

REQUEST FOR PROPOSALS

Pennsylvania Universal Service Fund Administrator

ISSUING OFFICE

Pennsylvania Public Utility Commission

Bureau of Technical Utility Services

RFP-2016-1

DATE OF ISSUANCE

October 5, 2016

TABLE OF CONTENTS

		<u>Page No.</u>
Part I	GENERAL INFORMATION FOR PROPOSERS	1
Part II	CRITERIA FOR SELECTION	13
Part III	TECHNICAL SUBMITTAL	17
Part IV	COST SUBMITTAL	21
Part V	SMALL DIVERSE BUSINESS AND SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL	23
Appendix A	NONCOLLUSION AFFIDAVIT	
Appendix B	PROPOSAL COVER SHEET	
Appendix C	RFP TRANSMITTAL LETTER	
Appendix D	DRAFT CONTRACT	
Appendix E	SMALL DIVERSE BUSINESS	

CALENDAR OF EVENTS

The Commission will make every effort to adhere to the following schedule:

Activity	Responsibility	Date
Non-mandatory Pre-Proposal Conference on October 12, 2016, at 1:30 p.m. in Hearing Room 4, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. The Issuing Officer will take questions.	Issuing Office/Potential Proposers	10/12/2016
Deadline to submit Questions via email to the Issuing Officer/Project Officer Janet Tuzinski at jtuzinski@pa.gov .	Potential Proposers	10/17/2016
Answers to all Potential Proposer questions posted to the Commission website no later than October 25, 2016, at http://www.puc.pa.gov/contact_us/request_for_proposals.aspx	Issuing Office	10/25/2016
Please monitor website for all communications regarding the RFP on an ongoing basis. http://www.puc.pa.gov/contact_us/request_for_proposals.aspx	Potential Proposers	Ongoing
Sealed proposal must be received by the Issuing Office at address indicated in Section I-11 by <u>3 p.m., November 18, 2016.</u>	Proposers	11/18/2016 <u>3 p.m.</u>

PART I

GENERAL INFORMATION FOR THE CONTRACTOR

I-1. PURPOSE. This Request for Proposals (RFP) provides interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Public Utility Commission (Commission or PUC) to administer the Pennsylvania Universal Service Fund (Pa. USF or Fund) from July 1, 2017, through and including June 30, 2022, pursuant to Commission regulations at 52 Pa. Code §§ 63.161 – 63.171.

The Pa. USF was created to reduce and restructure access charges and intraLATA toll rates, and to encourage greater toll competition while enabling carriers to continue to preserve the affordability of local service rates. *Rulemaking Re Establishing Universal Service Fund Regulations* at 52 Pa.Code §§ 63.161-171, Final Rulemaking Order at L-00000148 (November 29, 2000). Regulations may be found at <http://www.pacode.com>. The regulations governing administration of the Pa. USF are located at 52 Pa. Code §§ 63.161-63.171. They may be accessed along with related orders and pertinent information regarding the Pa. USF at the Commission's website: www.puc.pa.gov. Click on "Utility & Industry," then "Telecommunications," and finally "Pennsylvania Universal Service Fund."

I-2. ISSUING OFFICE. This RFP is issued by the PUC's Bureau of Technical Utility Services ("Issuing Office"). The Contract is between the Commission and the Contractor, and the final selection, control and approval for payment of the Contractor is to be made by the Commission. The sole point of contact in this Commission for this RFP is Janet Tuzinski (Issuing Officer/Project Officer), Manager of Telecommunications, Bureau of Technical Utility Services, 3rd Floor West, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, phone number (717) 783-6175, email at jtuzinski@pa.gov. Please refer all inquiries to the Issuing Officer.

I-3. ESTIMATED BUDGET. The Commission estimates the budget for this Contract as follows for the purpose of aiding in the submission of Proposals; these estimates are not meant to establish cost "minimums or maximums."

\$130,000 per year

\$520,000 (four firm contract years – for Disadvantaged Business scoring)

\$650,000 (\$520,000 four firm years plus \$130,000 optional year – for Cost scoring)

(Disadvantaged Business percentages must be similar in the optional year to the 4 years.)

I-4. PROBLEM STATEMENT. To assist the Commission in its task of regulation, the Contractor shall develop, and the Commission hereby requests, written proposals to serve as the third-party administrator (Administrator) of the Pennsylvania Universal Service Fund. The Administrator is responsible for managing the Pa. USF from the period of July 1, 2017, through and including June 30, 2021, with a possible one-year extension through June 30, 2022. The Administrator is responsible for collecting pro rata contributions based on telecommunications service providers' intrastate end-user telecommunications retail revenues, at a rate set by the PUC, and depositing these revenues into the Fund. The Administrator will also distribute money

from the Pa. USF on the first of each month to 31 rural incumbent local exchange carriers (ILECs).¹ The role of the Administrator is described at 52 Pa. Code § 63.167. Additional detail is provided in Part IV of this RFP.

The Commission regulations allow for an assessment that is computed annually pursuant to 52 Pa. Code § 63.165 (relating to collection of universal service fund contributions) at a rate calculated by the formula contained therein. The formula is the total amount of administration and audit fee, support due to recipient carriers and five percent allowance for uncollectible divide by carriers intrastate end-user telecommunications revenue. The Administrator submits an annual report to the Commission containing the data used to set the assessment rate. End-user revenues expressly do not include revenues received from access, resale (toll or local) of unbundled network elements, or other services that are essentially wholesale in nature. The total end-user revenue includes all revenues received from subscribers who actually consume the final service unadjusted for any expense or any other purpose.

The Commission regulates approximately 400 telecommunications carriers; however, based on reported intrastate revenues, only about 250 companies, are required to contribute monthly to the Pa. USF. The contributing carriers are companies providing intrastate toll services (interexchange carriers or IXC), intrastate competitive access services offered by competitive access providers (CAPs), intrastate services offered by incumbent local exchange carriers (ILECs), and intrastate services offered by competitive local exchange carriers (CLECs). Various entities offering wireless, VoIP (Voice over the Internet Protocol), or cable television services do not currently participate either as recipients or contributors in the Fund.

The Administrator functions as the “financial hub” of this system. The Administrator collects the contributions from the individual companies, manages the Fund’s cash flow, and disburses payments to 31 rural ILECs under the regulations. The Administrator also works with the Pa. USF’s External Auditor.

The Commission acknowledged in its July 18, 2011 Order at Docket No. I-00040105, *Rural ILEC Access Charge Investigation*, that it will be proceeding with a re-examination of its Pa. USF mechanism and associated regulations.² The Federal Communications Commission (FCC) continues to be engaged in comprehensive rulemaking proceedings where intercarrier compensation and federal USF reforms are being implemented.³ The contemplated Pa. PUC proceeding and federal developments can and will impact the Pa. USF mechanism, associated regulations, and its operation. It is anticipated that the Administrator will demonstrate and exhibit the necessary technical, operational, and

¹ Pennsylvania is home to 37 ILECs of which 35 are classified as rural. Due to their small quantity of customers, TDS-Deposit Telephone Company, Hancock Telephone Company, and West Side Telephone Company are exempt from contributions and distributions from the Pa. USF. In addition, Windstream D&E Telephone Company is a net contributor.

² *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund et al.*, Docket No. I-00040105 *et al.*, Order entered July 18, 2011, Ordering Paragraph 20 at 194 (*Rural Access Charge Investigation*).

³ *See generally In re Connect America Fund et al.*, (FCC February 9, 2011), WC Docket No. 10-90 *et al.*, (FCC November 18, 2011), Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, and subsequent FCC rulings.

administrative capabilities to successfully address changes occurring at the state and/or federal levels in appropriate coordination with the Commission.

The Commission notes that there is potential for expansion of the Pa. USF contribution base. If there is an expansion of the contribution base, the Administrator will need to work with both the PUC and carriers in order to expand the Pa. USF contribution base, identify new contributing carriers or entities (e.g., VoIP), and make the appropriate contribution assessments.

Administrator Criteria. Pursuant to 52 Pa. Code § 63.166, the Administrator shall meet the following criteria:

- (1) The administrator shall be neutral, impartial, and independent from telecommunications service providers operating in the Commonwealth of Pennsylvania;
- (2) The administrator shall not advocate specific positions before the Commission in non-universal service administrative proceedings related to common carrier issues;
- (3) The administrator shall not be an affiliate of any provider of telecommunications services. The administrator may not be closely associated with any provider of telecommunications services in a dependent or subordinate position; and
- (4) If the administrator has a board of directors that includes members with direct financial interests in entities that contribute to or receive support from the Fund, no more than a third of the board members may represent any one category (e.g., local exchange carriers or interexchange carriers) of contributing carriers or support recipients, and the Board's composition must reflect the broad base of contributors to and recipients of Fund assets. For purposes of this restriction, a direct financial interest exists where the Administrator or Board member:
 - (i) Is an employee of a telecommunications carrier,
 - (ii) Owns equity interests in bonds or equity instruments issued by any telecommunications carrier,
 - (iii) Owns mutual funds that invest more than 50% of its assets in telecommunications securities.
- (5) If the administrator's board composition changes during its contractual period, the administrator shall notify the Commission immediately.

I-5. TYPE OF CONTRACT. The Contract entered into by the Issuing Office as a result of this RFP will contain the proposed Terms and Conditions as shown in the draft contract found at Appendix D. This RFP and all exhibits, appendices, addenda, and other attachments thereto, and the proposal of the successful proposer who is awarded the Contract and all exhibits, appendices, addenda, and other attachments thereto, are incorporated into the Contract by reference.

In addition, the Contract issued as a result of this RFP will be a firm, fixed price contract. Payments to the Administrator will be based on a monthly payment schedule and will not be a percentage of the total size of the Pa. USF monies managed. The Contract will be for a term beginning on July 1, 2017, or as soon thereafter as an effective date can be placed on the Contract.

The Contract:

1. Will be for a term of four years with a possible one-year extension [July 1, 2017, through and including June 30, 2021, with a possible one-year extension through June 30, 2022];
2. May be amended, as necessary, to address regulatory or statutory changes; and
3. May elaborate further on the Administrator's duties, including:
 - (a) Clarifying reporting requirements for the Administrator, and in particular concerning compliance with Generally Accepted Government Auditing Standards;
 - (b) Imposing periodic financial reporting and revenue estimating requirements; and
 - (c) Cooperating with a new Administrator following termination of the Contract to ensure a smooth transition to the new administration of the Pa. USF.

