even necessitate the need for bidding. Please consider carefully monitoring contracts with renewal provisions in a calendar system. This will permit sufficient time for the preparation and submission of the renewal, and hopefully avoid the lapsing of an otherwise renewable contract.

Renewal contracts no longer require the review of the OAG. **However, renewals will continue to be reviewed and signed by university legal counsel.** If a renewal contract also contains an amendment to the terms of the original contract that was not anticipated in the original “services requested” section, review and signature by the OAG will be required.
The renewal must be assigned a new contract number. Maintaining the original number with the suffix of R-X, with “X” being the renewal period (i.e., 3 if it is the third renewal) is advisable.

However, if you think it is likely that a contract will be renewed, it would probably be more efficient to write a multi-year contract with a provision stating that the contract can be canceled by written notice provided thirty (30) days prior to the end of any contract year. That way, renewals will not have to be processed. If the contract prices either stay the same, or increase pursuant to some fixed formula contained in the original contract (for example, the CPI, or some specifically fixed percentage), no renewals will have to be processed during the term of the contract. However, the adjusted term should be clearly memorialized within the contract to ensure that both parties agree how the formula will be calculated.

The beginning of the term of a renewal must be prior to or the same as the termination dates of the contract that is being renewed. Renewals must be received in the Office of University Legal Counsel prior to the contract’s expiration date or they must be rejected.

It is the preparer’s responsibility to type on the contract the designation “Original Contract,” “First Renewal of Original Contract,” “Second Renewal of Original Contract,” etc. When submitting a renewal contract to university legal counsel for review and signature, you must provide a copy of the original contract and all previously executed renewals and amendments. (See Appendix I and Appendix L for models of a renewed SPC and blueback respectively.) In order to be renewed without bidding, the original contract must contain a renewal clause. Suggested language for such a clause is:

“This contract may be renewed for additional terms by mutual written consent of authorized representatives of the parties. Nothing herein guarantees any such renewal(s).” [Use one of the following sentences]: “(1) Renewals shall be at the same or lower prices(s) or rate(s) as stated in the original contract,” or “(2) Renewals may be at rates increased in the following manner.” [Here fill in the formula, such as the increase in a designated CPI, by which increased rates are to be computed.]

Renewals may contain provisions more advantageous to the university than the original contract, but any changes must be submitted for legal review.

Please note that the Commonwealth’s Standard Terms and Conditions under the heading “Term” does provide for a ninety (90) day extension of a contract. This cushion provides the University with the opportunity to conclude any procurement that may have been delayed and

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2 There exist several types of consumer price indexes. For clarity, reference within the contract which index is to be utilized.
not completed prior to the anticipated expiration of the current contract. However, in order to effectuate this ninety (90) day extension, a written document between the parties must be signed prior to the expiration of the agreement. In these instances, a simple letter of extension signed by both parties and forwarded to university legal counsel would suffice. Please review your original contract to ensure that it contains the ninety (90) day extension language.

In certain circumstances, term renewals can be accomplished by a letter. This is appropriate when an original contract states that during its term it may be renewed or extended at the same rate(s) (or at rates established by a fixed or independent factor, such as a designated CPI). In such cases, OAG approval is not required.

A letter renewal may sometimes be utilized only where:

1. There is a renewal or extension clause that provides for the same rate(s) or a predetermined adjustment (or CPI change in rate(s)); and

2. No provision of the original contract is modified other than the termination date and all prior terms of the preceding contracts are incorporated into the renewal; and

3. The new termination date in the extension or renewal letter does not impermissibly exceed the five (5) year limit stated in this manual, and the letter states that the extension or renewal is not binding or effective until approved by the appropriate Commonwealth attorney; and

4. The original contract, along with any amendments, prior renewals, and the renewal letter, are submitted to university legal counsel, for review, approval and, if required because of the magnitude of any increase in cost, review by the OGC.

F. Amendments

The need to amend a contract may be necessary due to many factors, including but not limited to, monetary factors, volume, increased need and time. However, contracts may not be amended to include goods and services not anticipated within the original agreement.

If the amount of funds originally required for a contract is insufficient due to a change of circumstances like an increased and unanticipated need, prepare an amended SPC or blueback to cover the additional obligation. However, the per unit cost terms must remain the same. An explanation of the need for the amendment should be included within the amendment.

How a contract is to be amended is addressed in Section IX of this manual. Amendments require the review and signature of the OAG and university legal counsel, regardless of the contract amount.
G. Emergency Contracts

Emergency procurements are permissible if the public health, safety and welfare are at risk or circumstances outside the control of the agency create an urgency of need which necessitates the suspension of normal bidding and review requirements. In an emergency procurement, the contract is submitted after the procurement is completed. It is only under these circumstances where an after-the-fact contract will be accepted. Under no circumstances will poor planning constitute an emergency.

When possible, Act 57 looks to secure at least two (2) bids in the event of an emergency procurement. There is no requirement that bids be in writing under these circumstances and no advertisement is necessary due to the exigent circumstances. However, a written determination of the emergency and for the selection of the contractor must be included in the contract file and sent in the form of a certification when the contract is submitted for legal review after the work is completed. If university legal counsel does not agree with the substantiation of the emergency procurement, or should the certification of emergency procurement not be forwarded with the contract, the contract will be rejected. Contracts will still require the signature of the OAG and, if warranted, the OGC, who reserve the right to reject the contract for failure to meet the emergency classification. A form certification for emergency procurement is found in Appendix T of this manual and in an electronic format at:

http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=198

It is recommended that the emergency certification and draft contract be faxed to university legal counsel for preliminary review prior to commencing work, if possible, to maximize the likelihood that the contract will be approved. At a minimum, telephoning legal counsel to discuss the matter would be prudent and highly recommended.

H. Sole Source Contracts

A contract may be awarded for a supply, service or construction item, without the necessity of a formal competitive process, when the contracting officer determines in writing that one (1) of the following statutory conditions exists which meets the definition of sole source:

1. Only a single contractor is capable of providing the supply, service or construction; or

2. A federal or state statute or federal regulation exempts the supply, service or construction from the competitive procedure; or
3. The total cost of the supply, service or construction is less than the amount established by the State System for small, no-bid procurements as dictated by the policy on small procurements; or

4. It is clearly not feasible to award the contract for supplies or services on a competitive basis; or

5. The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer’s authorized dealer, provided the contracting officer determines that bidding is not appropriate under the circumstances; or

6. The contract for supplies or services is in the best interest of the Commonwealth.

Be extremely cautious about “sole source” contracts. A sole source contract implies that there is only one (1) person or company that can provide the contractual services needed and that any attempt to obtain bids would only result in that one person or company being available to meet the need. Sole source does not equate with the person you know will do the best job at the lowest price. It is for those circumstances where only one (1) vendor can provide the needed good or service. In order to assess whether this is factually correct, it is not unreasonable for university legal counsel to request documentation evidencing the sole source nature of the procurement.

Before entering into a sole source contract, a statement of justification must be sent to university legal counsel in advance of the executed contract certifying that the contract is appropriate as a sole source procurement. University legal counsel will review the statement and either approve or disapprove the certification. It is critical that the sole source certification contain sufficient information in order for legal counsel to discern that it meets the statutory definition. If denied, it will be returned to the University with further instructions. If approved, a copy of the signed certification must be included with the contract when it is submitted for final legal review and approval and must predate the signature on the contract. A sample sole source certification is contained in Appendix U of this manual and is available in an electronic format at:

http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=1988

Despite the fact that purchase orders are not signed by legal counsel, Act 57 requires file documentation as to all sole source procurements. Therefore, if any procurement is in excess of $10,000.00, sole source certifications must be signed by university legal counsel even when the procurement documentation will be via a purchase order.
I. **Leases**

Subject to competitive bidding analysis, a university may lease needed space from third parties. Because of the potential uniqueness of some leasing needs, a sole source procurement may be appropriate.

Property owners generally want to utilize their own lease forms. While the use of these forms is not necessarily impermissible, it will require legal review in that these documents commonly contain impermissible boilerplate language. A compromise to recommend is the attachment and incorporation of the landlord’s lease to the University’s blueback with the understanding that in the event of any conflict, the University’s terms and conditions will control.

Certain provisions must be stricken from leases in order to receive legal approval. Prohibited language includes, but is not limited to:

- Indemnification clauses
- Confession of judgment clauses
- Clauses disclaiming any warranty that the premises are fit for the purpose rented
- Any obligation for the university to purchase insurance
- Automatic renewals

(See also Section VIII for a further discussion of prohibited clauses.)

Leases must be forwarded to university legal counsel for review and signature. Moreover, lease agreements, as with other contracts, must contain a clause stating that the agreement is contingent upon approval of the OAG. Leases are blueback contracts and will require the approval of OAG and possibly OGC depending on the cost of any given term.

If State System/University property is requested for use by a third party (i.e. a non-university, non System entity) a license arrangement should be used instead so as not to convey any property rights or interest in Commonwealth property to a non-Commonwealth person or entity (see below). If a license is utilized, university legal counsel should be consulted and will be required to review and sign such agreements as will the OAG. For use that is associated with a specific event (i.e. concert, lecture, sporting event) a pre-approved facilities use agreement should suffice that traditionally does not require legal review provided the form itself has been reviewed and approved by university legal counsel. A license should be utilized for any use beyond that of a day or two event.

In the event the university is providing an exclusive license for use of Commonwealth property (a use that is limited to only one party), the nature of the exclusive use requires that the opportunity be advertised and bid.
A sample lease that universities may use for leasing private property is found in Appendix P of the manual and is available electronically at:
http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=2024

J. **Licenses**

A license conveys to the user a right of limited access and use as defined by the owner of the property. Generally, a license is not transferable. Licenses are commonly used for a number of purposes including the placement of antennas on university buildings and access of facilities for classroom use. A sample license is found in Appendix Q of this manual and is available electronically at:

http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=2025
SECTION III. PROHIBITED CONTRACTS:

A. Employee-Employer Relationship

While contracts may be entered into for the Professional Services of consultants, contracts cannot be used to create an employee-employer relationship. Employees must be placed on the university’s payroll in appropriate classifications. Failure to do so leads to serious legal problems regarding such matters as withholding state, federal and local income taxes, workers compensation, unemployment compensation, the Commonwealth’s obligation to defend suits brought against employees, etc. Also, there are compliance issues in regards to collective bargaining agreements.

Several factors are considered to determine when a contact constitutes the creation of an independent contractor relationship or an employer-employee relationship. The presence of the following factors, in one combination or another, tends to indicate an employee-employer relationship:

1. The individual is paid on a per diem basis, rather than being paid a flat fee.
2. Work is performed during regularly scheduled work hours.
3. Work is performed under supervision of a university employee who controls the manner in which the work is done.
4. The university furnishes the individual’s equipment or supplies.
5. The individual performs duties as assigned by the university on a task-by-task basis.
6. The individual contracts regularly throughout the fiscal year with the university to provide the same services over and over again.
7. The duties are performed on university-owned or university-leased premises.
8. The university has the right to discharge the person by giving advance written notice.
9. The individual performs the same duties as one holding a position in university service.

Each contract for services to be performed must be reviewed and a determination made as to the status of the individual to be engaged or services to be performed under a contract. These individuals under contract must be deemed independent contractors for the contract to be approved.
B. Contracts for the Purchase of Insurance

The university itself does not have the statutory authority to purchase insurance. The Department of General Services (DGS), through the Bureau of Risk and Insurance Management (BRIM), has the authority to administer the Commonwealth Self-Insurance Program. If the contractor requests the university to purchase casualty, loss or liability insurance for the contractor’s benefit, it cannot be done. As an alternative, contractors may provide or supplement their own insurance and factor it into the cost of their bid submission for the proposed contract.

However, there are limited exceptions to this provision. Collision insurance may be procured by the university when a vehicle is rented for a university purpose. It is BRIM’s position that it will not cover property damages to or resulting from the operation of a rented vehicle. BRIM advises the purchasing of insurance as a part of any car rental agreement.

Furthermore, BRIM does carry specialized insurance policies that universities can purchase in unique circumstances. For example, BRIM provides insurance for fine works of art.

Because the University cannot purchase insurance and the Commonwealth is self-insured, it cannot provide a traditional “certificate of insurance” which is available to non-self insured entities. In the event that a request for proof of insurance is requested by a contracting party, a response letter as outlined in Appendix Z may be a sufficient explanation of the University’s status.

C. Attorney Services

Contracts with attorneys for legal services require approval from the OGC through the Office of Chief Counsel for the State System and cannot be entered into at the university level. No agency can independently retain an attorney for any legal issue, nor a non-attorney who engages in work substantially similar to that of work engaged in by legal counsel (i.e., legal action for the collection of debts, representation at real estate closings, litigation and legal advice of any kind). Any questions as to this issue should be immediately directed to university legal counsel.

D. Reciprocal Limitations Act

In the event that the lowest responsive bidder is an out-of-state vendor and the contract in question is in excess of $10,000.00 for construction or supplies, the university should consult the

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3 In regards to real estate transactions, title companies are usually used for closings and, although the title company will have attorneys inside the firm or at their disposal, the attorney does not attend the closing. Title company
Reciprocal Limitations Act. This Act limits the Commonwealth’s procurement with vendors from certain states or may require the implementation of a surcharge on an out-of-state vendor’s bid. This practice is necessitated when the vendor’s resident state limits procurement opportunities for businesses located within the Commonwealth. Information on the Act is found in an electronic format at:
http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/gspur89.pdf

Prior to awarding a contract or rejecting a bid which involves an out-of-state entity, the university should consult with university legal counsel.

E. After-the-Fact Contracts

After-the-fact contracts occur when a university attempts to process a contract in a non-emergency situation after goods and services have been delivered. This is impermissible. University legal counsel, OAG and OGC will not sign any after the fact contracts or contracts where services have commenced but are not yet completed. In such circumstances, Commonwealth monies can only be disbursed via a settlement agreement that requires the approval of the Chief Counsel and OAG or by having the contractor file an action with the Pennsylvania Board of Claims.

attorneys can do closings, as long as the SPC states that no legal services are being procured and no cost for legal services appear on the settlement sheet.
METHODS OF SOURCE SELECTION:

A. Generally
B. Invitation for Bids
C. Multi-Step Sealed Bidding
D. Competitive Sealed Proposals
E. Small Procurement
F. Multiple Awards
G. Professional Services
H. Contracts Under $1,500.00
I. Persons with Disabilities
J. Serial Contracts
K. Joint Purchasing
L. Electronic Auctioning

A. Generally

Unless authorized by law, all Commonwealth agency contracts under Act 57 are to be awarded by competitive sealed bidding, except as specifically provided in regards to:

- Competitive sealed proposals
- Competitive electronic auction bidding
- Small procurements (contracts under $10,000.00)
- Emergency procurement
- Multiple awards
- Competitive selection procedures for certain services
- Supplies manufactured and services performed by persons with disabilities
- Procurement of design professional services

B. Invitation for Bids/Competitive Sealed Bidding

An Invitation For Bids (IFB) consists of all documents used for the soliciting of bids. If the method of procurement is by an invitation to bid, the contract must be awarded to the lowest responsive, responsible bidder. There are no other considerations in determining the successful vendor. A responsible bidder is one that has submitted a responsive bid and possesses the capability to fully perform the contract requirements in all respects and has the integrity and reliability to assure good faith performance. A responsive bid is one that conforms in all material respects to the requirements and criteria advertised in the IFB.

In the competitive sealed bidding process, IFBs are to be issued and must contain:

- The procurement description with specifications.
- The terms and conditions of the future contractual relationship.
• All criteria to determine initial acceptability, including instructions and information for bidders (i.e., deadlines, security, inspection, descriptive literature, content of bids, etc.)

• Objectively measurable evaluation criteria (i.e., lifecycle costing, best value, discounts, warranty/customer issues). Only criteria set forth in the Invitation For Bids (IFB) may be used to determine the successful contractor.

Invitations to potential bidders are advertised by adequate public notice that allow an adequate time for response. Methods of public notice include:

• Publicly available electronic publication
• Pennsylvania Bulletin Advertisement
• Solicitation mailing list
• Publication in a newspaper of general circulation
• A properly established pre-qualification list
• As established by written State System of Higher Education policies

A sample IFB is found in Appendix B of this manual. A sample advertisement of an IFB is found in Appendix A of this manual.

The awarding of the contract must be made to the lowest, responsible, responsive bidder or all bids will be rejected within sixty (60) days of the bid opening. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible, responsive bidder. Within thirty (30) days of the bid opening, the University must return any required bid security to all but the lowest and next-to-lowest responsible bidders under consideration for the award of the contract.

Bids are to be sealed and not disclosed until the appointed time for public opening. Sealed bids are typically submitted in a sealed envelope to meet this requirement. Faxed bids or electronically submitted bids are discouraged because this submittal means typically does not have the ability to be confidential and closed until the bid opening.

With the ever-increasing improvements in technology, there is a movement to conduct the procurement process within a totally electronic format. At the present time, the only aspect of procurement that can be conducted via Internet is that of advertising the university’s general procurement needs or for a specific procurement opportunity. However, a university still needs to be sensitive in using electronic advertising for its contracts in that there may be a vast audience of small and disadvantaged or minority contractors who have yet to utilize this medium.
Bid information must accompany all contracts in excess of $10,000.00 for proof of procurement compliance when submitted to university legal counsel, as well as a statement as to the procurement method selected. This statement is nothing more than a sentence stating the basis for the procurement. Because the bid tabulation is on a separate page, the page must show the contract number and date of tabulation should it become separated from the contract. A bid tabulation sheet should be signed by the individual who opens and records the bids as well as by a witness to the process. A copy of a bid tabulation page is found in Appendix C of this manual.

When a contract is competitively bid and the lowest bidder is not selected, a written explanation should accompany the contract when sent to university legal counsel or it will be rejected.

The amount of the successful contractor’s bid should be the same as the contract amount.

All invitations for bids should contain a statement that the procurement may be canceled any time prior to the execution of the contract or any and all bids may be rejected when it is in the best interest of the Commonwealth. Bids may be rejected in part when specified in the procurement solicitation. It is important to note for record keeping purposes the reasons for the cancellation or rejection and to keep such information in the contract file for a minimum of three (3) years.

**All invitations for bids should contain clear criteria as to what the basis for the award will be and that criteria must be followed by the procurement officer or committee without alteration in its selection of the successful contractor. Deviating from these criteria may result in a successful bid protest.** (See Section XIII.A for a further discussion of bid protests.)

In determining the lowest responsive bidder, the university must examine the bids to determine their responsiveness to the requirements contained in the invitation to bid. A violation of the bid instructions may constitute grounds for disqualification and a university may reject a bid for such error.

There will be instances, however, where submitted bids contain errors. *Act 57* provides that a bidder (or authorized representative) may, by written notice or in person, modify or withdraw a bid only if its identity is made known and a receipt for the bid is signed prior to the time set for public bid opening.

Similarly, withdrawal of erroneous bids after the bid opening but before award shall be permitted by the written determination of the contracting officer. This shall be done when the bidder requests relief and presents credible evidence that the reason for the lower bid price was a *clerical* mistake rather than an error in judgment, and was due to an unintentional mathematical
error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the bid compilation. The contracting officer must receive the bidder’s request for relief and supporting evidence within a reasonable period of time after the bid opening.

If a bid is withdrawn, the contractor cannot supply any labor or materials or perform in any capacity under the contract unless the contractor has the expressed written approval of the contracting officer.

Universities may also waive defects in bid proposals, so long as they contain mere irregularities and the non-responsive bidder gains no competitive advantage. Such waivable irregularities include clerical and computation errors. Material or non-waivable defects include the submission of a certified check for less than the required amount, failure to sign the bid and failure to submit a bid bond in accordance with the rating specifications. Questions regarding specific instances of bid defects should be referred to your university legal counsel.

Pursuant to 62 Pa.C.S.A. §107(g), all IFBs for the procurement of supplies exceeding a small procurement must include:

- a list of all the states that have been found by the department to have applied a preference favoring in-state supplies, bidders or offerors and the amount of the preference as noted within the Reciprocal Limitations Act.
- a list of all states that have been found by the department to have applied a preference for in-state bidders and the amount of the preference.
- a list of all states that apply a prohibition against certain supplies and shall inform potential bidders that they are prohibited from using supplies from those states. If a bid discloses that the bidder is offering supplies from a state which prohibits the use of out-of-state supplies, the bid shall be rejected.

Information pertaining to these preferences can be located at:
http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/gspur89.pdf

C. Multi-Step Sealed Bidding

Multi-step sealed bidding is a type of competitive sealed bidding. It is a two-step process to be utilized when the university cannot develop a procurement description sufficient enough to elicit bid information.

When it is considered impractical for the university to initially develop a clear and concise procurement description to support an award based on price, an IFB may be issued requesting the submission of an unpriced bid based on an established criteria set by the
university. Once these submissions have been reviewed and a pool of candidates is comprised based on the responsiveness of the submissions, an IFB can be sent to those successful candidates requesting bids.

D. Competitive Sealed Proposals

Competitive sealed proposals are also referred to as “Requests for Proposals” (RFP). This method of procurement is typically used when the contracting officer determines that competitive sealed bidding is neither practical nor advantageous to the Commonwealth. Commonly, this method is used when flexibility is desired in the proposed terms of the supplies or services needed in the university’s proposal. The contracting officer should reduce its determination and the rationale for utilizing this procurement option to writing. A sample RFP is found in Appendix F of this manual. A sample advertisement of an RFP is found in Appendix E of this manual.

Proposals will be solicited through an RFP by public notice as in the case of competitive sealed bidding outlined in Subsection A above. The RFP consists of all documents used for the solicitation of proposals. The request itself must establish the criteria used to evaluate the proposals, the time and date for the receipt of such proposals, and the format in which the proposals are to be offered. Proposals should always be opened in a way to avoid the disclosure of the contents to competing offerors. All records of the process must be maintained as reflected in Section XI of this manual as to record keeping.

All requests for proposals should contain clear criteria as to what the basis for the award will be and that criteria must be followed by the procurement officer or committee without alteration in its selection of the successful contractor. Deviating from these criteria may result in a successful bid protest.

Pursuant to 62 Pa.C.S.A. §107(g), all RFPs for the procurement of supplies exceeding a small procurements must include:

- a list of all the states that have been found by the department to have applied a preference favoring in-state supplies, bidders or offerors and the amount of the preference as noted within the Reciprocal Limitations Act.
- a list of all states that have been found by the department to have applied a preference for in-state bidders and the amount of the preference.
- a list of all states that apply a prohibition against certain supplies and shall inform potential bidders they are prohibited from using supplies from those states. If a bid
discloses the bidder is offering supplies from a state which prohibits the use of out-of-state supplies, the bid shall be rejected.

Information pertaining to these preferences can be located at:

http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/gspur89.pdf

When using RFPs, the university may hold discussions and negotiations with responsible offerors who submit responsive proposals for purposes of clarification and of obtaining best and final offers. Responsible offerors are those capable in all respects to fully perform the contract requirements and the integrity and reliability which will assure good faith performance. Responsive proposals are those that conform in all material respects to the RFP. ALL offerors must be given fair and equal treatment with respect to discussion and revision of proposals. Also, there must be NO DISCLOSURE of any information received from other proposals.

The responsible offeror whose proposal is determined in writing to be the most advantageous to the university, taking into consideration price and all evaluation factors, shall be selected for contract negotiation. After the selection process is completed, the university shall negotiate a final contract which includes the key terms and conditions of the proposal.

Proposal scoring sheets must accompany all contracts in excess of $10,000.00 for proof of procurement compliance when submitted to university legal counsel, as well as a statement as to why this procurement method was selected. This statement is nothing more than a sentence stating the basis for the procurement. Because the scoring sheet is a separate page, the page must show the contract number and date of tabulation should it become separated from the contract. A proposal scoring sheet should be signed by the individual who evaluates and records the scores as well as by a witness to the process. A copy of a proposal scoring sheet is found in Appendix G of this manual.

E. Small Procurement

Small procurements may be made without the necessity of formal bidding if the total value of the contract does not exceed ten thousand dollars ($10,000.00). Contracting authority for the State System is not only within Act 57, but also within the recent amendments to the State System’s enabling statute, Act 188. However, procurement requirements must not be artificially divided so as to constitute multiple small procurements in order to avoid formal competitive bidding. (See subsection J on Serial Contracting below.)

Although no formal bidding is required, universities must contemplate prudent business practices and should solicit at least three (3) telephone bids, when possible, with at least one (1) such potential contractor being a woman-based or minority-based entity. It should be the
university’s practice that, despite no obligation for formal bidding, certain cases for economic benefit may dictate that formal bidding be utilized or university policy may require a lesser threshold for bidding than Act 57. Regardless, the selected contractor should not only be the lowest responsive bidder, but a responsible one as well.

The selected contractors should have their bid confirmed in writing in a subsequent SPC containing the specifics of the procurement completed, as noted in this section of the manual.

Contracts funded by federal funds or private donations are exempt from competitive bidding, regardless of amount; but if any federal bidding requirements apply, they must be followed. Contracts funded by state or local government funds must be competitively bid and if federal funds flow through a branch of state government, bidding is required.

F. Multiple Awards

Procurement in certain restrictive situations can be obtained from multiple contractors. However, there are five (5) criterions established by the Act, one (1) or more of which must be met before utilizing this method of procurement:

1. It is administratively or economically impractical to develop or modify specifications for a myriad of related supplies because of rapid technological changes.

2. The subjective nature in the use of certain supplies and the fact that recognizing this need creates a more efficient use of the item.

3. It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature of the product lines.

4. There is a need for compatibility with existing systems.

5. The agency should select the contractor to furnish the supply, service or construction based upon best value or return on investment.

The solicitation process used for this procurement method would be either an IFB or an RFP, subject to public notice and detailed as to the selection process. Bids are opened as in the case of competitive sealed bids. Proposals must be received in a timely manner, submitted in the predetermined format and opened in a way as to avoid disclosure to competitors.

Contracts can be awarded in one (1) of three (3) ways:

1. Awards may be made to the lowest responsible and responsive bidder or offeror for each designated manufacturer.
2. Awards may be made to the two (2) or three (3) lowest responsible and responsive bidders or offerors for each designated manufacturer.

3. Awards may be made to all responsible and responsive bidders or offerors.

The university shall have the discretion to select the contractor to furnish the supply, service or construction based upon best value or return on investment.

G. **Professional Services**

The services of accountants, clergy, physicians, dentists and other professional services (*with the exception of lawyers*), which are not performed by Commonwealth employees, shall be procured by a defined procedure. Universities should establish a consistent process for obtaining these professional services. This is not applicable if the service is authorized as a small procurement, sole source procurement, or emergency procurement.

Persons engaged in providing professional services may submit their qualifications and interest in providing these services to the university contracting officer. When professional services are needed on a recurring basis, the contracting officer can solicit periodic statements of qualification in a prescribed, uniform format. Professionals should and can amend their statement of qualifications when appropriate, based on professional changes such as experience and education.

Individuals are selected as a result of an RFP issued with an adequate notice for responses. The RFP should state clearly the described services, the background information required as to each professional desiring consideration, as well as why their background is important to meeting the RFP’s needs. Discussions are permissible between the contracting officer with an offeror who has submitted a proposal **BUT only for the purpose to determine qualification issues. Information on other candidates shall not be disclosed during these discussions.**

The professional ultimately selected should be the best qualified, as determined by the criteria established by the RFP. The award should be made in writing to the person selected. Once the selection process is completed, fair and reasonable compensation is determined by negotiation.

If for any reason the issue of compensation cannot be resolved, the university may terminate negotiations with the first candidate and commence negotiations with the person next best qualified. All negotiations, whether to be commenced or to be terminated, should be in writing.
H. **Contracts Under $1,500.00**

Refer to Section I (B) above.

I. **Persons with Disabilities**

Contracts involving supplies manufactured by, or services provided by, persons with disabilities may be exempt from the requirement of competitive bidding. However, in order to be considered exempt as a “supply manufactured by, or a service performed by, a person with disabilities,” at least 75% of the personnel directly utilized in the labor force must be visually impaired, mentally retarded or physically disabled. Additionally, at least 75% of the proceeds from any contract involving a Commonwealth agency must be directly remitted to the agency for persons with disabilities to cover payment of wages and salaries to such individuals and to cover the costs incurred in their manufacturing of the product.

DGS has the authority to establish a fair market price of supplies or services provided by persons with disabilities that are offered for sale to agencies of the Commonwealth by an agency for persons with disabilities. The agency for persons with disabilities must be a nonprofit, charitable organization that is incorporated under the laws of the Commonwealth and approved by DGS. The entity that most frequently deals with the State System is the Pennsylvania Institute for the Blind and Handicapped (PIBH).

Heads of university purchasing departments are obligated to annually discuss its needs, which can be procured through an agency for persons with disabilities, and review the DGS master list. All supplies and services must meet the applicable specifications of DGS or the State System, and the agency must be the lowest bidder before the obligation exists to utilize this procurement source. An obligation does exist for the agency to be considered for supplies and services, if such can be provided for the determined contractual need and the agency meets the statutory definitions as noted within Act 57. However, all requests for consideration by the agency must be timely made to the university.

When an agency for persons with disabilities can provide needed supplies or services to a university, information must be forwarded to DGS so that they may determine the fair market value. If that established fair market value is acceptable to the agency for persons with disabilities, the contract is to be awarded to the agency and no formal bidding is required.

In order to better assist DGS in assessing the qualifications of the agency to be exempt from bidding requirements and to determine whether the agency can meet the university's contractual needs, a proposed cover letter and form can be found at Appendix Y for your review.
and use. The purpose of the form is two-fold. First, it is to assist DGS in the determination of whether the agency is qualified and capable of providing the supplies/services under the statutory criteria. Secondly, it assists DGS in arriving at a fair market value by determining the nature of the supplies/services to be provided. If the returned information indicates that the agency is not able to respond to the bid proposal for the services or goods or does not meet the various statutory qualifications, the university may reject the entity as a non-responsive bidder.

**HOWEVER, ANY REJECTION SHOULD BE PRECEDED BY DISCUSSION WITH UNIVERSITY LEGAL COUNSEL.**

Even if a service is not on the DGS master list, it is best to notify a qualified agency of any proposal in which it might be interested prior to the solicitation of bids. If bidding takes place first and a qualified agency exercises its rights to provide the supplies and/or services at a “fair market price,” this sometimes tends to offend other bidders.

The qualified agency must accept the fair market price calculated by DGS. If the qualified agency rejects the fair market price or should the agency be non-responsive or untimely to the request for information as outlined in the above certification form, the university should obtain bids. The qualified agency can be treated just like any other potential vendor under those circumstances.

**J. Serial Contracts**

A serial contract is one of a series of separate contracts, each for the same kind of goods and/or services, which can have the effect of improperly avoiding the one thousand five hundred dollar ($1,500.00) limit on certain types of contracts which would not otherwise require legal review, or the ten thousand dollar ($10,000.00) limit on contracts which do not require bidding. If services from a single contractor within a fiscal year will obviously add up to more than ten thousand dollars ($10,000.00), writing several lower individual contracts to avoid bidding is illegal. Similarly, serial contracts may not be written to avoid legal review.

**K. Joint Purchasing**

Two (2) or more universities may jointly purchase and may put provisions in their contracts that specifically allow other State System universities to make purchases using purchase orders off of the contract at the rates and prices established within the contract. Pursuant to Act 57, joint procurement or “cooperative purchasing” may also occur between a university and a political subdivision, public authority, educational, health or other institution.
Initially, at least, purchasing agents should review joint purchasing agreements in advance with university legal counsel.

System-wide joint purchases are to be submitted to the Office of University Legal Counsel, which will forward the document to the Office of Chief Counsel for review and signature. When approved by the Office of Chief Counsel, the document will be executed by the Vice Chancellor for Administration and Finance. These agreements are not to be executed by university officials. After all necessary legal (and any other) approvals of a master contract (the approved joint purchasing agreement), purchase orders made under the master contract do not need to be submitted for review by legal counsel. The terms and conditions of purchase orders used to make purchases off of master contracts must conform exactly to the terms and conditions of the master contract, without modification and master contracts must include the following provisions:

*Contractor hereby agrees that no individual purchase order by a university under this contract may revise, alter or change the terms and conditions of this contract in any way.*

If there is a commitment from another university to make a specific dollar amount of purchases, an authorized employee of the other university must also sign the contract. If there is no agreement to make any specific or minimum amount of purchases, the following words should be stated in the contract:

*No guarantee is made in this contract that any university mentioned in this contract will purchase any definitive amount of goods or services from the contractor.*

There also exist several co-ops that offer volume discounts for those who wish to write purchase order against their existing contracts. Before a University may execute a purchase order against the master contract of another public procurement entity, the following information must be sent to university legal counsel to ensure that the purchase is in compliance with Act 57:

1) Documentation as to the entity to ensure it meets the definition of a “public procurement unit.”

