

## **STANDARD CONTRACT TERMS AND CONDITIONS - SAP**

If an award is made to a Bidder, the Bidder shall receive a Contract that obligates Bidder to furnish the awarded item(s) in accordance with these Standard Contract Terms and Conditions - SAP:

### **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: a) the date the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.

The fully executed Contract shall not contain "ink" signatures by the Commonwealth. The Contractor understands and agrees that the receipt of an electronically-printed Contract with the printed name of the Commonwealth purchasing agent constitutes a valid, binding contract with the Commonwealth. The printed name of the purchasing agent on the Contract represents the signature of that individual who is authorized to bind the Commonwealth to the obligations contained in the Contract. The printed name also represents that all approvals required by Commonwealth contracting procedures have been obtained.

The Contractor shall not start performance until all of the following have occurred: a. the Effective Date has arrived; b. the Contractor has received a copy of the fully-executed Contract; and c. the Contractor has received a Purchase Order. The Commonwealth shall not be liable to pay the Contractor for any supply furnished or work performed or expenses incurred before the Effective Date or before the Contractor receives a copy of the fully-executed Contract or before the Contractor has received a Purchase Order. Except as otherwise provided in Paragraph 3, no Commonwealth employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.

### **2. PURCHASE ORDERS**

The Commonwealth may issue Purchase Orders against the Contract. These orders constitute the Contractor's authority to make delivery. All Purchase Orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept Purchase Orders which require performance extended beyond those performance time periods specified in the Contract but in no event longer than ninety (90) days after the expiration date of the Contract period. Each Purchase Order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase Orders will not include an "ink" signature by the Commonwealth. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the Commonwealth, to authorize the Contractor to proceed.

Purchase Orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor. Receipt of the electronic or facsimile transmission of the Purchase Order shall constitute receipt of an order. Orders received by the Contractor after 4:00 p.m. will be considered received the following business day.

The Commonwealth and the Contractor specifically agree as follows:

- a. No handwritten signature shall be required in order for the Contract or Purchase Order to be legally enforceable.
- b. Upon receipt of a Purchase Order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the Commonwealth, unless and until the Commonwealth transmitting the order has properly received an acknowledgement.

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

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

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. INDEPENDENT CONTRACTOR**

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth.

### **4. 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.

### **5. ENVIRONMENTAL PROVISIONS**

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

### **6. POST-CONSUMER RECYCLED CONTENT**

Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified in Exhibits A-1 through A-8 to these Standard Contract Terms and Conditions - SAP.

### **7. COMPENSATION**

- a. The Contractor shall be required to perform at the price(s) quoted in the Contract. All items shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for items supplied and 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.
- b. Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall send an **invoice itemized by purchase order line item** to the address referenced on the Purchase Order promptly after

items are satisfactorily delivered. 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 rates, 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 "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.
- c. The Commonwealth will make contract payments through Automated Clearing House (ACH).
  - 1) Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
  - 2) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.
  - 3) It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

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

## **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. INSPECTION AND REJECTION**

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

#### **17. 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 19, Termination Provisions) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
- 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
  - 3) Unsatisfactory performance of the work;
  - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
  - 5) Improper delivery;
  - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
  - 7) Delivery of a defective item;
  - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
  - 9) Discontinuance of work without approval;
  - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
  - 11) Insolvency or bankruptcy;
  - 12) Assignment made for the benefit of creditors;

- 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
  - 14) Failure to protect, to repair, or to make good any damage or injury to property; or
  - 15) Breach of any provision of the Contract.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.
- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in Paragraph 20, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

## **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 aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

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

## 19. TERMINATION PROVISIONS

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

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under Paragraph 17, Default, upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under the Subparagraph 19.a.

## 20. CONTRACT CONTROVERSIES

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

## **21. ASSIGNABILITY AND SUBCONTRACTING**

- a. Subject to the terms and conditions of this Paragraph 21, 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 maybe 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 b 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.

## **22. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, 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 each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- d. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit

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

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

### **23. CONTRACTOR INTEGRITY PROVISIONS**

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

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

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

- g. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
- h. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- i. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - 1. Approved in writing by the Commonwealth prior to its disclosure; or
  - 2. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - 3. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - 4. Necessary for purposes of Contractor's internal assessment and review; or
  - 5. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - 6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - 7. Otherwise required by law.
- j. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
  - 1. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - 2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (a) obtaining;
    - (b) attempting to obtain; or
    - (c) performing a public contract or subcontract.

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

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 law.
6. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
7. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 *et seq.*
8. Violation of any federal or state law prohibiting discrimination in employment.
9. Debarment by any agency or department of the federal government or by any other state.
10. Any other crime involving moral turpitude or business honesty or integrity.