To the extent that any changes occur as a result of negotiations of terms or conditions that affect the cost of performing the Contract, adjustments from compensation described in the bid will be negotiated with the winning proposer.

Total payments under this Contract will not exceed the total cost quoted in the proposal. The total cost may be exceeded only upon written Commission approval prior to such additional expenses being incurred.

I-6. REJECTION OF PROPOSALS. The Commission reserves the right to reject any and all proposals or portions thereof received as a result of this RFP, when it is in the best interest of the Commission. The Issuing Office, in its sole discretion, may undertake negotiations with proposers whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the Project.

I-7. INCURRING COSTS. The Commission is not liable for any costs incurred by proposers prior to issuance of a Contract. The proposer shall not begin compensable work until so notified by the Commission's Project Officer.

I-8. PRE-PROPOSAL CONFERENCE. The Issuing Office will hold a Pre-proposal Conference as specified in the Calendar of Events. The purpose of this conference is to provide opportunity for the proposers to ask questions to clarify the RFP. Proposers may also submit written questions prior to the Pre-proposal Conference in accordance with Part I, Section I-9. Proposers may also ask questions at the Pre-proposal Conference. The Pre-proposal Conference

is for information only. Any verbal responses furnished during the conference will not be binding until they have been verified, in writing, by the Issuing Office. All questions and answers will be posted at http://www.puc.pa.gov/contact_us/request_for_proposals.aspx by the date stated in the Calendar of Events. Please submit a request for the teleconference information to the Issuing Officer in accordance with Part I, Section I-9. Attendance at the Pre-proposal Conference is not mandatory.

I-9. QUESTIONS & ANSWERS. If a proposer has any questions regarding this RFP, the proposer may submit the questions by email (with the subject line “RFP-2016-1 USF Administrator RFP Question”) to the Issuing Officer no later than the date indicated in the Calendar of Events. Proposers may also ask questions at the Pre-proposal Conference. **The proposer shall not attempt to contact the Issuing Officer by any other means.** The Issuing Officer shall post the answers to the questions on the PUC website by the date stated in the Calendar of Events.

All questions and responses as posted on the PUC website are an addendum to, and part of, this RFP and the Contract and are incorporated herein by reference. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within or incorporated into the RFP or formally issued as an addendum by the Issuing Office. Questions do not constitute a protest of the RFP. The required protest process for Commonwealth procurements is described on the Department of General Services (DGS) website at www.dgs.pa.gov.

I-10. ADDENDA TO THE RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to the PUC website. It is the proposer’s responsibility to monitor the PUC website for any new information or addenda to the RFP. Answers to the questions asked during the Question & Answer period also will be posted to the website as an addendum to the RFP.

I-11. RESPONSE DATE. To be eligible for consideration, the proposal or any addendum thereto must be received by the Issuing Office on or before the time and date specified in the Calendar of Events at the address listed below.

U.S. First Class Mail or Overnight Delivery Address

Janet Tuzinski, Manager
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services – Telco Division
3rd Floor West, Commonwealth. Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Proposers delivering proposals by any form of delivery service should allow for delivery time to insure timely receipt of their proposals. If, due to any reason, the Commission office location to which proposals are to be sent is closed on the proposal response date, the deadline for submission will be automatically extended until the next Commission business day on which the office is open, unless the Issuing Office otherwise notifies proposers. The hour for

submission of proposals shall remain the same. **Proposals received after the time and date specified in the Calendar of Events will be rejected, unopened, and not considered regardless of the reason for the late submission.**

I-12. PROPOSALS.

A. Proposal Submission: To be considered, proposers should submit a complete response to this RFP to the Issuing Officer, using the format provided in **Section I-12B**, providing **ten paper copies [one marked “ORIGINAL”] of the Technical Submittal, two paper copies of the Cost Submittal, and two paper copies of the Small Diverse Business and Small Business (SDB/SB) Participation Submittal and related Letter(s) of Intent.** The proposer shall make no other distribution of its proposal to any other proposer or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the proposer to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet** (Appendix B to this RFP) and the Proposal Cover Sheet is attached to the proposer’s proposal, the requirement will be met. For this RFP, the proposal must remain valid for 120 days or until a contract is fully executed, whichever is later. If the Issuing Office selects the proposer’s proposal for award, the contents of the selected proposer’s proposal will become the Contract, subject to any changes as addressed above in Section I-5 or below in Section I-18.

Each proposer may withdraw its proposal by written notice received at the Issuing Office’s address for proposal delivery prior to the exact hour and date specified for proposal receipt. A proposer or its authorized representative may withdraw its proposal in person prior to the exact hour and date set for proposal receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the proposal. A proposer may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

B. Proposal Format: Proposers must submit their proposals in the format, including heading descriptions, outlined below. To be eligible for consideration, the proposal must respond to all proposal requirements. Proposers should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the proposal. All cost data relating to this proposal and all SDB/SD cost data should be kept separate from and not included in the Technical Submittal. Proposers should not reiterate technical information in the cost submittal. Each proposal shall consist of the following **three** separately sealed submittals:

1. Technical Submittal;
2. Cost Submittal; and
3. SDB/SB Participation Submittal,
 - a. Complete and include - **SDB/SB Participation Submittal Form**; and

- b. Complete and include - **SDB/SB Letter of Intent**. Proposer must provide a Letter of Intent for each SDB and SB listed on the SDB/SB Participation Submittal Form

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the proposer to perform under the Contract, and the proposer shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the Issuing Office that such Proposer is properly qualified to carry out the obligations of the RFP and to complete the Contract as specified.

I-13. ECONOMY OF PREPARATION. The proposal should be a straight-forward, concise description of the proposer's ability to meet the requirements of the RFP.

I-14. ALTERNATE PROPOSALS. The Issuing Office has identified the basic approach to meeting its requirements, allowing Proposers to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals from the same proposer.

I-15. DISCUSSIONS FOR CLARIFICATION. Proposers may be required to provide an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Proposer responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

I-16. PRIME CONTRACTOR RESPONSIBILITIES. The selected Proposer must perform the largest percentage of work as compared to work performed by the proposer's subcontractors and suppliers. Nevertheless, the Contract will require the selected Proposer to assume responsibility for all services offered in its proposal whether it performs them itself or by subcontract. Further, the Issuing Office will consider the selected Proposer to be the sole point of contact with regard to all contractual matters.

I-17. PROPOSAL CONTENTS.

- A. Confidential Information. The Commission is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Proposers' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Proposers should not label proposal submissions as confidential, proprietary, or trade secret protected. Any Proposer who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection c. below and must additionally

provide a redacted version of its proposal, which removes only the confidential, proprietary, or trade secret information, for required public disclosure purposes.

- B. Commonwealth Use. All material submitted with the proposal shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Issuing Office's option. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Proposer copyright designations contained on proposals, the Commonwealth shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. Public Disclosure. After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential or proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. If financial capability information is submitted in response to Part II of this RFP such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-18. BEST AND FINAL OFFERS.

- A. While not required, the Issuing Office reserves the right to conduct discussions with Proposers for the purpose of obtaining “best and final offers” (BAFO). To obtain best and final offers from Proposers, the Issuing Office may do one or more of the following, in any combination and order:
 - 1. Schedule oral presentations;
 - 2. Request revised proposals;
 - 3. Conduct a reverse online auction; and
 - 4. Enter into pre-selection negotiations.
- B. The following Proposers will **not** be invited by the Issuing Office to submit a Best and Final Offer:
 - 1. Those Proposers that the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
 - 2. Those Proposers whose score for their Technical Submittal of the proposal is less than 70% of the total amount of technical points allotted to the technical criterion.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible proposers that the Issuing Office has, within its discretion, determined to be within the top competitive range of responsive proposals.

- C. The Evaluation Criteria found in **Part II, Section II-4**, shall also be used to evaluate the Best and Final offers.
- D. Price reductions offered through any reverse online auction shall have no effect upon the Proposer's Technical Submittal.
- E. Any reduction to commitments to SDB/SB must be proportional to the reduction in the total price offered through any BAFO process or contract negotiations unless approved by the Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO).

I-19. NEWS RELEASE. Proposers shall not issue news releases, Internet postings, advertisements, or any other public communications pertaining to this RFP and Contract without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

I-20. RESTRICTION OF CONTACT. From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Proposer's proposal. If the Issuing Office later discovers that the Proposer has engaged in any violations of this condition, the Issuing Office may reject the offending Proposer's proposal or rescind its contract award. Proposers must agree not to distribute any part of their proposals beyond the Issuing Office. A Proposer who shares information contained in its proposal with other Commonwealth personnel and/or competing Proposer personnel may be disqualified.

I-21. COMMISSION PARTICIPATION. The Commission's staff will take an active part in the successful proposer's performance of this Contract, and the Proposer should be prepared to work with Commission Staff throughout the term of the Contract. The Commission will rely upon its staff to answer various questions from time to time about the Contract. It will be necessary, therefore, that the Commission's staff be closely involved in the work of the contractor. This will include attending meetings, reviewing analytical procedures, and monitoring the contractor's progress as to scope, budget, work plans, time, etc. In any event, it is expected that the individuals assigned to each task area will frequently discuss his/her progress informally and directly with the Commission's Project Officer or his/her designate(s). The Proposer's willingness to work with the Commission's staff in the described manner is a material obligation of the Contract and should be explicitly stated in the proposal.

I-22. TERM OF CONTRACT. The term of the contract will commence on the Effective Date. The Issuing Office will fix the Effective Date after the Contract has been fully executed by the selected Proposer and by the Commission and all approvals required by Commonwealth contracting procedures have been obtained. The selected Proposer shall not start the

performance of any work prior to the Effective Date of the contract and the Commission shall not be liable to pay the selected Proposer for any service or work performed or expenses incurred before the Effective Date of the contract.

The term of the Contract will be from the Effective Date of the Contract until June 30, 2021, with a possible one-year extension through June 30, 2022.

Contractors should submit bids for the entire period from June 30, 2017 (the anticipated Effective Date of the Contract) through June 30, 2022.