2) A copy of the RFP that was issued for the master contract against which the University will issue a purchase order including method of public advertisement.

3) A copy of the master contract.

Upon review of the documentation above, university legal counsel will determine if this purchasing opportunity complies with all aspects of Act 57.
L. **Electronic Auctioning**

Electronic auctioning as a method of procurement can only be utilized if the purchasing agency determines in writing that use of competitive electronic auction bidding is in the best interests of the Commonwealth. A contract for supplies or services, but not construction, may be entered into by competitive electronic auction bidding. At the present time, no such writing exists in the State System determining its use.

However, in the event that electronic auctioning is permitted, an invitation for bids is issued and includes a procurement description and all contractual terms, whenever practical, and conditions applicable to the procurement, including a notice that bids will be received in an electronic auction manner. Public notice of the invitation for bids shall be given in the same manner as that of competitive sealed bidding.

Bids shall be accepted electronically at the time and in the manner designated in the invitation for bids. During the auction, a bidder's price shall be disclosed to other bidders. Bidders shall have the opportunity to reduce their bid prices during the auction. At the conclusion of the auction, the record of the bid prices received and the name of each bidder shall be open to public inspection.

After the auction period has terminated, withdrawal of bids shall be permitted as provided in the same manner as outlined under competitive sealed bids above.

The contract shall be awarded within sixty (60) days of the auction by written notice to the lowest responsible bidder, or all bids shall be rejected. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible bidder.
SECTION V. REQUIRED PROVISIONS & ATTACHMENTS FOR SPCs & BLUEBACK CONTRACTS:

In order to meet the approval of university legal counsel, as well as that of the OAG and OGC, every SPC, and blueback contract must contain certain provisions as Standard Terms and Conditions. As a result of Act 57, these requirements have been increased to several pages and the language is preapproved by the OAG and the OGC. No changes can be made to this language unless specifically approved by the Office of University Legal Counsel. The various terms and conditions are noted within Appendix W of this manual. They can be obtained electronically at:

http://www.dgs.state.pa.us/dgs/lib/dgs/forms/comod/procurementforms/std274.doc

In the case of bluebacks, which are specifically crafted for a particular contractual relationship, some of the nonessential terms may be eliminated, but the language of any term or condition may not be changed absent specific approval by the Office of University Legal Counsel and, in some cases, the OAG.

As a general rule, there are some Standard Terms and Conditions that must appear in every blueback contract in the exact language as outlined below, without exception or alteration, absent the approval of university legal counsel. They are as follows:

**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. 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. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

**OFFSET:** 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.
TERMINATION OF AGREEMENT: The Commonwealth has the right to terminate this Contract 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 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. 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 this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

c. TERMINATION FOR CAUSE: The Commonwealth shall have the right to terminate the Contract for Contractor default as outlined within this agreement, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause, as specified in this Contract, or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth’s discretion, the Contract shall be deemed to have been terminated for convenience as noted in subparagraph (a) above.

CONTRACTOR RESPONSIBILITY:

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

c. The Contractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the
Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (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 investigation of the Contractor’s compliance with the terms of this or any other agreement between the Contractor and the Commonwealth, which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor’s suspension or debarment.

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

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

All Contractors (if a corporate entity both signatories to this Contract must execute) with the State System shall sign the certification below:

**CONTRACTOR INTEGRITY:**

a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.

1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4) **Financial interest** means:
   a) Ownership of more than a five (5) percent interest in any business; or 
   b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

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

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

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official’s agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor’s integrity or responsibility, as those terms are defined by the Commonwealth’s statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor’s business or financial records, documents or files of any type or form which refers to or concerns the Contract. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the Contract unless otherwise provided by law.

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

**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.

**NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE:** During the term of the Contract, the Contractor agrees as follows:
a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the Contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services’ Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
SECTION VI. CONTRACT PREPARATION: SPCs & BLUEBACK CONTRACTS:

A. Contracting with Individuals versus Corporate Contractors
B. Preparing Service Purchase Contracts
C. Preparing Blueback Contracts
D. Preparing an Individually Drafted Blueback Contract from Scratch
E. Preparing a Contract where the University is Performing Services and Receiving Monies
F. Travel Expenses
G. Incorporating Contractors’ Forms, Specifications, Bonds, and Other Items into SPC and Bluebacks
H. Performance or “Booking” Contracts

A. Contracts with Individuals versus Corporate Contractors

One of the more basic and important pieces of information regarding any contract is the clear identification of the parties. It is critical that you understand with whom you are doing business.

Contracts are frequently made with John Smith personally, a contractor who operates a solely-owned business under a name different from that of his own. If a business is in the actual name of a person (i.e., John Smith), then John Smith is the party which you contract with because he is a legally recognized person. If you are contracting with Data Industries, Inc., a bona fide corporation, you are also contracting with a legally recognized “person.” Under the law, corporations are “persons,” and thus as a legal entity, may be treated like an individual “person.”

Complexities arise when someone is doing business in a partnership, or as an individual but under a name other than his or her own and not as an incorporated entity, commonly referred to as a “fictitious name.” An example would be “Don’s Sporting Goods.” Under the law, this is not a recognized “person,” and does not have the ability to enter into a contract and cannot be a defendant in a lawsuit. It would be as if the university was suing someone who does not exist. The legal “person” who is responsible and who does exist is the owner. Therefore, when contracting with a partnership or individual doing business under a fictitious name, always name the contractor/owner/legal “person” and the fictitious name (i.e., John Smith, d/b/a Don’s Sporting Goods or John Smith t/a Don’s Sporting Goods).⁴

⁴ D/b/a is a legal abbreviation for “doing business as.” T/a is a legal abbreviation for “trading as.”
Also, when contracting with a corporation, the contract must be in the official corporate name, and not a division, department, etc. For example, “ABC, Inc., by and through its XYZ Division.”

B. Preparing Service Purchase Contracts

Service Purchase Contracts (Commonwealth Form STD-278P, known as an SPC) may be used for the purchase of goods and services. Some of the points in this section, as specifically noted, will apply to all contracts. Please note that common errors which result in the return of a contract by university legal counsel will be specifically highlighted at the end of various passages. For clarification of the following numbered points, please refer to the sample SPC in Appendix S which is numbered to correlate to the instructions below:

1. In the “Issuing Office” section, always show the Pennsylvania State System of Higher Education, the name of the university, and its address.

2. In the ‘Provide Service and Bill To’ section, provide the University’s name and address. If the project is for a specific program or grant, then also note that in the address (e.g., Center for Urban Development). This helps define how a contract fits into the university’s mission. Fully complete the box to always include the university’s contact person, telephone number and fax number. This information may be critical to ensure that the proper individual is contacted in the event of a contract dispute.

3. In the ‘SP,’ assign a tracking number. If it is a renewal or an amendment, maintain the number of the original contract and add a suffix to the number indicating the number of renewals (SP#98503-3R for third renewal) or amendments (SP#98503-2A for second amendment).

4. In the ‘Contractor’s Name and Address’ section, show the contractor’s correct legal name and address. If the contractor is a corporation or partnership, then fill in the name of the corporation or partnership, not the name of your contact person at the partnership or corporation. Note the contact person in the space provided. Do not use post office boxes in this section, unless elsewhere in the contract you state the contractor’s actual address. You may agree in the contract to send all correspondence to the post office box.

The contractor’s full name is to be used. It must be the same throughout the contract and the same as on any license or Commonwealth corporate registration, unless any deviations are satisfactorily explained. The OAG has often rejected mere assertions by university personnel that the contractor has changed names.
If the contractor is not a corporation or partnership, but is an individual “doing business” under a fictitious name, then the name of the person with whom the university is doing business must be stated in this section. For example: “John Jones d/b/a Acme Cleaning Company, 1122 7th Avenue, Wexford, PA 15090.” The “d/b/a” means “doing business as.” Another similar term is t/a (“trading as”).

Also, fully complete the box to always include the contractor’s contact person, telephone number and fax number. This information may be critical to ensure that the proper individual is contacted in the event of a contract dispute.

**COMMON ERROR:**

**IN THE CASE OF A CHANGE OF NAME BETWEEN RENEWALS AND AMENDMENTS, A NOVATION SHOULD BE PREPARED BY THE UNIVERSITY THAT CONTAINS OFFICIAL DOCUMENTATION EVIDENCING THE CHANGE OF NAME. A LETTER FROM THE CONTRACTOR ALONE IS INSUFFICIENT. A NOVATION IS EXECUTED BY ALL PARTIES PRIOR TO SUBMISSION TO UNIVERSITY LEGAL COUNSEL FOR SIGNATURE AND FORWARDING TO THE OAG. SEE APPENDIX X FOR A SAMPLE NOVATION.**

**AVOID HANDWRITTEN INSERTIONS OF INFORMATION. ANYTHING HANDWRITTEN SHOULD BE INITIALED BY ALL PARTIES AND BY THE SAME INDIVIDUALS WHO EXECUTED THE CONTRACT.**

5. In the “License No.” section, include Public Utilities Commission numbers for transportation services, Department of Environmental Protection and Environmental Protection Agency numbers for pesticide and refuse contracts, asbestos removal and other numbers for licensed services. The contractor’s social security number or federal identification number must be shown for all contractors, including those that are non-profit organizations. Always fully complete the “Federal ID No. or Social Security No.” section with the proper information. In the event that the contract is with a foreign corporation (and such is permitted under Pennsylvania and Federal law) and the entity does not have a federal identification number, the section should be left blank with a short explanation on the transmittal sheet.

6. The “Effective Date” block is to be left blank. This information will be stamped on the contract by the Office of University Legal Counsel when it is approved and returned from the OAG. The effective date will be the date of the approval memorandum from the Attorney General.

**COMMON ERROR:**

IT IS A GENERAL CONTRACTING PRINCIPLE THAT NO INFORMATION SHOULD BE INSERTED INTO A CONTRACT AFTER THE PARTIES HAVE EXECUTED IT. HOWEVER, THE PROCUREMENT CODE NECESSITATES THE INSERTION OF THE EFFECTIVE DATE AFTER EXECUTION BY THE OFFICE OF
UNIVERSITY LEGAL COUNSEL AND/OR OAG. IN ORDER TO AVOID CONCERNS OF FRAUD OR TAMPERING WITH A CONTRACT POST-EXECUTION, YOUR INSTRUCTIONS SHOULD FULLY ADVISE ALL CONTRACTORS THAT THE EFFECTIVE DATE WILL BE INSERTED INTO THE CONTRACT AFTER IT IS EXECUTED AND THE EXECUTING OF THE SPC IS THE CONTRACTOR’S IMPLIED CONSENT THAT THIS IS PERMISSIBLE.

7. The “Expiration Date” must be inserted prior to submission for review. This is the completion date of services. It is also the date that terminates the contract. **No contractual relationship exists between the university and the contractor after the expiration date unless there is an amendment, or if reserved in the original contract, or a subsequent renewal which is effectuated prior to the date of expiration.**

The term of a contract, that is the number of years or other length of time it is effective, including the maximum total length of all renewals, must be explicitly stated, **AND MAY NOT EXCEED FIVE (5) YEARS WITHOUT THE EXPRESS WRITTEN APPROVAL OF CHIEF COUNSEL.** A five (5) year contract cannot be renewed without rebidding, or in the case of small procurement, execution of a new contract. A one (1) year contract can be renewed for a total of four (4) additional years. The sum of the number of years in the term of any contract and all of its renewals (without rebidding or a new contract) cannot exceed five (5) years.

The term of the contract and conditions of renewals or extension, if any, must be included in the solicitation.

**COMMON ERROR:**

BE CAREFUL THAT YOUR EXPIRATION DATE IS NOT INCONSISTENT WITH ANY DATES PROVIDED IN THE SPECIFIED SERVICES PORTION OF THE CONTRACT.

A CONTRACT CAN EXCEED FIVE (5) YEARS ONLY WITH THE EXPRESSED PERMISSION OF THE CHIEF COUNSEL.

8. In the “Specified Services” section, give a complete and explicit description of the services or equipment to be provided. In the case of services, target dates, products delivered for each task, where work is to be done, and work hours to be devoted to each task must be set forth. This is the part of the contract against which the contractor’s performance is measured, so particular care must be taken to protect the university’s interests. The description must be explicit enough to be enforceable in the event of a dispute. If additional space is required, staple a separate sheet of paper to the form and state on the face of the SPC that the contract includes attached pages, which detail the services to be performed.

The justification and need for obtaining these services must be clear as a result of the explanation given. State why the service is required. It is
insufficient to state: “To keep above equipment in good working order.” What is required is an explanation of why the university wants or needs the service. (What is the equipment needed for and why is it that the university cannot maintain it itself?) Justification for such a contract might be that the “university lacks employees (or perhaps sufficient employees) with the skills to maintain and repair highly technical equipment used to create student I.D. cards.” Any contract for purchase, rental, or maintenance of equipment should contain a brief justification stating the use to which the equipment will be put.

For the contracts covering rental or servicing of equipment, enter in the “Specified Services” section, or on a separate attachment, an identification of the equipment including, if available, model and serial numbers and location.

Also specify within this section the procurement method selected and the basis for utilizing that method. Many times a simple statement such as “This is a procurement of $10,000.00 or less and therefore no bidding is required” or “The procurement method for this contract was competitive sealed bids in that such was in the best economic interests of the university to obtain the best value for the expenditure required” is sufficient.

**COMMON ERROR:**

**ALL TERMS MUST BE CLEARLY DEFINED AND CONSISTENT THROUGHOUT THE AGREEMENT TO AVOID ANY CONFUSION SHOULD A MATTER BE BROUGHT BEFORE THE BOARD OF CLAIMS. THERE MUST BE A CLEAR UNDERSTANDING BY EACH PARTY AS TO EXPECTATIONS.**

9. When the contract is a **renewal** of an existing agreement, include the original SPC number in the “Specified Services” section and indicate whether the contract is a first-year, second-year, or third-year renewal. *(See Section II(F) for additional information about competitive bidding and renewal contracts.)*

**COMMON ERRORS:**

**NO CONTRACT MAY BE MODIFIED OR RENEWED AFTER ITS EXPIRATION DATE. PLEASE SET UP AN INTERNAL MECHANISM TO MONITOR CONTRACT EXPIRATION DATES. ONCE A CONTRACT HAS EXPIRED, IF WORK CONTINUES, SUCH WORK IS UNAUTHORIZED AND MAY NOT BE PAID ABSENT LITIGATION.**

**ATTACH THE ORIGINAL CONTRACT AND ALL RENEWALS AND AMENDMENTS WHEN A CONTRACT RENEWAL OR AMENDMENT IS SUBMITTED FOR REVIEW.**

**RENEWAL CONTRACTS MUST HAVE THE ORIGINAL SPC NUMBER WITH A SUFFIX TO INDICATE IT IS A RENEWAL *(i.e., 3095774R–03 FOR THIRD RENEWAL).*
10. If the contractor’s standard contract form adequately describes the services to be provided and any other terms and conditions of the agreement, in a manner that is not inconsistent with any of the Commonwealth’s standard terms, it is unnecessary to type this information onto the face of the SPC. Instead, attach the contractor’s form to the SPC and note in the block below the “Specified Services” section its incorporation as an attachment (i.e., Contractor’s Contract, Attachment “C”).

**COMMON ERRORS:**

ALL TERMS NOT ACCEPTABLE TO THE COMMONWEALTH MUST BE STRICKEN AND INITIALED. READ THE FINE PRINT OF ALL TERMS PROVIDED BY THE CONTRACTOR. COMMON UNACCEPTABLE LANGUAGE IS CONTAINED IN SECTION III OF THE MANUAL.

A BROAD “X” OVER INAPPLICABLE LANGUAGE MAY CREATE QUESTIONS AS TO WHAT IS EXCLUDED IN A CONTRACT. DRAW LINES THROUGH EACH AND EVERY INAPPLICABLE SENTENCE AND HAVE ALL PARTIES INITIAL THE MODIFICATION. INITIALING ALSO APPLIES TO ADDITIONS, EVEN IF THERE ARE NO MODIFICATIONS.

CLEARLY MARK, IDENTIFY AND INCORPORATE ADDITIONAL PROVISIONS, RIDERS OR ATTACHMENTS INCLUDING NUMBER OF PAGES ON THE FRONT OF THE SPC. MARK THE SPC NUMBER ON EACH ATTACHED PAGE.

INSURE THAT CONTRACT ATTACHMENTS ARE NOT MISNUMBERED OR MISMARKED.

11. In the “Contract Not to Exceed” section, show the maximum amount of money for which the university is committing to this contract. If the contract is in excess of $10,000, it also must contain the signature of an individual who will attest to fiscal responsibility.

12. In the “Quantity,” “Unit Price,” and “Total Price” sections, entries must clearly state the quantity and unit price, except for “flat rate” agreements where the cost may be shown in the “Total Price” section. Itemize prices and show the total price that the university will pay. Flat rate agreements are dangerous. Itemized rates make resolution of disputes simpler in cases where performance is incomplete or in the event that the contract must be terminated due to the Contractor’s default.

If the maximum amount of money to be expended is an estimated figure because the precise quantity of goods or services required is unknown, declare a fixed dollar amount and state, “Quantities estimated; invoicing shall be only for actual services provided” under the “Specified Services” section.

13. The contract must be signed by the president of the university or the president’s designee, before legal review, in the “Purchasing Agency Head
or Designee” section. If anyone signs in the wrong block (for example, if the contractor signs in the “Agency Head” block), just cross out the incorrect title and replace it with the correct one (in the example, you would cross out “Agency Head” and write in “Contractor”). Avoid putting arrows across the contract, if possible. Any one authorized representative of the contractor may sign a Service Purchase Contract for the contractor. The two-signature rule only applies to bluebacks. (See below.) The printed name and printed title of every person who signs any contract, SPC or blueback, should be placed underneath the signature.

**COMMON ERRORS:**

ALL CHANGES, WHETHER WRITTEN, WHITED-OUT, DELETED OR ADDED BY A SEPARATE PIECE OF PAPER MUST BE INITIALED BY ALL PARTIES.

EVERY SPC MANDATES THAT ALL PARTIES TO THE CONTRACT INDICATE A TITLE NEXT TO HIS/HER SIGNATURE. IF THE SIGNATURE IS NOT LEGIBLE, TYPE THE NAME OF THE PERSON UNDER THE SIGNATURE.

CONTRACTS MUST BE COMPLETELY EXECUTED AT THE UNIVERSITY LEVEL AND BY THE CONTRACTOR PRIOR TO FORWARDING TO UNIVERSITY LEGAL COUNSEL. BY SIGNING THE CONTRACT, COUNSEL IS ATTESTING TO ITS LEGALITY AND FORM, NOT AS A PARTY TO THE CONTRACT. THEREFORE, COUNSEL MUST BE THE LAST PERSON TO SIGN THE CONTRACT SO THAT NO SUBSEQUENT CHANGES CAN BE MADE AFTER LEGAL REVIEW. SHOULD THIS BE A PROBLEM, CONTACT UNIVERSITY LEGAL COUNSEL.

**WARNING:**

ONLY THE PRESIDENT OF THE UNIVERSITY AND ANY OTHER UNIVERSITY OFFICIAL SPECIFICALLY DELEGATED BY THE PRESIDENT IN WRITING AND FILED WITH THE OFFICE OF THE CHANCELLOR MAY SIGN A CONTRACT. NO PERSON SHOULD SIGN A CONTRACT ON BEHALF OF THE UNIVERSITY UNLESS THEY ARE SPECIFICALLY DELEGATED TO DO SO. A PERSON WITHOUT DELEGATION WHO SIGNS A CONTRACT WILL BE ACTING OUTSIDE THE SCOPE OF HIS OR HER EMPLOYMENT AND CAN BE HELD PERSONALLY LIABLE FOR OBLIGATIONS CREATED BY THE INAPPROPRIATE SIGNING OF THE CONTRACT. THE NAMES OF ALL PERSONS WITH SIGNATORY AUTHORITY MUST BE FILED WITH THE OFFICE OF THE CHANCELLOR BEFORE SUCH AUTHORITY IS RECOGNIZED BY UNIVERSITY LEGAL COUNSEL.

PURSUANT TO § 543 OF ACT 57, NO CONTRACT SHALL BE EFFECTIVE UNTIL EXECUTED BY ALL NECESSARY COMMONWEALTH OFFICIALS AS PROVIDED FOR BY LAW.

- Some attachments or preprinted Riders, have redundant signature lines on them. When the face of the SPC has
been signed, these lines are not required and a marking of n/a should be notated on each one. If superfluous signature lines exist, and are not marked as n/a, OGC has advised that the contract may be rejected. Such signature lines should be deleted. Blueback contracts also should not have signature lines on them but for those at the end of the document.

14. The “Comptroller’s Signature” is required on all contracts in excess of $10,000.00. This signature is an assurance that the contract is fiscally sound, and appropriate based on budgetary information, and that the funds required for the contract are available for payment. A comptroller who signs as such cannot also bind the contract on behalf of the university. These should be two separate individuals.

15. The title of the person who signs the contract on behalf of the contractor should always be included next to the signature.

- If the SPC is a multi-year contract, the contract costs are to be prorated among the fiscal years in question.

- Bidding information is to be attached to the SPC. It should be placed on a separate page, marked and attached. If bidding is not required for any specific reason, that information should be provided in the “Specified Services” space as being a contract exempt from bidding due to it being a small procurement and within prudent business practices, paid for by funds received by the university from direct federal or private sources, a sole source or emergency procurement, or another reason deemed appropriate after consultation with university legal counsel.

**COMMON ERROR:**

BIDDING INFORMATION MUST BE SUBMITTED WITH ANY SPC AND BLUEBACK CONTRACT UNLESS IT IS A SMALL PROCUREMENT OR A SOLE SOURCE CONTRACT. PLEASE DO NOT PUT THIS INFORMATION ON THE TRANSMITTAL SHEET.

- If the contract is an emergency contract or a sole source contract, necessary certifications must be submitted with the contract. See Appendices P and Q for certification forms. In the case of sole source procurement, the contract must be pre-approved by university legal counsel by submitting a sole source certification prior to entering into the contract.

**COMMON GENERAL ERRORS:**
IF A CONTRACT IS A SOLE SOURCE OR AN EMERGENCY CONTRACT, UNIVERSITY LEGAL COUNSEL WILL NOT APPROVE THE CONTRACT UNLESS THE PROPER CERTIFICATION IS ATTACHED AT THE TIME OF SUBMISSION. IN THE CASE OF A SOLE SOURCE CONTRACT, THE CERTIFICATION MUST BE SIGNED BY UNIVERSITY LEGAL COUNSEL PRIOR TO THE UNIVERSITY ENTERING INTO ANY CONTRACT.

AT NO TIME MAY A CONTRACT BE MODIFIED WITHOUT THE EXPRESS CONSENT OF BOTH PARTIES. MISSING PAPERWORK OR AMENDMENTS THAT ARE SUBSEQUENTLY ADDED, SHOULD BE APPROVED BY THE CONTRACTOR PRIOR TO SENDING THE CONTRACT TO UNIVERSITY LEGAL COUNSEL FOR SECOND REVIEW. ADDING TERMS AND CONDITIONS TO A CONTRACT AFTER IT IS SIGNED WITHOUT CONFERRING WITH ALL PARTIES IS AKIN TO FRAUD.

C. Preparing Blueback Contracts

In most instances, the contract officer will be able to use the form blueback contract found in Appendix K of this manual, with tailoring to fit the specific contractual need in question. An electronic version of this form is available at:

http://www.passhe.edu/content/?/office/counsel/procurement/procurement/templates&item=1985

At a minimum, the blueback contract must contain all the information required for an SPC. It will, however, be more detailed. Although not repeated here, many of the common errors noted in the preceding subsections are equally applicable to blueback contracts. Check to insure that you are not falling into any of those traps previously noted.

1. The **date** that is filled in on the blank in the first paragraph of a blueback contract must be prior to the date that services are to begin. Otherwise, the OAG will reject the contract. Understand that this is not the effective date but the **signature date**. The **effective date** will be stamped on the contract by university legal counsel when it is returned from the OAG.

2. The contract must have a **contract inquiry number** on the first page with the same number appearing on the transmittal form. The OAG has advised us that this is necessary due to the problems in locating, identifying and distinguishing contract documents. Each contract must have a new number. An amendment or renewal must have at least one digit or letter of the alphabet different from the original contract. It is not sufficient to number the contract “No. 1 to Contract No. 403010.” Instead, change the number of the amended or renewed contract as “403010-A1” or “403010-R1.”

3. **Two signatures** are required if the contractor is a corporation. This is a requirement of the OAG, which must be followed based on their interpretation of the Business Corporation Law of 1988. 15 Pa.C.S.A. § 1506(a). One of the signatures must be that of the president or vice president of the corporation. The second signature must be that of the secretary or treasurer. Similarly, a second signature of the assistant
secretary or assistant treasurer is also acceptable. However, a combination of signatures consisting of the president and vice president, or secretary and treasurer, would not be acceptable.

If the contractor is a small municipality, one of the signatures may be the mayor or president of the council, and the second signature should be the city clerk. With larger cities, if those two officers are unavailable, some evidence of authority should be sent with the contract. Specifically, a certified copy can be submitted of an ordinance from a City Council or Board of Commissioners authorizing the official or employee to sign the contract. A certified copy of a resolution by the governing body affirming an individual’s contracting authority would also be acceptable.

A certified resolution is also acceptable when dealing with a corporation. If a certified board resolution is submitted vesting contracting authority in one person, then one person may bind the contract.

4. The printed name and printed title of every person who signs any contract should be placed underneath the signature. Some preprinted riders, attachments or contractor’s submissions for inclusion in the contract, may have redundant signature lines on them. These lines are not required if the contract is signed and all attachments are referenced within the contract. Therefore, these additional signature lines should be deleted or marked n/a to avoid rejection.

5. Bluebacks must also include the mandatory provisions found in Section V of this manual but should contain all the applicable Standard Terms and Conditions that are attached to an SPC.

6. The specifications to the blueback contract are to be complete, explicit, and detailed. A description of each task, end products to be delivered for each task, and hours to be devoted to each task are to be included if pertinent. If the contractor has submitted a contract proposal but it is not sufficiently detailed, then the university is to negotiate a detailed set of specifications with the contractor. The result of these negotiations is to be typed up in the form of “Specifications of Work to be Performed.”

Merely attaching the IFB or RFP and the proposal can cause problems if any part of the proposal conflicts with the IFB's or RFP’s provisions, unless the terms of the contract clearly provide for the resolution of such conflicts. Differences between the IFB or RFP and the proposal that are not resolved by explicit language in the contract have a very high potential for causing disputes. It is far better, wherever the proposal deviates from the IFB or RFP, to explicitly state in the contract, the agreement of the parties as to how that situation will be handled.
D. Preparing an Individually Drafted Blueback Contract from Scratch

There are many types of contracts for which the forms included in the Appendices of this manual may not be appropriate or are not readily adaptable. When you encounter this type of situation, an original agreement must be drafted. If you are having any problems, do not hesitate to contact university legal counsel for guidance.

In drafting any agreement, there are essential elements that are to be contained in all contracts.

1. The contract must clearly and accurately identify the parties (i.e., corporation, fictitious name, individual). This is accomplished by stating at the outset of the contract as follows:

   This Agreement, dated this ____ day of ___________, 20___, is made by and between ____________ University of Pennsylvania of the State System of Higher Education, hereinafter called “__________ University” and Acme Corporation, ____________(insert the form of the entity i.e., partnership, sole proprietorship, corporation, etc.) ____________(Address), hereinafter called “Contractor”:

2. The signature date of the contract should be completed in its entirety before sending to university legal counsel.

3. The contract price and any quantities of goods or services to be provided must be specified.

4. If services or goods are to be provided, then the goods or services must be clearly described. Be clear as to the expectations of the university.

5. The dates relating to the commencement and completion of the contract are essential and should be specifically addressed. No contract should commence activity before the effective date as stamped by the Office of University Legal Counsel. If activity begins before that date, the parties are operating without the benefit of a contract and a submission to the Board of Claims will be inevitable for compensation to be paid to the vendor for services performed prior to the effective date.

6. Include a payment schedule specifying the amount and due date of each payment.

7. The contract must include all mandatory language for Commonwealth contracts as discussed in Section V of this manual.

8. The parties, including the proper number of parties with title identification, must sign the blueback.
If any tables, descriptions, inventories, drawings, pictures, etc., are to be attached to the contract, include a paragraph which identifies the documents and incorporates them into the contract by reference. Clearly mark all attachments to the contract.

In any contract, if there is a cost per unit of goods and services (pound, square foot, hourly rate, etc.), include a table of costs/unit so that in the event of early termination, a pro rata payment can be made without a dispute. Such tabulations will also be helpful if you amend or renew the contract without rebidding, for a modified amount of goods and/or services. If there is to be an objective escalation clause for a multi-year contract, that should also be defined.

E. Preparing a Contract where the University is Performing Services and Receiving Monies.

The discussion for this contracting scenario involves situations where the university is receiving monies with the expectation that it will be performing work on behalf of an entity, as opposed to expending Commonwealth monies which are specifically controlled by Act 57. The traditional roles are reversed and the university is now in the role of the vendor/contractor. Such work to be performed by the university could include, and not be limited to, research, polling, reports, seminars, educational instruction, etc. There should be a clear understanding as to what the entity expects for its money, and the university’s obligation in providing the service. In this scenario, the university itself is totally capable of fulfilling the obligations of the contract without the need for subcontracting. In the event that the services of a third party are needed to fulfill the requirements, and there exists no obligation under a grant or federal monies for the use of a particular subcontractor, subcontracting of services by the university with payment by the university should be accomplished in the traditional procurement manner as dictated by Act 57.

In order to meet the approval of university legal counsel, certain provisions must be contained in every contract where the university is receiving funds based on obligations it must perform. For ease of use, the Standard Terms and Conditions for such agreements have been reduced to one page, which can be attached and incorporated into any blueback provided by the paying party which delineates the obligations of the parties, amount to be paid, termination and term of contract amongst other provisions which will need to be specifically crafted to each situation. The terms to be attached and incorporated appear in Appendix R of this manual. No changes should be made to this language unless specifically approved by university legal counsel. In addition, should the paying party’s forms be used, the document should be
scrutinized to ensure that it contains no impermissible provisions and the one-page mandatory terms of the Commonwealth should be attached and incorporated into the contract.

In the event that the paying party provides no contract for the university’s execution, the university should craft a blueback contract that contains all the terms found in Appendix R, as well as all necessary terms that specifically address the parties’ mutual obligations (i.e., terms of payment, services to be provided, termination date).

The Standard Terms and Conditions are as follows:

1. **Liability**

   As an alternative to hold-harmless language that is sometimes inserted by other parties, the liability clause noted below is to be substituted. At a minimum, however, the liability clause is to be included in contracts of this nature as standard language. This clause acknowledges that each party has the right to pursue whatever remedies are available to them as provided by law. Because the law strictly prohibits certain litigation or the awarding of certain damages against the Commonwealth, the university is, for the most part, protected by constitutional and statutory authority in the form of sovereign immunity. No action should be taken by the University to compromise this protection by agreeing to alternate language without consulting with university legal counsel.

   **LIABILITY.** Neither of the parties shall assume any liabilities to each other. As to liability to each other or death to persons, or damages to property, the parties do not waive any defense as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth’s rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the university.

2. **Amendments**

   The purpose of memorializing the obligations of the parties in a written contract is to ensure that everyone has a clear understanding of their rights and responsibilities. Verbal agreements or promises undermine this legal relationship due to the fact that memories fade, miscommunication occurs or there are differing perceptions. In order to avoid this dilemma in the event of potential litigation, any changes to the written agreement should be in writing and in a form similar to the document contained in Appendix M of this manual. So that both parties understand the necessity of memorializing any changes in writing, the following language is to be in every contract:

   **AMENDMENTS.** This contract represents the complete agreement between the parties, superceding any other prior or contemporaneous written or oral
agreements. Any changes, corrections or additions to this contract shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change, correction, or addition.

3. **Jurisdiction and Applicable Law**

All contracts entered into by any Commonwealth agency must be interpreted and enforced within the Commonwealth courts and under the Commonwealth’s laws. There are no exceptions to this requirement unless the contract involves grant monies that originate from a federal entity. Because of federal supremacy over state law, federal law and jurisdiction would pre-empt the Commonwealth’s interest. In such cases, you should work closely with university legal counsel to resolve this issue.