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

- k. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
  1. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  2. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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

- l. Contractor shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 *et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
- m. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
- n. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

- o. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
- p. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
- q. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph q.
  - 1. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - 3. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - 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 holding any position of management.
  - 5. "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
  - 6. "Immediate family" means a spouse and any unemancipated child.
  - 7. "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
  - 8. "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of

money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## 24. CONTRACTOR RESPONSIBILITY PROVISIONS

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

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

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

## 25. 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.

## 26. HAZARDOUS SUBSTANCES

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

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
  - 1) Hazardous substances:
    - a) The chemical name or common name,
    - b) A hazard warning, and
    - c) The name, address, and telephone number of the manufacturer.
  - 2) Hazardous mixtures:
    - a) The common name, but if none exists, then the trade name,
    - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
    - c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
    - d) A hazard warning, and
    - e) The name, address, and telephone number of the manufacturer.
  - 3) Single chemicals:
    - a) The chemical name or the common name,
    - b) A hazard warning, if appropriate, and
    - c) The name, address, and telephone number of the manufacturer.
  - 4) Chemical Mixtures:
    - a) The common name, but if none exists, then the trade name,

- b) A hazard warning, if appropriate,
- c) The name, address, and telephone number of the manufacturer, and
- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

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

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

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

## **27. 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.

## **28. 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.

## 29. INTEGRATION

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

## 30. CHANGES

The Commonwealth reserves the right to **make changes** at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such **change shall be made by the Contracting Officer by notifying the Contractor in writing.** The **change** shall be effective as of the date **of the change**, unless the **notification of change** specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required **by any notification of change** shall be handled through Paragraph 19, "Contract Controversies".

## 31. CONTROLLING TERMS AND CONDITIONS

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

## 32. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
  1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

**EXHIBIT A-1  
 CONSTRUCTION PRODUCTS  
 RECYCLED CONTENT**

**(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:

<b>Construction Products</b>	<b>Material</b>	<b>% of Post-Consumer Materials</b>	<b>% of Total Recovered Materials</b>
Structural Fiberboard	Recovered Materials	-	80
Laminated Paperboard	Post-consumer Paper	100	-
Rock Wool Insulation	Slag	-	75
Fiberglass Insulation	Glass Cullet	-	20
Cellulose Insulation (loose-fill and spray-on)	Post-consumer Paper	75	-
Perlite Composite Board Insulation	Post-consumer Paper	23	-
Plastic Rigid Foam, Polyisocyanurate/ Polyurethane: Rigid Foam Insulation	Recovered Material	-	9
Foam-in-Place Insulation	Recovered Material	-	5
Glass Fiber Reinforced Insulation	Recovered Material	-	6
Phenolic Rigid Foam Insulation	Recovered Material	-	5
Floor Tiles (heavy duty/commercial use)	Rubber	90	-
	Plastic	-	90
Patio Blocks	Rubber or Rubber Blends	90	-
	Plastic or Plastic Blends	-	90
Polyester Carpet Fiber Face	Polyethylene terephthalate (PET) resin	25	-
Latex Paint: --Consolidated <sup>1</sup> --Reprocessed <sup>2</sup> ----White, Off-White, Pastel Colors ----Grey, Brown, Earthtones, and Other Dark Colors	Recovered Material	100	-
	Recovered Material	20	-
	Recovered Material	50	-
Shower and Restroom Dividers/Partitions:	Plastic	20	-
	Steel <sup>4</sup>	16	9
		67	33
Carpet Cushion: --Bonded Polyurethane --Jute --Synthetic Fibers --Rubber	Old Carpet Cushion	15	-
	Burlap	40	-
	Carpet Fabrication Scrap	-	100
	Tire Rubber	60	-
Railroad Grade Crossing Surfaces --Concrete --Rubber <sup>3</sup> --Steel <sup>4</sup>	Coal Fly Ash	-	15
	Tire Rubber	-	85
	Steel	16	9
		67	33

"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

<sup>1</sup> Consolidated latex paint used for covering graffiti, where color and consistency of performance are not primary concerns.

<sup>2</sup> 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.

<sup>3</sup>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

<sup>4</sup> 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.

(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.

**EXHIBIT A-2  
VEHICULAR PRODUCTS  
RECYCLED 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:

Vehicular Product	Requirements
Re-Refined Oil	25% re-refined oil base stock for engine lubricating oils, hydraulic fluids, and gear oils.

"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 basestock 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.