I-23. PROPOSER'S REPRESENTATIONS AND AUTHORIZATIONS. By submitting its proposal, each Proposer understands, represents, and acknowledges that:

- A.** All of the Proposer's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Commonwealth shall treat any misstatement, omission, or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- B.** The Proposer has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other proposer, potential proposer or Commission or Commonwealth employee.
- C.** The Proposer has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is a proposer, potential proposer, or Commission or Commonwealth employee for this RFP, and the Proposer shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- D.** The Proposer has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this Contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- E.** The Proposer makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Proposer, the Proposer, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Proposer has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Proposer and except as the Proposer has otherwise disclosed in its proposal, the Proposer has no

outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Proposer that is owed to the Commonwealth.

- H.** The Proposer is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Proposer cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Proposer has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Proposer, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Proposer's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Proposer receives the fully executed and approved written Contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Proposer shall not begin to perform.

I-24. NOTIFICATION OF SELECTION. The Issuing Office will notify the selected proposer of its selection for negotiation after the Commission has considered the Evaluation Committee's recommendation, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Commission.

I-25. DEBRIEFING CONFERENCES. Proposers whose proposals are not selected will be notified of the name of the selected proposer and given the opportunity to be debriefed if such request is made within seven days after the proposer is notified of the award of the contract. A request for debriefing will not alter the deadline for filing a Protest. The Issuing Office will schedule the time and location of the debriefing. A Proposer's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

I-26. RFP PROTEST PROCEDURE. The RFP Protest Procedure is on the DGS website at <http://www.dgs.pa.gov/Documents/Procurement%20Forms/Handbook/Pt1/Pt%20I%20Ch%2058%20Bid%20Protests.pdf>. A protest by a party not submitting a proposal must be filed within **seven** days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Proposers may file a protest within **seven** days after the protesting Proposer knew or should have known of the facts giving rise to the protest, but in no event may an Proposer file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office at the address found in I-11. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-27. MINIMUM QUALIFICATIONS. Proposers must have at least the following qualifications to be considered for selection:

- Demonstrated organizational, financial, data tracking, and reporting abilities that will adequately support the work load and demands associated with the Contract.
- Demonstrated sufficient infrastructure, history, and experience to handle the required work and manage sub-contractors, if applicable.
- Demonstrated technical, operational, and administrative capabilities to timely and successfully address the transition of the Pa. USF mechanism and associated regulations because of PUC rulemaking actions and/or effects, federal regulatory actions, and/or state or federal legislative actions. Such capabilities should include but do not need to be limited to the interpretation of relevant legislative and/or administrative regulatory directives, timely and correct implementation of such directives in the operation and administration of the Pa. USF mechanism, and appropriate coordination with the PUC in related matters.

I-28. KEY PERSONNEL. Contractor agrees to notify the Commission at least 30 days in advance of a change in personnel used by the Contractor to perform Contract work, including changes in personnel at any subcontractors. Commission reserves the right to require Commission approval of changes in the Contractor's key personnel. Changes in key personnel should also include a transition period of appropriate length to ensure continuity of operations.

PART II

CRITERIA FOR SELECTION

II-1. Mandatory Responsiveness Requirements. To be eligible for selection, a proposal must:

- A. Be timely received from an Proposer (see **Part I, Section I-11**); and
- B. Be properly signed by the Proposer (see **Part I, Section I-12A**).

II-2. Technical Nonconforming Proposals. The two Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFP requirements that the Commonwealth will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Proposer's proposal, (2) allow the Proposer to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Proposer's proposal.

II-3. Evaluation. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Issuing Office with a rating for this component of each proposal. The Issuing Office will notify in writing of its selection for negotiation the responsible Proposer whose proposal is determined to be the most advantageous to the Commonwealth as determined by the Issuing Office after taking into consideration all of the evaluation factors.

II-4. Evaluation Criteria. The following criteria will be used in evaluating each proposal:

A. Technical: The Issuing Office has established the weight for the technical criterion for this RFP as **50%** of the total points. Evaluation will be based upon the following:

1. WORK PLAN. Task descriptions are to be the guide in the proposer's technical plan for accomplishing the work. Provide the work plan in terms of the tasks indicated in the scope of work. The work plan for each task should be in sufficient depth to afford the Commission a thorough understanding of the work planned for that task. Individual tasks may be grouped into larger groups of tasks in each phase as long as it is clear which tasks are being grouped together. The work plan must include a written description how the information that will be generated/collected during performance of the Contract will be documented. The work plan should list the employees and their anticipated work hours for each task or group of tasks, but **not include their billable rate, as cost information is to be provided separately.** Please pay particular attention to indicating the leadership/project management staff, and ensure that adequate project management staff is provided.

Describe the intended plan and actions for timely and successfully addressing major Pennsylvania and/or federal regulatory and/or legislative changes and/or directives that at times may affect the operation of the Pa. USF funding mechanism. Refer to any prior experience with this or other funding mechanisms where such changes became necessary because of state and/or federal legislative or regulatory actions. Describe interaction with the responsible administrative agency for which changes to the funding mechanism at issue were implemented.

2. PRIOR EXPERIENCE. Submit a statement of similar work conducted by the proposer. Work completed in the previous five years will carry greater weight than older work. This would also apply to any subcontractors. Prior work experience should be similar work done by individuals who will be assigned to this project and/or similar projects completed by the proposer. Projects referred to should be identified and the name of the client shown, including the name, address, email and phone number of the responsible official of the client, company or agency who may be contacted. Copies of prior work reports and deliverables may be also submitted.

Describe previous experience in timely and successfully dealing with major regulatory changes and/or directives that at times affected the operation of funding mechanisms generally similar to the operation of the Pa. USF where such changes became necessary because of state and/or federal legislative or regulatory actions.

3. PERSONNEL. Include the names of all personnel, including personnel employed by any subcontractors, – executive, professional, management analysts, systems analysts, auditors, staff consultants, subcontractors, etc., - that will be engaged in the work and the services they will perform. Please pay particular attention to indicating the leadership/project management staff, and ensure that adequate project management staff is provided. Include a resume indicating all staff's education and specific experience/role(s) in performing similar work (especially work relating to telecommunications utilities). In addition, leadership personnel employed by the "finalist" shall be subject to personal interviews by Commission staff, if requested. These interviews would be conducted at the Commission offices in Harrisburg prior to the final selection of a contractor.

The final technical scores are determined by giving the maximum number of technical points available to the proposal with the highest raw technical score. The remaining proposals are rated by applying the Technical Scoring Formula set forth at the following webpage:
<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

B. Cost: The Issuing Office has established the weight for the Cost criterion for this RFP as **30%** of the total points. The cost criterion is rated by giving the proposal with the lowest total cost the maximum number of Cost points available. The remaining proposals are rated by applying the Cost Formula set forth at the following

webpage:

<http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/default.aspx>.

C. Small Diverse Business and Small Business Participation:

BDISBO has established the minimum evaluation weight for the Small Diverse Business and Small Business Participation criterion for this RFP as **20%** of the total points.

1. The Small Diverse and Small Business point allocation is based entirely on the percentage of the contract cost committed to Small Diverse Businesses and Small Businesses.
2. A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no Small Diverse Business or Small Business points.
3. Two thirds (2/3) of the total points are allocated to Small Diverse Business participation

(SDB %).
4. One third (1/3) of the total points is allocated to Small Business participation (SB %).
5. Based on a maximum total of 200 available points for the Small Diverse Business and Small Business Participation Submittal, the scoring mechanism is as follows:

Small Diverse Business and Small Business Raw Score =

$$200 (\text{SDB}\% + (1/3 * \text{SB}\%))$$

6. Each Proposer's raw score will be pro-rated against the Highest Proposer's raw score by applying the formula set forth on the following webpage: http://www.dgs.pa.gov/Businesses/Materials%20and%20Services%20Procurement/Procurement-Resources/Pages/RFP_SCORING_FORMULA.aspx.
7. The Proposer's prior performance in meeting its contractual obligations to Small Diverse Businesses and Small Businesses will be considered by BDISBO during the scoring process. To the extent the Proposer has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Proposer be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business points.

II-5. PROPOSER RESPONSIBILITY. To be responsible, a Proposer must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

In order for a Proposer to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A.** The total score for the technical submittal of the Proposer's proposal must be greater than or equal to **70%** of the **available technical points**; and
- B.** Further, the Issuing Office will award a contract only to a Proposer determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

II-6. FINAL RANKING AND AWARD.

- A.** After any best and final offer process conducted, the Issuing Office will combine the Evaluation Committee's final technical scores, BDISBO's final Small Diverse Business and Small Business Participation Submittal scores, the final cost scores, in accordance with the relative weights assigned to these areas as set forth in this Part.
- B.** The Issuing Office will rank responsible proposers according to the total overall score assigned to each, in descending order.
- C.** The Issuing Office must select for contract negotiations the proposer with the highest overall score.
- D.** The Issuing Office has the discretion to reject all proposals or cancel the request for proposals, at any time prior to the time a contract is fully executed, when it is in the best interests of the Commonwealth. The reasons for the rejection or cancellation shall be made part of the contract file.

PART III
TECHNICAL SUBMITTAL
WORK STATEMENT

III-1. OBJECTIVES.

A. General. The Administrator manages the Pennsylvania Universal Service Fund.

B. Specific. Specifically, an Administrator is expected to perform the following duties in conformance with 52 Pa. Code §§ 63.161 – 63.171.

- (1) Maintain a database to track contributing telecommunications providers.
- (2) Develop Commission-approved forms to be used by telecommunications service providers to report monthly contributions.
- (3) Review the completed forms to ensure completeness and accuracy of reported revenue and Pa. USF assessments and contact providers whose accounts contain unexplained variances in reported revenues or Fund assessments.
- (4) Assess late-payment charges of 1.5% per month pro rata per diem on contributions that are 30 days past due.
- (5) Send initial notices of delinquency to all delinquent contributors when a payment is 30 days past due and follow up with at least one subsequent written notice and/or phone call to the contributor to pursue collection of Pa. USF payments that are 60 days past due.
- (6) Maintain logs of notices of delinquent contributors and refer to the Commission for further enforcement, on a monthly basis, all accounts more than 90-days past due.
- (7) Immediately inform the Commission if the Administrator has reason to believe that any telecommunications provider has submitted false information to the administrator with the intent of obtaining fraudulent funding, for under-reporting intrastate end-user revenues that are subject to Pa. USF contribution assessments, or if any other irregularity occurs in the operation or administration of the Fund.
- (8) Invest Pa. USF moneys in interest-bearing instruments designed to minimize risk of loss while providing maximum liquidity; permitted investments shall include:
 - (i) Marketable obligations directly and fully guaranteed by the United States government.
 - (ii) Federally-insured checking, money market accounts, or certificates of deposit.
 - (iii) Other accounts as expressly approved by the Commission.