The following standard language is to be included within the contract. In the event that a party will NOT agree to the laws and jurisdiction of Pennsylvania, then the agreement should remain silent as to the issue. At no time, should an agreement agree to the laws of another state.

**APPLICABLE LAW.** This contract shall be governed by, 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 Paying Party consents to the jurisdiction of any court or administrative tribunal 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 Paying Party agrees that any such court shall have personal jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

4. **Relationship of Parties**

When contracting with another entity, confusion may arise as to the legal independence of each entity. As a Commonwealth agency, the State System of Higher Education is afforded certain legal protection from suit and other statutory benefits (i.e., sovereign immunity). However, those protections do not extend to non-Commonwealth entities. So that no confusion exists as to the nature of the contractual relationship, clarification of each entity’s independence is important. The following language is to be included:

**INDEPENDENT CONTRACTOR.** In performing the services required by the contract, each party will act as an independent contractor and not as an employee or agent of the other party. The relationship of the parties to this contract to each other shall not be construed to constitute a partnership, joint venture or any other relationship, other than that of independent contractors.

5. **Conflict in Terms**

Because of the voluminous contents of large agreements that may be provided by the paying party, it is possible that impermissible language may not be seen and consequently not
stricken. In order to avoid giving effect to language that conflicts with the limited mandatory terms above, the following paragraph should appear in each contract:

**CONFLICT IN TERMS.** Should any portion of the agreement contain terms which conflict with those contained within this page, the terms contained on this page shall unequivocally control.

6. **Termination of Contract**

In the event of unforeseen circumstances, every contract that the university enters into must provide for its ability to cancel its obligations, either for the failure of paying party to fulfill its obligation or should the university find such a cancellation to be in the best interest of the Commonwealth. Therefore, the following paragraphs should appear in each contract:

**TERMINATION OF CONTRACT.** The University has the right to terminate the Contract for any of the following reasons. Termination shall be effective upon written notice to the Paying Party:

(a) **Termination for Convenience.** The University shall have the right to terminate the Contract for its convenience if it determines termination to be in its best interest. The University shall be paid for work satisfactorily completed prior to the effective date of the termination.

(b) **Termination for Cause.** The University shall have the right to terminate the Contract upon written notice for the Paying Party’s default as to any of the terms contained in the contract between the parties or by law. If it is later determined that the University erred in terminating the Contract for cause, then, at the University’s discretion, the Contract shall be deemed to have been terminated for convenience under subparagraph (a).

F. **Travel Expenses**

A contract should either state that the contractor is entitled to no additional payments for travel or that travel expenses will be reimbursed by the university if travel is involved in the performance of contracted services. If payment of travel expenses will be made, the contract should state that:

*Reimbursement will be made in accordance with the Commonwealth’s rules currently applicable to the university for travel expenses.*

Should the contractor desire, the current rules may be attached and incorporated into the contract. Any provision for payment of amounts or rates greater than provided by current Commonwealth rules must be justified in writing at the time of the submission of the contract for legal review, or better yet, prior to submission.
G. Incorporating Contractors’ Forms, Specifications, Bonds, and Other Items into SPC and Bluebacks

All attachments intended to be a part of the university’s contract with the contractor must be incorporated and referenced into the SPC or blueback and stapled to the contract. It is a very common situation for contractors to have standard forms (i.e., a standardized maintenance agreement) that they want the university to sign. Conversely, it is very common for the university to have various documents (i.e., specification from an IFB) that it wants to make a part of the contract as well. Under these circumstances, the documents in question must be “incorporated and referenced” into the SPC or blueback contract.

In order to incorporate an attachment and reference into an SPC, use the following standard provision:

*The following terms and conditions are attached hereto, incorporated herein and made a part of this Contract: Attachment _____ consisting of ____ pages.*

Because the SPC or blueback is the “entire agreement” between the parties, a court could rule that any unreferenced and/or unattached terms are not part of the university’s agreement with the contractor. This could subject the university to liability or make the contract unenforceable.

The present form for blueback contracts attempts not to rely on riders and attachments. Instead, to incorporate material that is already printed, simply number the printed materials consecutively as though they were part of the contract and insert them into it. Where this results in leaving a large blank space on the preceding page of the contract, it is good legal practice to type on that page, where the blueback text ends:

*THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.*

Then, of course, leave the rest of the page blank as indicated.

Consistency between the university’s blueback and SPC forms and the contractor’s forms is critical. It is the responsibility of the person preparing the contract and/or the person who signs the contract to review the contractor’s insertions or attachments carefully to make sure that the language in any and all attachments is 100% consistent with the “Terms and Conditions” attached to the SPC or contained within a blueback. Any inconsistencies must be rectified or university legal counsel will reject the contract unless a statement is included within the terms of
the contract that resolves all inconsistencies in favor of the Commonwealth’s terms and conditions. Modification of the contract can be accomplished as outlined in Section VII of this manual.

H. Performance or “Booking” Contracts

Many times performing artists will attempt to have the university sign a booking contract claiming that this is required in order to secure a performance date. First, no one should sign such a document if the university is a party unless they have written contract authority delegated by the President and filed in the Office of the Chancellor. **Anyone without contracting authority who signs such contracts is acting outside the scope of his/her authority and could be held personally responsible for any and all costs/damages associated with the contract.** Second, these booking contracts can be enforceable as **CONTRACTS AS IS.** No such contract is to be signed unless **ALL** of the Standard Terms and Conditions of the Commonwealth are attached and referenced in the contract and none of the terms in the contract are in contradiction to the Commonwealth’s language.

If these “booking” contracts are required, a sentence should be added stating that:

*Both parties acknowledge that this is not a final contract and that the final contract of the parties must contain all the Standard Terms and Conditions for Commonwealth contracts AND receive all the necessary legal approval as required by the Commonwealth including legal review. Until a contract is signed and approved by the Office of Attorney General, no enforceable contract exists between the parties.*
SECTION VII. SPECIAL RULES ON HOW TO MODIFY THE SPC OR BLUEBACK AFTER THE DOCUMENTS HAVE ALREADY BEEN PREPARED AND SIGNED BY THE CONTRACTOR:

A. Pre-Execution Errors or Other Changes in Terms

Sometimes after sending a contract to the contractor for signature, it becomes apparent there is a mistake in the contract or that a change is needed. It is necessary to correct the documentation in a legally appropriate manner by rewriting the contract, or amending the applicable portions. Any strikeouts, additions or changes must be initialed by all signatories within the contract. If two (2) people were necessary to sign for a corporate contractor, the same two (2) must initial any changes.

To make any changes in the content of the contract after the contractor has already signed it, the contract must be resubmitted to the contractor for review and approval. This second review should also be noted in the contract file as proof that the review of the alteration was made. Wording that is to be deleted from the contract may be crossed out and wording that is added may be inserted. Each person who originally signed must initial every amendment or deletion, whichever is applicable.

B. Additional Language

The addition of any pages to a contract should be noted and properly initialed on one of the original pages of the contract. This is best accomplished by referencing, identifying, and incorporating the additional pages in the descriptions either in the “Specified Services” in an SPC or an additional paragraph in a blueback contract.

C. Emergency Changes

The following procedure applies to emergency changes to a contract after it has been signed by the contractor, but before approval by university legal counsel. The following procedure is not intended to apply to any renewals handled by letter. This procedure also does not apply to amendments of a contract that have already been approved. This procedure only applies when there is not enough time to return a contract to the contractor for additions or deletions. Rules governing amendments are in Section IX.
In emergencies, with approval of university legal counsel, the contractor and the university can agree to modifications in a letter that is signed by both parties. Either party can prepare the text of the letter. The letter itself must be on the contractor’s letterhead and then the letter must be “incorporated by reference” into the initial contract with wording to that effect at the end of the letter. However, this “letter technique” is to be used only as a last resort; if time allows, it is preferable to type up a clean, revised, version of the contract and resubmit it to the contractor for signature.

The letter method, if used after approval by university legal counsel, should be signed by the proper person or persons (when two (2) signatures are required) and should state:

This letter shall be attached hereto, incorporated herein and deemed a modification of Contract No. _____ between ____________________ (contractor’s name) and ______________________ University of Pennsylvania. All other provisions of the referenced contract not affected by this letter shall remain in full force and effect.
SECTION VIII. PROHIBITED CONTRACT CLAUSES:

A. Assignment Clauses

B. Law of the Contract

C. Attorneys' Fees, Court Costs, Entry of Judgment

D. Indemnity and Hold-Harmless Clauses

E. Arbitration Clauses

F. Payment in Advance

G. Purchase of Insurance

The following is a list of clauses typically found in contractors’ forms that the OAG and university legal counsel will not accept. Contractors must agree to forgo or delete such clauses from their forms if they wish to do business with the university. Deletions, if necessary, are to be stricken and initialed by all parties prior to final submission.

A. Assignment Clauses

If the contractor’s form agreement gives the contractor a unilateral right to assign its obligations, the phrase, “however, no assignment may be made without the prior written consent of the university” should be added to the contractor’s form. It is acceptable for the university to add a further provision stating that “such permission shall not be unreasonably withheld.” The purpose of reserving the written consent of the university is to ensure that a contract is not assigned to a business that is suspended, debarred or has an unpaid financial obligation to the Commonwealth which would then be subjected to offset.

B. Law of the Contract

The laws of Pennsylvania must govern any Commonwealth contract or agreement. Thus, any provision which states that the contract will be construed under the laws of some other state, must be changed to the laws of Pennsylvania. Any provision that states that the law of the contract is Pennsylvania but does not extend to the “choice of law” is also a prohibited provision. This is an attempt by the contractor to have disputes heard by courts in their home states applying Pennsylvania law, rather than before the Commonwealth’s Board of Claims. If nothing is stated about the governing law, but a clause states that the contract is to be deemed made in a state other than Pennsylvania, you must add a statement that the contract is governed by Pennsylvania law.

Clauses that confer jurisdiction and/or venue in a state other than Pennsylvania are also unacceptable and must be deleted. As a last resort, if the parties cannot agree to the applicability.
of Pennsylvania law, then the contract can only be acceptable if it remains silent as to the subject.

C. **Attorneys’ Fees, Court Costs, Entry of Judgment**

Clauses that require the university to pay the contractor’s “costs” (i.e., court costs) or attorney fees, or to confess judgment in the event that the contractor finds it necessary to sue, must be deleted. The university may not voluntarily pay the contractor’s court costs or legal fees nor may it allow a contractor to confess judgment on its behalf. This is only permissible if ordered by a court of competent jurisdiction.

D. **Indemnity and Hold-Harmless Clauses**

Many contractors’ forms contain a clause stating that the university will “indemnify” or “hold the contractor harmless” from and against any and all claims, suits, judgments, etc. Although the Commonwealth as a last resort can waive its right to sue an entity, indemnification provisions are prohibited by the OAG. The contractor must agree to delete this language from the contract or it will not be able to do business with the university.

Indemnification is a legal premise where one party agrees to make another party whole in the event of litigation. For example, if a third party sues a vendor in regards to some aspect of work performed under a contract with the Commonwealth, indemnification would require the Commonwealth to reimburse the vendor for any monetary damages assessed against the vendor as a result of the litigation. In essence, the Commonwealth, through indemnification, becomes a vendor’s insurer should any legal action arise under its contract with the Commonwealth that results in the vendor paying damages.

Any contractual provision that would create such obligations could not pass legal scrutiny and would be rejected by university legal counsel. These provisions are routinely removed from every Commonwealth contract because it compromises the greatest protection afforded Commonwealth entities: sovereign immunity.

As a Commonwealth agency, the Pennsylvania State System of Higher Education, with its universities, is afforded the protection of sovereign immunity pursuant to the Constitution of the Commonwealth of Pennsylvania and as designated by statutory authority. Article 1, Section 11 of the Commonwealth’s Constitution provides that suits may be brought against the Commonwealth, but only in courts and in cases as defined by the Legislature. All other actions not defined may not be brought against the Commonwealth, thus insulating or making the Commonwealth “immune” from suit. In contractual matters, the Legislature created a legal
forum for actions against the Commonwealth known as the Board of Claims. Its purpose is to resolve disputes in excess of $300.00 brought against the Commonwealth arising from a contract entered into by the Commonwealth. Its jurisdiction is limited to determining what the Commonwealth may owe a vendor based on the contractual obligations between the parties. To agree to indemnify a contractor creates a greater legal obligation/responsibility upon the Commonwealth than mandated by constitutional or statutory law.

As a last resort, alternative language may be used in situations where a contractor insists that some type of hold-harmless or indemnification language appears within the contract. The language below may be used only after all reasonable efforts have been made to adhere to the Commonwealth’s Standard Terms and Conditions:

Neither the contractor nor the university assumes any liabilities to each other. As to liability to each other or death to persons, or damages to property, the university and the contractor do not waive any defenses as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth’s rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the university.

Ultimately, this language reaffirms the Commonwealth’s right to sovereign immunity and merely affirms what the law already acknowledges: the Commonwealth will only be subject to litigation to the extent permitted by law. It does not indemnify the contractor nor hold the contractor harmless. It merely confirms the obvious: if the contractor can bring a viable legal action against the Commonwealth as permitted by law, then the contractor is free to do so.

E. Arbitration Clauses

Clauses that require resolution of disputes by binding arbitration in contracts for goods and services are prohibited. The Board of Claims has exclusive jurisdiction over the resolution of contract matters that are defined as “procurement contracts.” These are contracts that are under the auspices of the Commonwealth Procurement Code. Non-procurement contracts may permit arbitration as a means of resolution but such should be discussed with your university legal counsel prior to execution of any agreement.

F. Payment in Advance

Payment in advance is ordinarily prohibited. Any exceptions must be justified in writing. Specific payment conditions and a payment schedule must be included in the contract in the
“Specified Services” block within the SPC, or in the proper blueback clause. In the event that a contract is cancelled and monies have been paid in advance, the contract will have to utilize the time and expense for services to recoup its funds.

G. **Purchase of Insurance**

State System universities, as a general rule, may not purchase insurance as previously outlined in Section III.B. The following language can be used where a contractor insists on substitute language for an insurance clause or can be provided to the contractor by way of explanation of the Commonwealth’s self-insurance program:

____________________ University of Pennsylvania is a part of the State System of Higher Education, a body corporate and politic and constitutes a public corporation and government entity. As such, it lacks the statutory authority to purchase insurance and it does not possess insurance documentation per se (i.e., certificates of insurance). Instead, it participates in the Commonwealth’s Tort Claims Self-Insurance Program administered by the Bureau of Risk and Insurance Management of the Pennsylvania Department of General Services. The program covers Commonwealth/University-owned property, employees and officials acting within the scope of their employment, and claims arising out of the University’s performance under this agreement, subject to provisions of the Tort Claims Act, 42 Pa.C.S.A. § 8521, et seq.

Occasionally, a request may be made for the Commonwealth’s “certificate of insurance.” In that the Commonwealth is self insured, such does not exist. Alternatively, a draft letter found at Appendix Z should be sent to confirm the university’s insurance status.
SECTION IX. AMENDING EXISTING CONTRACTS:

A. Generally

If the amount of services originally requested in a contract is insufficient, or should a change need to occur in the terms and conditions of the original agreement, you will need to prepare an amended SPC or an amended blueback to cover the additional obligation or to make the other changes desired. However, the unit cost must remain the same.

A copy of the original SPC or blueback contract must be attached to the amended SPC or blueback when submitted for legal review and include signature with all renewals and amended pertaining to the contract to date.

B. Service Purchase Contracts

An SPC can be amended by preparing and completing another SPC. A model of an amended SPC is found in Appendix J of this Manual.

Steps for amending an SPC are:

Step 1. Complete amending SPC but the amended contract must have a new number. (See Section II(G) of this Manual as to numbering amended contracts.)

Step 2. Type across the top of the amending SPC “Amendment No. _____ to Service Purchase Contract No. ______,” and alter the original contract number to the amended contract number which would consist of the original number followed by the suffix –A#. The number would reflect the number of times the original contract was amended.

Step 3. Complete sections “Provide Service To and Bill To,” “Issuing Office,” “Expiration Date,” and “Contractor’s Name, Address, Telephone Number and License Numbers” on the amending SPC to agree with the original contract.

Step 4. Complete section “Contract Not To Exceed” with the words “See TOTAL Below.”

Step 5. In the “Specified Services” section, state “Original Contract cost was $_______.” Addition/reduction [cross out invalid word(s)] to
Step 6. Complete “Specified Services” section to include any other pertinent information not already included, as well as the payment schedule.

Step 7. Include the following sentence in the “Specified Services” section, “All terms and conditions of the original contract not changed herein are to remain in full force and effect.” This provision means you do not have to repeat everything from the original contract in the amended contract.

Step 8. Include a “Purpose and Justification” statement in the “Specified Services” block with an explanation for the amendment. There must be a statement here of what additional goods and services are being purchased by any increase in payment.

Step 9. Obtain approval from the same level of individuals as was obtained for the original SPC contract. University legal counsel approval is needed. When an amended contract is referred to your university legal counsel, be sure to also include a copy of the original contract and all amendments and renewals so that university legal counsel can verify that the change in cost is due to a change in the amount or nature of services.

Step 10. Distribute the amending SPC in the same manner as the original.

C. **Blueback Contracts**

Blueback contracts are to be amended by preparing an amendatory face sheet which includes the names of the parties, and a new contract number. The original contract number to the amended contract number would consist of the original number followed by the suffix –A#. The number reflects how many times the original contract has been amended. The document must state that the existing contract is being amended and what the amendments are. Amendments are to be processed like original contracts. Only changed terms and new terms must be stated. References must be made to the specific pages and paragraphs that are being changed. Blueback amendment forms may be found in Appendix M of this manual.

D. **Funding Adjustments (Also Known As Fiscal Notes) – Additional Purchases At Established Rates**

A university may, when purchasing services or material (equipment, supplies, etc.) at rates which are clearly discernable from the contract, purchase additional or delete services and
material at the same rates during the term of the contract by means of a written, signed funding adjustment, if **all** the following steps are followed:

1. The original contract (SPC or blueback) contains specific rates for specific identifiable services or materials.

2. When purchases over and above the original contract amount are desired, a signed, dated funding adjustment (or an amended SPC or blueback contract) with a new contract number, should be prepared showing:
   a) Specific amounts of materials or services to be purchased over and above the dollar amount in the original contract (alternatively if purchases of less are required such be stated for a downward fiscal adjustment).
   b) Cost per unit of the additional services or materials.
   c) Location in original contract (page number and paragraph number) where the rates are clearly established.
   d) Identification of the original contract by contract number and name of the contractor (and “date made,” if applicable).

3. Nothing in this procedure, or in this Manual for that matter, may be taken to allow the purchase of services or materials with a purchase order, except at rates established in a legally valid existing contract.

4. When purchases of this type exceed the maximum amount stated in the original contract, the funding adjustment (or modified SPC or blueback) and a copy of the original contract, must be sent to university legal counsel for approval. When a contract for five hundred thousand dollars ($500,000.00) or less is raised over five hundred thousand dollars ($500,000.00), by a funding adjustment, the contract and fiscal adjustment must also be sent for approval to the OGC, but, generally, not again to the OAG.

   If a funding adjustment to a contract that was not required to be obtained through a bidding or similar open and public process should raise the cost to, or over, the level at which bids are required, a bid process will be required. This may only be omitted if university legal counsel determines that the purchase involved was not done (and does not give the appearance of being done) in series to avoid the bidding limit.

5. There is no set amount by which funding adjustments may exceed the contract maximum, but care must be taken to avoid even the appearance of using funding adjustments to get around the requirements of competitive bidding. A funding adjustment should not be so great that it otherwise contradicts the principles of providing fair and open public processes for
contracting. That is, a fiscal adjustment of fifty thousand dollars ($50,000.00) to a six thousand dollar ($6,000.00) contract for cleaning supplies should be rejected. Funding adjustments are for moderate increases to the maximum dollar amount of contracts, without changing any condition of the contract; or the nature of what is being provided; or the unit prices; or any other term or provision of the contract except the maximum dollar amount. Except as noted above, university legal counsel may approve funding adjustments without the approval of other Commonwealth attorneys.
SECTION X.  BONDS:

A.  Generally

Bonds are required by law in certain construction contracts. In other contracts they are often desirable, but the decision as to whether to include them is up to the university, subject to requirements of the Office of the Vice Chancellor for Administration and Finance. It is considered a breach of ethical standards under Act 57 for any employee issuing a request for procurement responses to require that any bond be required and furnished by a particular surety company or through a particular agent or broker. Any employee who does so commits a misdemeanor of the first degree.

Regarding contracts for supplies or services, acceptable forms of security or performance bonds can be requested. Bid or proposal security shall be in the form of a certified or bank check or a bond provided by a surety company authorized to do business in the Commonwealth. Alternatively, another form of security can be utilized if noted within the IFB or RFP. The amount of the bond or security must be at least in the minimum amount or percentage of the amount of the bid as specified in the advertisement.

When the IFB or RFP requires security, noncompliance by the proposed vendor with the mandated instructions requires that the bid or proposal be rejected unless it is determined that the bid or proposal fails to comply with the security requirements in a nonsubstantial manner. Whether something constitutes substantial or nonsubstantial compliance should be discussed with university legal counsel on a case-by-case basis.

If a vendor withdraws a bid or proposal before award, no action shall be taken against the bid or proposal security.

A contractor may be required by the contracting officer to provide a performance bond executed by a surety company authorized to do business in the Commonwealth. In lieu of a bond, a contract may provide other security as permitted by the agency head. The performance bond or other required security shall be in the amount determined to protect the University and it is conditioned upon faithful performance of the contract.

Universities should ensure, if and all possible, that bonds do not expire until the warranty period has passed and that it receives notice when a bond is being terminated or is about to expire.
B. **Signatures and Dates of Execution**

The OAG requires **all** of the signatures on **each** of the bonds that it took to bind the contractor to the contract. Be sure to obtain the signatures and identify the titles of the proper persons. The surety must also sign **each** bond. When the surety’s authority is shown by Power of Attorney, one Power of Attorney will suffice for both bonds, but the date that the Power of Attorney is certified to be valid must be the same or later than the date the agent signs the bonds.

Also, the date filed should be completed on the bonds as follows:

-Sealed with our respective seals and dated this _____ day of _______________, 20______.

The date on the bond must be the same or later than the date the contract is made. **For practical purposes, this is most easily achieved by making the date of the contract, the date of the bonds, and the date that the bonds are certified (in the power of attorney) all the same.**
SECTION XI. RECORD KEEPING:

A. Generally

Recordkeeping is essential not only because Act 57 dictates that certain records be maintained, but also because each contract can be a potential action before the Board of Claims. Virtually, all successfully litigated matters are a result of thorough and accurate recordkeeping. Although sometimes mundane and uninteresting, and even burdensome, the importance of this task cannot be underestimated especially when a dispute arises.

B. Retention of Records

All procurement records, including written determinations, shall be retained for a minimum of three (3) years from the date of final payment under the contract and disposed of in accordance with records retention guidelines and schedules as provided by law according to the type of record in question. All retained documents are to be made available to the State Treasurer, Auditor General, Inspector General and Attorney General upon request, as well as the Office of University Legal Counsel and the Office of the Chancellor. If such a request for records is made by another agency, University Legal Counsel should be contacted immediately in order to assess and coordinate record requests.

C. Records of Certain Actions

The universities shall maintain a record listing of all contracts made as small procurements, sole source procurements and emergency procurements for a minimum of three (3) years from the date of final payment under the contract. This record must be comprised of:

1) Each contractor’s name;
2) The amount and type of each contract; and
3) A listing of supplies, services or construction procured under each contract.

D. Audit of Contractor’s Records

The university may, at reasonable times and places, audit the books and records of any person who submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data. A person who receives a contract, change order or a contract modification
for which cost or pricing data is required, shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized by the university in writing.

The university may also audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract, other than a firm, fixed-price contract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment and by the subcontractor for a period of three (3) years from the date of final payment, unless a shorter period is otherwise authorized by the university in writing.

E. Public Requests for Information

Any document created by or provided to the university for procurement purposes can be subject to inspection and copying only to the extent already required under the Right-to-Know Law. Specifically:

1. Bids and Proposals. Bids and proposals are not “public records” unless and until a contract is executed with one of the bidders or offerors. If a formal contract is executed, not only the selected firm’s bid or proposal, but also all competing bids and proposals are subject to disclosure. Act 57 specifically prohibits the disclosure of competing proposals during the evaluation/discussion processes of the competitive sealed proposals method of procurement.

2. Solicitation Mailing Lists and Lists of Bidders and Offerors. Solicitation mailing lists and lists of those responding to an IFB or RFP should be considered public records.

3. Written Determinations. The written determinations required by Act 57 should be considered decisions which are subject to the Right-to-Know Law.

4. Correspondence and Memoranda. Correspondence and memoranda by an agency concerning an IFB, RFP, or contract will generally not be considered public records. The burden is on the party requesting the documents to show that the correspondence and memoranda formed the basis of a determination.

Each University is to have a Right-to-Know Law Policy and an identified Right-to-Know Law Officer. All requests for information under the Right-to-Know Law should be processed as mandated by university policy. It is the responsibility of each purchasing department to know what its university policy mandates.

University legal counsel should be consulted before complying with any request for information under the Right-to-Know Law.
SECTION XII. DEBARMENT:

A. Generally

Debarment is the exclusion of a contractor from consideration for the awarding of Commonwealth contracts. A period of debarment may not exceed three (3) years. In some cases, a contractor may be suspended from consideration up to three (3) months if there is probable cause for debarment. However, no such action may be taken against a contractor absent proper authority to do so and without affording the contractor due process.

The effect of a suspension or debarment is an automatic prohibition of all Commonwealth agencies from awarding any contracts to the contractor, in addition to renewing or extending any existing contracts absent a compelling reason to do so.

Questions concerning debarment should be referred to the Office of University Legal Counsel. A list of debarred and suspended contractors can be accessed at: http://www.dgsweb.state.pa.us/debarmentlist/default.asp?procurementNav=|

B. Basis for Debarment

The causes for debarment or suspension are dictated by Act 57. These causes include:

1. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

2. Commission of fraud or criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by a person associated with:
   a) obtaining;
   b) attempting to obtain; or
   c) performing a public contract or subcontract.

   The person’s acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

3. Violation of federal or state antitrust statutes.

4. Violation of any federal or state law regulating campaign contributions.

5. Violation of any federal or state environmental laws.
6. Violation of any federal or state laws regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.

7. Violation of the Workers’ Compensation Act.

8. Violation of any federal or state laws prohibiting discrimination in employment.

9. Debarment by any agency or department of the federal government or by any other state.

10. Three or more occurrences where a contractor has been declared ineligible for a contract.

11. Unsatisfactory performance, including but not limited to, any of the following:

   (i) Failure to comply with terms of a Commonwealth agency contract or subcontract, including but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform or unsatisfactory performance of one (1) or more contracts.

   (ii) Offering unbalanced bids.

   (iii) Failure to complete the work in the timeframe specified in the contract.

   (iv) Being declared in default on prior work or projects.

   (v) Failure to submit documents, information or forms as required by contract.

   (vi) Making false statements or failing to provide information or otherwise cooperate with the university, the Office of the State Inspector General or other Commonwealth authorities.

   (vii) Discrimination in violation of laws or regulations in the conduct of business as a contractor.

12. Any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a person as determined by the university.

   If you suspect any situation that may give rise to a debarment issue, immediately contact university legal counsel.
SECTION XIII. LEGAL & CONTRACTUAL REMEDIES:

A. Authority to Resolve Protests of Solicitations or Awards
A bid protest is a procedural mechanism that permits an unsuccessful vendor/contractor or a potential vendor/contractor to file a complaint in regards to the solicitation and/or awarding of a public contract. Every bid/proposal package should contain the notice to contractors contained in Appendix CC of this manual.

The procedure to follow in the event of a bid protest is as follows:

1. Filing of Protest
   a) A bidder or offeror, a prospective bidder or offeror, or a prospective contractor, that is aggrieved in connection with the solicitation or award of a contract under the Commonwealth Procurement Code, except as provided in 62 Pa.C.S.A. § 521 (relating to cancellation of invitations for bids or requests for proposals) may protest to the head of the purchasing agency in writing. Protests should be filed with the Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, Pennsylvania 17110. A copy of the protest shall also be simultaneously mailed to the Office of the President of the university that issued the bid solicitation.
   b) If the protestant is a bidder or offeror or a prospective contractor, the protest shall be filed with the Office of the Chancellor at the aforementioned address within seven (7) days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest. In no event may a protest be filed later than seven (7) days after the date the contract was awarded.
   c) If the protestant is a prospective bidder or offeror, a protest shall be filed with the Office of the Chancellor at the aforementioned address prior to the bid opening time or the proposal receipt date.
   d) If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest, or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor shall be deemed to have waived its right to protest the
solicitation or award of the contract in any forum. The State System of Higher Education shall disregard protests that are untimely filed.

e) A protest shall state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

2. State System of Higher Education’s Response and Reply to Protest

a) The Office of the Chancellor shall immediately date stamp all protests on the day of receipt.

b) Within fifteen (15) days of receipt of a protest, a university president may submit to the Office of the Chancellor and the protestant a response to the protest, including any documents or information he/she deems relevant to the protest. The protestant may file a reply to the response within ten (10) days of the date of the response.

c) The Office of the Chancellor, or its designee, shall review the protest and any response or reply, and may request and review such additional documents or information he/she deems necessary to render a decision, and may, at its sole discretion, conduct a hearing. The Office of the Chancellor, or its designee, shall provide to the protestant and the contracting officer a reasonable opportunity to review and address any additional documents or information deemed necessary by the Office of the Chancellor, or its designee, to render a decision.

d) Upon completing an evaluation of the protest in accordance with the preceding paragraphs, the Office of the Chancellor, or its designee, shall issue a written determination stating the reasons for the decision. The determination shall be issued within sixty (60) days of the receipt of the protest, unless extended by written consent of the Office of the Chancellor, or its designee, and the protestant. The determination shall be the final order of the purchasing agency.

e) The determination shall be sent to all parties via first class mail and the protestant shall receive a second copy, via certified mail, return receipt requested. The date of the determination shall be the date of mailing.

f) If the Office of the Chancellor, or its designee, determines that the solicitation or award of the contract was contrary to law, he/she may enter an order authorized by 62 Pa.C.S.A § 1711.2 (relating to solicitations or awards contrary to law).

3. Right of Appeal

a) Within fifteen (15) days of the mailing date of a final determination denying a protest, a protestant may file an appeal with Commonwealth Court. Issues not raised by the protestant before the State System of
Higher Education are deemed waived, and may not be raised before the court.

b) The record of determination for review by the court shall consist of the solicitation or award; the contract, if any; the protest; any response or reply; any additional documents or information considered by the Office of the Chancellor, or its designee; the hearing transcript and exhibits, if any; and the final determination.

c) The court shall hear the appeal, without a jury, on the record of determination certified by the purchasing agency. The court shall affirm the determination of the purchasing agency, unless it finds from the record that the determination is arbitrary and capricious, an abuse of discretion, or is contrary to law. If the determination is not affirmed, the court may enter any order authorized by 42 Pa.C.S.A. § 706 (relating to disposition of appeals). If the court determines the solicitation or award of a contract is contrary to law, then the remedy the court shall order is limited to canceling the solicitation or award and declaring void any resulting contract.

4. Status of Contract Pending Protest Determination

a) In the event a protest is filed timely under this section, and until the time has elapsed for the protestant to file an appeal with Commonwealth Court, the university shall not proceed further with the solicitation or with the award of the contract, unless and until the university, after consultation with the Office of the Chancellor, makes a written determination that the protest is clearly without merit, or that award of the contract without delay is necessary to protect substantial interests of the Commonwealth.

b) This section shall be the exclusive procedure for protesting a solicitation or award of a contract by a bidder or offeror, a prospective bidder or offeror, or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract. The provisions of 2 Pa.C.S.A., relating to administrative law and procedure, shall not apply to this section.