**EXHIBIT A-3  
 PAPER PRODUCTS  
 RECYCLED 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:

Item	Notes	Post-Consumer Content (%)
<b>Printing and Writing Papers</b>		
Reprographic	Business papers such as bond, electrostatic, copy, mimeo, duplicator and reproduction	30
Offset	Used for book publishing, commercial printing, direct mail, technical documents, and manuals	30
Tablet	Office paper such as note pads and notebooks	30
Forms bond	Bond type papers used for business forms such as continuous, cash register, sales book, unit sets, and computer printout, excluding carbonless	30
Envelope	Wove Kraft, white and colored (including manila) Kraft, unbleached Excludes custom envelopes	30 10 10
Cotton fiber	High-quality papers used for stationery, invitations, currency, ledgers, maps, and other specialty items	30
Text and cover	Premium papers used for cover stock, books, and stationery and matching envelopes	30
Supercalendered	Groundwood paper used for advertising and mail order inserts, catalogs, and some magazines	10
Machine finished groundwood	Groundwood paper used in magazines and catalogs	10
Papeteries	Used for invitations and greeting cards	30
Check safety	Used in the manufacture of commercial and government checks	10
Coated	Used for annual reports, posters, brochures, and magazines. Have gloss, dull, or matte finishes	10
Carbonless	Used for multiple-impact copy forms	30
File folders	Manila or colored	30
Dyed filing products	Used for multicolored hanging folders and wallet files	20
Index and card stock	Used for index cards and postcards	20
Pressboard	High-strength paperboard used in binders and report covers	20
Tags and tickets	Used for toll and lottery tickets, licenses, and	20

	identification and tabulating cards	
<b>Newsprint</b>		
Newsprint	Groundwood paper used in newspapers	20
<b>Commercial Sanitary Tissue Products</b>		
Bathroom tissue	Used in rolls or sheets	20
Paper towels	Used in rolls or sheets	40
Paper napkins	Used in food service applications	30
Facial tissue	Used for personal care	10
General-purpose industrial wipers	Used in cleaning and wiping applications	40
<b>Paperboard and Packaging Products</b>		
Corrugated containers (<300 psi) (300 psi)	Used for packaging and shipping a variety of goods	25 25 40
Solid fiber boxes	Used for specialized packaging needs such as dynamite packaging and army ration boxes	40
Folding cartons	Used to package a wide variety of foods, household products, cosmetics, pharmaceuticals, detergent, and hardware	40
Industrial paperboard	Used to create tubes, cores, cans and drums	45
Miscellaneous	Includes "chipboard" pad backings, book covers, covered binders, mailing tubes, game boards, and puzzles	75
Padded mailers	Made from kraft paper that is usually brown but can be bleached white	5
Carrierboard	A type of folding carton designed for multipack beverage cartons	10
Brown papers	Used for bags and wrapping paper	5
<b>Miscellaneous Paper Products</b>		
Tray liners	Used to line food service trays. Often contain printed information.	50

"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.

**EXHIBIT A-4  
 LANDSCAPING PRODUCTS  
 RECYCLED 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:

Landscaping Products	Recovered Material Content
Hydraulic Mulch: -----Paper -----Wood/Paper	100% (post-consumer) 100% (total)
Compost Made From Yard Trimmings and/or Food Waste	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.
Garden Hose: -----Rubber and/or Plastic	60% (post-consumer)
Soaker Hose: -----Rubber and/or Plastic	60% (post-consumer)
Lawn and Garden Edging: -----Rubber and/or Plastic	30% (post-consumer)/30-100% (total)
Landscaping Timber and Posts: -----HDPE -----Mixed Plastics/Sawdust -----HDPE/Fiberglass -----Other mixed Resins	25% (post-consumer) + 50% (recovered) 50% (post-consumer) + 50% (recovered) 75% (post-consumer) + 20% (recovered) 50% (post-consumer) + 45% (recovered)

"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.

**EXHIBIT A-5  
 MISCELLANEOUS PRODUCTS  
 RECYCLED CONTENT**

**(A) REQUIREMENT**

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:

<b>Miscellaneous Products</b>	<b>Recovered Material Content</b>
Awards and Plaques -----Glass -----Wood -----Paper -----Plastic and Plastic/Wood Composites	75% (post-consumer) + 25% (recovered) 100% (total) 40% (post-consumer) 50% (post-consumer) + 45% (recovered)
Industrial Drums -----Steel <sup>1</sup> -----Plastic (HDPE) -----Fiber (paper)	16% (post-consumer) + 9% (recovered) 30% (post-consumer) 100% (post-consumer)
Mats -----Rubber -----Plastic -----Rubber/Plastic Composite	75% (post-consumer) + 10% (recovered) 10% (post-consumer) + 90% (recovered) 100% (post-consumer)
Pallets -----Wood -----Plastic -----Thermoformed -----Paperboard	95% (post-consumer) 100% (post-consumer) 25% (post-consumer) 50% (post-consumer)
Signage -----Plastic -----Aluminum -----Plastic Sign Posts/Supports -----Steel Sign Posts/Supports <sup>2</sup>	80% (post-consumer) 25% (post-consumer) 80% (post-consumer) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered)
Sorbents -----Paper -----Textiles -----Plastics -----Wood <sup>3</sup> -----Other Organics/Multimaterials <sup>4</sup>	90% (post-consumer) + 10% (recovered) 95% (post-consumer) 25% (total) 100% (total) 100% (total)
Manual-Grade Strapping -----Polyester -----Polypropylene -----Steel <sup>2</sup>	50% (post-consumer) 10% (total) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered)

"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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> "Wood" includes materials such as sawdust and lumber mill trimmings.