- (9) Promptly advise the Commission if the Administrator's data analysis projects a potential Fund shortfall or if Pa. USF disbursements exceed receipts in a given month.
- (10) In January of each year, mail reporting forms to each telecommunications service provider to acquire appropriate data to compute the individual provider's aggregate intrastate end-user telecommunications retail revenue and to compute year-end access line growth percentages for development of the following year's Pa. USF amount.
- (11) Cooperate with the independent auditor selected by the Commission, and provide data and information reasonably required to support audit activities.
- (12) Promptly respond to Commission requests for information pertaining to Fund administration.
- (13) Maintain adequate principal liability insurance coverage, criminal liability coverage, and a sufficient umbrella liability policy.
- (14) Prepare reports of Pa. USF activity for the Commission on a monthly basis detailing carrier assessments, delinquent payers, late-payment charges (if applicable), Fund disbursements, interest earned, and cumulative results.
- (15) Maintain records by contributor and by recipient.
- (16) Provide any additional reports as requested by the Commission.
- (17) Maintain a statement of financial condition (balance sheet) and income statement for the total Pa. USF, and a sources and uses of funds statement, which will tie to the total Fund income statement.
- (18) Deliver the balance sheet, income statement, and sources and uses of funds statement to the Pa. USF auditor by May 1 of each year so that the auditor may prepare its report.
- (19) Maintain a system of internal controls.
- (20) Consider the auditor's report in preparing the annual report for submission to the Commission and include any undercollections or overcollections identified by the audit report in developing a proposed budget for the upcoming fiscal year.
- (21) Submit the administrator's annual report by September 1 or 60 days following receipt of the audit report, whichever is later.
- (22) With prior Commission approval, borrow monies to cover the short-term liabilities of the Fund caused by undercollections.

(23) If short-term borrowing is necessary, the Administrator shall provide formal notice on a timely basis to the Commission which identifies the amount, the proposed lending source, and the terms and conditions of the loan.

(24) Comply with procedures and guidelines established by the Commission, but may request the Commission to amend, modify or delete procedures or guidelines, (the Administrator will not have the authority to develop or interpret the Commission's procedures or guidelines with respect to the Pa. USF, and any dispute between the Administrator and any contributing telecommunications provider shall be submitted to the Commission for resolution).

(25) Have access to the books of account of all telecommunications service providers to the limited extent necessary to verify their intrastate end-user telecommunications retail revenues and other information used by the Administrator in determining assessments and disbursements for the USF.

(26) Treat any competitive and financial information received as confidential and proprietary, and only release said information upon order of the Commission.

(27) Operate on a fiscal year which shall be the same as the calendar year.

In addition, the Administrator must have the ability to timely and successfully respond to any state/federal regulatory transitions that affect the operations of the Pa. USF.

III-2. NATURE AND SCOPE OF THE PROJECT. For the time period of July 1, 2017, through June 30, 2021, and for an additional one year if the Contract is extended, the Administrator is expected to collect payments from contributing carriers to the Fund, assess late fees on carriers that are in arrearages, and refer delinquent carriers to the Commission's Bureau of Technical Utility Services and Law Bureau for collections. The Administrator is expected to manage the cash flow of the Pa. USF in a manner such that monthly payments to the Administrator and to recipient carriers occur on the 28th of each month, and contributions are due on the 15th of each month. A 5% surplus contingency cushion is to be maintained in the Pa. USF at all times, to cover uncollectibles. The Administrator works with an annual Auditor to audit the Fund and prepare an annual Administrator's report due September 1 of each year. The report makes recommendations regarding the Fund and recommends an annual change to the contribution factor. At the beginning of each year, the Administrator mails out forms to all contributing carriers operating in Pennsylvania for them to report their net end-user operating revenues for the prior year and access lines (recipient carriers only). These figures are then used in calculating the contribution factor for the upcoming year consistent with the provisions at 52 Pa. Code § 63.165. In addition, the Administrator must have the ability to timely and successfully respond to any state/federal regulatory transitions that affect the operations of the Pa. USF.

III-3. REQUIREMENTS. The Administrator is required to provide the Commission's Bureau of Technical Utility Services and Law Bureau with monthly status reports detailing the cash flow for the prior month, as well as delinquent contributing carriers broken down by 30 day arrearage increments. Additionally, interest earned must be reported as well as all account expenditures

for the prior month. By September 1 of each year, an Administrator's Report is due the Commission's Bureau of Technical Utility Services and Law Bureau detailing recommendations and adjustments to be made to the Pa. USF and the contribution factor for the upcoming calendar year. The Administrator must notify the Commission's Law Bureau and Bureau of Technical Utility Services as soon as possible if it appears that cash shortages could cause a delay in making full payments so steps may be taken in order to avoid an emergency. The Commission has the authority to order interim adjustments to the contribution factor, thus, increasing cash flow to the Fund. In addition, the Administrator must timely and successfully respond to any state/federal regulatory transitions that affect the operations of the Pa. USF. Such transitions will require the Administrator to work both with the Pa. PUC and the carriers to make the appropriate contribution assessments.

III-4. TESTIMONY. The Contractor is required to stand behind its conclusions and recommendations by testifying and by aiding in the preparation of testimony by Commission staff, if necessary, in any future rate case or other proceeding before the Commission or for proceedings in other venues. The Contractor is required to provide factual support for its conclusions and recommendations in such testimony. The Contractor's staff involved in providing such testimony shall be compensated at 150% of the hourly rates indicated in the Contract. These costs will be paid in accordance with the payment methods of the Contract; however, those costs will be in addition to and billed separately from the base contract amount at 150% of the salary rates provided in the Contract.

III-5. ONGOING OBLIGATIONS. Data, records, and other materials collected or created by the Contractor for this Contract are property of the Commission. Information must be maintained in a manner to enable access for at least ten years from date of creation of the data, record or other materials. Prior to destruction of such materials, the Contractor must notify the Commission to allow the Commission to take custody of such materials, if it so chooses.

III-6. OBJECTION TO CONTRACT TERMS. The Proposer may identify which, if any, of the contract terms it would like to negotiate and what additional contract terms it would like to add to the contract. The Issuing Office may also consider objections and requests for additions to contract terms during final contract negotiations with the winning bidder, if to do so, in the Issuing Office's sole discretion, would be in the best interest of the Commonwealth. The Issuing Office may, in its sole discretion, accept or reject any requested changes or additions to the standard contract terms. The Proposer shall not request changes to the other provisions of the RFP, nor shall the Proposer request to completely substitute its own contract terms. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Proposer's, or any other, online guides or online terms and conditions contained in any proposal. Regardless of any objections set out in its proposal, the Proposer must submit its proposal, including the cost proposal, on the basis of the Commission's proposed contract. The Issuing Office will reject any proposal that is conditioned on the negotiation or addition of a contractual term.

III-7. SECTION 6: STATEMENT OF POTENTIAL CONFLICTS OF INTEREST. The proposer shall identify any relationships between itself or its employees and the Commission and its employees. This would include any work currently being performed by the proposer or any work performed by the proposer during the past five years related to the Commission or the

Pa. USF. If there have been no such relationships, a statement to that effect is to be included in the proposal.

PART IV

COST SUBMITTAL

IV-1. COST SUBMITTAL.

Cost Summary. The overall cost for the entire contract must be separately provided. Then provide the total costs for each task or group of tasks:

- Direct Labor Costs. List of all employees who will be assigned to work on the project by indicating their hours and billable rate. Itemize to show the following for each category of personnel with a different hourly rate:

Category (e.g., partner, project manager, analyst, senior auditor)

Estimated hours.

Rate per hour.

Total cost for each category and for all direct labor costs

- Travel and Subsistence Costs. Itemize transportation, lodging, and meals per diem costs separately. Travel and subsistence costs must conform with the requirements of the most current version of Commonwealth Management Directive 230.10, *Travel and Subsistence Allowances*. The proposer's standard practices for employee travel expenses such as meals, entertainment, transportation, and lodging must also be provided.
- Consultant Costs. Itemize as indicated above.
- Subcontract Costs. Itemize as indicated above.
- Cost of Supplies and Materials. Itemize.
- Other Direct Costs. Itemize.
- General Overhead Costs. Overhead includes two major categories of cost: operations overhead and general and administrative overhead. Operations overhead includes costs that are not 100% attributable to the service being completed, but are generally associated with the recurring management or support of the service. General and administrative overhead includes salaries, profits, equipment, and other costs related to headquarters management external to the service, but in support of and properly allocated to the

activity being completed. Specify what specific items are included, the rates used, and the relevant allocation factors if and where applicable.

This portion of the proposal shall be clearly identified as the Cost Proposal and two copies sealed in an envelope, separate from the remainder of the proposal. Please refer to Section I-17 regarding confidential information.

IV-2. TIME ESTIMATES. Regarding time estimates for staff, for each task or group of tasks in the Work Plan, indicate the number of direct staff hours for each employee assigned that is required for completion. Include a project schedule chart or spreadsheet, showing the direct staff hours for each monthly period for each task or group of tasks in the Work Plan. In addition, provide a schedule indicating the estimated staff hours each individual (project management or lead personnel, professional support personnel, and administrative support personnel) will spend on indirect support for the various tasks or groups of tasks. **Note that the schedule of estimated staff hours each individual will spend on the various task areas must be included in the Technical Submittal as well as in the separately bound Cost Submittal. The difference is that the Cost Submittal will include the monetary costs of the staff hours, and the Technical Submittal will only list hours without any indication of the costs related to those hours.**

The information requested in this **Part IV** shall constitute the Cost Submittal. The Cost Submittal shall be placed in a separate sealed envelope within the sealed proposal, separated from the Technical Submittal. The total proposed cost should be broken down into the individual components. The percentage of commitment to SDB/SB should not be stated in the Cost Submittal. Proposers should **not** include any assumptions in their cost submittals. If the Proposer includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Proposers should direct in writing to the Issuing Office pursuant to **Part I, Section I-9** of this RFP any questions about whether a cost or other component is included or applies. All Proposers will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

The Issuing Office will reimburse the selected Proposer for work satisfactorily performed after execution of a written contract and the start of the contract term, in accordance with contract requirements, and only after the Issuing Office has issued a notice to proceed.