During the pending protest and until all avenues of appeal have been exhausted, the university may not proceed with the solicitation or with the award of the contract, unless it is determined by the Office of the Chancellor in writing that the protest is clearly without merit or that the award of the contract without delay is necessary to protect the substantial interests of the Commonwealth. If this situation exists, a letter should be forwarded to the Office of the Chancellor to receive written permission to commence work despite the pending bid protest. University legal counsel should be consulted prior to any determination and subsequent action.
B. Authority to Resolve Contract and Breach of Contract Controversies

If a controversy arises between a contractor and a university as a result of a contractual relationship \( i.e., \) breach of contract, mistake, misrepresentation or other cause for contract modification or recession), a claim must first be filed in writing with the contracting officer within six (6) months after it accrues. The contracting officer has the authority to settle or resolve this action without the necessity of the Contractor bringing the matter before the Board of Claims for formal adjudication. However, all settlements must be reviewed and approved by Chief Counsel and a release must be prepared and executed by all parties that must include the contractor, the university, Chief Counsel and the OAG. Untimely claims are to be disregarded by the contracting officer. However, it is recommended that such be done in consultation with university legal counsel.

C. Board of Claims

The Board of Claims (“Board”) is both a judicial and an independent administrative agency created in 1978. The Board of Claims has jurisdiction to hear and determine all contract claims where the Commonwealth or one of its agencies is a defendant. This includes the State System and its universities. The Pennsylvania legislature has made the Board of Claims the exclusive entity for the adjudication of these claims. Because of this exclusive grant by the legislature, no Commonwealth contract may contain a provision that any other court may resolve disputes. It also means that claims against the State System and its universities may not be brought before the local district justice or county court. The Board’s offices and main courtrooms are located in downtown Harrisburg.

However, contracting activities that are not under the auspices of the Commonwealth Procurement Code in which the State System or a university receives monies for services it provides or enters into non-exclusive no cost agreements that do not require competitive bidding, should not confer jurisdiction with the Board. OGC is now formally defining such contracts as Non-Procurement Code Contracts.

Recent amendments to the Procurement Code now confer jurisdiction upon the Board to include Non-Procurement Code Contracts entered into by the Commonwealth for dispute resolution if such is dictated by the contract’s language. If the Board is contractually designated for dispute resolution in Non-Procurement Code Contracts, concerns have arisen that such would compromise the Commonwealth’s defense of sovereign immunity.
The agreements that are most impacted by this memorandum within the State System include, but are not limited to, grants, leases, real estate agreements such as various licenses and facility use agreements (including many camp and conference programs) and training provided by the State System or a university for a fee. In rare cases, designating the Board for dispute resolution may have been necessary in Academic Affiliation Agreements.

Therefore, language that confers upon the Board of Claims’ jurisdiction to resolve contract disputes must not be included in any Non-Procurement Code Contracts. The best way to address such jurisdiction/dispute resolution issues is with the simple written clause which should already be included in virtually every template contract: “This Contract will be governed under the laws of the Commonwealth of Pennsylvania.” If this provision is objectionable for any reason, then the contract should remain silent as to the issue of jurisdiction as a last resort. As always, agreeing to the laws of another’s state jurisdiction is not a viable option and in such a case, you should immediately contact your university legal counsel to assist you in resolving the issue.

The Board consists of three (3) members, one (1) of whom serves as its Chairman and Chief Administrative Judge. This Chief Judge manages the day-to-day operations of the Board and its caseload and rules on procedural issues. Hearings are held before panels of two (2) or three (3) individuals appointed by the Board. These panels will usually include one (1) lawyer and one (1) engineer or architect. These panels will actually hear the cases and make findings.

The Board of Claims follows the Pennsylvania Rules of Civil Procedure. Therefore, the Board handles any claim before it similar to any contract dispute between two (2) private parties brought at the local county Court of Common Pleas. There are strict requirements as to pleadings and deadlines for filing. University legal counsel must formally answer claims within thirty (30) days of issuance; thus prompt notification to your attorney is important. All discovery that is available to litigants in a major civil action is available to parties before the Board of Claims. This may include the taking of witness depositions, interrogatories, and almost invariably, requests for production of documents.

Ultimately, failing some other resolution, a Board of Claims case will proceed to a formal trial before one of its panels. The same rules apply here as in most trial courts in the Commonwealth. Attorneys will make opening arguments. Witnesses will be called, sworn, take the stand, and answer questions and be subject to cross-examination. Physical evidence, typically contract documents and related correspondence and notes, will be admitted. Following the conclusion of evidence and the transcription of evidence, counsel will submit briefs to the
The case is then in the hands of the hearing panel, which may take up to several months to issue its determination.

The Board will issue its decision in writing. It may either dismiss the claim or award monetary damages to the plaintiff. In some cases, if a defendant has filed a counterclaim, it may award damages to the defendant. The damages are not limited to the contract amount and may include interest, consequential damages, court costs and/or attorney’s fees.

Practice pointers that you must keep in mind in regards to this issue are:

- Keep university legal counsel informed of potential contract claims before they become a formal lawsuit. Document these potential claims with visual aids such as videotapes or photographs.
- Notify university legal counsel as soon as you receive a formal complaint.
- Maintain all documents and evidence related to the contract. Correspondence, notebooks, photographs, and videotapes can be surprisingly easy to misplace and can make defense of a case more difficult.
- Stress the importance of the case to employees who may be involved in trial preparation or as trial witnesses. Some employees may see the case as a mere inconvenience and not appreciate the risk of loss to the university.

The status of actions pending before the Board of Claims can be monitored at http://www.boc.state.pa.us/.

D. Solicitations or Awards in Violation of Law

If prior to the execution of a contract it is determined that a solicitation or a proposed award of a contract is in violation of the law, then the remedies are limited to the cancellation of the solicitation or proposed award, or the revision of the solicitation or proposed award in order to comply with the law. If you suspect activity of this nature, you should contact your university legal counsel for further discussion.

E. Remedies after Execution of a Contract

If after the execution of the contract it is determined that a solicitation or award of a contract is in violation of the law, then:

1. If the person awarded the contract has not acted fraudulently or in bad faith:
   a) the contract may be ratified and affirmed, provided it is determined by the university that doing so is in the best interest of the Commonwealth;
b) the contract, with the consent of all parties, may be modified to comply with the law; or

c) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination. Such compensation shall not include loss of anticipated profit, loss or use of money or administrative or overhead costs.

2. If the person awarded the contract has acted fraudulently or in bad faith:

a) the contract may be declared void;

b) the contract, with the consent of all parties, may be modified to comply with the law, or;

c) the contract may be ratified and affirmed, provided it is determined by the university that the action is in the best interest of the Commonwealth and without prejudice to the right of the university to damages as may be deemed appropriate.

As always, timely and consistent contact with university legal counsel is integral to the successful use of your legal remedies.

F. **Taxpayer Actions**

Commonwealth Court will permit the filing of a petition by a third party seeking injunctive relief to preliminarily and permanently enjoin the awarding of a contract. These actions are generally referred to as taxpayer actions. Although not a party to the contract, this procedural mechanism allows citizens of the Commonwealth to voice concerns and objections to the expenditure of Commonwealth monies based on his or her standing as a taxpayer.

In its capacity as a taxpayer, a third party will file a Petition for Review with the Commonwealth Court seeking to enjoin the award of the contract generally on the legal premise that the university violated the competitive bidding requirements. These matters do not come under the jurisdiction of the Board of Claims in that the petitioner does not seek to review the contract in question but, in its capacity as a taxpayer, seeks to prevent the improper expenditure of public funds by alleging the violation of Act 57’s competitive bidding requirement. Even though Act 57 does, for the first time, give standing to disappointed bidders, the Code did not take away the right of a taxpayer to bring an action to enjoin the
award of a contract when the Commonwealth failed to follow the bidding requirements established in Act 57.
SECTION XIV. SMALL & DISADVANTAGED BUSINESSES:

A. Generally

Act 57 adopted the Commonwealth policy to assist small and disadvantaged businesses in learning how to do business with Commonwealth agencies. Every effort should be made by contracting officers to reach these potential offerors especially in placing its notices for procurement opportunities. Under the statute, a “disadvantaged business” is defined as:

A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

A “small business” is defined as:

A business in the United States which is independently owned, is not dominant in its field of operation and employs 100 or fewer employees.

University legal counsel will keep you informed as to any regulations established by the Department of General Services in regard to this issue, as well as all contracting issues. Further information on the application of and recognition as a small and disadvantaged business can be located at: http://www.dgs.state.pa.us/bcabd/cwp/view.asp?a=3&Q=122384. Information on women and minority-owned businesses can be located at:
http://www.dgs.state.pa.us/bcabd/cwp/view.asp?a=3&Q=121117

B. Duties

Each university contracting office has special duties to enhance the involvement of small and disadvantaged businesses in the procurement process. Pursuant to the statute, each university shall:

1. When feasible, provide appropriate staff who will be responsible to assist small and disadvantaged businesses in this Commonwealth in learning how to do business with the State System.

2. Give special publicity to procurement procedures and issue special publications designed to assist small and disadvantaged businesses in learning how to do business with the State System.
3. Compile, maintain and make available source lists of small and disadvantaged businesses for the purpose of encouraging procurement from small and disadvantaged businesses.

4. Include small and disadvantaged businesses on solicitation mailing lists.

5. Take steps to insure that small and disadvantaged businesses are solicited on each procurement for which businesses may be suited.

6. Develop special training programs to assist small and disadvantaged businesses in learning how to do business with the State System.

To evidence proof of compliance, each university should keep and maintain records evidencing its outreach to these business entities in its procurement practices for a minimum of three (3) years.

C. Bonding and Progress Payments

In cases involving small and disadvantaged businesses, the university may reduce the level or change the types of bonds normally required or even accept alternative forms of security to the extent reasonably necessary to encourage procurement from these entities. However, if such changes do occur, it is best that such be clearly documented evidencing the involvement of a small and disadvantaged business contractor, as defined by the statute quoted in Subsection A above.

Latitude also exists for the university to make progress payments or partial payments throughout the existence of a contractual relationship with a small and disadvantaged business, if such would encourage its involvement. However, any such terms should be clearly reflected in the SPC/blueback contract and the expectations as to what must be completed and when to receive progress payment should be defined, so that there are no performance questions on behalf of either party.

D. Compliance with Federal Regulations

If a procurement involves expenditure of federal assistance or contract funds, the university must comply with all applicable federal laws and regulations. Should you have any questions regarding applicable statutes and regulations, contact university legal counsel immediately.
A. **General Standards of Ethical Conduct**

As Commonwealth employees, no situation must exist within the scope of your employment in which personal gain is achieved and/or the violation of the public trust occurs. Commonwealth employees must avoid any conflicts of interest or the use of confidential information for personal pecuniary gain. Even the effort to influence a Commonwealth employee by a non-employee is considered to be a breach of ethical standards. Lastly, employees shall not dictate the use of a particular surety company, agency or broker.

Any questions regarding ethical dilemmas should be forwarded to Chief Counsel.

B. **What is Bid-Rigging?**

Bid-rigging is when two (2) or more individuals conspire together to determine in advance the winning bidder of a contract involving a government agency. It includes, but is not limited to, the following scenarios:

1. Agreeing to sell items or services at the same price.
2. Agreeing to submit identical bids.
3. Agreeing to rotate bids.
4. Agreeing to share profits with a contractor who does not submit the low bid.
5. Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.
6. Agreeing to set up territories to restrict competition.
7. Agreeing not to submit bids.

C. **Illegality of Bid-Rigging**

It is illegal for any person individually, or with another person, to engage in bid-rigging involving the following types of Commonwealth contracts:

1. A contract for the purchase of goods, equipment, services or materials or for construction or repair; and/or
2. A subcontract for the purchase of equipment, goods, services or material or for construction or repair with a prime contractor or proposed prime contractor for a government agency.

D. Civil Action and Damages as a Result of Bid-Rigging

Any university which discovers that it is the victim of bid-rigging as a result of any contractor, third party, and/or Commonwealth employee has the authority to sue in a civil action all participants for the recovery for the full amount of damages, which are then tripled. In addition, the university may recover the cost of the suits plus reasonable attorney fees. The statute of limitations for such an action is four (4) years from the date the action arose and cannot extend past ten (10) years from the date the contract was signed by the parties.

E. Criminal Prosecution

Any entity found to have engaged in anti-bid-rigging activities can be sentenced to pay a fine of up to one million dollars ($1,000,000.00). An individual can be fined up to fifty thousand dollars ($50,000.00) and/or serve a prison term of three (3) years.

F. Specification Rigging

A “not-so-distant cousin” to anti-bid-rigging is specification rigging. This occurs when the writing of a specification is so restrictive that it virtually guarantees the awarding of the contract to a pre-selected individual. In that this is a pre-conceived arrangement, which requires advance knowledge of a contractor’s capability and an intent to exclude others, this is technically a violation of the anti-bid-rigging laws. Effort should be made to insure that this does not occur either intentionally or unintentionally.
SECTION XVI. DISPOSAL OF SURPLUS PROPERTY:

A. Establishment of Policy

It will be the responsibility of the Board of Governors to promulgate a policy on the issue of “supply management regulations,” or more aptly called surplus supplies. These supplies, which are owned by the State System and have completed their useful life cycle, may be sold, leased or disposed of by public auction, competitive sealed bidding or any other appropriate method established by the State System.

However, regardless of the specifics of the future policy, it is statutorily mandated that no employee of the State System may purchase these supplies unless the policy permits purchases for supplies valued below a threshold level.

B. Proceeds from Sale/Disposal of Surplus Supplies

Proceeds from the sale, lease or disposal of surplus supplies shall be deposited into the State Treasury and then deposited into the funds out of which the supplies were originally purchased. This is accomplished by giving an appropriate credit to the then-current appropriation. The bottom line is that the State System will now directly receive the benefit of its sale of its surplus property.

C. Intergovernmental Cooperation

Chapter 19 of Act 57 allows public procurement units (as that term is defined therein) to buy, sell, transfer and otherwise cooperate with one another with respect to their supplies, materials, equipment, property, etc. Close consultation with university legal counsel is advised if a university desires to engage in such activity.
APPENDIX A

SAMPLE ADVERTISEMENT OF AN INVITATION FOR BID (IFB)

____________________ University of the State System of Higher Education is soliciting sealed bids in the (insert physical address and location of where bids will be received) for Project _____________ (insert number)
____________________________ (name of project).

The Project consists of:
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________________________________________________________

The bids are due and will be publicly opened at __________ a.m/p.m. on ____________.

A pre-bid conference and site visit will be conducted at ____________a.m/p.m. on ____________ at
___________________________________________________________________________________.

A bid bond and contract bonds will be required.

All responsible bidders are invited to participate, including MBE/WBE firms. Plans and specifications will be
available from ________________ University on or around ______________ by calling ________________,
faxing the request to _________________ or via e-mail at _________________.


APPENDIX B
SAMPLE IFB FOR GOODS

THIS IS NOT AN ORDER

Date: _____________
Bid Proposal #: _____

Bid Due Date: ______ 
Time: _____________

Vendor Name and Address: _______________________________________

__________________________ _____________ 

Phone # _______________________   Fax # _________________________

The University is authorized to accept bids on the articles described below in accordance with the following instructions:

All materials, as specified, are to be delivered F.O.B. ___________University, _______________, Pennsylvania. Bids will be rejected if received after due date and time. The University reserves the right to accept all or part, or to reject the entire bid.

See additional pages for special conditions

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>#AL4512E01 Nortel Baystack 380-24F Switch</td>
<td>5</td>
<td>each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>#AA1419015 Nortel SFP GETH 1PT 1000BLX-LC MINI GBIC Mod</td>
<td>10</td>
<td>each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>#AA1419013 Nortel SFP GETH 1 PORTS 1000BSX LC-MINI GBIC Mod</td>
<td>30</td>
<td>each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>#AL2012E34 Baystack 470 48PT 10/100 Ethernet Switch</td>
<td>24</td>
<td>each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>#AL2012E37 Baystack 470 24PT 10/100 Eth Switch GBIC</td>
<td>24</td>
<td>each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>#AA1419001 1-Port 1000BSX Gigabit</td>
<td>36</td>
<td>each</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please fax bid with original sent through the mail

NO SUBSTITUTES - Manufacturer: Nortel

For technical questions, please contact ________ at ____________, for bid questions, please contact ________________ at ________________.

TOTAL DELIVERED PRICE TO UNIVERSITY:

No bid will be considered unless bid price is firm without qualification.

This bid proposal form must be signed where indicated by an individual with the authority to bind the bidding firm to their proposal.

Please provide address and telephone numbers above.

---

5 Please note that this IFB is for goods and will be executed via a purchase order. Because of the auto-formatting of purchase orders via SAP, the terms and conditions below are significantly reduced. An IFB for services that will include the execution of an SPC or blueback contract should result in the full recital or reference to all of the Commonwealth’s Standard Terms and Conditions.
The following pages are hereby incorporated into this bid proposal.

1. Vendor read carefully
2. Notice as to filing a Bid Protest

Bids received after the due date and time will be rejected.

The price submitted must be firm for a period of thirty (30) days, and must be returned by the above indicated date. The undersigned vendor agrees to supply the items and/or material at the price quoted. PAYMENT TERMS OF UNIVERSITY ARE NET THIRTY (30) DAYS AFTER RECEIPT AND INSPECTION OF MATERIAL AND/OR SERVICES.

<table>
<thead>
<tr>
<th>Vendor's Signature</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
</table>

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GENERAL TERMS

1. This order is acceptable only at prices stated. Goods herein ordered shall comply with all Federal and State laws. No charges allowed for packing, reels, packages or cartage unless specified on this order. Shipment must be made by date specified. Materials will be received subject to inspection and if found defective or not in accordance with specifications will be returned at your expense. Quantities ordered must not be exceeded unless authority for small deviations is specified in this order. Truck deliveries will only be accepted during working hours. No tax shall be included in the bid price.

2. ____________ University is exempt from all excise taxes and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. ____________. No exemption certificates are required and none will be issued.

3. ______________ University is exempt from provisions of Fair Trade laws and the Pennsylvania Sales Tax. The Sales and Use Tax Regulations provide that exemption certificates are not required for sales made to government entities. Exemption certificates will not be issued.

4. All shipments will be F.O.B. destination, with transportation charges prepaid by the vendor and title passing upon proper delivery at the destination.

5. Send three copies of itemized invoices as directed on order promptly upon shipment. Don't include in one invoice items on more than one purchase order. (Consider as one purchase order a consecutive series of purchase order forms bearing a single total--)

6. Show purchase order number on all invoices, packages, delivery slips and correspondence. (Show number of first purchase order of a consecutive series of purchase order forms bearing a single total.) The name of shipper and car initials and number, if any, shall also be identified on all shipments.

ASSIGNMENT OF ANTITRUST CLAIMS

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

NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during, employment, without regard to their race, color, religious creed, ancestry national origin, age, sex or handicap. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion

Note: If not Bidding, please return this form indicating “NO BID” if you would like to remain on the university’s active bidders’ list.
or transfer recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex or handicap.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program, or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further University contracts, and other sanctions may be imposed and remedies invoked.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

10. Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside Pennsylvania, the facilities at which such goods are actually produced.

Note: If not Bidding, please return this form indicating “NO BID” if you would like to remain on the university’s active bidders’ list.
BID PROTEST

1) A bidder or offeror, a prospective bidder or offeror, or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract under the Commonwealth Procurement Code, except as provided in 62 Pa.C.S.A. § 521 (relating to cancellation of invitations for bids or requests for proposals) may file a protest with the Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, Pennsylvania, 17110.

A copy of any protest must also be simultaneously mailed to the Office of the President, of the university that issued the bid solicitation. No additional notification need be sent if the Office of the Chancellor issued the bid Solicitation. For ________________________ University, the mailing address is Office of the President, _________________ University, __________________________ (ADDRESS).

2) If the Protestant is a bidder or offeror or a prospective contractor, the protest must be filed with the Office of the Chancellor at the aforementioned address within seven (7) days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest. In no event may a protest be filed later than seven (7) days after the date the contract was awarded.

3) If the Protestant is a prospective bidder or offeror, a protest must be filed with the Office of the Chancellor at the aforementioned address prior to the bid opening time or the proposal receipt date.

4) If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest, or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor will have waived its right to protest the solicitation or award of the contract in any forum. The State System of Higher Education shall disregard protests that are untimely filed.

5) A protest must state all grounds upon which the Protestant asserts the solicitation or award of the contract was improper. The Protestant may submit with the protest any documents or information it deems relevant to the protest.

6) Upon receipt of the protest, the Office of the Chancellor will render a decision in accordance with the procedures outlined within the Commonwealth Procurement Code, 62 Pa. C.S.A. § 171 1.1 et seq.
**APPENDIX C**

**SAMPLE IFB TABULATION SHEET**

__________________________________________________________________________

University of Pennsylvania

**Project Number:**

**Bid Date and Time:**

**Opener / Reader:**

**Witness / Recorder:**

**Number of Bidders Listed:**

<table>
<thead>
<tr>
<th>Bid Package Recipient</th>
<th>Contact Information</th>
<th>Amount</th>
<th>Bid Disqualification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name &amp; Address</td>
<td>Telephone &amp; E-Mail</td>
<td></td>
<td>Per Legend</td>
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</tr>
</tbody>
</table>

*Disqualification Legend:

1 = No Bid
2 = No
3 = Non Compliant (e.g. deviated from bid specs, terms, or other mandatory requirements);
4 = Non-Responsive (e.g. failed to provide all required information; unable to bid on all items; counterproposals);
5 = Other Reason (explain below or on attachment)

*Note: Assessment of bid qualification and completion of the last column is done subsequent to the public bid opening. This form is to summarize reasons for disqualification. Detailed backup records of such reasons must be retained for vendor debriefing and audit purposes. When a bid is disqualified, the "Amount Bid" should be circled, and the reason for disqualification annotated in the last column.
APPENDIX D

SAMPLE BID DISQUALIFICATION LETTER

VIA FACSIMILE

DATE:

CONTRACTOR NAME
ADDRESS

Subject: Project ________________________________

Dear ______________________________:

____________________________ University regrets to inform you that ____________________
(Contractor’s Name) bid submitted for subject project has been disqualified because pursuant to
the bid documents, the Bid Bond was required to be in the amount of 10% of the bid and your firm
submitted its Bid Bond in the amount of 5%.

The bid documents state that “Failure to submit a bid guaranty….will result in the rejection of
the bid as Non-Responsive.” In this case, since your firm did not submit the Bid Bond in the
required amount, your firm in essence did not submit the required Bid Bond.

There may be other projects in the future that your firm may qualify for, and we hope that the
determination for this project will not deter you from participating in future bid opportunities with
_______________________ University.

Thank you for your interest in _______________________ University, and if you should have any
questions, please do not hesitate to call my office.

Sincerely,

________________________ ___________
Director of Purchasing and Contract Services
APPENDIX E

SAMPLE ADVERTISEMENT OF A REQUEST FOR PROPOSAL (RFP)

University of Pennsylvania of the State System of Higher Education is issuing Request for Proposal (proposal number) for (project name).

University is seeking:

The System encourages responses from small firms, minority firms, women-owned firms and firms which have not previously performed work for the System, and will consider joint ventures.

The proposal is due no later than ______ a.m./p.m. on _________________. All questions should be directed, in writing, to ________________ no later than close of business on ________________. It is acceptable to send the question via US Mail, fax number ________________ or e-mail _________________.

The proposal will be issued via e-mail from ________________ or by calling ________________.
APPENDIX F

SAMPLE RFP6

July 13, 2008

Dear Sir/Madam:

In accordance with the enclosed Request for Proposal, you are invited to submit a proposal for Long Distance Telephone Service, RFP Number 36458. All firms must submit five (5) copies of the proposal to ____________, __________University of Pennsylvania, Office of Purchasing, ____________. ____________, PA _____. Proposals are due by 3:00 p.m. on July 29, 2008.

All questions should be directed, in writing, to ____________no later than close of business on July 22, 2008. It is acceptable to either send the question via US Mail, fax number 610-436-2637 or e-mail. Firms will be provided with answers to all questions submitted by the above noted date via Addendum pursuant to Paragraph 1.2 of the Request for Proposal.

Very truly yours,

Manager of Purchasing

Enclosure:
Request for Proposal

---

6 Because of the complexities of services generally solicited via an RFP, this template contains the details of an actual RFP for illustrative purposes.
REQUEST FOR PROPOSAL NUMBER 36458
LONG DISTANCE TELEPHONE SERVICE

KIM E. LYTTLE,
ACTING CHAIRMAN, BOARD OF GOVERNORS

JUDY G. HAMPLE
CHANCELLOR

PRESIDENT

UNIVERSITY OF PENNSYLVANIA
OFFICE OF PURCHASING
__________________________, PA ________
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<table>
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<tr>
<th>PART</th>
<th>Title</th>
<th>No. of Pages</th>
</tr>
</thead>
<tbody>
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<td>Proposal Information</td>
<td>3</td>
</tr>
<tr>
<td>PART II</td>
<td>Information Required from the Firm</td>
<td>2</td>
</tr>
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<td>PART III</td>
<td>Selection of the Firm</td>
<td>1</td>
</tr>
<tr>
<td>PART IV</td>
<td>Work Statement</td>
<td>2</td>
</tr>
</tbody>
</table>

ATTACHMENTS

- Attachment A - Cover Page
- Attachment B – Standard Form of Contract
University of Pennsylvania
Long Distance Telephone Service RFP Number 36458

Attachment A – Cover Page

On behalf of the firm listed below, the undersigned binds the firm to the provisions in its proposal and warrants that its proposal shall remain valid during the entire solicitation and award process.

________________________________________________
Name of Firm

________________________________________________
Contact Person Title

________________________________________________
Address

________________________________________________
Telephone # Fax #

________________________________________________
E-mail Website

________________________________________________
Federal ID#

Minority Business Enterprise: Yes/ No Type: ____________________________

Certification # ____________________________

____________________________________________ ________________________
Authorized Official Signature Date
(Include Title)
PART I

General Information for the Vendor

I.1. Purpose
This Request for Proposal (RFP) provides interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the University to satisfy a need for Long Distance Telephone Service to all administrative telephone lines via the University’s Centrex service with Verizon.

I.2. Issuing Office
This RFP is issued for the Commonwealth, by the State System of Higher Education, University of Pennsylvania. The Issuing Office is the Purchasing Office and is the sole point of contact for this RFP. The contact person is Manager of Purchasing and Central Stores, and can be reached at or by e-mail at _______________. All questions must be in writing and directed to _______________ by e-mail or fax at _______________ and be received on or before the close of business on ______________.

I.3 Scope
This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; a general evaluation criteria; and other requirements to be met by each proposal.

I.4 Problem Statement
University of Pennsylvania is in need of long distance telephone service via the University’s Centrex services with Verizon. The vendor is responsible for the connection and the continuing cost of PRI or T1 lines to Verizon’s Centrex System. The cost must be calculated into the per minute usage charge per line and cannot be considered as an additional reoccurring expense. The vendor shall be responsible for all costs of providing service.

Services to include:

1. Intralata calling.
2. Interlata calling.
3. International calling.
4. Credit card calling.
5. PR1, T1, and fractional T1 services.
6. Long distance directory assistance services.
7. Conformance to standard dialing plans for 800, 900, and international calls.
8. Electronic monthly call detail reporting, including call originating telephone number, destination telephone number, and duration of call.
9. Recognition that University is not responsible for fraudulent calls.
I.5. **Type of Contract**
It is proposed that if a contract is entered into as a result of this RFP, it will be a blueback contract and will contain the provisions shown in the attached standard contract.

A. **Term of Agreement:**
The Notice to Proceed cannot be issued until approval signatures are received from University Legal Counsel and the Attorney General's Office (Estimated time frame: The University shall endeavor to complete evaluations and issue award letters within one hundred twenty (120) days after closing date for receipt of proposals. An additional forty-five (45) days are necessary for Legal Counsel and Attorney General Office approvals after the agreement is signed by the Firm and returned to the University.)

B. The contract will be issued for three (3) years, with two (2) yearly renewal options. Price increases in the renewal years (4 and 5) will be indexed to the CPI (seasonally adjusted). The University does not guarantee any renewal of the contract beyond the initial three year term.

The contract terms and conditions found in Attachment B are not negotiable.

I.6. **Rejection of Proposals**
The University reserves the right to reject any and all proposals received as a result of this request, or to negotiate separately with competing contractors.

I.7. **Incurring Costs**
The University is not liable for any cost incurred by contractors prior to issuance of a contract.

I.8. **Amendment to the RFP**
If it becomes necessary to revise any part of this RFP, an amendment will be issued to all contractors who received the basic RFP.

I.9. **Response Date**
To be considered, proposals must arrive at the Purchasing Office on or before the time and date specified in the cover letter. Contractors mailing proposals should allow sufficient mail delivery time to insure timely receipt of their proposals.

I.10. **Proposals**
To be considered, contractors must submit a complete response to this RFP, using the format provided in Part II. Each proposal must be submitted in seven (7) copies to the Purchasing Office on or before 3:00 p.m. on July 29, 2008. No other distribution of proposals will be made by the contractor. Proposals must be signed by an official authorized to bind the contractor to its provisions. The proposal must remain valid for one hundred twenty (120) days. Moreover, the contents of the proposal of the successful bidder will become a contractual obligation if a contract is entered into. **Responses received after the above stated date and time will be rejected.**
Please mail your responses to:

__________________________________
__________________________________
__________________________________
__________________________________

I.11. Economy of Preparation
Proposals should be prepared simply and economically, providing a straightforward, concise description of the contractor’s ability to meet the requirements of the RFP.

I.12. Oral Presentation
Contractors who submit proposals may be required to make an oral presentation of their proposal to the University. Such presentations provide an opportunity for the contractor to clarify his proposal to ensure a thorough mutual understanding. The Purchasing Office will schedule these presentations.

I.13. Prime Contractor Responsibilities
The selected contractor will be required to assume responsibility for all services offered in his proposal whether or not he produces them. Further, the University will consider the selected contractor to be the sole point of contact with regard to contractual matters.

Cost and price information provided in proposals will be held in confidence and will not be revealed or discussed with competitors. All other material submitted becomes the property of the University and may be returned only at the University’s option. Proposals submitted to the University may be reviewed and evaluated by any person other than competing bidders at the discretion of the University. The University has the right to use any or all ideas presented in any reply to the RFP. Selection or rejection of the proposal does not affect this right.

I.15. Debriefing Conferences
Contractors whose proposals are not selected will be notified of the name of the selected contractor and will be given the opportunity to be debriefed. The Purchasing Office will schedule the time and location of the debriefing.

I.16. News Releases
News releases pertaining to this project will not be made without prior University approval, and then only in coordination with the Purchasing Office.

I.17 Contractor Responsibility Program
Bidders must certify that they or any subcontractor(s) are not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government to the best of their knowledge. Additionally, Service Providers must certify that they or any subcontractor(s) are not tax delinquent with either the Pennsylvania Department of Revenue or the Pennsylvania Department of Labor and Industry to the best of their knowledge. Service Providers must acknowledge that, if they or any subcontractor(s) are currently under suspension or debarment, or if they or any subcontractor(s) owe delinquent taxes, their proposal may not be accepted or considered. These statements may be included in a signed cover letter.
1.18 **Contracting Authority**

Each proposal must be signed by the individual representative of the firm who has contracting authority to contractually bind the firm. That individual or designee will be the sole point of contact with regard to contractual matters. That individual or designee must complete and sign Attachment A – Cover Page.
PART II

Information Required from the Vendor

Proposals must be submitted in the format outlined below. To be considered, the proposal must respond, at a minimum, to all requirements in this part of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

II.1. Statement of the Problem
State in succinct terms your organization’s understanding of the services required by this RFP. Include a narrative description of the proposed effort and a list of services that will be delivered.

II.2. Work Plan
Describe, in narrative form, your technical plan for accomplishing the task and requirements outlined in the RFP. Use the deliverables in Section III of this RFP as your reference point for describing your approach to meeting the University’s needs. Provide additional information in a form corresponding to Section III-2 describing your firm’s ability to fulfill the listed requirements.

II.3. Prior Experience
Describe in detail your firm’s experience and capability in providing clients with the types of deliverables listed in Section III. Related work experience should be completely identified. Address the overall expertise and resources that your firm will bring in performing the work, if selected. Provide three (3) business references for which your firm has provided work and services of equal or greater scope and complexity as described by this RFP. Include the company name, address, contact person, and telephone number. Supply a description of the services provided to these clients, dates of service, and how these services relate to the requirements of this RFP.

II.4. Personnel
Identify the executive and professional personnel, network engineers, 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 work. Include education and experience. Indicate the responsibilities each will have in this project and how long each has been with your company.