<sup>4</sup> 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.

<sup>2</sup> 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:

<b>Nonpaper Office Product</b>	<b>Recovered Material Content</b>
Recycling Containers and Waste Receptacles: -----Plastic -----Steel <sup>1</sup> -----Paper -----Corrugated -----Solid Fiber Boxes -----Industrial Paperboard	20% (post-consumer) 16% (post-consumer) +9% (recovered)  25% (post-consumer) 40% (post-consumer) 40% (post-consumer) + 60% (recovered)
Plastic Desktop Accessories (polystyrene) including desk organizers, sorters, and trays, and memo, note, and pencil holders.	25% (post-consumer)
Binders: -----Plastic-Covered -----Paper-Covered -----Pressboard -----Solid Plastic -----HDPE -----PE -----PET -----Misc. Plastics	25% 75% (post-consumer) +15% (recovered) 20% (post-consumer) + 30% (recovered)  90% (post-consumer) 30% (post-consumer) 100% (post-consumer) 80% (post-consumer)
Trash Bags (plastic)	10% (post-consumer)
Toner Cartridges	Return used toner cartridges for remanufacturing and reuse or purchase a remanufactured or recycled-content replacement cartridge.
Printer Ribbons	Procure printer ribbon reinking or reloading services or procure reinked or reloaded printer ribbons.
Plastic Envelopes	25% (post-consumer)
Plastic Clipboards: -----HDPE -----PS -----Misc. Plastics	90% (post-consumer) 50% (post-consumer) 15% (post-consumer)
Plastic File Folders -----HDPE	90% (post-consumer)
Plastic Clip Portfolios -----HDPE	90% (post-consumer)
Plastic Presentation Folders -----HDPE	90% (post-consumer)

"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."

<sup>1</sup> The recommended recovered materials content levels for steel in this table reflect the fact that the designated item is made from steel manufactured from in 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:

<b>Park &amp; Recreation Product</b>	<b>Recovered Material Content<sup>1</sup></b>
Park Benches & Picnic Tables: -----Plastic <sup>2</sup> -----Plastic Composites -----Aluminum -----Concrete -----Steel <sup>3</sup>	90% (post-consumer) + 10% (recovered) 50% (post-consumer) + 50% (recovered) 25% (post-consumer) 15% (total) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered)
Plastic Fencing for Specified Uses <sup>4</sup>	60% (post-consumer) + 30% (recovered)
Playground Equipment -----Plastic <sup>3</sup> -----Plastic Composites -----Steel <sup>4</sup> -----Aluminum	90% (post-consumer) + 10% (recovered) 50% (post-consumer) + 45% (recovered) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 25% (post-consumer)
Playground Surfaces: -----Plastic or Rubber	90% (post-consumer)
Running Tracks: -----Plastic or Rubber	90% (post-consumer)

"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.

<sup>1</sup> 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.

<sup>2</sup> "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.

<sup>3</sup> 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.

<sup>4</sup> 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.

**EXHIBIT A-8  
 TRANSPORTATION PRODUCTS  
 RECYCLED CONTENT**

**(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:

<b>Transportation Products</b>	<b>Recovered Material Content<sup>1</sup></b>
Traffic Cones: -----Plastic (PVC and LDPE) -----Crumb Rubber	50% (recovered) 50% (recovered)
Traffic Barricades (type I and II only): -----Plastic (HDPE, LDPE, PET) -----Steel <sup>2</sup> -----Fiberglass	80% (post-consumer) + 20% (recovered) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 100% (recovered)
Parking Stops: -----Plastic and/or Rubber -----Concrete Containing Coal Fly Ash -----Concrete Containing Ground Granulated Blast Furnace Slag	100% (recovered) 20% (recovered) 15% when used as a partial cement replacement as an admixture in concrete. 25% (recovered)
Traffic Control Devices: -----Channelizers: -----Plastic -----Rubber (base only) -----Delineators: -----Plastic -----Rubber (base only) -----Steel (base only) <sup>2</sup> -----Flexible Delineators	25% (post-consumer) 100% (post-consumer) 25% (post-consumer) 100% (post-consumer) 16% (post-consumer) + 9% (recovered) 67% (post-consumer) + 33% (recovered) 25% (post-consumer)

"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.

<sup>1</sup> Content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.

<sup>2</sup> 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