PART V

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. SMALL DIVERSE BUSINESS AND SMALL BUSINESS GENERAL INFORMATION. The Issuing Office encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business must meet each of the following requirements:

- The business must be a for-profit, United States business;
- The business must be independently owned;
- The business may not be dominant in its field of operation;
- The business may not employ more than 100 full-time or full-time equivalent employees;
- The business, by type, may not exceed the following three-year average gross sales:
 - Procurement Goods and Services: \$20 million
 - Construction: \$20 million
 - Building Design Services: \$7 million
 - Information Technology Goods and Services: \$25 million

For credit in the RFP scoring process, a Small Business must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at:
<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx>.

A Small Diverse Business is a DGS-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, disability-owned small business, or other small businesses as approved by DGS, that are owned and controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

For credit in the RFP scoring process, a Small Diverse Business must complete the DGS verification process. Additional information on this process can be found at:
<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Pages/default.aspx>.

A Proposer that qualifies as a Small Diverse Business or a Small Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Proposers.

A Small Diverse Business or Small Business may be included as a subcontractor with as many prime contractors as it chooses in separate proposals.

The Department's directory of self-certified Small Businesses and DGS/BDISBO-verified Small Diverse Businesses can be accessed from:

<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Small-Diverse-Business-Verification/Pages/Finding-Small-Diverse-Businesses.aspx>.

Questions regarding the Small Diverse Business and Small Business Programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 601, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: RA-BDISBOVerification@pa.gov
Website: www.dgs.pa.gov

V-2. SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION

SUBMITTAL. All Proposers are required to submit **two (2)** copies of the Small Diverse Business and Small Business Participation Submittal Form contained in (**Appendix E**) and related Letter(s) of Intent (**Appendix E**). The submittal must be sealed in its own envelope, separate from the remainder of the proposal, and must be provided on the Small Diverse Business and Small Business Participation Submittal form, with information as follows:

- A. Proposers must indicate their status as a Small Diverse Business and as a Small Business through selection of the appropriate checkboxes.
- B. Proposers must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Proposer commits to paying to Small Diverse Businesses and Small Businesses as subcontractors.
- C. Proposers must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.
- D. Proposers must include a Letter of Intent (attached as **Appendix E** is a Letter of Intent template that may be used to satisfy these requirements) signed by both the Proposer and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business Participation Submittal form. At minimum, the Letter of Intent must include the following:
 - 1. The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the Small Diverse Business or Small Business; and

2. A description of the services or supplies the Small Diverse Business or Small Business will provide; and
 3. The timeframe during the initial contract term and any extensions, options and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and
 4. The name and telephone number of the Proposer's point of contact for Small Diverse Business and Small Business participation; and
 5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.
- E. Each Small Diverse Business and Small Business commitment that is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business commitments will become contractual obligations of the selected Proposer.

NOTE: Proposers will not receive credit for any commitments for which information as above is not included in the Small Diverse Business and Small Business Participation Submittal. Proposers will not receive credit for stating that after the contract is awarded they will find a Small Diverse or Small Business.

NOTE: Equal employment opportunity and contract compliance statements referring to company equal employment opportunity policies or past contract compliance practices do not constitute proof of Small Diverse Business and/or Small Business Status or entitle a Proposer to receive credit for Small Diverse Business or Small Business participation.

V-3. CONTRACT REQUIREMENTS – SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION.

All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

- A. Each Small Diverse Business and Small Business commitment that was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business commitments made at the time of proposal submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Proposer upon execution of its contract with the Commonwealth.
- B. All Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
- C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.

- D.** Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.
- E.** The selected Proposer and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Proposer and the Small Diverse Business and/or Small Business to BDISBO within 30 days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided in **Appendix E – Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
- 1.** The specific work, supplies, or services the Small Diverse Business and/or Small Business will perform; location for work performed; how the work, supplies or services relate to the project; and the specific timeframe during the initial term and any extensions, options and renewals of the prime contract when the work, supplies or services will be provided or performed.
 - 2.** The fixed percentage commitment and associated estimated dollar value that each Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.
 - 3.** Payment terms indicating that the Small Diverse Business and/or Small Business will be paid for work satisfactorily completed within 14 days of the selected Proposer’s receipt of payment from the Commonwealth for such work.
 - 4.** Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Proposer’s contract with the Commonwealth and that do not place disproportionate risk on the Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business’ and/or Small Business’ participation in the project.
- F.** If the selected Proposer and a Small Diverse Business or Small Business credited by BDISBO cannot agree upon a definitive subcontract within 30 days of the final execution date of the Commonwealth contract, the selected Proposer must notify BDISBO.
- G.** The Selected Proposer shall complete the Prime Contractor’s Quarterly Utilization Report and submit it to the contracting officer of the Issuing Office and BDISBO within 10 business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to Small Diverse Business and Small Business subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter, the form must be completed by stating “No activity in this quarter.” A late fee of \$100.00 per day may

be assessed against the Selected Proposer if the Utilization Report is not submitted in accordance with the schedule above.

- H.** The Selected Proposer shall notify the Contracting Officer of the Issuing Office and BDISBO when circumstances arise that may negatively impact the selected Proposer's ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by the Issuing Office and DGS.

- I.** If the Selected Proposer fails to satisfy its Small Diverse Business and/or Small Business commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Proposer is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Proposer's Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

INSTRUCTIONS FOR NONCOLLUSION AFFIDAVIT

1. This Noncollusion Affidavit is material to any contract/purchase order awarded pursuant to this bid. According to section 4507 of Act 57 of May 15, 1998, 62 Pa. C.S. § 4507, governmental agencies may require Noncollusion Affidavits to be submitted with bids.

2. This Noncollusion Affidavit must be executed by the member, officer or employee of the Proposer who makes the final decision on prices and the amount quoted in the bid.

3. Bid rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids, are unlawful and may be subject to criminal prosecution. The person who signs the affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the bid.

4. In the case of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an affidavit must be submitted separately on behalf of each party.

5. The term “complementary bid” as used in the affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.

6. Failure to submit an affidavit with the bid proposal in compliance with these instructions may result in disqualification of the bid.

NONCOLLUSION AFFIDAVIT

State of _____:

County of _____: S.S.

I state that I am _____ (Title) of _____ (Name of Firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

(1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Proposer or potential Proposer.

(2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before bid opening.

(3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

(4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____ (Name of Firm), its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Pennsylvania Public Utility Commission in awarding the contract(s)/purchase order(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Purchasing Agency of the true facts relating to the submission of this bid.

(Signature)

(Signatory's Name)

(Signatory's Title)

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____ 20____

Notary Public _____

My Commission Expires _____

**PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
PA PUC RFP-2016-1**

Enclosed in three separately sealed submittals is the proposal of the Proposer identified below for the above-referenced RFP:

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

Submittals Enclosed and Separately Sealed:	
<input type="checkbox"/>	Technical Submittal <input type="checkbox"/> Domestic Workforce Utilization Certification
<input type="checkbox"/>	Small Diverse Business and Small Business Participation Submittal <input type="checkbox"/> Small Diverse Business and Small Business Participation Submittal Form <input type="checkbox"/> Small Diverse Business and Small Business Letter(s) of Intent
<input type="checkbox"/>	Cost Submittal

Signature

Signature of an official authorized to bind the Proposer to the provisions contained in the Proposer's proposal:

Printed Name:

Title:

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSER'S PROPOSAL

RFP TRANSMITTAL LETTER
Pennsylvania Universal Service Fund Administrator

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services
RFP-2016-1
October 5, 2016

[Company Name]
[Address]
[City, State Postal Code]

Dear Mr./Ms. **[Contact]**:

The Commission is issuing this invitation regarding the enclosed Request for Proposal for administration of the Pennsylvania Universal Service Fund.

All proposals must be submitted to the address stated in Section I-11 of the RFP no later than 3 p.m., November 18, 2016, as stated in the Calendar of Events. Late proposals will not be considered regardless of the reason.

All questions should be submitted by email (with subject line “RFP-2016-1 USF Administrator RFP Question”) to Janet Tuzinski at jtuzinski@pa.gov no later than October 17, 2016, as stated in the Calendar of Events. All proposers will be provided with written answers to questions asked by any proposer at the pre-proposal conference.

In addition, a pre-proposal conference will be held on October 12, 2016, at 1:30 p.m. in Hearing Room 4, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. Questions may also be submitted at the pre-proposal conference. Attendance at the pre-proposal conference is not mandatory.

Sincerely,

Janet Tuzinski, Manager of Telco Division
Issuing Officer

Enclosure: Request for Proposal

Pennsylvania Universal Service Fund Administrator Contract

This Contract is entered into by _____ (“Contractor”) and the **Pennsylvania Public Utility Commission** (“Commission”) (collectively, the “Parties”) for the administration of the Pennsylvania Universal Service Fund (Pa. USF).

Incorporation by Reference. The Request for Proposal and all exhibits, appendices, addenda, and other attachments thereto, and the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto, are hereby incorporated into this Contract by reference.

I. Covenants of the Parties.

The Parties to this Contract agree and promise that:

A. Subject in all respects to the terms and conditions of this Contract and to the duties and limitations contained in the statutory and common law of the Commonwealth of Pennsylvania, the Contractor shall perform as the Pennsylvania Universal Service Fund Administrator for the Commission. The duties of the Contractor shall be completed as outlined in and in accordance with the promises, warranties, and representations contained in the Contractor’s Proposal (“Proposal”) and the Request for Proposals (“RFP”).

B. The Project Officer and other designated staff, as described in Section II.A below, shall cooperate with the efforts of the Contractor and the Commission shall pay the Contractor promptly upon submission to it of invoices for payment as described below.

C. The Commission by its agent, the Project Officer, shall have the right and opportunity to participate actively in the activities of the Contractor and to this end shall have immediate access to all data, models, and other materials or information provided by the Contractor except that the Contractor may withhold such data, models, materials, or information to which the Commission does not otherwise have a right of access or inspection. The Commission shall be advised if any data, models, materials, or information is being so designated and may contest such designation.

D. The Project Officer shall generally have immediate access to all data, non-proprietary models, and other factual materials or factual information provided to the Commission by the Contractor, provided however that the Commission may designate some materials as confidential.