II.5. Cost and Price Analysis
The information requested in this section is required to support the reasonableness of your price proposal and is for internal University use only in the evaluation process. The Cost Proposal should be provided in the format defined in Part IV of this RFP. This portion of the proposal must be bound and sealed separately from the remainder of the technical proposal. Price does not enter into the selection process until after the technical capabilities of the individual proposals are considered and a determination of their responsiveness, suitability, and competence is made.
PART III
Criteria for Selection

All proposals received from the contractors will be reviewed and evaluated by a committee of qualified University personnel. This committee will recommend for selection the proposal that most closely meets the requirements of the RFP and satisfies University needs.

The following areas of consideration will be used in making the selection:

III.1. **Understanding the Problem**
This refers to the contractor’s understanding of the University’s needs, of the University’s objectives in asking for the services, and of the nature and scope of the work involved.

III.2. **Contractor’s Qualifications**
This refers to the ability of the contractor to meet the terms of the RFP, especially the time constraint and the quality, relevancy, and recency of studies and project completed by the contractor. This also includes the contractor’s financial ability to undertake a project of this size.

III.3. **Professional Personnel**
This refers to the competence of professional personnel who would be assigned to the job by the contractor. Qualifications of professional personnel will be measured by experience and education, with particular reference to experience on studies/services similar to that described in the RFP. Particular emphasis is placed on the qualifications of the Project Manager.

- How long has your company been in business?
- Where is your company headquartered?
- How many similar arrangements do you have with other Colleges/Universities? Provide a listing.
- List all your partners, both from a development and a financial perspective.
- Provide an annual report or financial statement for your company.
- How many people are currently employed full-time with your company?
- List employee counts by function (i.e. Engineering, Sales, etc.).

III.4. **Soundness of Approach**
Providers should submit complete system documentation and equipment technical manuals for the proposed systems. This documentation will enable the University to fully understand the system’s capabilities and limitations. Providers should comment on their willingness to make complete documentation available to the University for the selected system and keep it current over the contract term. All costs related to documentation must be included in the proposal.

III.5. **Pricing and Plans**
While this area will be weighted heavily, it will not normally be the deciding factor in the selection process.
PART IV

Work Statement

IV.1. Objective

The University is seeking reliable, well-engineered, reasonable-cost long distance telephone service to more than 500 members of the University’s faculty, staff, and administration on a 24x7x365 basis. The University currently supports approximately 2000 primary voice lines with approximately 100,000 to 130,000 long distance minutes used each month during the fiscal year via the University’s Centrex system.

IV.2. Requirements

A. The awarded vendor shall be responsible for the design, installation, and maintenance of the network facilities required to provide the desired long distance services, including international services.

B. Vendor shall guarantee 100% network answer supervision on the originating and terminating ends of the call.

C. The vendor shall design the system to provide a Grade of Service of P.01 for the busy hour. State your estimate of which is the busy hour and the numbers of voice equivalent circuits and number of PRI or T1 access lines that are required to provide a P.01 grade of service.

D. The ability to access long distance service should be afforded through the use of a Centrex Access Code. This is currently being done by dialing “8.”

E. The vendor shall conduct comprehensive testing of the long distance calling portion of the system to assure the University will experience no interruption of service at the time of cut over from the existing system. A description of that process must be included in the response.

F. Describe your process of monitoring the access facilities to ensure service quality.

G. The vendor shall provide on a monthly basis call detail in an ASCII format on CD to the University telecom department. This information shall include but not be limited to:

1. Originating telephone number
2. Destination telephone number
3. Date of the call
4. Time of the call
5. Duration of the call
6. Cost of the call

H. The vendor shall be responsible for all costs of providing service, including but not limited to:
1. Long distance usage charges
2. Long distance access charges, initial and monthly
3. LEC’s Digital facility terminations
4. LEC’s SMDR-Premises, if required
5. LEC’s Authorization codes, if required
6. LEC’s Automatic route selection, if required
7. Initial charges, direct or indirect, for any service or equipment

IV.3. Price and Payment Conditions
The contractor must provide a breakdown of the costs of services to be provided. All cost data for the proposal shall be submitted in a separate sealed envelope within the sealed proposal and kept separate from the technical proposal. Failure to meet this requirement will result in the automatic disqualification of the proposal.
APPENDIX G

SAMPLE RFP SCORING SHEET

UNIVERSITY PROPOSAL RATING SHEET FOR
Project Number – Professional Design Services for Parking and Traffic Study

Name of Professional Firm ____________________________________________
Name of Rater: __________________________ Date Rated ____________________

RFP Requirements Satisfied

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

PART II - INFORMATION REQUIRED FROM THE PROFESSIONAL

Was each section listed below addressed in the proposal?

<table>
<thead>
<tr>
<th>Section Description</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Letter of Interest including:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongest Asset</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auto CAD 2002</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Geographic Miles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Send and receive electronic documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Addenda Acknowledged</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposal valid 120 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Statement of Problem</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. 3 like projects COMPLETED within last 5 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. References</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Experience of Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 years experience in analysis using SYNCR0 etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preparation of at least 10 similar studies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Min. 3 ITE-certified Professional Traffic Operation Engineers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Authorized signature binding firm to RFP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Financial Responsibility -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>As some of Professionals only submitted One copy of their Financial Statement, please Check with the Construction Procurement Office Before disqualifying the firm as non-responsive.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A NO at this point means that the rater is not to proceed any further with the evaluation.

USE THE EVALUATION CHECKLIST FOR ITEMS THAT ARE TO BE CONSIDERED UNDER EACH ITEM LISTED BELOW. THE POINT SCORES ARE TO BE PLACED ON THIS SHEET, NOT THE EVALUATION CHECKLIST.

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Points Available</th>
<th>Points Assigned</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Equitable Distribution</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>2. Capability to perform the services being considered</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>3. Geographic Proximity</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>4. Ability of the firm to furnish the necessary manpower</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>5. Electronic Distribution of documents</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>6. Experience/successful completion projects</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>7. Understanding the Problem</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>8. Quality/Responsiveness</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>
**Evaluators' Comments.** To form the basis for debriefing non-selected professionals, describe the strong and weak points of this proposal with respect to each of the criteria:

1. **Equitable Distribution:**

2. **Capability to perform the services being considered:**

3. **Geographic Proximity:**

4. **Ability of the firm to furnish the necessary manpower:**

5. **Electronic Distribution of documents:**

6. **Experience/successful completion of project:**

7. **Understanding the Problem:**

8. **Quality/Responsiveness:**

9. **Successful completion of like projects:**

10. **Quality/Responsiveness:**

---

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Capability to perform the services being considered</td>
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<td>Understanding the Problem</td>
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</tr>
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<td>Quality/Responsiveness</td>
<td>25</td>
</tr>
<tr>
<td>Successful completion of like projects</td>
<td>25</td>
</tr>
<tr>
<td>Quality/Responsiveness</td>
<td>25</td>
</tr>
</tbody>
</table>

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SUBTOTAL POINTS 175

GRAND TOTAL POINTS 200
11. Financial Stability:

12. References:
   (References will only be verified on the short-listed forms)
APPENDIX H
SAMPLE SERVICE PURCHASE CONTRACT

ISSUING OFFICE

University of Pennsylvania
State System of Higher Education
8 Main Street
850, PA 17350

CONTRACTOR’S NAME & ADDRESS

Kim Johnson
d/b/a Asbestos Is Us
25 Chambersburg Road
Chambersburg, PA 17301

CONTACT PERSON PHONE NO.

Kim Johnson  717-259-6058

FAX NO.

717-259-6059

CONTRACTING OFFICER

Kim Johnson

PHONE NO.

717-259-6058

FAX NO.

717-259-6059

EFFECTIVE DATE:

06/30/07

EXPIRATION DATE:

06/30/07

CONTRACTOR’s LICENSE OR REGISTRATION NO.

63-135-99

CONTRACT NOT TO EXCEED:

$9,000.00

SPECIFIED

Removal & disposal of asbestos tiling in ceiling of North Hall snack area. Contractor warrants that the removal & disposal of the substance will be in accordance with federal & state regulations. Price is inclusive of labor & disposal fees.

This contract is a small procurement and therefore bidding is unnecessary and would result in no economic benefit to the university.

The need for this service is that broken asbestos tile poses a health risk to the university community. The university does not have the equipment or training to safely remove the substance per state & federal regulations.

TOTAL

$9,000.00

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees, to provide the specified services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

1. Standard Contract Terms and Conditions, STD-274 (Rev.05/07/04)

COMMONWEALTH SIGNATURE

DATE

Purchasing Agency Head or Designee

COMMONWEALTH ATTORNEY APPROVALS

DATE

Purchasing Agency Attorney

APPROVED AS TO FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS

DATE

Controller

APPROVED AS TO FORM AND LEGALITY

DATE

Office of General Counsel (if required)

Office of Attorney General (if required)
STANDARD CONTRACT
TERMS AND CONDITIONS FOR SERVICES

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. 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. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

2. INDEPENDENT CONTRACTOR

In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

3. 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.

4. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

5. POST-CONSUMER RECYCLED CONTENT

Except as specifically waived by the Pennsylvania State System of Higher Education 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 in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions.

6. COMPENSATION/EXPENSES

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.

7. **INVOICES**

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an itemized invoice to the agency at the address referenced on the purchase order promptly after services are satisfactorily completed. The invoice should include only amounts due under the Contract/purchase order. The purchase order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a “Work In Progress” sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the purchase order or task order to which it refers.

8. **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 “Provide Service and 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.

9. **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.

10.  WARRANTY

The Contractor warrants that 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 services and parts are warranted for a period of one year following completion of performance by the Contractor and acceptance by the Commonwealth. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

11.  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.
12. **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.

13. **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.

14. **HOLD HARMLESS PROVISION**

The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

15. **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.

16. **DEFAULT**

a. The Commonwealth may, subject to the provisions of Paragraph 17, Force Majeure, 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 Paragraph 18, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

1) Failure to begin work within the time specified in the Contract 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 terms;
3) Unsatisfactory performance of the work;
4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
5) Discontinuance of work without approval;
6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
7) Insolvency or bankruptcy;
8) Assignment made for the benefit of creditors;
9) 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;
10) Failure to protect, to repair, or to make good any damage or injury to property; or
11) Breach of any provision of this Contract.

b. In the event that the Commonwealth terminates this Contract 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, services 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 services included within the terminated part of the Contract.

c. If the Contract 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 Issuing Office, such partially completed work, 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 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 work 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 Paragraph 19, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

17. **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 either to cancel the Contract 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.

18. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract 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 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. 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 this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

c. TERMINATION FOR CAUSE: The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 16, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth’s discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 18.a.

19. 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.
b. The contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

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

20. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Paragraph 20, 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.

21. NONDISCRIMINATION/SEXUAL HARRASSMENT CLAUSE

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

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services’ Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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

a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions:

1) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

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

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

4) Financial interest means:
   a) Ownership of more than a five percent interest in any business; or
   b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

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

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

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

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

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

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official’s agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor’s integrity or responsibility, as those terms are defined by the Commonwealth’s statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor’s business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

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

23. CONTRACTOR RESPONSIBILITY PROVISIONS

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

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

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

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

24. 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.
25. 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:


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.

26. 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.

27. 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.

28. INTEGRATION

The 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. All such amendments will be made using the appropriate Commonwealth form.

29. CHANGE ORDERS

The Commonwealth reserves the right to issue change orders 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 order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order 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 under any change order shall be handled through Paragraph 19, “Contract Controversies”.

For purposes of this Contract, “change order” is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.

THE BALANCE OF THIS PAGE IS LEFT INTENTIONALLY BLANK
**A) REQUIREMENT**

All construction products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Construction Products</th>
<th>Material</th>
<th>% of Post-Consumer Materials</th>
<th>% of Total Recovered Materials</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural Fiberboard</td>
<td>Recovered Materials</td>
<td>-</td>
<td>80</td>
</tr>
<tr>
<td>Laminated Paperboard</td>
<td>Post-consumer Paper</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Rock Wool Insulation</td>
<td>Slag</td>
<td>-</td>
<td>75</td>
</tr>
<tr>
<td>Fiberglass Insulation</td>
<td>Glass/Cullet</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>Cellulose Insulation (loose-fill and spray-on)</td>
<td>Post-consumer Paper</td>
<td>75</td>
<td>-</td>
</tr>
<tr>
<td>Perlite Composite Board Insulation</td>
<td>Post-consumer Paper</td>
<td>23</td>
<td>-</td>
</tr>
<tr>
<td>Plastic Rigid Foam, Polyurethane/Polystyrene</td>
<td>Recovered Material</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td>Foam-in-Place Insulation</td>
<td>Recovered Material</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>Glass Fiber Reinforced Insulation</td>
<td>Recovered Material</td>
<td>-</td>
<td>6</td>
</tr>
<tr>
<td>Phenolic Rigid Foam Insulation</td>
<td>Recovered Material</td>
<td>-</td>
<td>5</td>
</tr>
<tr>
<td>Floor Tiles (heavy duty/commercial use)</td>
<td>Rubber or Rubber Blends</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>Pool Blocks</td>
<td>Plastic or Plastic Blends</td>
<td>-</td>
<td>90</td>
</tr>
<tr>
<td>Polyester Carpet Fiber Face</td>
<td>Polyethylene terephthalate (PET) resin</td>
<td>-</td>
<td>25</td>
</tr>
<tr>
<td>Latex Paint:</td>
<td>Recovered Material</td>
<td>-</td>
<td>100</td>
</tr>
<tr>
<td>--Consolidated</td>
<td></td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>--Reprocessed</td>
<td></td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>-----White, Off-White, Pastel Colors</td>
<td>Recovered Material</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>-----Grey, Brown, Earthtones, and Other Dark Colors</td>
<td>Recovered Material</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>Shower and Restroom Dividers/Partitions:</td>
<td>Plastic</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>Carpet Cushion:</td>
<td>Steel</td>
<td>-</td>
<td>67</td>
</tr>
<tr>
<td>--Bonded Polyurethane</td>
<td>Old Carpet Cushion</td>
<td>-</td>
<td>15</td>
</tr>
<tr>
<td>--Jute</td>
<td>Burlap</td>
<td>-</td>
<td>40</td>
</tr>
<tr>
<td>--Synthetic Fibers</td>
<td>Carpet Fabrication Scrap</td>
<td>-</td>
<td>100</td>
</tr>
<tr>
<td>--Rubber</td>
<td>Tire Rubber</td>
<td>-</td>
<td>60</td>
</tr>
<tr>
<td>Railroad Grade Crossing Surfaces</td>
<td>Coal Fly Ash</td>
<td>-</td>
<td>15</td>
</tr>
<tr>
<td>--Concrete</td>
<td>Tire Rubber</td>
<td>-</td>
<td>85</td>
</tr>
<tr>
<td>--Rubber 4</td>
<td>Steel</td>
<td>-</td>
<td>16</td>
</tr>
<tr>
<td>--Steel 4</td>
<td>Steel</td>
<td>-</td>
<td>67</td>
</tr>
</tbody>
</table>

"Post-consumer" material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed it life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

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1 Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.
2 Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceiling, and trim; gutterboards; and concrete, stucco, masonry, wood, and metal surfaces.
3 The recommended recovered materials content for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or additives.
4 The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.
“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) **BIDDER'S CERTIFICATION**

Bidder certifies that the construction product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the construction product(s), to provide the Commonwealth with documentary evidence that the construction product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.
(A) **REQUIREMENT**

All vehicular products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Vehicular Product</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Re-Refined Oil</td>
<td>25% re-refined oil base stock for engine lubricating oils, hydraulic fluids, and gear oils.</td>
</tr>
</tbody>
</table>

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

“Re-refined oil” is oil that is manufactured with a minimum of twenty-five percent base stock made from used oil that has been recovered and processed to make it reusable as oil. Once the oil has been refined, no difference can be detected between re-refined and virgin oil.

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the vehicular product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **The Commonwealth shall have no obligation to pay for the item(s) until a properly completed and signed manufacturer/mill certification is submitted for the referenced item.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the vehicular product(s), to provide the Commonwealth with documentary evidence that the vehicular product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.
(A) **REQUIREMENT**

All paper offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Item</th>
<th>Notes</th>
<th>Post-Consumer Content (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Printing and Writing Papers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reprographic</td>
<td>Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction</td>
<td>30</td>
</tr>
<tr>
<td>Offset</td>
<td>Used for book publishing, commercial printing, direct mail, technical documents, and manuals</td>
<td>30</td>
</tr>
<tr>
<td>Tablet</td>
<td>Office paper such as note pads and notebooks</td>
<td>30</td>
</tr>
<tr>
<td>Forms bond</td>
<td>Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless</td>
<td>30</td>
</tr>
<tr>
<td>Envelope</td>
<td>Wove</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Kraft, white and colored (including manila)</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>Kraft, unbleached</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Excludes custom envelopes</td>
<td>10</td>
</tr>
<tr>
<td>Cotton fiber</td>
<td>High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items</td>
<td>30</td>
</tr>
<tr>
<td>Text and cover</td>
<td>Premium papers used for cover stock, books, and stationery and matching envelopes</td>
<td>30</td>
</tr>
<tr>
<td>Supercalendered</td>
<td>Groundwood paper used for advertising and mail order inserts, catalogs, and some magazines</td>
<td>10</td>
</tr>
<tr>
<td>Machine finished groundwood</td>
<td>Groundwood paper used in magazines and catalogs</td>
<td>10</td>
</tr>
<tr>
<td>Papeteries</td>
<td>Used for invitations and greeting cards</td>
<td>30</td>
</tr>
<tr>
<td>Check safety</td>
<td>Used in the manufacture of commercial and government checks</td>
<td>10</td>
</tr>
<tr>
<td>Coated</td>
<td>Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes</td>
<td>10</td>
</tr>
<tr>
<td>Carbonless</td>
<td>Used for multiple-impact copy forms</td>
<td>30</td>
</tr>
<tr>
<td>File folders</td>
<td>Manila or colored</td>
<td>30</td>
</tr>
<tr>
<td>Dyed filing products</td>
<td>Used for multicolored hanging folders and wallet files</td>
<td>20</td>
</tr>
<tr>
<td>Index and card stock</td>
<td>Used for index cards and postcards</td>
<td>20</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Quantity</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Pressboard</td>
<td>High-strength paperboard used in binders and report covers</td>
<td>20</td>
</tr>
<tr>
<td>Tags and tickets</td>
<td>Used for toll and lottery tickets, licenses, and identification and tabulating cards</td>
<td>20</td>
</tr>
<tr>
<td><strong>Newsprint</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Newsprint</td>
<td>Groundwood paper used in newspapers</td>
<td>20</td>
</tr>
<tr>
<td><strong>Commercial Sanitary Tissue Products</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bathroom tissue</td>
<td>Used in rolls or sheets</td>
<td>20</td>
</tr>
<tr>
<td>Papertowels</td>
<td>Used in rolls or sheets</td>
<td>40</td>
</tr>
<tr>
<td>Paper napkins</td>
<td>Used in food service applications</td>
<td>30</td>
</tr>
<tr>
<td>Facial tissue</td>
<td>Used for personal care</td>
<td>10</td>
</tr>
<tr>
<td>General purpose</td>
<td>Used in cleaning and wiping applications</td>
<td>40</td>
</tr>
<tr>
<td>industrial wipers</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Paperboard and Packaging Products</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corrugated containers</td>
<td>Used for packaging and shipping a variety of goods</td>
<td>25</td>
</tr>
<tr>
<td>(&lt;300 psi)</td>
<td></td>
<td>25</td>
</tr>
<tr>
<td>(300 psi)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solid fiber boxes</td>
<td>Used for specialized packaging needs such as dynamite packaging and army ration boxes</td>
<td>40</td>
</tr>
<tr>
<td>Folding cartons</td>
<td>Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware</td>
<td>40</td>
</tr>
<tr>
<td>Industrial paperboard</td>
<td>Used to create tubes, cores, cans and drums</td>
<td>45</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>Includes “chipboard” pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles</td>
<td>75</td>
</tr>
<tr>
<td>Padded mailers</td>
<td>Made from kraft paper that is usually brown but can be bleached white</td>
<td>5</td>
</tr>
<tr>
<td>Carrierboard</td>
<td>A type of folding carton designed for multipack beverage cartons</td>
<td>10</td>
</tr>
<tr>
<td>Brown papers</td>
<td>Used for bags and wrapping paper</td>
<td>5</td>
</tr>
<tr>
<td><strong>Miscellaneous Paper Products</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tray liners</td>
<td>Used to line food service trays. Often contain printed information.</td>
<td>50</td>
</tr>
</tbody>
</table>

“Post-consumer” content is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer content is part of the broader category of recovered material.”

The Commonwealth of Pennsylvania recognizes that paper products are universally made with scrap material recovered from the manufacturing process; use of such materials is a standard practice, both efficient and economical for the paper maker; therefore, bidders of paper products need not certify that their products are made with “pre-consumer,” “recovered,” or “secondary” paper fiber.
(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the paper product(s) which the bidder is offering contains the required minimum percentage of post-consumer content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a mill certification must be completed and signed by the mill before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the paper product(s), to provide the Commonwealth with documentary evidence that the paper product(s) were in fact produced with the required minimum percentage of post-consumer content.
(A) REQUIREMENT

All landscaping products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Landscaping Products</th>
<th>Recovered Material Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydraulic Mulch:</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>------Paper</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>------Wood/Paper</td>
<td>100% (total)</td>
</tr>
<tr>
<td>Compost Made From Yard Trimmings and/or Food Waste</td>
<td>Purchase or use compost made from yard trimmings, leaves, grass clippings and/or food wastes for applications such as landscaping, seeding of grass or other plants, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation. DGS further recommends implementing a composting system for these materials when agencies have an adequate volume and sufficient space.</td>
</tr>
<tr>
<td>Garden Hose:</td>
<td>60% (post-consumer)</td>
</tr>
<tr>
<td>------Rubber and/or Plastic</td>
<td>60% (post-consumer)</td>
</tr>
<tr>
<td>Soaker Hose:</td>
<td>60% (post-consumer)</td>
</tr>
<tr>
<td>------Rubber and/or Plastic</td>
<td>60% (post-consumer)</td>
</tr>
<tr>
<td>Lawn and Garden Edging:</td>
<td>30% (post-consumer)/30-100% (total)</td>
</tr>
<tr>
<td>------Rubber and/or Plastic</td>
<td>30% (post-consumer)/30-100% (total)</td>
</tr>
<tr>
<td>Landscaping Timber and Posts:</td>
<td>25% (post-consumer) + 50% (recovered)</td>
</tr>
<tr>
<td>------HDPE</td>
<td>25% (post-consumer) + 50% (recovered)</td>
</tr>
<tr>
<td>------Mixed Plastics/Sawdust</td>
<td>50% (post-consumer) + 50% (recovered)</td>
</tr>
<tr>
<td>------HDPE/Fiberglass</td>
<td>75% (post-consumer) + 20% (recovered)</td>
</tr>
<tr>
<td>------Other mixed Resins</td>
<td>50% (post-consumer) + 45% (recovered)</td>
</tr>
</tbody>
</table>

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) BIDDER’S CERTIFICATION

Bidder certifies that the landscaping product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) MANUFACTURER/MILL CERTIFICATION

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.

(D) ENFORCEMENT

Awarded bidders may be required, after delivery of the landscaping product(s), to provide the Commonwealth with documentary evidence that the landscaping product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.
All miscellaneous products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Miscellaneous Products</th>
<th>Recovered Material Content</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Awards and Plaques</strong></td>
<td></td>
</tr>
<tr>
<td>Glass</td>
<td>75% (post-consumer) + 25% (recovered)</td>
</tr>
<tr>
<td>Wood</td>
<td>100% (total)</td>
</tr>
<tr>
<td>Paper</td>
<td>40% (post-consumer)</td>
</tr>
<tr>
<td>Plastic and Plastic/Wood Composites</td>
<td>50% (post-consumer) + 45% (recovered)</td>
</tr>
<tr>
<td><strong>Industrial Drums</strong></td>
<td></td>
</tr>
<tr>
<td>Steel</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>Plastic (HDPE)</td>
<td>30% (post-consumer)</td>
</tr>
<tr>
<td>Fiber (paper)</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td><strong>Mats</strong></td>
<td></td>
</tr>
<tr>
<td>Rubber</td>
<td>75% (post-consumer) + 10% (recovered)</td>
</tr>
<tr>
<td>Plastic</td>
<td>10% (post-consumer) + 90% (recovered)</td>
</tr>
<tr>
<td>Plastic/Plastic Composite</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td><strong>Pallets</strong></td>
<td></td>
</tr>
<tr>
<td>Wood</td>
<td>95% (post-consumer)</td>
</tr>
<tr>
<td>Plastic</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>Thermoformed</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>Paperboard</td>
<td>50% (post-consumer)</td>
</tr>
<tr>
<td><strong>Signage</strong></td>
<td></td>
</tr>
<tr>
<td>Plastic</td>
<td>80% (post-consumer)</td>
</tr>
<tr>
<td>Aluminum</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>Plastic Sign Posts/Supports</td>
<td>80% (post-consumer)</td>
</tr>
<tr>
<td>Steel Sign Posts/Supports</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td></td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
<tr>
<td>** Sorbents**</td>
<td></td>
</tr>
<tr>
<td>Paper</td>
<td>90% (post-consumer) + 10% (recovered)</td>
</tr>
<tr>
<td>Textiles</td>
<td>95% (post-consumer)</td>
</tr>
<tr>
<td>Plastic</td>
<td>25% (total)</td>
</tr>
<tr>
<td>Wood</td>
<td>100% (total)</td>
</tr>
<tr>
<td>Other Organics/Multimaterials</td>
<td>100% (total)</td>
</tr>
<tr>
<td><strong>Manual Grade Strapping</strong></td>
<td></td>
</tr>
<tr>
<td>Polyester</td>
<td>50% (post-consumer)</td>
</tr>
<tr>
<td>Polypropylene</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>Steel</td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
</tbody>
</table>

"Post-consumer" material is "material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material."

"Recovered Materials" refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

1. Steel used in steel drums is manufactured using the Basic Oxygen Furnace (BOF) process, which contains 25-30% total recovered material, of which 16% is post-consumer steel. Steel used in manual-grade strapping is manufactured using either the BOF process or the Electric Arc Furnace (EAF) process, which contains 100% total recovered materials, of which 67% is post-consumer steel.

2. The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.

3. "Wood" includes materials such as sawdust and lumber mill trimmings.

4. Examples of other organics include, but are not limited to, peanut hulls and corn stover. An example of multimaterial sorbents would include, but not be limited to, a polymer and cellulose fiber combination.

5. The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.
(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the miscellaneous product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the miscellaneous product(s), to provide the Commonwealth with documentary evidence that the miscellaneous product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.
EXHIBIT A-6
NONPAPER OFFICE PRODUCTS
RECYCLED CONTENT

(A) **REQUIREMENT**

All nonpaper office products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth **must** contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Nonpaper Office Product</th>
<th>Recovered Material Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recycling Containers and Waste Receptacles:</td>
<td></td>
</tr>
<tr>
<td>Plastic</td>
<td>20% (post-consumer)</td>
</tr>
<tr>
<td>Steel</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>Paper</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>Corrugated</td>
<td>40% (post-consumer)</td>
</tr>
<tr>
<td>Solid Fiber Boxes</td>
<td>40% (post-consumer) + 60% (recovered)</td>
</tr>
<tr>
<td>Industrial Paperboard</td>
<td></td>
</tr>
<tr>
<td>Plastic Desktop Accessories (polystyrene) including desk organizers, sorters, and trays, and memo, note, and pencil holders</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>Binders:</td>
<td></td>
</tr>
<tr>
<td>Plastic-Covered</td>
<td>25%</td>
</tr>
<tr>
<td>Paper-Covered</td>
<td>75% (post-consumer) + 15% (recovered)</td>
</tr>
<tr>
<td>Pressboard</td>
<td>20% (post-consumer) + 30% (recovered)</td>
</tr>
<tr>
<td>Solid Plastic</td>
<td></td>
</tr>
<tr>
<td>HDPE</td>
<td>90% (post-consumer)</td>
</tr>
<tr>
<td>PE</td>
<td>30% (post-consumer)</td>
</tr>
<tr>
<td>PET</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>Misc Plastics</td>
<td>80% (post-consumer)</td>
</tr>
<tr>
<td>Trash Bags (plastic)</td>
<td>10% (post-consumer)</td>
</tr>
<tr>
<td>Toner Cartridges</td>
<td>Return used toner cartridges for remanufacturing and reuse or purchase a remanufactured or recycled-content replacement cartridge.</td>
</tr>
<tr>
<td>Printer Ribbons</td>
<td>Procure printer ribbon reinking or reloading services or procure reinked or reloaded printer ribbons.</td>
</tr>
<tr>
<td>Plastic Envelopes</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>Plastic Clipboards:</td>
<td></td>
</tr>
<tr>
<td>HDPE</td>
<td>90% (post-consumer)</td>
</tr>
<tr>
<td>PS</td>
<td>50% (post-consumer)</td>
</tr>
<tr>
<td>Misc. Plastics</td>
<td>15% (post-consumer)</td>
</tr>
<tr>
<td>Plastic File Folders:</td>
<td></td>
</tr>
<tr>
<td>HDPE</td>
<td>90% (post-consumer)</td>
</tr>
<tr>
<td>Plastic Clip Portfolios</td>
<td></td>
</tr>
<tr>
<td>HDPE</td>
<td>90% (post-consumer)</td>
</tr>
<tr>
<td>Plastic Presentation Folders</td>
<td></td>
</tr>
<tr>
<td>HDPE</td>
<td>90% (post-consumer)</td>
</tr>
</tbody>
</table>

"Post-consumer" material is "material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material."

---

1 The recommended recovered materials content levels for steel in this table reflect the fact that the designated item is made from steel manufactured from a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel.
“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the nonpaper office products which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the paper, to provide the Commonwealth with documentary evidence that the nonpaper office product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.
EXHIBIT A-7
PARK & RECREATION PRODUCTS
RECYCLED CONTENT

(A) **REQUIREMENT**

All park and recreation products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Park &amp; Recreation Product</th>
<th>Recovered Material Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Park Benches &amp; Picnic Tables:</td>
<td></td>
</tr>
<tr>
<td>-----Plastic²</td>
<td>90% (post-consumer) + 10% (recovered)</td>
</tr>
<tr>
<td>-----Aluminum</td>
<td>50% (post-consumer) + 50% (recovered)</td>
</tr>
<tr>
<td>-----Concrete</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>-----Steel²</td>
<td>15% (total)</td>
</tr>
<tr>
<td>-----Steel³</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>Plastic Fencing for Specified Use:²</td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
<tr>
<td>Playground Equipment:</td>
<td></td>
</tr>
<tr>
<td>-----Plastic³</td>
<td>90% (post-consumer) + 10% (recovered)</td>
</tr>
<tr>
<td>-----Aluminum</td>
<td>50% (post-consumer) + 45% (recovered)</td>
</tr>
<tr>
<td>-----Steel³</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>Plastic or Rubber</td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
<tr>
<td>Playground Surfaces:</td>
<td></td>
</tr>
<tr>
<td>-----Plastic or Rubber</td>
<td>90% (post-consumer)</td>
</tr>
<tr>
<td>Running Tracks:</td>
<td>90% (post-consumer)</td>
</tr>
</tbody>
</table>

“Post-consumer” material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

“Recovered Materials” refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the park and recreational product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the park and recreational product(s), to provide the Commonwealth with documentary evidence that the park and recreational product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

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1. The recommended recovered materials content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.
2. “Plastic” includes both single and mixed plastic resins. Park benches and picnic tables made with recovered plastic may also contain other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.
3. The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (AF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.
4. Designation includes fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
(A) **REQUIREMENT**

All transportation products offered by the bidder, or included in the final product offered by the bidder, and sold to the Commonwealth must contain the minimum percentage of post-consumer and recovered material content as shown below for the applicable products:

<table>
<thead>
<tr>
<th>Transportation Products</th>
<th>Recovered Material Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic Cones:</td>
<td></td>
</tr>
<tr>
<td>----- Plastic (PVC and LDPE)</td>
<td>50% (recovered)</td>
</tr>
<tr>
<td>----- Cumb Rubber</td>
<td>50% (recovered)</td>
</tr>
<tr>
<td>Traffic Barcodes (type I and II only):</td>
<td></td>
</tr>
<tr>
<td>----- Plastic (HDPE, LDPE, PET)</td>
<td>80% (post-consumer) + 20% (recovered)</td>
</tr>
<tr>
<td>----- Steel†</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td>----- Fiberglass</td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
<tr>
<td></td>
<td>100% (recovered)</td>
</tr>
<tr>
<td>Parking Stops:</td>
<td></td>
</tr>
<tr>
<td>----- Plastic and/or Rubber</td>
<td>100% (recovered)</td>
</tr>
<tr>
<td>----- Concrete Containing Coal Fly Ash</td>
<td>20% (recovered)</td>
</tr>
<tr>
<td></td>
<td>15% when used as a partial cement replacement as an admixture in concrete.</td>
</tr>
<tr>
<td></td>
<td>25% (recovered)</td>
</tr>
<tr>
<td>Traffic Control Devices</td>
<td></td>
</tr>
<tr>
<td>----- Channelizers</td>
<td></td>
</tr>
<tr>
<td>----- Plastic</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>----- Rubber (base only)</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>----- Delineators</td>
<td></td>
</tr>
<tr>
<td>----- Plastic</td>
<td>25% (post-consumer)</td>
</tr>
<tr>
<td>----- Rubber (base only)†</td>
<td>100% (post-consumer)</td>
</tr>
<tr>
<td>----- Steel (base only)</td>
<td>16% (post-consumer) + 9% (recovered)</td>
</tr>
<tr>
<td></td>
<td>67% (post-consumer) + 33% (recovered)</td>
</tr>
<tr>
<td></td>
<td>25% (post-consumer)</td>
</tr>
</tbody>
</table>

"Post-consumer" material is “material or finished product that has served its intended use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Post-consumer material is part of the broader category of recovered material.”