II. Party Representatives and Payment.

A. Project Officer and Party Representatives

1. The Commission has designated Janet Tuzinski, Manager Telco Division, Bureau of Technical Utility Services, 3rd Floor West, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, phone number (717) 783-6175, email jtuzinski@pa.gov (and/or her designated alternative) as its staff contact (“Project Officer”) and has authorized

her to act on behalf of the Commission under this Contract. The Project Officer may appoint members of the Commission staff or its designees to represent her as appropriate.

2. The Commission has designated Spencer Nahf, telephone number 717-787-5164, and email snahf@pa.gov as its staff contact (Project Coordinator) and has authorized him to act as the lead contact on behalf of the Commission under this Contract.

3. The Contractor has designated _____, telephone number _____, and email _____ as its staff contact (“Contractor Representative”) and has authorized him/her to act as the lead contact on behalf of the Contractor under this Contract.

4. The Project Officer and Project Coordinator shall have primary responsibility and authority on behalf of the Commission to administer this Contract and to agree upon procedures for coordinating the efforts of the Contractor.

5. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the Project.

6. The Contractor shall provide the Project Officer and Project Coordinator with reasonable notice of and opportunity to attend all high-level planning meetings regarding the Pa. USF.

7. The Commission and the Contractor will provide an atmosphere conducive to the free flow of information between the Parties.

B. Expenses and Payment

1. The Project Officer and Project Coordinator shall have the right and opportunity to approve, in whole or in part, each invoice on behalf of the Commission. The basis for the Commission’s approval shall be a finding that the expenses are reasonable, necessary, and correct and billed in accordance with the provisions of this Contract. Such approval or payment may be withheld if the following items are not included in the invoice:

- a) A list of the individuals, by name, who have worked during the invoice period;
- b) A list of the monthly and annual reports prepared during the invoice period;
- c) A list of any other work done during the invoice period;
- d) A listing by category of materials and supplies purchased during the invoice period;
- e) A list of transportation lodging, and meal expenses by each individual incurring such costs during the invoice period and the basis for calculating such costs; and
- f) The specific dates when services were rendered.

2. The approval of the Commission may also be withheld as to any costs that are not just, reasonable, or in conformity with costs in the Proposal.

3. The total amount paid the Contractor under this Contract shall not exceed the following amounts or as otherwise specified in the Request for Proposal and the Contract, unless the Commission's Project Officer or Project Coordinator approves additional expenditures in writing. The Project Officer and Project Coordinator shall be consulted prior to the approval of any additional expenditure by the Commission.

Total Contract Price: \$ _____

4. No expenditure will be reimbursed if incurred before the effective date of this Contract.

5. All charges for services and other costs charged by the Contractor are subject to review at any time by the Project Officer and/or the Project Coordinator and the Commission.

III. Other Rights of Parties.

A. Commission's Right to Disapprove Expenditures

The Commission shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Contractor for the amount of any disapproved expenditure. The Contractor will not be paid for any cost incurred for services not in compliance with the terms of this contract. The Commission will provide in writing within thirty days of invoice receipt an explanation of any invoiced costs that are disallowed by the Commission. Nothing herein shall preclude the Project Officer and/or the Project Coordinator from questioning the reasonableness or propriety of any invoice, or any portion of an invoice, submitted by Contractor, prior to payment of the same.

B. Commission's Right to Make Amendments and Changes to Contract

Subject to the terms and conditions of this Contract and to the statutory and common law of the Commonwealth of Pennsylvania, the Commission shall have the right to make changes in the Statement of Work in the Proposal with the concurrence and written agreement of the Contractor, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded. Prior to making any such change the Project Officer and/or the Project Coordinator will consult with the Contractor.

C. Confidentiality

The parties recognize that it will be necessary for the Contractor to review certain confidential and proprietary information. Accordingly, the Contractor and the Commission have executed a Nondisclosure Agreement attached hereto as Exhibit 1, which is hereby incorporated into this Contract by reference.

a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential, proprietary, and trade secret information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.

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

- 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
- 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;
- 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
- 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
- 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

D. Termination

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 for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under 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 for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

IV. Other Agreements by the Parties.

A. Status of Contractor

The Parties hereto agree that the Contractor and any agents and employees of the Contractor shall act, in the performance of this Contract, in an independent capacity and not as officers, employees or agents of the Commission.

B. Interest of Contractor

The Contractor warrants that it presently has no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor agrees that in the performance of this Contract, it shall not knowingly employ any person having such interest. The Contractor further certifies that no member of the board of the Contractor or any of its officers or directors have such an adverse interest. Contractor personnel who perform the services are employees of the Contractor (or its subcontractors) and the Contractor will be solely responsible for payment of compensation to such persons. The Contractor agrees to

indemnify, defend, and hold harmless the Commission for any claim asserted against the Commission or the Pa. USF alleging that the Commission is an employer, co-employer or joint employer of any Contractor personnel. The Contractor will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Commission or the Pa. USF be required to pay any amount to a governmental agency for failure of the Contractor to withhold any amount as may be required by law, the Contractor agrees to indemnify, defend and hold harmless the Commission, or the Pa. USF for any amount so paid, including interest, penalties and fines. The Contractor is not an agent of the Commission and has no authority to represent the Commission or the Pa. USF as to any matters, except as expressly authorized in this Contract.

C. Disputes

All questions arising respecting any matter pertaining to this Contract or any part thereof or any breach of contract arising thereunder shall be referred to the Project Officer or Project Coordinator. Any dispute, which cannot be settled by negotiations after submission to the Project Officer, shall then be submitted to the Commission for resolution. The provisions of this paragraph shall not be construed to limit the remedies of the Commission and the Contractor for breach of this Contract, nor shall it limit the Commission or the Contractor's rights to appeal to a court of competent jurisdiction after resolution by the Commission. This provision shall not be construed as an arbitration provision that provides the Commission with arbitration powers.

D. Conflicts between the Contract, the RFP, and the Proposal

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

E. Integration Clause

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

F. Amendments

No amendment or modification changing the scope or terms of this Contract shall have any force or effect unless it is in writing and signed by all parties.

G. Applicable Law

This Contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania. Contractor and the Commission expressly submit to the personal and subject matter jurisdiction of the Courts of the Commonwealth of Pennsylvania.

H. Assignment and Delegation

- a. Subject to the terms and conditions of this paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Issuing Officer, which consent may be withheld at the sole and absolute discretion of the Issuing Officer.
- c. Except as provided in H.d., below, 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 Issuing Officer, which consent may be withheld at the sole and absolute discretion of the Issuing Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Issuing Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Issuing 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.

I. Severability

If any provision of this Contract is invalid, the remainder of the Contract shall not be affected thereby if the essential terms and conditions of the Contract remain valid, legal and enforceable.

J. Non-Waiver

No provision of this Contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

K. Time of the Essence

Time is of the essence in this Contract and any failure to perform any of the terms hereof in the time and manner specified shall be deemed a material breach of this contract.

L. Effective Dates

The effective date of this Contract shall be fixed by the Issuing Office after the Contract has been fully executed by the Contractor and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained.

M. Insurance

During the performance of the work covered by this Contract, the Contractor shall maintain the following minimum insurance coverage at no additional cost to the Commission or Pa. USF:

1. Workers' Compensation Insurance as required by law.
2. Employer's Liability Insurance (bodily injury) of \$1,000,000 per accident, and Employer's Liability Insurance (occupational diseases) of \$1,000,000 per person and \$2,000,000 in the general aggregate.
3. Comprehensive General Liability Insurance of \$1,000,000 each person; \$1,000,000 each occurrence for bodily injuries; and \$1,000,000 for property damage.
4. Comprehensive Automobile Liability Insurance covering all owned and hired vehicles of \$1,000,000 each person, \$1,000,000 each accident for bodily injuries, and \$1,000,000 each accident for property damage.

The insurance called for above is subject to the normal limitations and exclusions applying to each type of insurance; provided, however, that first dollar coverage shall be provided for each type. The Commission will be named as an additional insured on the policies referred to in 2, 3, and 4 above and such insurance shall be endorsed to require the

insurer to furnish the Commission with ten (10) days written notice prior to the effective date of any cancellation of insurance.

The Contractor shall furnish the Commission with certificates or other documentary evidence showing that the insurance to be carried by the Contractor in accordance with this paragraph has been arranged.

O. Indemnity

The Contractor agrees and undertakes to indemnify, defend, and hold harmless the Pa. USF, the Commission and its respective agents and employees and subcontractors against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, in any way relating to or arising out of any action or operation of the Contractor, or its respective agents, employees, or subcontractors under this Contract, including but not limited to personal injury or property damage, including but not limited to injury or damage to the person or property of the Commission or the Contractor, or their respective agents, employees, or subcontractors, and shall, at the request of the Commission defend any and all actions brought against the Pa. USF or the Commission and its respective agents, employees, or subcontractors based upon any such claims or demands. The Contractor expressly waives use of the "statutory employer" defenses provided in the Pennsylvania Worker's Compensation Act found generally at 77 P.S. § 481(a) and (b) and 77 P.S. § 52 with regard to this indemnity. Pursuant to the Commonwealth Attorneys Act (71 P.S. §§ 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits. Neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

P. **LIMITATION OF LIABILITY**

IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL ANY PARTY OR THEIR RESPECTIVE AGENTS AND EMPLOYEES OR SUBCONTRACTORS, BE LIABLE TO ANY OTHER PARTY OR THEIR RESPECTIVE AGENTS AND EMPLOYEES OR SUBCONTRACTORS, FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.

Q. Immunity

Nothing contained in this Contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

R. Jurisdiction

It is understood and agreed that actions undertaken by the Contractor shall be limited to matters within the jurisdiction of the Commission.

S. Employees, Background Checks, Substance Abuse

1. Contractor shall employ for the work only persons known to it to be experienced, qualified, reliable, and trustworthy. At the request of the Project Officer, the credentials of any of Contractor's employees assigned to perform the work shall be submitted to the Project Officer in advance of such assignment. During the performance of the work, the Commission staff may object to any Contractor's employee, who, in their opinion, does not meet these criteria. In such case, Contractor shall at its expense and risk, immediately replace and remove such employee and promptly advise the Commission's Project Officer and Project Coordinator.
2. Background checks. Contractor shall make reasonable efforts to ensure that Contractor's employees assigned to work on this Project do not have criminal records and are not involved in criminal activity which could create a risk of fraud/embezzlement and/or a risk to the Pa. USF or the Commission's property and employees.

Contractor will obtain criminal background checks for all employees, including but not limited to employees of all subcontractors, for this Project who will visit or otherwise have physical contact with the public or the premises or property of the public prior to such employee performing work on the Project. Criminal background checks will be checked at least every year for such employees. Contractor will maintain up to date records evidencing such criminal background checks.

Upon actual knowledge of a criminal record or involvement in a potentially criminal activity, including but not limited to threats, harassment, or other abuse, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer to inform them of the circumstances. Commission staff may, at any time, request Contractor to verify that an employee or employees do not possess a criminal record.

- a. Contractor shall provide certification for each of the Contractor's employees who are authorized as part of the work to have electronic or unescorted physical access to critical cyber assets (as the same are identified from time to time), that such employee (i) has submitted to a Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Contractor-sponsored security awareness training or will receive such training prior to accessing critical cyber assets. These requirements are subject to audit by Commission staff or designated auditor.
3. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor's employees undertaking work will not be under the influence, purchase, transfer,

use or possess illegal drugs or alcohol or abuse prescription drugs in any way. Upon actual knowledge of such activity or any such potential activity, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer to inform them of the circumstances.

T. 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.

U. 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.

V. 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 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 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 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.

IN WITNESS THEREOF, intending to be legally bound, the Contractor and the Commission hereby execute this Pennsylvania Universal Service Fund Administrator Contract.

Contractor

Date

Robert C. Gramola
Director of Administrative Services
Pennsylvania Public Utility Commission

Date

Bohdan R. Pankiw
Chief Counsel
Pennsylvania Public Utility Commission

Date

Nondisclosure Agreement

_____ (“Contractor”) and the Pennsylvania Public Utility Commission (“Commission”), intending to be legally bound, hereby agree as follows:

1. As part of the performance of the Work of the Contract, it may be necessary for the Contractor to review confidential, proprietary, or trade secret information.

2. In order to safeguard more effectively the proprietary information, the Contractor will designate certain authorized representative(s) to receive and review the proprietary information. Said authorized representatives will agree to be bound by this Nondisclosure Agreement and will sign it prior to receiving any proprietary information and will furnish, upon request, to the Commission or other entity a signed copy of the Nondisclosure Agreement executed by such authorized representative(s). Proprietary information will not be accessible by anyone who has not signed the Nondisclosure Agreement.

3. With respect to proprietary information provided under this Agreement, the Contractor and its authorized representatives shall:

- (a) Hold the proprietary information in confidence;
- (b) Restrict disclosure of the proprietary information only to persons authorized under this Agreement who have a need to know;
- (c) Use the proprietary information solely in connection with the Contractor's work on this Project;
- (d) except as provided in Paragraph 5 below, not disclose the proprietary information publicly or privately to any third party in any manner, unless such third party has signed this Nondisclosure Agreement; and
- (e) Advise the Contractor's representatives of their obligation with respect to the proprietary information.

4. The Contractor may make proprietary information available to the Commission's Staff under this Agreement; provided, however, that in the event of disclosure, the Commission's Staff shall also be bound by the terms of this Agreement. Nothing in this Agreement shall be construed as preventing access by the Commission (outside the scope of this Project) to the data, books, records, and documents as permitted by the statutory and common law of the Commonwealth of Pennsylvania.

5. After providing an opportunity to comment, either the Contractor or the Commission's Staff may assert at any time that any document claimed to be proprietary is in fact non-proprietary. Any disagreement as to the proprietary or non-proprietary nature of a particular document or information shall be resolved by action of the Commission.

8. Proprietary information that is provided to the Contractor and/or Commission Staff will be protected from disclosure as proprietary information under 66 Pa. C.S. § 335(d) until such time as the Commission (or court of competent jurisdiction, if an appeal of a Commission determination is taken) rules that the documents are non-proprietary and, therefore, subject to public disclosure. In determining which documents are subject to public disclosure, the

Commission will follow the *Right-to-Know Law*, 65 P.S. §§ 67.101 *et seq.*, including any future amendments thereto.

9. Nothing in this Agreement shall otherwise affect, abridge, increase, or decrease the statutory authority of the Commission to investigate or inspect the facilities and data, books, records, and documents of any regulated entity.

10. This Nondisclosure Agreement may be executed in counterpart.

IN WITNESS THEREOF, intending to be legally bound, the Contractor and the Commission, have caused this Nondisclosure Agreement to be approved and executed under their signatures, as Exhibit 1 to the Contract, with a duplicate copy being provided to each of the parties.

Contractor

Date

Robert C. Gramola
Director of Administration
Pennsylvania Public Utility Commission

Date

Bohdan R. Pankiw
Chief Counsel
Pennsylvania Public Utility Commission

Date

NONDISCRIMINATION/SEXUAL HARASSMENT PROVISIONS

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- d. The Contractor and each subcontractor shall not discriminate in violation of PHRA and applicable federal laws against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- e. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Small Business Opportunities (BSBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- g. The Contractor’s and each subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof.

Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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

RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, proposer, 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

THE AMERICANS WITH DISABILITIES ACT PROVISIONS

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 the Contract or from activities provided for under the 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.

CONTRACTOR INTEGRITY PROVISIONS

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

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

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

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

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

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

e. “Financial Interest” means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

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

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

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

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or

regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

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

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

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

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

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

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

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

(4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

(5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's

obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

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

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

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

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

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

Listing SDB and SB Subcontractors

The Proposer must list in the chart below the SDBs and SBs that will be used to meet the percentage commitments provided above. Include the SDB/SB firm name, SDB or SB designation, SDB/SB Primary Contact Information, a description of the service or supplies the SDB/SB will provide, fixed percent of total contract cost committed, estimated dollar value of each commitment, and an indication as to the Proposer’s intent to utilize the SDB/SB subcontractor for contract options or renewals. Include as many pages as necessary.

Proposers must also include a Letter of Intent as indicated in RFP Part V, Section V-2 for each SDB/SB listed.

SDB/SB Name	SDB or SB	Primary Contact Name & Email	Description of Services or Supplies to be provided	% of total Contract Cost Committed	Estimated \$ value of Commitment	Will SDB/SB be used for options/renewals? (yes/no)

SMALL DIVERSE AND SMALL BUSINESS
LETTER OF INTENT

[DATE]

[SDB/SB Contact Name
Title
SDB/SB Company Name
Address
City, State, Zip]

Dear [SDB/SB Contact Name]:

This letter serves as confirmation of the intent of [Proposer] to utilize [Small Diverse Business (SDB) or Small Business (SB)] on RFP [RFP number and Title] issued by the [Commonwealth agency name].

If [Proposer] is the successful vendor, [SDB or SB] shall provide [identify the specific work, goods or services the SDB/SB will perform] during the initial term of the prime contract and during any extensions, options or renewal periods of the prime contract exercised by the Commonwealth, as more specifically set forth below: [identify the specific time periods during the initial contract term and any extensions, options and renewals when the component work, goods or services will be provided or performed.]

These services represent [identify fixed numerical percentage commitment] of the total cost in the [Proposer's] cost submittal for the initial term of the contract. Dependent on final negotiated contract pricing and actual contract usage or volume, it is expected that [SDB or SB] will receive an estimated [identify associated estimated dollar value that the fixed percentage commitment represents] during the initial contract term.

[SDB/SB] represents that it meets the small or small diverse business requirements set forth in the RFP and all required documentation has been provided to [Proposer] for its SDB/SB submission.

We look forward to the opportunity to serve the [Commonwealth agency name] on this project. If you have any questions concerning our small business or small diverse business commitment, please feel free to contact me at the number below.

Sincerely,

Acknowledged,

Proposer Name	SDB	or	SB
Name			
Title	Title		
Company	Company		

Phone number

Phone number

**MODEL FORM OF SMALL DIVERSE AND SMALL BUSINESS
SUBCONTRACTOR AGREEMENT**

This Subcontractor Agreement ("Subcontract") is made effective as of _____, 20____, by and between _____, ("Contractor") and _____, a Small Diverse Business or Small Business ("Subcontractor") (collectively referred to as the "Parties").

RECITALS

Contractor has entered into a contract dated _____ (the "Prime Contract") with the Department of _____ of the Commonwealth of Pennsylvania ("Commonwealth"). Under the Prime Contract, Contractor has agreed to provide certain supplies, services or construction ("Services") to the Commonwealth.

In connection with the Procurement leading to the Prime Contract, Contractor and Subcontractor entered into a letter agreement dated _____ ("Letter of Intent") whereby the Contractor committed a certain percentage of work ("Small Diverse Business or Small Business Commitment") under the Prime Contract to the Subcontractor.

As contemplated by the Letter of Intent and in accordance with the provisions of the Procurement and Prime Contract, the Parties have agreed to enter into this Subcontract to fulfill the Small Diverse Business or Small Business Commitment expressed in the Letter of Intent and as required by the Prime Contract.

DEFINITIONS

The following words and terms when used in this Subcontract shall have the following meanings:

Bureau – The Department’s Bureau of Diversity, Inclusion and Small Business Opportunities.

Contracting Officer – The person authorized to administer and make written determinations for the Commonwealth with respect to the Prime Contract.

Department – The Department of General Services of the Commonwealth of Pennsylvania.

Issuing Office – The department, board, commission or other agency of the Commonwealth of Pennsylvania that issued the Procurement.

Procurement – The Invitation for Bids, Request for Quotes, Request for Proposals or other solicitation and all associated final procurement documentation issued by the Commonwealth to obtain proposals from firms for award of the Prime Contract.

Small Business – A business in the United States which is independently owned, not dominant in its field of operation, employs no more than 100 full-time or full-time equivalent employees, and earns less than \$7 million in gross annual revenues for building design, \$20 million in gross annual revenues for sales and services and \$25 million in gross annual revenues for those businesses in the information technology sales or service business.