"Recovered Materials" refers to waste materials and by-products which have been recovered or diverted from solid waste, but does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(B) **BIDDER’S CERTIFICATION**

Bidder certifies that the transportation product(s) which the bidder is offering contains the required minimum percentage of post-consumer and recovered material content as shown above for the product.

(C) **MANUFACTURER/MILL CERTIFICATION**

In addition to the Bidders Certification in Subsection (B), a manufacturer certification must be completed and signed by the manufacturer before payment will be made to the successful bidder for the delivered items. The enclosed Manufacturer/Mill Certification form must be used. Bidders are not required to submit the completed and signed Manufacturer/Mill Certification form with their bids. **THE COMMONWEALTH SHALL HAVE NO OBLIGATION TO PAY FOR THE ITEM(S) UNTIL A PROPERLY COMPLETED AND SIGNED MANUFACTURER/MILL CERTIFICATION IS SUBMITTED FOR THE DELIVERED ITEM.**

(D) **ENFORCEMENT**

Awarded bidders may be required, after delivery of the transportation product(s), to provide the Commonwealth with documentary evidence that the transportation product(s) were in fact produced with the required minimum percentage of post-consumer and recovered material content.

---

1 Content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.
2 The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured from either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25-30% total recovered materials, of which 16% is post-consumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is post-consumer.
MANUFACTURER/MILL CERTIFICATION

(To be submitted with invoice for each order)

TO BE COMPLETED BY MANUFACTURER/MILL:

NAME OF MANUFACTURER/MILL: ____________________________________________

ADDRESS OF MANUFACTURER/MILL: __________________________________________

FEDERAL EMPLOYER I.D. NO.: ________________________________________________

CONTRACT OR REQUISITION NO.: ____________________________________________

NAME OF CONTRACTOR: ________________________________________________

ADDRESS OF CONTRACTOR: ________________________________________________

Type of product(s) which the manufacturer/mill furnished to the contractor: _______

__________________________________________________________

CERTIFICATION: I, the undersigned officer of the above-named manufacturer/mill, do hereby certify that I am authorized to provide this certification on behalf of the above-named manufacturer/mill and that the type of product(s) listed above which my company furnished to the contractor named above for the referenced contract or purchase requisition, contained not less than _____% post-consumer materials and _____% recovered materials as those terms are defined in the invitation for bids. I understand that this document is subject to the provisions of the Unsworn Falsification of Authorities Act (18 P.S. Section 4904).

_____________________________________

Signature

_____________________________________

Name of Signatory

_____________________________________

Title Date
## APPENDIX I

### SAMPLE SERVICE PURCHASE CONTRACT

**FIRST YEAR RENEWAL OF ORIGINAL CONTRACT #304521**

<table>
<thead>
<tr>
<th>ISSUING OFFICE</th>
<th>CONTRACTOR'S NAME &amp; ADDRESS</th>
<th>SHOW THIS CONTRACT INQUIRY NUMBER ON INVOICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of Pennsylvania</td>
<td>Quick Welding, Inc.</td>
<td>SP 304521-R1</td>
</tr>
<tr>
<td>State System of Higher Education</td>
<td>205 Spring Street, Scranton, PA 18504</td>
<td>PROVIDE SERVICE AND BILL TO:</td>
</tr>
<tr>
<td>8 Main Street, PA 17350</td>
<td>CONTACT PERSON: Kay Johnson</td>
<td>Cost Accounting Office</td>
</tr>
<tr>
<td></td>
<td>PHONE NO.: 717-342-9742</td>
<td>University of PA</td>
</tr>
<tr>
<td></td>
<td>FAX NO.: 717-342-9743</td>
<td>8 Main Street, PA 17350</td>
</tr>
<tr>
<td></td>
<td>CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.: 23-9872304</td>
<td>CONTACT PERSON: Jane Doe</td>
</tr>
<tr>
<td></td>
<td>SHOW THIS CONTRACT INQUIRY NUMBER ON INVOICE</td>
<td>PHONE NO.: 717-624-3014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FAX NO.: 717-624-3015</td>
</tr>
</tbody>
</table>

**EFFECTIVE DATE:** 06/30/07

**SPECIFIED**

<table>
<thead>
<tr>
<th>SPECIFIED</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide materials for welding and fabricating services for all areas of the Physical Plant Department in accordance with the attached RFP which is incorporated herein and marked Attachment A.</td>
<td></td>
<td></td>
<td>$15,156.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EQUATION DATE:</th>
<th>EXPIRATION DATE:</th>
<th>CONTRACT NOT TO EXCEED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/30/07</td>
<td></td>
<td>$15,156.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONTRACTOR'S LICENSE OR REGISTRATION NO.:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Provide service and bill to:**

| Cost Accounting Office |
|------------------------|---|
| University of PA       | |
| 8 Main Street, PA 17350| |

| CONTACT PERSON: Jane Doe |
| PHONE NO.: 717-624-3014 |
| FAX NO.: 717-624-3015 |

<table>
<thead>
<tr>
<th>EFFECTIVE DATE:</th>
<th>EXPIRATION DATE:</th>
<th>CONTRACT NOT TO EXCEED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/30/07</td>
<td></td>
<td>$15,156.00</td>
</tr>
</tbody>
</table>

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees, to provide the specified services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

1. **Standard Contract Terms and Conditions, STD-274 (Rev. 05/07/04)**

## COMMONWEALTH SIGNATURE

<table>
<thead>
<tr>
<th>PURCHASING AGENCY HEAD OR DESIGNTEE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## CONTRACTOR'S SIGNATURE (IN INK)

<table>
<thead>
<tr>
<th>PRESIDENT/VICE PRESIDENT/MANAGER/PARTNER/OWNER</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(SIGN BELOW, PRINT NAME, AND CIRCLE TITLE)</td>
<td></td>
</tr>
</tbody>
</table>

## APPROVED AS TO FISCIAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS

<table>
<thead>
<tr>
<th>COMPTROLLER</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## COMMONWEALTH ATTORNEY APPROVALS

<table>
<thead>
<tr>
<th>PURCHASING AGENCY ATTORNEY</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OFFICE OF GENERAL COUNSEL (IF REQUIRED)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OFFICE OF ATTORNEY GENERAL (IF REQUIRED)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX J
SAMPLE SERVICE PURCHASE CONTRACT
AMENDMENT #1 TO SERVICE PURCHASE CONTRACT #980143

This is Amendment #1 to the original SPC #980143. Original contract cost was $10,000.00. Addition to cost is $1,800.00. Amended total is $11,800.00. All terms and conditions of the original contract not changed herein remain in full force and effect.

Amendment #1: Fee to purchase additional binders and notepads for child welfare conference to be held on 7/15/07.

Invoices will be submitted for actual services rendered only upon completion of services.

This change has been caused due to an increase in the conference attendance which could not be anticipated when the original contract was prepared. This amendment has not been caused by an increase in per unit cost.

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees, to provide the specified services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

1. Standard Contract Terms and Conditions, STD-274 (Rev.05/07/04)
APPENDIX K

STANDARD BLUEBACK CONTRACT

COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION

CONTRACT FOR

(3 to 10 word statement of nature of the Contract)

Contract Inquiry No. __________

THIS AGREEMENT, made and entered into this ________ day of ______________, between __________________ University of Pennsylvania of the State System of Higher Education (address), (hereinafter “University,” “Commonwealth,” or “Agency”),

And

______________________________________________________(Contractor’s full name which must be in its legally recognized form, i.e., corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as “Contractor” within this document from this point forward) at _____________________________ (address) acting through its proper officials, (hereinafter referred to as “Contractor”) Federal I.D. #___________________(or if an individual, Social Security Number).

Both the University and Contractor, when used together, are hereinafter referred to as Parties. The University is an instrumentality of the Commonwealth of Pennsylvania, established by and existing pursuant to Article XX-A of the Public School Code of 1949, as amended, 24 P.S. § 20-2001-A, et seq., and is authorized thereby to enter into this Contract.

The University desires to obtain ___________________________ (Short description of the goods and/or services to be provided) from the Contractor.

NOW THEREFORE, in consideration of the foregoing and the mutual promises hereinafter expressed and intending to be legally bound hereby, the Parties agree as follows:

---

8 Information that it italicized is for instructional purposes only and should not appear in the final contract draft.
1. **CONTRACTOR DUTIES.** The Contractor, subject to the terms and conditions set forth below, shall perform the following duties:

(As lengthy as necessary including dividing the obligations into subparagraphs. In the event of a breach of performance, this is the key paragraph upon which the determination will be made).
2. **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. 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. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary, up to three (3) months, to enter into a new contract.

3. **RENEWALS.**

4. **COST OF AGREEMENT.** It is understood that the cost of this Agreement to the University shall not exceed ______________________________ (If there is a payment schedule, it should be included with specificity. Review to ensure that it does not conflict with the payment paragraph below).

5. **COMPENSATION/EXPENSES.** 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.

6. **INVOICES.** Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an itemized invoice to the agency at the address referenced on the purchase order promptly after services are satisfactorily completed. The invoice should include only amounts due under the Contract/purchase order. The purchase order number must be included on all invoices. In addition, the Commonwealth shall have the right to require the Contractor to prepare and submit a “Work In Progress” sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the purchase order or task order to which it refers.

7. **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 “Provide Service and 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.

8. **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.

9. **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.
10. **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.

11. **TERMINATION OF AGREEMENT.** The Commonwealth has the right to terminate this Contract 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 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. 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 this contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.

   c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract for Contractor default under Paragraph 19, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth’s discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 11.a.

12. **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.

13. **CONTRACTOR RESPONSIBILITY.**

   a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any subcontractors, nor
any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor also certifies, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

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

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

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

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

14. CONTRACTOR INTEGRITY.

a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.

   1) Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair,
unethical, or illegal advantage to another desiring to contract with the Commonwealth.

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

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

4) **Financial interest** means:
   a) Ownership of more than a five percent interest in any business; or
   b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

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

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

d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree to promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.

g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

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

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official’s agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor’s integrity or responsibility, as those terms are defined by the Commonwealth’s statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor’s business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

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

15. **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.

16. **ASSIGNABILITY AND SUBCONTRACTING.**
a. Subject to the terms and conditions of this Paragraph 16, 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.

17. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE. During the term of the Contract, the Contractor agrees as follows:

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture
of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services’ Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

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

18. **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 are not 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 either to cancel the Contract 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.

19. **DEFAULT.**

a. The Commonwealth may, subject to the provisions of Paragraph 18, Force Majeure, 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 Paragraph 11, Termination Provisions) the whole or any part of this Contract for any of the following reasons:

   1) Failure to begin work within the time specified in the Contract 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 terms;
   3) Unsatisfactory performance of the work;
   4) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
   5) Discontinuance of work without approval;
   6) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
   7) Insolvency or bankruptcy;
   8) Assignment made for the benefit of creditors;
   9) 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;
   10) Failure to protect, to repair, or to make good any damage or injury to property; or
   11) Breach of any provision of this Contract.

b. In the event that the Commonwealth terminates this Contract 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, services 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 services included within the terminated part of the Contract.

c. If the Contract 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 Issuing Office, such partially completed work, 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 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 work 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 Paragraph 21, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

20. **HOLD HARMLESS PROVISION.** The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

21. **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.

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

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

22. **AMENDMENTS.** This Agreement represents the complete agreement between the parties, superceding any other prior or contemporaneous written or oral agreements. Any changes, corrections or additions to this Agreement shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change, correction or addition.

23. **SEVERABILITY.** Should any term of this Contract be rendered unlawful by a court of competent jurisdiction or any legislative act, then the parties shall give effect to the balance of the agreement to the extent possible.

24. **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.

25. **INDEPENDENT CONTRACTOR.** In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

26. **POST-CONSUMER RECYCLED CONTENT.** Except as specifically waived by the Pennsylvania State System of Higher Education 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 in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions.

27. **ENVIRONMENTAL PROVISIONS.** In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

28. **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:


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.

29. **WARRANTY.** The Contractor warrants that 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 services and parts are warranted for a period of one year following completion of performance by the Contractor and acceptance by the Commonwealth. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

30. **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.

31. **INTEGRATION.** The 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. All such amendments will be made using the appropriate Commonwealth form.

32. **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 is 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.

33. **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.
34. **CHANGE ORDERS.** The Commonwealth reserves the right to issue change orders 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 order shall be in writing signed by the Contracting Officer. The change order shall be effective as of the date appearing on the change order, unless the change order 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 under any change order shall be handled through Paragraph 21, “Contract Controversies.”

For purposes of this Contract, “change order” is defined as a written order signed by the Contracting Officer directing the Contractor to make changes authorized under this clause.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due and legal action authorizing the same to be done the date first written above.

FOR THE CONTRACTOR:       FOR THE UNIVERSITY:

________________________________________________________
Individual or Partner (if Contractor Is an individual or partnership)  President or Designee

________________________________________________________
Title

________________________________________________________
President or Vice President of Corporate Contractor  Comptroller (Circle Title)

________________________________________________________
Secretary or Treasurer of Corporate Contractor  Deputy Attorney General (Circle Title)

Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.
APPENDIX L
SAMPLE BLUEBACK RENEWAL

PROFESSIONAL AGREEMENT RENEWAL FORM

THIS AGREEMENT, made and entered into this ______ day of __________, between __________________ University of Pennsylvania of the State System of Higher Education (address), (hereinafter “University”), and

_________________________________________ (Contractor’s full name which must be in its legally recognized form, i.e., corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as “Contractor” within this document from this point forward) at __________________________ (physical address) acting through its proper officials, (hereinafter referred to as “Contractor”) Federal I.D. #________________________ (or if an individual, Social Security Number).

WHEREAS, this Agreement Renewal is for the renewal of the original contract between the Professional and the University, Contract Number 05091, for open-ended professional design services and to administer and review the construction phase for the project as negotiated in individual work orders; and

WHEREAS, the original agreement identified above, together with any previously executed amendments, is attached hereto, and incorporated herein and marked Attachment A, and all its terms and conditions remain unchanged except as modified in this Agreement Renewal.

NOW THEREFORE, the parties hereto, intending to be legally bound, hereby do agree as follows:

1. Term of Agreement Renewal. This is the first renewal of this Agreement. The term of this Agreement renewal is December 1, 2007 through November 30, 2008.

2. Compensation. This Agreement is an indefinite quantity contract against which individual work orders shall be issued, the total compensation of which shall not exceed two hundred and fifty thousand dollars ($250,000.00) in this renewal term.

9 Information that is italicized is for instructional purposes only and should not appear in the final contract draft.
3. **Agreement Renewal Rates.** The cost of goods/services shall be as stated in Attachment B which is attached hereto and incorporated herein. The original Agreement allows for any increase, decrease or change and defines the manner in which the price change is determined.

4. **Terms of Original Agreement.** All other terms and conditions of the original contract not modified in this renewal shall remain in full force and effect and be considered incorporated herein as part of the renewal contract.

**IN WITNESS WHEREOF,** this Agreement Renewal has been executed and delivered as of the date set forth in the caption above.

FOR THE CONTRACTOR:       FOR THE UNIVERSITY:

_________________________________      _____________________________
Individual or Partner (if Contractor is an individual or partnership)  President or Designee

_________________________________
Office of the Chancellor

_________________________________
President or Vice President of Corporate Contractor  (Circle Title)

_________________________________
Secretary or Treasurer of Corporate Contractor  (Circle Title)

**APPROVED AS TO FORM AND LEGALITY:**

_________________________________
University Legal Counsel

*Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.*
AMENDMENT OF CONTRACT 985483

THIS AMENDMENT, is made and entered into this ________ day of ______________, between __________________ University of Pennsylvania of the State System of Higher Education (address), (hereinafter “University”),

and

_______________________________________(Contractor’s full name which must be in its legally recognized form, i.e., corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as “Contractor” within this document from this point forward) at __________________________________________ (physical address) acting through its proper officials, (hereinafter referred to as “Contractor”) Federal I.D. #___________________ (or if an individual, Social Security Number).

WHEREAS, the parties entered into an agreement for elevator service and maintenance on November 15, 2007 in Contract Number 985483; and

WHEREAS, subsequent to its execution an error was discovered as to the term of the contract; and

WHEREAS, the parties are mutually agreeable to amend the contract to reflect the correct information as to the term of the contract.

NOW THEREFORE, the parties hereto, intending to be legally bound, hereby do agree to the following amendment:

1. Term of Agreement. The term of this Agreement shall be amended to December 1, 2007 through November 30, 2008.

2. Terms of Original Agreement. All other terms and conditions of the original contract not modified in this amendment shall remain in full force and effect and be considered

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Information that it italicized is for instructional purposes only and should not appear in the final contract draft.
incorporated herein as part of the Amended Contract. Said original Contract is attached hereto, incorporated herein and marked Attachment A.

IN WITNESS WHEREOF, this Amendment has been executed and delivered as of the date set forth in the caption above.

FOR THE CONTRACTOR:  
___________________________  
Individual or Partner (if Contractor is an individual or partnership)

__________________________  
President or Vice President of Corporate Contractor  
(Circle Title)

____________________________  
Secretary or Treasurer of Corporate Contractor  
(Circle Title)

FOR THE UNIVERSITY:

___________________________  
President or Designee

____________________________  
University Legal Counsel

____________________________  
Deputy Attorney General

Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.
APPENDIX N
SAMPLE RENEWAL BY LETTER
(SUBMISSION SHOULD BE ON LETTERHEAD)

________________, Esquire
University Legal Counsel
State System of Higher Education
Dixon University Center
Harrisburg, PA 17110

RE: RENEWAL OF SPC 983059-1R

Dear Attorney ___________________: 

By mutual agreement of __________________ University of Pennsylvania and John Doe, d/b/a John’s Computers, the Service Purchase Contract No. 983059 is to be renewed for one year commencing July 1, 2007 through June 30, 2008. The right to renew this contract was reserved in the original SPC, which is attached for your review.

The rate of service for the renewed contract period is identical to the initial rate and no provision of the original contract is modified other than the effective and termination date noted above. These new dates do not exceed a total contract length of five years and all parties understand that this renewal is not effective until approved by appropriate Commonwealth Attorneys. All other provisions of the original contract are to remain in full force and effect.

Title: ______________________
John Doe d/b/a John’s Computers

_________________ University of
Date: _________________________
Pennsylvania

Approved as to Form and Legality:

_______________________________
University Legal Counsel

Date: __________________________
APPENDIX O
SAMPLE MEMORANDUM OF UNDERSTANDING
INTERAGENCY MEMORANDUM OF UNDERSTANDING
S159715
BETWEEN
____________________ UNIVERSITY OF PENNSYLVANIA

AND

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

THIS MEMORANDUM OF UNDERSTANDING, made this ____ day of September 2007, by and between the Pennsylvania Higher Education Assistance Agency (hereinafter “PHEAA”), Federal I.D. No. ________________ and ________________ University of Pennsylvania, a Commonwealth-owned educational institution of the Pennsylvania State System of Higher Education (hereinafter “University”), Federal I.D. No. ________________.

W I T N E S S E T H

WHEREAS, PHEAA maintains a Remote Time Sharing Service; and

WHEREAS, the University requires access to this Service for purposes of financial aid data; and

WHEREAS, technology exists to permit the University access to PHEAA’s Remote Time Sharing Service; and

WHEREAS, Sections 501 and 502 of the Administrative Code of 1929 (71 P.S. §§ 181 and 182) require Commonwealth departments and agencies to coordinate their work with other Commonwealth departments and agencies; and

WHEREAS, PHEAA is agreeable to entering into an understanding with the University to permit such access.

NOW THEREFORE, the parties to this memorandum set forth the following terms and conditions of their understanding:

1. PHEAA shall provide computer access for the University’s Financial Aid Department for the period of July 1, 2007 – June 30, 2008.

2. The University shall pay to PHEAA a lump sum of nine thousand, nine hundred and ninety six dollars ($9,996.00) for computer access upon receipt of an appropriate invoice.
3. This Memorandum of Understanding is not intended and does not create any contractual rights or obligations with respect to the signatory agencies or other parties.

4. Any dispute arising hereunder shall be submitted to the Office of General Counsel for final resolution.

IN WITNESS WHEREOF, the parties have caused these presents to be signed and attested by their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first written above.

Title: _________________________  Title:_________________________
___________ University of Pennsylvania Higher Education
Pennsylvania     Assistance Agency

APPROVED AS TO FORM AND LEGALITY:

____________________________                _____________________________
University Legal Counsel   Legal Counsel: PHEAA

____________________________
Office of General Counsel
APPENDIX P

SAMPLE LEASE OF NON-COMMONWEALTH PROPERTY
FOR A UNIVERSITY

PROPERTY LEASE
LEASE #102599

PARTIES: LEASE, executed this _____ day of _________, 200__ by and between _____________________, ______ address ______, (EIN# ________________ ) (hereinafter called LESSOR), and __________________________ University of Pennsylvania, Pennsylvania State System of Higher Education, Commonwealth of Pennsylvania (hereinafter called LESSEE).

PREMISES: LESSOR hereby lets unto LESSEE premises situate and consisting of five thousand square feet, in building _______ of the complex of (address), ____________ County, Pennsylvania, to be used as a storage facility for furniture.

TERM: The term shall be for a period of _____ year(s)/__________ month(s) commencing with the approval of this contract by all necessary parties until ________________________.

COST: The cost for the rental is $_________ Annually ($___________ per month). Payment shall be due the first of each month and provided at the following address: ________________________________________.

OPTION TERM: Before the contract period ends as noted above, if option is taken, a month to month option can be exercised by the LESSEE at which time the LESSEE shall have the right to terminate this lease without any further obligations. However, in no event should this lease exceed 5 years. Said option must be memorialized in writing with the same formality as this lease.

SERVICES: Said rental is to include maintenance and the providing by Lessor of the following: lighting (except the replacement of bulbs which will be the responsibility of LESSEE), heat to the rental premises at an average temperature of 68 degrees, and snow removal. LESSEE shall be responsible for garbage removal. In addition, the LESSOR shall also provide hot and cold water, real estate taxes and sewer and water rental; two (2) lavatories in accordance with Labor and Industry requirements; private, paved parking for ______ vehicles; provide and maintain electrical, plumbing and heating equipment.

COVENANTS: LESSOR hereby covenants and agrees:

1. To maintain the premises in tenantable condition and to make all repairs
necessary for that purpose, in the event of, but not confined to damage by fire, flood, lightning, etc.

2. No rents shall be due or payable under this lease agreement and the agreement shall not be binding until approved by the Office of Attorney General, Commonwealth of Pennsylvania.

3. It will be at the LESSOR’s option whether to elect to rebuild or repair in the event of major damage.

**RENEWAL:** A lawful continuance of the tenancy beyond said term can only occur in writing with the same formality as this lease. Notice of renewal shall be given by Lessee within 45 days of termination.

**INSURANCE:** The University is a Commonwealth agency, and as such is covered under the Commonwealth’s self-insurance program administered by the Bureau of Risk and Insurance Management of the Department of General Services. This program covers Commonwealth/University-owned property, employees and officials acting within the scope of their employment, and claims arising out of the University’s performance under this agreement. Coverage is subject to provisions of the Tort Claims Act, 42 Pa.C.S.A. § 8521, et seq.

**LIABILITY:** Neither of the parties shall assume any liabilities to each other. As to liability to each other or death to persons, or damages to property, the parties do not waive any defense as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth’s rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the University.

**TERMINATION:** The LESSEE has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the LESSOR:

(a) **Termination for Convenience.** The LESSEE shall have the right to terminate the Contract for its convenience if the LESSEE determines termination to be in its best interest. The LESSOR shall be paid for space occupied prior to the effective date of the termination, but in no event shall the LESSOR be entitled to recover loss of profits.

(b) **Non-Appropriation.** The LESSEE’s obligation to make payments during any University 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 LESSEE shall have the right to terminate the contract. The LESSOR 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 this 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 LESSEE shall have the right to terminate the Contract upon written notice for the Contractor’s default as to any of the terms contained in the contract between the parties or by law. If it is later determined that the LESSEE erred in terminating the Contract for cause, then, at the LESSEE’s discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph (a).

PENALTY: In case of the LESSOR’s failure to maintain the premises in a tenantable condition as aforesaid, or in the event of damage to the premises by fire, flood, lightning, etc., rendering it impossible or inconvenient for LESSEE to continue to occupy or use the same of its operations then, should the LESSOR fail to have repaired and restored the premises to a tenantable condition within ten (10) days after notice of such condition by LESSEE to LESSOR: the LESSEE may at its option terminate this lease or any renewal or extension thereof by giving the LESSOR ten (10) days written termination notice at last known mailing address. Payment of rent shall abate as long as the premises remain in an untenantable condition after notice thereof to LESSOR and shall resume only after condition has been corrected.

ASSIGNMENT: No assignment shall be made to this lease without the prior written approval of the University.

NOTICE: Notice under the provisions of this lease shall be provided to the following individuals. Notice must be in writing and sent to addresses noted below.

FOR LESSOR:
________________________________________
________________________________________
________________________________________
________________________________________

FOR LESSEE:
________________________________________
________________________________________
________________________________________
________________________________________

EXHIBIT: Attached hereto and incorporated herein to the lease is the following: Exhibit “A” Commonwealth Standard Terms and Conditions (Consisting of five pages).
FOR ______________________

_______________________________
President/Vice President

______________________________
Secretary/Treasurer

______________________________
APPROVED AS TO FORM & LEGALITY:

______________________________
University Legal Counsel

______________________________
Deputy Attorney General
Commonwealth of Pennsylvania
1. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

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

a. In the hiring of any employees for the manufacture of supplies, performance of work or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, or color.

c. The Contractors and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

d. The Contractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Contracting Officer and the Department of General Services’ Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Contracting Officer or the Bureau of Contract Administration and Business Development.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

g. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.
2. CONTRACTOR INTEGRITY PROVISIONS
   a. For purposes of this clause only, the words “confidential information,” “consent,” “Contractor,” “financial interest,” and “gratuity” shall have the following definitions:

   1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

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

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

   4) **Financial interest** means:
      a) Ownership of more than a five percent interest in any business; or
      b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

   5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

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

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

   d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

   e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

   f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

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

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

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official’s agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor’s integrity or responsibility, as those terms are defined by the Commonwealth’s statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor’s business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

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

3. OFFSET PROVISION
The Contractor agrees that the Commonwealth may set off the amount of any state 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.

4. 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 subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

a. The Contractor must certify in writing, for itself and all its subcontractors, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any
subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

b. The Contractor must also certify in writing, that as of the date of its execution of this Bid/Contract, it has no tax liabilities or other Commonwealth obligations.

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

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

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

f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at: http://www.dgs.state.pa.us/debarment.htm 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

5. 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.
APPENDIX Q
SAMPLE LICENSE AGREEMENT

LICENSE AGREEMENT FOR TELECOMMUNICATIONS ANTENNA

THIS LICENSE AGREEMENT (hereinafter “Agreement”), made this _____ day of _____, 2006 (“Effective Date”), by and between _____________________ University of Pennsylvania of the State System of Higher Education (hereinafter “University”), with its principal mailing address of ________________________________, and ______________________, a ________________ corporation, with its principal offices at ____________________________________________ (hereinafter “Licensee”). Federal ID Number: __________________.

W I T N E S S E T H:

WHEREAS, the University is an instrumentality of the Commonwealth of Pennsylvania, established and existing pursuant to Article XX-A of the Public School Code of 1949, as amended, 24 P.S. §20-20001-A, et seq.; .

WHEREAS, the University is authorized to license rooftop and adjacent ground area of ___________________ (hereinafter referred to as “the Building”) which is situated on real property operated by the University located at _____________ Street, on the Campus of ______________ University and called ________________ (together with the Building shall collectively be referred to as the “Property”); and

WHEREAS, Licensee desires to license specific areas of the rooftop of the Building for the installation, operation, and maintenance of telecommunications equipment, antennas and appurtenances, including any electronic and supporting equipment and structures thereto; and __________________ square feet of adjacent ground space for the installation of a prefabricated equipment shelter and standby power generator (the rooftop equipment and ground-based equipment of Licensee is collectively referred to as the “telecommunications equipment”); and

WHEREAS, Licensee is authorized to own and operate telecommunications equipment in the Borough/Township/Town of ________________, ____________ County, Pennsylvania; and

WHEREAS, the University and Licensee desire to enter into this Agreement upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the University and Licensee agree as follows:

1. License.
1.1 The University hereby grants to Licensee a non-exclusive license to use the following parts of the Building: (i) The rooftop areas defined in Exhibit A which reflect rooftop areas of _______________ and ____________________ square feet of adjacent ground level area as defined in Exhibit B for installation of an equipment shelter and generator together with the right of ingress and egress, seven (7) days a week, twenty-four (24) hours a day, subject to notice to the University as provided in Paragraph 1.2 below, for the purpose of installation, operation, repair and maintenance of the telecommunications equipment, which rooftop areas, ground space and access are collectively referred to hereinafter as the “Licensed Premises.” The University also grants to Licensee the right and sufficient space for the installation and maintenance of wires, cables, conduits and pipes as shown on Exhibit B running from the licensed roof space to the licensed ground space.

1.2 Licensee acknowledges the University’s academic mission and agrees not to interfere with that mission in the conduct of installation, operation, repair and maintenance of the telecommunications equipment. To this end, Licensee will not schedule construction, maintenance and repair work outside the hours of 8:00 AM to 5:00 PM, Monday through Saturday, except in emergency situations. The Licensee’s personnel will not be allowed above the ground floor of the Building before 9:00 AM and must be announced by the Resident Director or a Resident Assistant. In addition, the Licensee will not schedule construction, maintenance or repair work during “academic quiet Hours” which is defined as the last two weeks of the fall and spring semesters, or on other occasions when the University’s mission may be adversely affected, emergencies excepted. The Licensee will give the University a minimum of one working day advance notice of all scheduled construction, maintenance and repairs except in the case of emergencies. Pursuant to this Agreement, Licensee will have access for ingress and egress to the Licensed Premises upon and across the Property and the adjacent properties, if any, during the term set forth in this Agreement. This includes all roads and drives located or to be located thereon for the installation of utilities, wires, (no poles are allowed in that area), cables, conduits and pipes for the movement of men, machinery, vehicles and equipment for the purpose of providing utility service and installing, operating, repairing and maintaining the telecommunications equipment. Licensee shall have access to its ground-based equipment and ground-based utilities without prior notice at all times. For safety reasons, because the University operates a radio station transmitter antenna (________ insert call letters of University Radio Station) on the roof of _____________________________, the Licensee’s personnel shall check out a key at the University Police station to gain access to the roof of the Building and return the key at the end of each visit and/or at the end of each day. This is necessary so the radio station transmitter can be reduced to 50% power while personnel are on the Building roof.

1.3 Licensee shall have the right to connect the antennas to the Building and to connect any related telecommunications equipment with cables, wires and other such conduits in such location(s) and in such a manner as shall be mutually agreeable to the University and Licensee. Licensee shall prepare detailed drawings depicting the work envisioned (“Plans”) for University review and approval which shall not be unreasonably withheld, delayed or conditioned. In the event University has not approved or rejected the Plans, in writing and delivered to Licensee, within twenty (20) business days following its receipt thereof from Licensee, such Plans shall automatically be deemed approved.
1.4 No property interest for the use of the Building is created by this license. The University grants in this Agreement to Licensee a non-exclusive, non-transferable license only. No leasehold interest for the use of the facility is created under this Agreement.

2. **Term.** The term of this license shall commence upon approval of this Agreement by the Pennsylvania Attorney General’s Office and shall continue, unless otherwise terminated, for a period not to exceed five years. Said Agreement may be renewed beyond five years upon agreement of the parties and expressed written approval of Chief Counsel.

3. **Payment.**

3.1 As consideration for the granting of the right to use the Licensed Premises for operation of its telecommunications equipment during the Original Term and upon issuance of the necessary permits, the Licensee shall pay $____________________ annually; payable in monthly installments of $__________________ due the first of each month, partial months to be pro-rated. Licensee will also pay for its use of any electricity and gas as determined by separate electric and gas submeters, to be installed by the Licensee, on the Licensed Premises for Licensee’s use.

Payments will be made to __________________________ University and mailed to _____________________________________________________. In addition, Licensee shall provide a Performance Bond, in the amount of Two Thousand Five Hundred and No/100 Dollars ($2,500), which Bond shall secure Licensee’s obligation to keep the Licensed Premises in good working order and repair. The University shall be notified in writing of any changes in bonding capacity or changes in provider insurance or indemnity.

3.2 The annual base rental for each year of any subsequent five-year renewal periods shall be as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Year</th>
<th>Five Year Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Renewal Period:</td>
<td>2010-2015</td>
<td></td>
</tr>
<tr>
<td>2nd Renewal Period:</td>
<td>2015-2020</td>
<td></td>
</tr>
<tr>
<td>3rd Renewal Period:</td>
<td>2020-2025</td>
<td></td>
</tr>
</tbody>
</table>

3. **Insurance.** Licensee shall provide the University in advance of the antenna’s installation a copy of its certificate of insurance for comprehensive general liability insurance covering property damage liability and bodily injury in amount of no less than Two Hundred Fifty Thousand Dollars ($250,000.00) per person and One Million Dollars ($1,000,000.00) per incident. The University shall be named as an additional insured on any such certificates, and the certificates shall provide that the insurance carrier will give advance notice to the University of any termination, cancellation or discontinuance or modification in coverage of the insurance.

4. **Liability.** Licensee agrees that the University, or any organization affiliated with the University, or any of the University’s officers, agents or employees (collectively the University), shall not be responsible for the loss or damage to the antenna and equipment associated with the mounting and operation of the antenna by fire, theft, vandalism or other hazard. Further,
Licensee agrees to indemnify and hold harmless the University and its officers, agents and employees from all liability and/or contractual claims in relation to any personal injuries to any person whatsoever, or any losses or expenses due to such personal injuries or due to instance of or damages to personal property, arising from or related to the use of the facilities provided in this Agreement to Licensee, its employees, agents, or representatives.

5. **Access to Roof.** Access to the antenna for purposes including but not limited to installation, maintenance, inspection or repair shall be made at the direction of the University’s Physical Plant Director.

6. **Entire Agreement.** This Agreement contains the entire agreement between the University and the Licensee and supercedes all prior oral or written agreements or understandings.

7. **No Leasehold Interest.** The University grants in this Agreement to Licensee a non-exclusive, non-transferable, revocable license only. No leasehold interest for the use of the facility is created under this Agreement.

8. **Termination.** The license granted for the use of the facilities under this Agreement and/or the University’s obligation to provide services may be terminated within the sole discretion of the University upon written notice to Licensee. This Agreement and any damages/liabilities arising from under this Agreement shall survive the termination of the Agreement. This provision is in addition to and not in limitation of any other remedy the University may have for breach of the Agreement.

9. **Independent Contractors.** The parties acknowledge that they are independent contractors in regard to this Agreement and the University is not Licensee’s agent for any purpose whatsoever and vice-versa. Neither party will have the authority to enter into any contract nor assume any obligation for the other, nor will anything herein be construed to establish any partnership, joint venture or principal-agent relationship between the University and Licensee.

10. **Hazardous Substances.** Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation.

11. **Damage of University Property.** In case of damage or destruction to the property of the University due to conduct, whether intentional or unintentional, by Licensee or its employees, agents or representatives, Licensee will be responsible for the cost of replacing the property destroyed, or at the University’s option, for the cost of restoring the property to its original condition.

12. **Applicable Laws.** Licensee agrees that no activity shall be conducted on the University’s premises in violation of any applicable law or in violation of any University regulation, or in opposition to any reasonable direction that may be issued from time to time by the University Administration.
13. **Ejectment.** The University reserves the right to eject any objectionable person or persons from the University premises at all times, including periods when the facility is being provided to Licensee pursuant to this Agreement.

14. **Notices.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier’s regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier’s receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

University: __________________ University of Pennsylvania  
ATTN: Vice President for Finance and Administration  
ADDRESS

Licensee: __________________

________________________
________________________
________________________

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

15. **Radio Frequency (RF) Emissions Safety.** Prior to the installation of the telecommunications equipment, Licensee shall, at its own expense, contract for an independent Radio Frequency (“RF”) Emissions Safety Analysis for the Licensed Premises. A licensed Professional Engineer (“PE”) with experience in the field of RF safety who is not an employee of the Licensee and who is approved in advance by the University shall perform the analysis. The analysis shall be based on American National Standards Institute (ANSI), Institute of Electrical and Electronic Engineers (IEEE), Federal Communications Commission (FCC), Occupational Safety and Health Administration (OSHA), and other applicable industry standards in effect on the Commencement Date of this Agreement. Licensee agrees to supply complete, consistent and accurate information applicable to the proposed installation to the PE including transmitter RF output power levels, RF power level antenna input connectors, antenna gain, number of antenna, antenna placement, and other information as requested. So that an accurate analysis can be performed, a copy of all information provided to the PE shall be provided to the University.

A competent RF Exposure Compliance Statement detailing a typical installation of the proposed telecommunications equipment may be used to satisfy this requirement if, in the University’s sole opinion, the RF Exposure Compliance Statement completely and accurately represents the proposed configuration and is based on the standards described above.

If the Radio Frequency Exposure Compliance Statement reveals that the Building, together with Licensee’s installation, is within the above-identified federal limits, then Licensee shall be authorized to proceed with its installation and use.

16. **Installation and Operations.** Following installation of the telecommunications equipment in accordance with the approved Plans (referenced above) Licensee shall provide as-
built plans to the University for permanent records. Licensee shall install, operate, and maintain the telecommunications equipment in a good and workmanlike manner. This work shall be performed, such that the structural integrity of the Building is not damaged or impaired, under supervision of the University and pursuant to the Plans. Licensee shall not make any alterations or additions (collectively “Modifications”) to the telecommunications equipment which results in an increase in the maximum effective power levels of radio frequency emissions analyzed in the Radio Frequency Exposure Compliance Statement without the prior written consent of the University. Any Modifications which, increase the effective power levels of the RF emissions, will not be approved unless the RF Safety Analysis or RF Exposure Compliance Statement is updated to include the effects of the proposed Modifications.

Licensee shall not make any alterations or additions to the Building which involves substantial modifications to the Exhibits attached hereto without the prior written consent of the University, which consent shall not be unreasonably withheld, delayed or conditioned.

All installations and operations in connection with this Agreement by Licensee shall meet all applicable rules and regulations of the Federal Communications Commission and all applicable codes and regulations of the borough, county, state and federal governments. Licensee agrees to be responsible for its telecommunications equipment at the Building and for the safety of all work performed by, or on behalf of Licensee, at the Building. In the event of any emergency or hazardous condition caused by Licensee, or its employees, subcontractors, suppliers, or agents, University will immediately notify Licensee (in person, writing or telephone) and Licensee will send a technician to the Building upon receipt of such notice. If Licensee fails to take immediate action, the University may take corrective action to eliminate the hazardous condition.

Licensee agrees to place appropriate signage relating to radio frequency emissions in accordance with all FCC, OSHA and ANSI requirements so that it may be visible to all personnel who, by nature of their occupation, would have the ability to place themselves in range of the radio frequency emissions. If there is a need for the Licensee to connect to the University’s current entry alarm system(s) to the transmitter in any way for personal safety of individuals that need to be in the vicinity of the transmitter equipment, that cost will be borne by the Licensee.

Licensee recognizes the University’s need to perform preventative and corrective maintenance and repair to the rooftop area and to install equipment and other appurtenances. Licensee will take all reasonable steps as may be necessary to enable the University to perform its ordinary Building maintenance and repair. The University agrees to give Licensee no less than five (5) business days’ notice of its intent to perform work which would necessitate the suspension of Licensee’s operations. University agrees that any such work shall be performed during off-peak hours, emergencies excepted. If Licensee is required to temporarily suspend the operation of its rooftop telecommunications equipment to allow for University’s maintenance and repair of the rooftop areas or in the event of an emergency, University agrees that Licensee may install a cell on wheels on the University’s Property in a mutually agreeable location to provide for uninterrupted service, including for emergency communications to Licensee’s customers.
Licensee shall pay for the electricity it consumes in its operations at the rate charged by
the servicing utility company. Licensee shall have the right to draw telco (from the point of
demarcation, if available, but not from the University’s telco distribution system), electricity and
other utilities from the existing utilities on the Property or obtain separate utility service from
any utility company that will provide service to the Property. University agrees to sign such
documents or easements as may be required by said utility companies to provide such service to
the Premises, including the grant to Licensee or to the servicing utility company at no cost to the
Licensee, of an easement in, over, across or through the Property as required by such servicing
utility company to provide utility services as provided herein, except that the University does not
allow overhead power or communications lines or new poles on the Campus. Any easement
necessary for such power or other utilities will be at a location acceptable to University and the
servicing utility company.

17. **Nuisance and Interferences.** Licensee shall comply with any and all reasonable
Building rules and regulations. Licensee agrees to install radio equipment of the type and
frequency which will not cause measurable interference to the equipment of the University, the
University’s Student Activities Association or other licensees of the Building existing as of the
Effective Date. In the event Licensee’s equipment causes such interference, and after University
has notified Licensee of such interference, Licensee will take all steps necessary to correct and
eliminate the interference. Failure of the Licensee to abate such interference shall be deemed a
non-monetary default of this License Agreement by Licensee.

If necessary, the University may install and use additional radio or telecommunications
equipment at the Building. The University may also grant other parties permission to install and
use radio or telecommunications equipment at the Building. Any future use of such equipment
shall be in compliance with existing state or federal laws or regulations and should not cause
measurable interference to Licensee’s telecommunications equipment. Subsequent to the
installation of the telecommunications equipment, University shall not permit itself, its lessees or
licensees to install new equipment on the Property or property contiguous thereto owned or
controlled by University, if such equipment is likely to cause interference with Licensee’s
operations. Such interference shall be deemed a material breach by University. In the event
interference occurs, University agrees to take all action necessary to eliminate such interference,
in a reasonable time period. In the event University fails to comply with this paragraph,
Licensee may terminate this Agreement and/or pursue any other remedies available under this
Agreement, at law, and/or in equity.

18. **Removal.** Upon expiration or termination of this Agreement, Licensee shall
remove all telecommunications equipment from the Licensed Premises at its own expense and
restore the Licensed Premises to its appearance and condition existing before the installation of
the telecommunications equipment, reasonable wear and tear excepted. Removal of the
telecommunications equipment shall be conducted under the coordination of University
personnel and fully completed within ninety (90) days after termination of the Agreement. In the
event that the removal of a fixture will cause substantial and/or irreparable damage to the
Building, or if the removal of such fixtures will substantially impair the operations of the
University or its tenants, the University shall, at its option, retain such fixtures at no cost to the
University and prevent their removal. The University shall not have the right to retain
Licensee’s telecommunications equipment that can reasonably be removed without causing
substantial and/or irreparable damage to the Building.
19. **Licensee Technical Contact Information.** Licensee shall provide within 10 days of the Commencement Date, a list of Licensee’s contact personnel who will be directly responsible for the installation, operation and maintenance of the Licensed Premises. This list shall contain not less than two contact names, addresses, and telephone numbers, which should be available 24 hours per day, 7 days per week. The list shall include instructions whereby the University may contact the Licensee’s authorized personnel for the purpose of both routine and emergency problem resolution.

20. **Delay of Performance.** The University shall have no liability for any failure to perform or delay in performance due to any circumstances beyond its reasonable control, such as but not limited to fire, flood, work stoppage or strikes, loss of the use of a building or buildings due to construction or maintenance problems, acts of God and the like.

21. **Assignment.** This license may not assign this Agreement without the written permission of the University.

22. **Modification.** No changes shall be made in any of the terms of this Agreement without the prior written consent of both parties and with the same formality as this original Agreement.

23. **Controlling Law.** This Agreement will be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

*The Balance of this Page is Intentionally Blank*
24. **Binding Effect.** This Agreement shall not be binding and shall have no legal force or effect until the review and approval of the Office of University Legal Counsel of the State System of Higher Education and of the Office of Attorney General of Pennsylvania is obtained.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the day and year first written above.

_________________________                      ____________________
                          UNIVERSITY  OF PENNSYLVANIA

___________________________  ____________________________
NAME      NAME
Mayor/President    President

____________________________
NAME
Secretary or Treasurer

**REVIEWED AS TO FORM AND LEGALITY:**

_________________________
University Legal Counsel

_________________________
Deputy Attorney General
Commonwealth of Pennsylvania
APPENDIX R
TERMS AND CONDITIONS FOR CONTRACTS WHERE UNIVERSITY IS RECEIVING MONEY AND/OR PERFORMING SERVICES

1. Liability. Neither of the parties shall assume any liabilities to each other. As to liability to each other or death to persons, or damages to property, the parties do not waive any defense as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth’s rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the University.

2. Amendments. This Contract represents the complete agreement between the parties, superseding any other prior or contemporaneous written or oral agreements. Any changes, corrections or additions to this Contract shall be in writing in the form of a supplemental agreement signed by all necessary parties and setting forth therein the proposed change, correction, or addition.

3. Applicable Law. This contract shall be governed by, 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. Paying Party consents to the jurisdiction of any court or administrative tribunal 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 Paying Party agrees that any such court shall have personal jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

4. Independent Contractor. In performing the services required by the Contract, each party will act as an independent contractor and not as an employee or agent of the other party. The relationship of the parties to this Contract to each other shall not be construed to constitute a partnership, joint venture or any other relationship, other than that of independent contractors.

5. Conflict In Terms. Should any portion of the agreement contain terms which conflict with those contained within this page, the terms contained on this page shall unequivocally control.

6. Termination of Contract. The University has the right to terminate the Contract for any of the following reasons. Termination shall be effective upon written notice to the Paying Party:

   (a) Termination for Convenience. The University shall have the right to terminate the Contract for its convenience if it determines termination to be in its best interest. The University shall be paid for work satisfactorily completed prior to the effective date of the termination.
(b) **Termination for Cause.** The University shall have the right to terminate the Contract upon written notice for the Paying Party’s default as to any of the terms contained in the Contract between the parties or by law. If it is later determined that the University erred in terminating the Contract for cause, then, at the University’s discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph (a).
APPENDIX S
ROAD MAP TO PREPARING A SERVICE PURCHASE CONTRACT

<table>
<thead>
<tr>
<th>Issuing Office</th>
<th>Contractor's Name &amp; Address</th>
<th>Show This Contract Inquiry Number on Invoice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>SP PROVIDE SERVICE AND BILL TO:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4 CONTACT PERSON PHONE NO. FAX NO.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 CONTRACTOR'S FEDERAL ID NO. OR SOC. SEC. NO.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 CONTRACTOR PHONE NO. FAX NO.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7 EFFECTIVE DATE:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>6 EXPIRATION DATE:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 CONTRACTOR'S LICENSE OR REGISTRATION NO.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 CONTRACT NOT TO EXCEED: $</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specified</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>8, 9, 10</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In compliance with the contract terms, conditions, and specifications, the undersigned, on behalf of the Contractor, which intends to be legally bound hereby, offers and agrees, to provide the specified services at the price(s) set forth above at the time(s) and point(s) specified. In addition to this document, the following contract terms, conditions, and specifications are a part of the contract:

1. Standard Contract Terms and Conditions, STD-274 (Rev.05/07/04)

**COMMONWEALTH SIGNATURE**

<table>
<thead>
<tr>
<th>Purchasing Agency Head or Designee</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13</td>
</tr>
</tbody>
</table>

**CONTRACTOR'S SIGNATURE (IN INK)**

<table>
<thead>
<tr>
<th>President/President Manager/Partner/Owner (sign below, print name, and circle title)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15</td>
</tr>
</tbody>
</table>

**APPROVED AS TO FISCAL RESPONSIBILITY, BUDGETARY APPROPRIATENESS AND AVAILABILITY OF FUNDS**

<table>
<thead>
<tr>
<th>Comptroller (sign below, print name, and circle title)</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14</td>
</tr>
</tbody>
</table>

**COMMONWEALTH ATTORNEY APPROVALS**

<table>
<thead>
<tr>
<th>Purchasing Agency Attorney</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15</td>
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</table>

<table>
<thead>
<tr>
<th>Office of General Counsel (if required)</th>
<th>DATE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Office of Attorney General (if required)</th>
<th>DATE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fund</th>
<th>Dept</th>
<th>App</th>
<th>Yr</th>
<th>Org</th>
<th>Cost Function</th>
<th>Obj</th>
<th>Amount of Encumbrance</th>
<th>Pre-Encumbrance Number</th>
<th>Amt of Pre-Encumbrance Liquidated</th>
<th>Code</th>
<th>Pre-Audit</th>
<th>Posted</th>
</tr>
</thead>
</table>
APPENDIX T

EMERGENCY CONTRACT CERTIFICATION

University: ______________________  Contract Number: ______________________
Contractor: ______________________  Contract Cost: ______________________
Nature of Goods or Services: ______________________________________________

Bid Information

<table>
<thead>
<tr>
<th>Bid #1</th>
<th>Bid #2</th>
<th>Bid #3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bid:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Justification for Emergency Procurement Selection:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

I certify that the above goods and services can only be obtained by emergency procurement procedures based on the justification cited above.

________________________________________                   _______________________
Signature of Contracting Officer or Designee                           Date

________________________________________
Title

Approved as to Procurement Method

________________________________________
University Legal Counsel

This certification must be attached to the contract when presented to university legal counsel for review and signature.
APPENDIX U

SAMPLE SOLE SOURCE CONTRACT

CERTIFICATION

University: _______________________       Contract Number: _____________________
Contractor: ________________________      Contract Cost: _______________________
Nature of Goods or Services: ________________________________________________

I certify that the proposed contract identified above is a sole source procurement based on the statutory criteria checked below:

____ Only a single contractor is capable of providing the supply, service or construction.

____ A federal or state statute of federal regulations exempts the supply, service or construction from the competitive procedure.

____ The total costs of the supply, service or construction is less than the amount established by the State System for small, no-bid procurements as dictated by the policy of small procurements.

____ It is clearly not feasible to award the contract for supplies of services on a competitive basis.

____ The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer’s authorized dealer, provided the contracting officer determines that bidding is not appropriate under the circumstances.

____ The contract for supplies or services is in the best interest of the Commonwealth.

Justification for Criteria Selected/Basis for Procurement Selection:
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

Signature of Agency Head or Designee                                    Date

Title

Approved as to Procurement Method

University Legal Counsel                                                Date

This certification must be attached to the contract when it is presented to university legal counsel for final review and signature. Pre-approval of sole source procurement by university legal counsel is required prior to submission of contract.
APPENDIX V
SAMPLE TRANSMITTAL FORM

Date: ____________________

SSHE CONTRACTS FOR APPROVAL

TO: University Legal Counsel Office

FROM: ____________________
(Signature of University Employee)
University
Pennsylvania State System of Higher Education

The attached contract is submitted for review:

<table>
<thead>
<tr>
<th>Contract No.</th>
<th>Contractor</th>
<th>SS# or Federal I.D.#</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Contract Amount</th>
<th>Effective Date</th>
<th>Termination Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(leave blank)</td>
<td></td>
</tr>
</tbody>
</table>

Check below if signatures are needed:

ο James Dillon

ο Construction Support

DOCUMENTS ATTACHED:

ο Bidding Information  ο Contract
ο Certification  ο Other ______
  o Sole Source
  o Emergency

*IF ANY OF THE REQUIRED INFORMATION HAS NOT BEEN PROVIDED (e.g., Federal I.D.#, bidding information, signature lines), THE CONTRACT WILL BE RETURNED TO THE UNIVERSITY FOR COMPLETION.
APPENDIX W
CHECKLIST FOR DRAFTING CONTRACTS

Please go through this checklist prior to submitting a contract to university legal counsel for review and approval.

I. Identification of Contractor

_____ Confirm if the contractor is a corporation, partnership or sole owner.

_____ If sole owner and contractor uses a fictitious name, identify the contractor by name and acknowledge the fictitious name (i.e., John Smith d/b/a Smith’s Repairs).

_____ Confirm that all data of the contractor is up to date, including social security number and/or federal identification number, address and telephone number.

_____ If a contract involves activities requiring additional licensing (i.e., asbestos removal, transportation services, etc.), include the licensing number in the contract.

_____ Is the identification of the contractor consistent throughout the contract?

_____ If a Service Purchase Contract (SPC), is the title of the contractor clearly indicated?

_____ Is the contractor identified as an “independent contractor” and not as an employee of the University or the State System of Higher Education?

II. Dates

_____ Are the dates throughout the contract consistent as to the termination date?

_____ Is the effective date left blank?

_____ If a renewal, is it being prepared prior to the expiration of the previous contract? **(If not, then a new contract must be completed with bidding, if not a small procurement.)*

_____ If an amendment, is the amendment completed prior to the termination of the contract? **(If not, no amendment is possible.)*

_____ Are the signatures dated prior to the commencement of the services? **(If not, the contractor is illegally working without the benefit of a contract.)*

_____ If the contract must be completed by a certain date, is that noted as a specific condition within the contract?
III. Titling and Numbering of Contract

_____ If a renewal, amendment or modification, is this indicated on the first page of contract?

_____ If a renewal, amendment or modification, does the number consistently reflect the original contract number with an SPC indicating the renewal, amendment or modification (i.e., 78654-02R for second renewal, 78654-01A for first amendment and 78654-01M for first modification)?

_____ Are all pages, including attachments, properly numbered for identification and marked with the number of the contract should the papers separate from the contract?

IV. Services Requested Information

_____ Are the specific terms of the contract clear and without contradiction as to any other provisions in the contract?

_____ Is there a need to attach, incorporate and reference other documents to the contract to clearly establish the contractor’s services (i.e., the university’s request for proposal or an estimate prepared by the contractor)?

_____ If there is a mandatory time frame for the completion of services, is it contained in the services requested?

_____ Does the contract clearly state any and all per diem expenses or travel expenses?

_____ Does the contract include terms as to the place, time and method of payment?

_____ If for rental services of a hotel/motel or restaurant, does the contract contain information that no alcoholic beverages may be charged to the contract?

_____ If for rental/lodging/catering services, does the contract specify that the charge will be based on a pre-confirmed number or the actual number of attendees?

_____ If a contract for written, photographic or artistic services, does the contract specify that the services requested are a work for hire and that the university retains any and all copyright interest in the product?

_____ Does the term of the contract exceed five years (including renewals, original plus four renewals equals five years)?

_____ Does the contract clearly state its justification and purpose within the description of services requested (i.e., the University is unable to provide this service, the university does not have the equipment to provide this service)?
V. **Standard Terms and Conditions**

Are the following terms and conditions included in the blueback contract? (If an SPC, are the Standard Terms and Conditions attached?)

- [ ] Contractor Duties
- [ ] Term of Contract
- [ ] Renewals
- [ ] Cost of Agreement
- [ ] Compensation/Expenses
- [ ] Invoices
- [ ] Payment
- [ ] Taxes
- [ ] Assignment of Antitrust Claims
- [ ] Ownership Rights
- [ ] Termination of Agreement
- [ ] Audit Provisions
- [ ] Contractor Responsibility
- [ ] Contractor Integrity
- [ ] Americans with Disabilities Act
- [ ] Assignability and Subcontracting
- [ ] Nondiscrimination/Sexual Harassment Clause
- [ ] Force Majeure
- [ ] Default
- [ ] Hold Harmless Provision
- [ ] Contractor Controversies
- [ ] Amendments
- [ ] Severability
- [ ] Applicable Law
- [ ] Independent Contractor
- [ ] Post-Consumer Recycled Content
- [ ] Environmental Provisions
- [ ] Hazardous Substances
- [ ] Warranty
- [ ] Compliance with Law
- [ ] Integration
- [ ] Patent, Copyright and Trademark Indemnity

Are the following clauses excluded as impermissible if the contract is submitted on a contractor’s form?

- [ ] Purchase of insurance by the University
- [ ] Laws other than Pennsylvania applicable under the contract
- [ ] Courts other than Pennsylvania having jurisdiction under the contract
- [ ] Assignment Clauses
- [ ] Provisions for the awarding of attorneys fees, court costs or entry of judgment
- [ ] Arbitration Clauses
- [ ] Payment in Advance
- [ ] Liability language which expands the university’s exposure and decreases its protection under sovereign immunity
Are all impermissible clauses/paragraphs/languages stricken and initialed by all signatories to the contract?

VI. Procurement/Bidding Information

Have you indicated your method of procurement within the contract (on an SPC this can be accomplished within the “Service Requested” block. In a blueback contract, this can be typed onto the bidding documents since these are attached and incorporated as part of the contract)?

Have you enclosed all bidding information?

If a sole source procurement, have you completed the sole source certification and received pre-approval from university legal counsel?

If an emergency procurement, have you completed the emergency certification?

VII. Signatures

If a corporation, are there two signatures comprising of a President or Vice-President and a Secretary or Treasurer?

If an officer cannot sign, is there a certified resolution giving an individual the ability to sign on behalf of the officer and bind the corporation to the contract?

Are the titles of the signatories noted?

Is the contractor’s responsibility certification signed within the blueback contract with the same formality as the signatures necessary to bind the contract?

Does the university employee have a written delegation from the President of the university, which has also been forwarded to the Office of the Chancellor, to sign contracts on behalf of the university?

Have all parties signed the contract and initialed all changes, deletions and modifications prior to forwarding to university legal counsel for review?

VIII. Attachments

If a renewal, modification or amendment, is the original contract attached for legal review?

Are the required certifications attached for legal review?

Is all bidding information attached?

Are all additional provisions, conditions, riders and attachments attached?
IX. Miscellaneous

_____ Are all handwritten changes, amendments, modifications, and insertions initialed by ALL signatories? (If two signatures are required of the contractor, both individuals must initial these items.)

_____ Are all “blank” spaces in the contract completed or marked “not applicable” (i.e., N/A)?

_____ If the contract is being submitted for a second review as a result of it being returned for correction, has the contractor seen all changes/additions and approved them prior to resubmission to university legal counsel? Have you written documentation of the contractor’s approval of the changes in your file?

_____ If a corporate seal is required on any document, the name on the seal must identically match the contractor’s name as it appears on the contract.
This Novation is made and entered into on this ____ day of _________________, 200__, by _________________ University of Pennsylvania of the Pennsylvania State System of Higher Education, Commonwealth of Pennsylvania, and _________________ (Contractor’s full name which must be in its legally recognized form, i.e., corporate registration, full legal name if an individual and must be the same throughout this Contract. Deviations must be satisfactorily explained, except that the Contractor may be referred to as “Contractor” within this document from this point forward) at ___________________________________________ (address) acting through its proper officials, (hereinafter referred to as “Contractor”) Federal I.D. #___________________(or if an individual, Social Security Number).

WHEREAS, _________________ University on July 1, 2007, entered into an agreement with _________________, contract number _________________, for the Contractor to provide pest control services to the University campus (attached hereto as Exhibit A); and

WHEREAS, the above Agreement included a renewal clause which provided for three one-year renewals; and

WHEREAS, since the making of the Agreement, Contractor, entered into a merger with ____________________________________, filing Articles of Merger-Domestic Business Corporation with the Pennsylvania Department of State, Corporation Bureau on January 29, 2008 (attached hereto as Exhibit B); and

WHEREAS, the Articles of Merger state that _________________________, is the surviving corporation and _________________________, is the disappearing corporation in the merger; and

WHEREAS, the Articles of Merger includes as Exhibit A, a plan of merger which states in Paragraph 8 that the disappearing corporation has granted to the surviving corporation an irrevocable power of attorney to execute and deliver, among other things, assignments and assurances in law to confirm possession of rights, properties or assets of the surviving corporation; and

WHEREAS, Pennsylvania business corporate law, 15 Pa.C.S.A. § 1929(b), provides that the surviving corporation shall be responsible for all the liabilities of each corporation so merged; and

WHEREAS, _________________, desires to continue to provide services and meet the assigned obligations of the merged corporation under the above contract and its subsequent renewals; and

WHEREAS, the parties desire to make this Novation because of their mutual interests in continuing the contractual relationship which existed between _________________ University

11 Information that it italicized is for instructional purposes only and should not appear in the final contract draft.
of Pennsylvania and ________________________, now merged with and known as ________________________.

NOW, THEREFORE, with the mutual intent to be legally bound, the parties agree to the following:

1. **Assumption of Contract.** ______________________, should be substituted for ______________________ in the above contract number ______________________ and any subsequent renewals or amendments. ______________________ agrees to accept all obligations under the agreement as if it was the original contracting party.

2. **Original Terms and Conditions.** All terms and conditions of the original contract shall remain in full force and effect.

The parties hereby acknowledge the foregoing as the terms and conditions of their Agreement.

FOR THE CONTRACTOR: FOR THE COMMONWEALTH:

_________________________ ______________________
President or Vice President of Vice President for Administration/Finance
Corporation (Please date) University of Pennsylvania
State System of Higher Education
(Please date)

_________________________
Secretary or Treasurer of Secretary or Treasurer of
Corporation (Please date) Corporation (Please date)

_________________________
Federal Identification Number

APPROVED AS TO FORM AND LEGALITY:

_________________________
University Legal Counsel
State System of Higher Education

_________________________
Office of Attorney General

*Note regarding signatures above. If a corporation, two signatures are required, one being the President or Vice President, the second being the Secretary or Treasurer. Signatory authority of either signatures can be delegated provided there is a certified Board resolution presented with this contract.*
APPENDIX Y

FORM LETTER TO PIBH OR SIMILAR SITUATION PROVIDER

DATE:

ADDRESSEE

Re: Project No.
Title of Project:

Dear ____________________________:

I am in receipt of your request for the establishment of a fair market price for services subject to the above referenced contract. In order to assist the Department of General Services in arriving at a fair market price for this particular service and to insure that your agency is in compliance with the Commonwealth Procurement Code (Act 57), please complete the enclosed form and return it to the University no later than ______________________.

Upon receipt of your completed form, this information, as well as all relevant information pertaining to the criteria for this project, will be forwarded to the Department of General Services. If your form is not returned by the above noted date, it will be assumed that you have no further desire to be considered as a contractor for this project.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Director of Purchasing
AGENCY CERTIFICATION FORM

Project No.________________________  Title of Project: ____________________

1. In accordance with the Commonwealth Procurement Code (Act 57), will persons with disabilities perform 75% of the work in this project?

    __________   Yes     _____________  No

If yes, please state who will be the provider of these services:
____________________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________

2. In accordance with the Act 57, will 75% of the compensation in this project be paid to cover the wages and salaries of persons with disabilities?

    __________ Yes    ___________ No

3. What comparable experience does your entity have in regards to the work to be performed in this project?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. How does your agency intend to meet the necessary criteria for contractors established in the IFB/RFP?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

I hereby certify that the information in this form is true and accurate. Should the entity accept the fair market value of services once determined, all work performed shall be in accordance with state and federal statutes.

________________________________________ ____________________________
Name       Date

________________________________________
Title

(If additional space is necessary, answers may be supplemented and attached to this form. All responses should be numbered to correspond to this form.)
APPENDIX Z
Draft Letter to Confirm University’s Insurance Status

NAME
ADDRESS

Dear _________________________:

This letter is in response to your request that ___________ University of Pennsylvania purchase and provide a certificate of insurance.

_______________ University is a part of the Pennsylvania State System of Higher Education, a body corporate and politic constituting a public corporation and government entity. As such, it lacks the statutory authority to purchase insurance and it does not possess insurance documentation per se (i.e., certificates of insurance). Instead, it participates in the Commonwealth’s Tort Claims Self-Insurance Program administered by the Bureau of Risk and Insurance Management of the Pennsylvania Department of General Services. The program covers Commonwealth/University-owned property, employees, and officials acting within the scope of their employment, and claims arising out of the University’s performance under a contract, subject to provisions of the Tort Claims Act, 42 Pa.C.S.A. § 8521, et seq.

The Commonwealth’s exposure to liability (other than Workman’s Compensation) is governed by the dictates of Act 1978-152, as amended, commonly known as the Sovereign Immunity Tort Claims Act. Under the Act, sovereign immunity was re-affirmed but waived in eight specific areas of liability. Eligible claims or suits against the Commonwealth, its officials, or its employees, within the waived areas may be settled up to $250,000 per person, $1,000,000 each occurrence.

If I can be of any further assistance in this matter, please do not hesitate to contact me.

Very truly yours,
APPENDIX AA

Board of Governors      Policy 1990-07-A

Professional Services Contracting

A. Policy

Authorized System Contracting Officers and professionals seeking architectural
engineering or other professional services contracts with the State System of Higher
Education shall utilize and comply with the Commonwealth Procurement Code and the
procedures prescribed in this policy statement when contracting for professional services.
Only authorized System Contracting Officers may contract for professional services and
all agreements must be within delegated authority limitations.

B. Background

The Commonwealth Engineer, Land Surveyor and Geologist Registration Law 63 P.S.
§150 and the Architects Licensure Law 63 P.S. §34 establish the requirements of what
constitutes the practice of engineering and architecture and when registered professionals
must be utilized in the design and construction of facilities projects. It is imperative that
the requirements of these statutes are observed whenever facilities projects are
undertaken by the System.

Act 188 as amended by Act 103 of July 10, 1990, authorizes the State System to contract
for professional services for facilities projects. The Act requires selection of
professionals by a board based on qualifications and merit, after advertisement of the
work. Award of a contract must be based on equitable distribution of contracts,
capability to perform the services, geographic proximity to the work, ability to perform
the work within the required time frame, and other related circumstances peculiar to the
proposed contract.

C. Purpose

This policy specifies the minimum requirements that must be met in the process used for
selection of design professionals and professional construction/project managers as
provided in the cited authorities. Design/build, small procurements, sole source
procurements, and emergency projects may be considered on an individual basis and may
be subjected to different or an accelerated selection process.

D. Definitions

The following words and terms, when used in this policy, shall have the following
meanings unless the context clearly indicates otherwise:

* Authorized System Contracting Officer – The president of each university and the
chancellor, or their designees, are designated as contracting officers and, as such, are
the only individuals authorized to procure goods, services, supplies, and construction;
enter into and administer contracts; and make written determinations with respect to contracts for the State System.

- **Design/Build Projects** - projects undertaken by a single team of design professionals and contractors under the same contract are called design/build projects. The procedures for selection of the design/build team are prescribed in section E (7).

- **Design Professional** - a registered architect, professional engineer, landscape architect, or land surveyor, or a professional association, corporation or partnership, or other legal entity licensed or authorized by the law of this Commonwealth to provide professional design services in accordance with the provisions of 63 P.S. §150 and 63 P.S. §34.

- **Emergency Procurement** – When there exists a threat to public health, welfare, safety, or circumstances outside the control of the agency create an urgency of need which does not permit the delay involved in using more formal competitive methods, a written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

- **Professional Construction/Project Manager** – a registered architect or professional engineer, firm, corporation, partnership, or other legal entity licensed or authorized by the law of this Commonwealth to engage in the application of the practice of engineering or architecture in accordance with the provisions of 63 P.S. §150 and 63 P.S. §34 during the planning, development, design construction, alteration, repair, or renovation of System facilities.

- **Professional Services** - those professional services which are acquired by contractual procurement for a specified project or fixed duration by a qualifications-based merit selection process within the scope of the practice of architecture, engineering, landscaping architecture or land surveying (as defined in 63 P.S. §149 and 63 P.S. §34), including studies, investigation, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soil engineering, drawing reviews, preparation of operating and maintenance manuals and other related services associated with research, planning, development, design, construction, alteration, repair, or renovation of State System facilities.

- **Selection Board** - a body of at least three members charged with the responsibility of ranking the most qualified design professional applicants in order of priority.

- **Negotiation Board** - a body composed of at least three members who are appointed by the Contracting Officer and are knowledgeable of the professional services required to satisfy the project, capable of evaluating the design professional's statement of qualifications and performance data, and are charged with the responsibility of identifying the most qualified design professional applicants.

- **Small Procurements** – procurements defined in Policy 1998-xx for which the cost of the procurement is below the cost limit required for competitive procurement.
• **Sole Source Procurements** – procurements defined in Policy 1998-xx for which procurements can be made without competition.

**E. Procedure**

The procedures prescribed below shall be used when contracting for professional services.

1. **Public Notice of Projects**

   The State System universities shall give public notice of all proposed contracts in *The Pennsylvania Bulletin* or other approved media published in the Commonwealth Procurement code with the advertisement containing the following minimum information:

   a. Project number or title, location, description of scope of work, and range of estimated construction cost of each project.

   b. The criteria for selection, the deadline (time and date) and place for response, the form and format of response desired for consideration and selection of interested applicants, and the information and address where such information may be obtained.

   c. A Liability Disclaimer Clause, which states: "All applications submitted are subject to review by the university slating and/or selection boards. The university boards disclaim any liability whatsoever as to their review of the applications submitted and in formulating their recommendations for selection. All recommendations for selection made by the boards shall be final pursuant to the Act of November, 1982, (P.L 660, No. 188)."

   d. A statement that the System encourages responses from small firms, minority firms, women-owned firms, and firms which have not previously performed work for the university, and will consider joint ventures which will enable these firms to participate in university professional services contracts.

   e. A professional shall be considered only when the information specified in the public notice is received within the prescribed deadline.

   f. Professionals may be required as part of the selection process to be interviewed by the selection board. If an interview is required, the professionals will be notified by the board as to the date, time, and place.

2. **Procedures for Selection of Design Professional Services and Professional Construction or Project Management Services**

   a. Each Contracting Officer or the Office of the Chancellor shall establish selection and negotiation boards which shall be used to select professional services on a merit basis, as prescribed by Act 188 and the Commonwealth Procurement Code.
b. Every selection shall be made based on the qualifications of the professionals, and the fees for services shall be established by negotiation regardless of the fee.

c. The Contracting Officer shall give public notice of projects requiring services of professionals, in order to determine the identity of design professionals interested in the design, contract administration, project management, or inspection for the project.

d. The selection board appointed by the Contracting Officer shall review the qualifications of interested professionals and identify in rank order, based upon the criteria established and published by the board, at least three of the professionals deemed to be the most highly qualified to provide the services required. The results of the selection board shall be formally transmitted to the negotiation board appointed by the Contracting Officer and made available for public information upon request. In establishing the criteria and in the selection process, both boards must consider:

1. equitable distribution of contracts among qualified architects and engineers;
2. capability to perform the design and construction management services for the contracts being considered;
3. geographic proximity of the architect or engineer to the proposed facility;
4. ability of the architect or engineer to furnish the necessary manpower to perform the services required by the project; and
5. any other related circumstances peculiar to the proposed contract.

e. The negotiation board shall negotiate a fair and reasonable fee in order of preference, opening negotiations with firms of a lower preference only if a fair and reasonable fee cannot be established with the firm of higher preference. Information presented by either party during negotiation shall be considered proprietary and held in the strictest confidence, and made public only if a contract is executed.

3. Quorum

Three members each of the slating or selection boards shall constitute a quorum, and all action shall be taken only by vote of a majority.

4. Negotiated Agreements

a. The negotiation board shall attempt to negotiate a contract with the professional ranked as the highest qualified professional at compensation
which the board determines is fair and reasonable to the university. The board shall consider the estimated value and scope of the work, complexity, and nature of the services in its determination.

b. If a satisfactory agreement cannot be consummated with the firm considered to be the most qualified, negotiations shall be formally terminated with that professional or firm.

c. The negotiation board shall then undertake negotiations with the professional or firm ranked the second most qualified to perform the services.

d. If agreement cannot be reached with the second most qualified professional or firm, the negotiation board shall attempt negotiation with each ranked professional firm in descending order, individually (one at a time) until satisfactory agreement can be reached.

e. If the negotiation board is unable to negotiate a satisfactory agreement with any of the professionals or firms ranked by the selection board, the selection board may request the slating board to recommend additional applicants for the selection board's review, ranking, and subsequent negotiations according to the process herein established.

f. The negotiation board shall continue negotiations in accordance with this paragraph until agreement is reached, or shall terminate all negotiations and request re-advertisement.

5. Standard of Conduct

Employees, officers, and/or agents, or any professional submitting a letter of interest or receiving an agreement pursuant to the authority cited in this policy shall meet and comply with the contractor integrity provisions applicable to contractors pursuant to the public announcement and/or prescribed in the agreement.

6. Small Procurements, Sole Source Procurements and Emergency Procurements

Upon determination by the Contracting Officer or a designee that a project meets the requirements for small procurement, sole source procurement, or emergency procurement, the selection procedures with regard to the form of public notification, consideration, and recommendation by the selection and negotiation boards may be modified.

7. Design/Build Projects as Permitted by Pennsylvania Code

a. The State System shall give public notice of all proposed contracts undertaken through the design/build process.

b. The selection committee shall review the information required of the design/build firms responding to the public notice and the Request-for-Proposals (RFP), if required, and shall pre-qualify at least three but not
more than seven firms most qualified to satisfy the project requirements on basis of merit using the criteria specified in section 2 (d).

c. Those design/build teams/firms prequalified as most qualified shall be requested to submit a Guaranteed Maximum Price (GMP) for the project based on the specified requirements for the project in the Request-for-Proposals.

d. Award shall be made on a competitive basis to the design/build team/firm submitting the lowest conforming guaranteed maximum price.

Adopted October 18, 1990
Amended April 9, 1998
APPENDIX BB

Board of Governors  Policy 1998-04

Procurement of Goods, Services, Supplies, and Construction

A. Policy

All procurement of goods, services, supplies, and construction for the State System of Higher Education will conform to the policies, procedures, and statutory limitations published in the Commonwealth Procurement Code and this policy. The State System will use the provisions contained in this policy to implement the provisions of the Commonwealth Procurement Code promulgated by Act 57 of 1998.

B. Background

Act 57 of 1998, known as the Commonwealth Procurement Code, establishes the statutory limitations and provisions for all procurement activities for the Commonwealth of Pennsylvania. The provisions of the act apply to the State System as a state-affiliated entity.

C. Purpose

The intent of this policy is to assign specific responsibilities and establish procedures that will be used to implement Act 57 of 1998 within the State System.

D. Definitions

The following definitions apply to the State System.

· **Agency Head** – The chancellor is the agency head for the State System, as referenced in Act 57 of 1998.

· **Contracting Officer** – The president of each university and the chancellor, or their designees, are designated as contracting officers and, as such, are the only individuals authorized to procure goods, services, supplies, and construction; enter into and administer contracts; and make written determinations with respect to contracts for the State System.

· **Department** – For those cases in which the State System, by virtue of its status as a state-affiliated entity, is granted similar authority to that assigned to the Department of General Services in Act 57 of 1998, “department” shall mean the agency head.

· **Fiscal Officer or Comptroller** – The president of each university and the chancellor, or their designees, will appoint a fiscal officer or comptroller, who will be
responsible for reviewing all procurements (except small purchases) and for fiscal
responsibility, budgetary appropriateness, and availability of funds.

- **Purchasing Agency** – The State System is a purchasing agency as defined in Act 57
  of 1998. The chancellor will act as, and assume the duties and responsibilities
  assigned to, the purchasing agency head.

All other definitions applicable to the procurement of goods, services, supplies, and
construction will be as defined in Act 57 of 1998.

### E. Authority

1. The chancellor will serve as agency head and carry out the duties and responsibilities
   of that office as defined in Act 57 of 1998 and this policy (see Attachment 1).

2. The president of each State System university and the chancellor, or their designees,
   will serve as contracting officers and carry out the duties and responsibilities of that
   office as defined in Act 57 of 1998 and this policy (see Attachment 2).

3. The president of each State System university and the chancellor are delegated the
   authority to resolve protests of solicitations or awards according to the provisions of
   Sections 1711 and 1712 of Act 57 of 1998.

### F. Procedures and Responsibilities

1. Each State System contracting officer will comply with the provisions of Act 57 of
   1998 when contracting for goods, services, supplies, and construction.

2. In implementing the provisions of the Reciprocal Limitations included in Act 57 of
   1998, the State System will use the list of discriminating states prepared and
   published by the Department of General Services for administering the Reciprocal
   Limitations provisions.

3. The State System will utilize the Department of General Services Central Office to
   provide information to businesses operating in the Commonwealth that desire
   information pertaining to the procurement needs of the State System.

4. The State System will participate in the Contractor Responsibility Program in
   coordination with the Office of the Budget and the Department of General Services.

5. The appointed fiscal officer or comptroller of each State System institution, and the
   Office of the Chancellor for Office of the Chancellor procurements, will review and
   approve all procurements for fiscal responsibility, budgetary appropriateness, and
   availability of funds. Also, at his or her option, this officer may serve as a nonvoting
   member of an evaluation committee for requests for proposals or similar contract
   bidding or selection committee for acquisition of services.

6. All procurements (except small procurements and emergency procurements) must be
   advertised publicly. The contracting officer will determine the method of public
   notice to be given for each procurement to ensure competition that should produce
   the least cost for the procurement. The contracting officer will select any or all of the
methods of public notice listed in Section 512 of the Commonwealth Procurement Code, except that a general notice must be given in addition to issuance of invitation for bids to bidders on the solicitation mailing list, and/or when utilizing the pre-qualification provisions of Section 512. The contracting officer must consider the principles of responsiveness, accountability, fairness, and openness in determining the public notice given for each procurement as set forth in Attachment 3.

7. Withdrawal of erroneous bids after opening, but before award, because of bid mistakes will be permitted as provided in Section 512 of the Commonwealth Procurement Code, provided notice of request for relief and supporting evidence to withdraw the bid is made in writing to the contracting officer within two business days after opening the bids.

8. The provisions of Section 514 of the Commonwealth Procurement Code, entitled Small Procurements, will be limited to procurements at the amount published in Policy 1983-02-A: Purchasing.

9. The provisions of Section 514 of the Commonwealth Procurement Code, entitled Small Procurements, for construction projects will be limited to procurements up to and including $10,000, as adjusted annually by the construction cost index published by the Department of General Services.

10. Whenever a State System contracting officer intends to award a sole-source contract, as defined in Section 515 of Act 57 of 1998, for supplies, services, or construction above the amount established in paragraphs 8 and 9 above, or intends to make an emergency procurement as defined in Section 516 of Act 57 of 1998, a copy of the written determination as specified in Section 563 of Act 57 of 1998 justifying the use of the sole source or emergency procurement provisions of Sections 515 and 516, respectively, will be forwarded to the university legal counsel for review prior to award of the contract.

11. The chancellor, or his or her designee, will establish due process procedures for hearing debarment actions and appoint a debarment board, consisting of at least three individuals knowledgeable of the provisions in the Commonwealth Procurement Code controlling the type of procurement, to hear the contracting officer’s reasons for requesting debarment proceedings, and to hear the contractor’s response. After hearing both sides of the debarment recommendation, the hearing board will recommend appropriate debarment action or dismissal to the chancellor. The chancellor will issue the written decision for each debarment action.

12. The contracting officer will determine the pre-qualifications of prospective bidders and offers for particular types of supplies, services, and construction whenever a pre-qualification list is used for the procurement action. The lowest responsive, responsible bidder must be considered for award even though that bidder was not included in the pre-qualification list.

13. Whenever a contracting officer selects a contract type other than a firm, fixed-price contract or an emergency procurement, the contracting officer first will review the contractor’s accounting system to ensure it meets acceptable accounting standards as outlined in Attachment 4, to comply with the provisions of Section 541 of the 50
14. The contracting officer will inspect the plant of contractors or subcontractors and audit cost and pricing data to the extent necessary to ensure that the provisions of the contract are met and the pricing is accurate. The contractor must maintain for a period of three years the original contracts for which cost and pricing data was required and/or the contracts that were audited.

15. The contracting officer will appoint a selection and negotiation committee in accordance with Policy 1990-07-A: Professional Services Contracting, for procurement of design professional services. The selection and negotiation committee will select and negotiate agreements with architectural and engineering firms seeking to perform design and engineering services for the State System in accordance with the procedures of Policy 1990-07-A.

16. The chancellor will promulgate procedures for the sale and or disposal of surplus supplies in accordance with the provisions of Chapter 15 of the Commonwealth Procurement Code.

17. The chancellor will establish procedures for implementing the provisions of the Commonwealth Procurement Code and this policy, as required.

G. Effective date

November 15, 1998

Approved October 8, 1998
Attachment 1

Duties and Responsibilities of the Agency Head

In addition to those duties and responsibilities enumerated in the basic policy, the Agency Head will:

1. formulate implementing policies and procedures consistent with Act 57 of 1998 and Act 188 of 1982;

2. delegate contract authority to System contracting officers consistent with System policy;

3. audit and monitor the implementation of the System procurement program;

4. make or authorize others to make emergency procurements as provided in the Commonwealth Procurement Code and Act 188 of 1982;

5. make the final determination for the agency in any suspension or debarment actions;

6. issue written decisions within 120 days from the filing of the protest for all protests not resolved by the contracting officer.
Attachment 2

Duties and Responsibilities of State System of Higher Education Contracting Officers

In addition to the duties and responsibilities enumerated in the basic policy, System Contracting Officers will:

1. determine the method of source selection and public notice to be given for each contract;

2. ensure that withdrawals of bids are made in accordance with the provisions of Act 57 of 1998 and the basic policy;

3. determine in writing the conditions justifying procurements made without competition;

4. determine the security, payments, and performance bonding required in each contract to ensure appropriate risk coverage for the System consistent with the Commonwealth Procurement Code and System policy. Provide copies to any person who makes an application for the copy;

5. appoint members and constitute selection and negotiating boards;

6. hear and issue findings on bid protests, claims, and/or disputes concerning solicitation, award, or administration of a contract.
Attachment 3

Principles of Public Notice

The following principles of good procurement practices will be considered when determining the public notice to be given for System procurements.

Responsiveness:

1. The objectives and policies of the agency.
2. Community understanding of purchasing procedures and requirements.

Accountability:

2. The maximum value for each dollar of expenditure sought assertively through the widest possible audience of potential vendors to maximize competition; competitive practices set aside only in the most justifiable circumstances; and cooperation and collaboration with other universities and public agencies pursued to maximize value.
3. Adequate documentation is provided for public review as an “audit trail.”

Fairness and Openness:

1. All competitive suppliers are granted equal consideration as far as state or federal statute and institutional policies permit.
2. A reasonable effort is made to make all competing suppliers aware of institutional needs for the procurement.
3. Minority/Women Business Enterprises (MBE/WBE) are sought actively to provide them the opportunity to respond to the solicitation.
4. Honesty in sales representation is demanded, whether offered by a verbal or written statement, an advertisement, or a sample of the product.
5. Business is conducted with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
6. Consent from the originator of proprietary ideas and designs is received before using them for competitive purchasing purposes.
7. Every effort is made to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier. Major controversies are submitted to arbitration or other third party review, as permitted by the Procurement Code and Act 188 of 1982.

Personal and institutional gifts or gratuities are not accepted.
APPENDIX CC

NOTICE AS TO FILING A BID PROTEST

1. A bidder or offeror, a prospective bidder or offeror, or a prospective contractor, that is aggrieved in connection with the solicitation or award of a contract under the Commonwealth Procurement Code, except as provided in 62 Pa.C.S.A. § 521 (relating to cancellation of invitations for bids or requests for proposals) may file a protest with the Office of the Chancellor, State System of Higher Education, 2986 North Second Street, Harrisburg, Pennsylvania 17110.

A copy of any protest must also be simultaneously mailed to the Office of the President of the university that issued the bid solicitation. No additional notification need be sent if the Office of the Chancellor issued the bid solicitation.

2. If the protestant is a bidder or offeror or a prospective contractor, the protest must be filed with the Office of the Chancellor at the aforementioned address within seven (7) days after the aggrieved bidder or offeror or prospective contractor knew or should have known of the facts giving rise to the protest. In no event may a protest be filed later than seven (7) days after the date the contract was awarded.

3. If the protestant is a prospective bidder or offeror, a protest must be filed with the Office of the Chancellor at the aforementioned address prior to the bid opening time or the proposal receipt date.

4. If a bidder or offeror, a prospective bidder or offeror, or a prospective contractor fails to file a protest, or files an untimely protest, the bidder or offeror, the prospective bidder or offeror, or the prospective contractor will have waived its right to protest the solicitation or award of the contract in any forum. The State System of Higher Education shall disregard protests that are untimely filed.

5. A protest must state all grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

6. Upon receipt of the protest, the Office of the Chancellor will render a decision in accordance with the procedures outlines within the Commonwealth Procurement Code, 62 Pa.C.S.A. §1711.1 et seq.
APPENDIX DD

GLOSSARY OF TERMS

**Act 57:** The Commonwealth Procurement Code. Dictates how Commonwealth entities purchase goods and services.

**Act 188:** The statutory authority that establishes the State System of Higher Education. It also defines the roles and responsibilities of the System, individuals who voluntarily serve the system, as well as those who are employed by the System.

**Affiliated Entity:** The State System of Higher Education is an “affiliated entity” under Act 57.

**Agreement:** *See* Contract.

**Amendment:** A change or modification required to a contract that has already been fully executed by all parties.

**Anti-Bid Rigging:** The act of conspiring, colluding or combining with another in order to commit or attempt to determine in advance the winning bidder of a contract. *See* Section XV of the Contract Manual.

**Arbitration Clauses:** Language in a contract that requires any disputes arising from a contract to be resolved before an arbitrator. This is impermissible in that the Board of Claims has exclusive jurisdiction over contract matters in excess of three hundred dollars ($300.00) that involve a Commonwealth Agency. *See* Section VIII(E) of the Contract Manual.

**Assignment:** The transfer of a party’s rights and responsibilities under a contract to a third (new) party. This is impermissible absent the expressed written approval of the University. *See* Section VIII(A) of the Contract Manual.

**Attachments:** Any and all paperwork appended to a contract that is to be referenced and incorporated within the contents of the main contract as part of the overall contract.

**Attorney’s Fees:** The cost assessed by a Court of one party’s legal fees incurred as a result of bringing a legal action. Generally assessed against a losing party in a litigation matter. This type of clause is impermissible in any Commonwealth contract.

**Bid Protest:** The formal contestment by a contractor as to anything involving the bidding process. *See* Section XIII of the Contract Manual.

**Blueback Contract:** A formal written contract, not written on a pre-approved form, is referred to as a “blueback” as a result of the traditional blue paper which is used by attorneys to bind the papers together.

**Board of Claims:** A Commonwealth entity which has exclusive original jurisdiction to resolve contract disputes in excess of three hundred dollars ($300.00) which involves Commonwealth agencies.

**Bonds:** Instruments of financial security in an amount equal to or a percentage of, the work to be performed by a contractor. *See* Section X of the Contract Manual.
Certified Board Resolution: An action by a corporate governance structure, reduced to writing, and marked with the corporate seal.

Chief Counsel: Provides legal representation to the Chancellor for the State System of Higher Education, the Board of Governors and the Presidents of all 14 universities. Chief Counsel also manages the administration of the Office of University Legal Counsel.

Commonwealth Attorneys Act: The Act that dictates the legal representation of Commonwealth agencies.

Commonwealth Court: The trial court for all legal matters involving Commonwealth agencies.

Competitive Sealed Bidding: The most traditional of procurement methods which requires the issuance of invitations to bid on previously prepared specifications and contract terms and conditions which each bidder must meet to be eligible for the contract award.

Contract: A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction.

Contracting Officer: A person authorized to enter into and administer contracts and make written determination with respect to contracts. A person has contracting authority either directly from Act 188 or from written delegation by a person authorized to have and delegate this authority.

Court Costs: Costs assessed by a Court as a result of the need to bring litigation as a result of a legal action. Generally assessed against a losing party in a litigation matter. This type of clause is impermissible in any Commonwealth contract.

d/b/a: Doing Business As. Used to indicate that an owner of a business utilizes a fictitious name as part of his business identity. Example: John Smith d/b/a John’s Used Cars.

Debarment: The exclusion of a contractor from eligibility of Commonwealth contract awards as a result of a finding of substantial evidence of impermissible business practices. See Section XII of the Contract Manual.

Disadvantaged Business: A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. See Section XIV of the Contract Manual.

Emergency Contract: A procurement made without formal bidding, even if greater than a small procurement, due to the fact that there exists a threat to public safety, health or welfare or circumstances outside the control of the university. This thereby created a need, which does not permit the delayed method of formal competitive bidding methods. See Section II(H) of the Contract Manual.

Employee: An individual drawing a salary or wages from a Commonwealth agency, whether elected or not, and any noncompensated individual performing personal services for any Commonwealth Agency.

Excess Supplies: All nonexpendable supplies having a remaining useful life but which are no longer required by the University.
**Execution:** The signing of a contract by a person with contracting authority.

**Executive Agencies:** The Governor and the departments, boards, commissions, authorities and other officers and agencies of the Commonwealth. The term does not include any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies or any independent agency or State-affiliated entity.

**Expendable Supplies:** All tangible supplies other than nonexpendable supplies.

**Firm, Fixed-Price Contract:** A contract where the total amount to be paid to the contractor is fixed and not subject to adjustment for any reason.

**Grant Agreements:** A written document that furnishes assistance to a university by the Commonwealth, federal government or any person or entity, whether financial or otherwise, to support a program or project.

**Hold-harmless Clauses:** A statement in a contract that obligates one party to not hold a second party liable for any actions, which may be specified and limited.

**Indemnification Clause:** A contractual obligation where one party agrees to make another party whole in the event of litigation. This is an impermissible clause where such imposes the obligation upon the Commonwealth.

**Independent Agencies:** Boards, commissions and other agencies and officers of the Commonwealth, which are not subject to the policy supervision and control of the Governors. The terms do not include state-affiliated entities, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, any State-related institution, political subdivision or transportation authority.

**Independent Contractor:** A contractor who performs services under contract who is not an employee of the university.

**Invitation for Bids:** All documents, including those either attached or incorporated by reference, used for soliciting bids from contractors. See Section IV of the Contract Manual.

**Joint Purchasing:** When two or more permissible entities such as universities or a university and a municipal authority procure goods and services together in the hopes of achieving lower prices as a result of higher volume. See Section IV(K) of the Contract Manual.

**Jurisdiction:** The authority by which courts and other tribunals hear and resolve legal disputes.

**Legal Approval:** The process in which all necessary Commonwealth attorneys review and sign a contract thereby approving of its form and legality. See Section I of the Contract Manual.

**Management Directive:** Policies issued by the Office of the Governor for implementation by Executive Agencies coming under its jurisdiction. Not all management directives are applicable to the State System of Higher Education.
**Memorandum of Understanding:** A written understanding of goods or services provided between two Commonwealth agencies that come under the authority of the Office of General Counsel. *See Section II of the Contract Manual.*

**Modification:** A written alteration in specifications, price, quantity, period of performance or other provision of any contract accomplished by mutual action of the contracting parties. *See Section IX of the Contract Manual.*

**Multi-Step Sealed Bidding:** A two step procurement process first requesting the submission of unpriced offers followed by the submission of bids to a then selected procurement description. *See Section IV (C) of the Contract Manual.*

**Multiple Awards:** The awarding of a contract to two or more contractors. *See Section IV(F) of the Contract Manual.*

**Nondiscrimination Clause:** Language in all Commonwealth contracts that insures that any contractor receiving Commonwealth funds will not discriminate in any way, shape or form in regards to sex, age, national origin or heritage in its business practices which includes but is not limited to the treatment of employees, hiring and wages. *See Section V of the Contract Manual.*

**Nonexpendable Supplies:** All tangible supplies having an original acquisition cost of over one hundred dollars ($100.00) per unit and a probable useful life of more than one year.

**Novation:** A document between parties, with sufficient documentation, that evidences and confirms another business assuming the responsibilities of another business or the evidence of a name change. *See Appendix T of the Contract Manual.*

**OAG:** Office of Attorney General

**OGC:** Office of General Counsel

**Persons with Disabilities:** These are individuals who are physically disabled, visually impaired or mentally retarded. *See Section IV (I) of the Contract Manual.*

**PIBH:** Pennsylvania Industries for the Blind and Handicapped.

**Procurement:** Buying, purchasing, renting, leasing, licensing or otherwise acquiring any supplies, services or construction. The term also includes all functions that pertain to the obtaining of any supply, service or construction, including the description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

**Professional Services:** The services of accountants, clergy, physicians, dentists and other personal services that are not performed by other Commonwealth employees.

**Proprietary Specifications:** A description of the physical or functional characteristics or the nature of a supply, service or construction item, including a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery which is specific to a contractor either as a result of a patent or copyright.
**Recycled Content Products Provision**: Requirements that obligate a contractor, when appropriate, to utilize recycled materials at minimum percentage levels. See Section V of the Contract Manual.

**Request for Proposal (RFP)**: All documents, including those either attached or incorporated by reference, used for soliciting proposals. See Section IV of the Contract Manual.

**Renewal**: The continuing of a contract beyond its original term for another fixed period. The right to renew a contract must be specifically contained in the original contract. See Section II(F) of the Contract Manual.

**Responsible Bidder**: A person who has the capability in all respects to fully perform the contract requirements and the integrity and reliability, which will assure good faith performance. See Section IV of the Contract Manual.

**Responsive Bid**: A responsive bid is one that confirms in all material respects to the requirements and criteria advertised in the IFB.

**Required Provisions**: Mandatory contract language, which must be contained in all Commonwealth Contracts. See Section V of the Contract Manual.

**Sealed Bid or Proposal**: A bid or proposal whose contents are not disclosed until the bid opening time or the proposal receipt date. Bids and requests are typically submitted in sealed envelopes to meet the requirement but electronic submission is not prohibited so long as the university has the electronic capability to maintain the confidentiality of the bid or proposal until the bid opening time or proposal receipt date. See Sections IV(B)(D) of the Contract Manual.

**Serial Contracting**: The drafting of multiple contracts under the guise of small procurements for one large purchase of goods or services in order to avoid the formal bidding process. This is impermissible.

**Service Purchase Contract (SPC)**: Pre-approved form STD-278P that is used by the university for non-complex purchases of goods or services.

**Small Businesses**: A business in the United States which is independently owned, it is not dominant in its field of operation and meets the criteria established by the Department of General Services, by regulation, for qualification as a small business.

**Small Procurement**: The purchase of goods or services under ten thousand dollars ($10,000.00). See Section IV (E) of the Contract Manual.

**Sole Source**: When only one contractor is capable of providing the goods or services needed by a university. See Section II(I) of the Contract Manual.

**Source Selection**: The procurement method utilized for the purchasing of goods or services (i.e., competitive sealed bidding, sole source, emergency). See Section IV of the Contract Manual.

**Sovereign Immunity**: The legal doctrine that insulates the Commonwealth from liability but for limited circumstances.
**Specification:** A description of the physical or functional characteristics or the nature of a supply, service or construction item, including a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

**Specification Rigging:** The requesting of a bid or proposal, which knowingly includes specifications, that only one contractor can realistically meet. *See Section XV(F) of the Contract Manual.*

**Surplus Property:** Nonexpendable supplies no longer having any use to the Commonwealth agency. The term includes obsolete supplies, scrap materials and nonexpendable supplies that have completed their useful life cycle. *See Section XVI of the Contract Manual.*

**Suspension:** The temporary exclusion of a contractor from receiving the award of Commonwealth contracts.

**Tax Offset Provisions:** Contractual language which permits the university to deduct from payment to the contractor, any past due monies owed to the Commonwealth such as taxes, insurance, licensing fees, etc. *See Section V of the Contract Manual.*

**Termination:** The completion of a contract as a result of its expiration date or the severing of a contractual relationship for causes specifically dictated within the contract. *See Section V of the Contract Manual.*

**University Legal Counsel:** Attorneys who work under the auspices of the Office of General Counsel who are supervised by Chief Counsel for the State System of Higher Education and who are assigned to respective universities for the purpose of providing legal services.

**Work for Hire:** Material subject to copyright ownership prepared by a contractor wherein the university retains ownership of the material as a result of the payment to the contractor. This option, when applicable, must be clearly stated within the terms and conditions of the contract.