Small Diverse Business – A Department-verified minority-owned small business, woman-owned small business, veteran-owned small business, service-disabled veteran-owned small business, LGBT-owned small business, or disability-owned small business.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Subcontractor Representations. Subcontractor represents and warrants to Contractor as follows:

(a) Subcontractor is self-certified as a Small Business in accordance with the requirements and procedures established by the Bureau of Diversity, Inclusion and Small Business Opportunities; [Subcontractor is also verified as a Small Diverse Business by the Bureau of Diversity, Inclusion and Small Business Opportunities in accordance with the requirements and procedures established by the Bureau;]

(b) Subcontractor possesses the necessary knowledge, experience, expertise, capital, resources and personnel required to perform the Services it will provide under this Subcontract;

(c) Subcontractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(d) The execution and performance by Subcontractor of the terms and provisions of this Subcontract have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract by Subcontractor will violate any provision of law, any order of any court or other agency of government, the organizational documents of Subcontractor or any indenture, agreement or other instrument to which Subcontractor is a party, or by which Subcontractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Subcontractor pursuant to, any such indenture agreement or instrument;

(e) Subcontractor has obtained all licenses, permits and approvals required to perform the Services it will provide under this Subcontract; and

(f) Subcontractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

2. Contractor Representations. Contractor represents and warrants to Subcontractor as follows:

(a) Contractor (i) is duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, (ii) has the power and authority to own its properties and to carry on business as now being conducted, and (iii) has the power to execute and deliver this Subcontract;

(b) The execution and performance by Contractor of the terms and provisions of this Subcontract by Contractor have been duly authorized by all requisite action, and neither the execution nor the performance of this Subcontract will violate any provision of law, any order of any court or other agency of government, the organizational documents of Contractor or any indenture, agreement or other instrument to which Contractor is a party, or by which Contractor is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or except as may be provided by this Subcontract, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Contractor pursuant to, any such indenture agreement or instrument;

(c) Contractor has obtained all licenses, permits and approvals required to perform the Services to be provided by Contractor under the Prime Contract; and

(d) Contractor is not under suspension or debarment by the Commonwealth or any other governmental entity, instrumentality or authority.

3. Relationship of the Parties. The provisions of this Subcontract are not intended to create, nor shall be deemed or construed to create, any joint venture, partnership or other relationship between Contractor and Subcontractor, other than that of independent entities contracting with each other solely for the purpose of carrying out the provisions of this Subcontract. Neither of the Parties to this Subcontract, nor any of their respective employees, agents, or other representatives, shall be construed to be the agent, employee or representative of the other party. Neither party shall have the authority to bind the other party, nor shall a party be responsible for the acts or omissions of the other party, unless otherwise stated in this Subcontract. Similarly, the Parties expressly acknowledge that neither the Contractor nor the Subcontractor is an agent, employee or representative of the Commonwealth and each party covenants not to represent itself accordingly.

4. Prime Contract Flow-Down.

(a) General. This agreement is a subcontract under the Prime Contract and all provisions of the Prime Contract and any amendments thereto applicable to the Services being performed by the Subcontractor shall extend to and be binding upon the Parties as part of this Subcontract.

(b) Specific. The Parties agree to comply with the following provisions of the Prime Contract, which are incorporated herein by reference:

- (1) The Americans with Disabilities Act Provisions.
- (2) Nondiscrimination/Sexual Harassment Clause.
- (3) Contractor Integrity Provisions.
- (4) Contractor Responsibility Provisions.

(c) Termination. Should the Prime Contract be terminated pursuant to the terms and conditions provided in the Procurement, such termination shall have the same effect on this Subcontract. Payment for Services provided as of the date of termination must be made in accordance with the Section 13 of this Subcontract.

(d) 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 Parties to the extent that the books, documents, and records relate to the Parties' compliance with the provisions set forth in subsection (b) above or to the Small Diverse Business or Small Business Commitment effectuated through this Subcontract. The Parties shall preserve such books, documents, and records for a period of three years from the date of final payment hereunder. The Parties shall give full and free access to all such records to the Commonwealth and/or its authorized representatives.

5. Order of Precedence. The Letter of Intent, Procurement and Prime Contract are incorporated herein by reference into this Subcontract. In the event of any conflict or inconsistency among the individual components of this Subcontract, such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) This Subcontract;
- (b) The Letter of Intent;
- (c) The Prime Contract; and
- (d) The Procurement.

6. Further Action. The Parties shall take such actions and complete, execute and deliver any and all documents or instruments necessary to carry out the terms and provisions of this Subcontract, to effectuate the purpose of this Subcontract, and to fulfill the obligations of each party hereunder.

7. Description of Services. Subcontractor will perform the following Services for the Contractor which Contractor is obligated to provide to the Commonwealth under the Prime Contract:

[DESCRIBE IN DETAIL THE SPECIFIC SUPPLIES, SERVICES OR CONSTRUCTION THE SUBCONTRACTOR WILL PROVIDE OR PERFORM]

8. Small Diverse Business or Small Business Commitment. The above-referenced Services represent ___ % of the final negotiated total cost for the initial term of the Prime Contract. Any proposed change to the Small Diverse Business or Small Business Commitment must be submitted in writing to the Bureau which will make a recommendation to the Commonwealth Contracting Officer regarding a course of action.

9. Performance of Services. Subcontractor may not subcontract more than 50% of the work subcontracted to it hereunder without written permission from the Bureau. Subcontractor will perform the Services strictly in accordance with any applicable plans and specifications as contained in the Prime Contract and the reasonable deadlines set by Contractor in view of the requirements of the Prime Contract, and in a good workmanlike manner consistent with industry standards, meeting all applicable local, state and federal laws, regulations and policies.

10. Location of Services. Subcontractor will provide the Services at the following address(es):

11. Timeframe for Performance of Services. The Services will be provided by Subcontractor during the initial term of the Prime Contract, and during any extensions, options or renewal periods of the Prime Contract exercised by the Commonwealth, as more specifically set forth below:

[IDENTIFY THE SPECIFIC TIME PERIODS DURING THE INITIAL CONTRACT TERM AND EXTENSIONS, OPTIONS AND RENEWALS WHEN THE SUBCONTRACTOR WILL PERFORM COMPONENT SERVICES]

12. Pricing of Services. Subcontractor shall provide or perform the Services at the pricing specified in Exhibit ___ to this Subcontract. [ATTACH A BILL OF MATERIALS, RATE CARD OR OTHER APPROPRIATE COST SHEET COVERING THE SERVICES TO BE PROVIDED.]

13. Payment for Services. Contractor shall exert reasonable and diligent efforts to collect prompt payment from the Commonwealth. Contractor shall pay Subcontractor in proportion to amounts received from the Commonwealth which are attributable to the Services performed by Subcontractor. Contractor shall pay Subcontractor within fourteen (14) days after the Contractor

receives such payment from the Commonwealth, unless the parties expressly agree upon a different payment schedule or structure as set forth below:

14. Utilization Reports. Both the Contractor and Subcontractor shall complete Quarterly Utilization Reports (or similar type documents containing the same information) and submit them to the Contracting Officer and to the Bureau within ten (10) business days at the end of each quarter. This information will be used to determine the actual dollar amount paid to Subcontractor and will also serve as a record of fulfillment of Contractor's Small Diverse Business and Small Business Commitments. If there was no activity during the quarter, then the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Contractor if its Utilization Report is not submitted in accordance with the schedule above.

15. Change Orders. If the Commonwealth issues any change order or other formal contract instrument either expanding or limiting the work to be performed under the Prime Contract, the Parties shall accept such Change Orders. Contractor agrees to provide Subcontractor with written notice of any such change orders that affect the Services to be provided by the Subcontractor hereunder as soon as practical after Contractor receives such notice. Any resulting increase or decrease in the Services, Small Diverse Business or Small Business Commitment provided for in Paragraphs 7 or 8 above must be in writing, mutually agreed to, and signed by both Parties and communicated to the Bureau. If the Parties are unable to reach an agreement regarding any adjustment to the Services, Small Diverse Business or Small Business Commitment necessitated by a Commonwealth Change Order, the Parties must submit the matter in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.

16. Force Majeure. Neither party will incur any liability to the other if its performance of any obligation under this Subcontract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemic and quarantines, general strikes throughout the trade, and freight embargoes. The existence of such causes beyond a party's control shall extend the period for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes have been removed.

17. Dispute Resolution.

(a) The Parties will attempt to resolve any dispute arising out of or relating to this Subcontract through friendly negotiations.

(1) The Parties expressly acknowledge and confer upon the Bureau and Contracting Officer the authority to adjudicate disputes that the Parties cannot resolve amicably concerning the Parties' compliance with their Small Diverse Business and Small Business Commitments as provided in the Prime Contract and this Subcontract.

(2) The Bureau may recommend to the Contracting Officer a range of sanctions it deems appropriate if the Bureau determines a party has failed to satisfy or perform its Small Diverse Business or Small Business commitment. Such sanctions include, but are not limited to, one or more of the following: a determination that the party is not responsible under the Contractor Responsibility Program; withholding of Prime Contract and/or Subcontract payments; suspension or termination of the Prime Contract and/or Subcontract together with consequential damages; revocation of the party's Small Business self-certification status and/or Small Diverse Business verification status; and/or suspension or debarment of one or both parties from future contracting opportunities with the Commonwealth.

(3) The Parties' acknowledge that their prior performance in meeting their Small Diverse Businesses and Small Businesses contractual obligations will be considered by the Bureau during future procurement scoring processes. To the extent a party has failed to meet prior contractual commitments, the Bureau may recommend to the Issuing Office that the party be determined non-responsible for the limited purpose of eligibility to receive SDB/SB points or consideration as a qualified Small Diverse Business or Small Business.

(b) Nothing herein shall be construed to prevent either party from seeking such relief as provided by law in a court or tribunal of competent jurisdiction.

18. Notices. Any written notice to any party under this Subcontract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to the following:

If to Contractor:

If to Subcontractor:

19. Waiver. No waiver by either party of any breach of this Subcontract shall be deemed to waive any other breach. No acceptance of payment or performance after any breach shall be deemed a waiver of any breach. No failure or delay to exercise any right by a party upon another's default shall prevent that party from later exercising that right, nor shall such failure or delay operate as a waiver of any default.
20. Severability. If any provision of this Subcontract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
21. Assignment. Neither party may assign or transfer this Subcontract without the prior written consent of the Commonwealth. If Contractor's Prime Contract with the Commonwealth is assigned to another contractor, the new contractor must maintain the Small Diverse Business and Small Business Commitment set forth in the Prime Contract as implemented through this Subcontract.
22. Applicable Law. This Subcontract shall be governed by the laws of the Commonwealth of Pennsylvania.
23. Entire Agreement. This Subcontract constitutes the entire agreement of the Parties regarding the subject of this Subcontract as of the date of execution. No other agreement or understandings, verbal or written, expressed or implied, are a part of this Subcontract unless specified herein.
24. Amendment. This Subcontract may be modified or amended only if made in writing and signed by both Parties. Any proposed change to the Contractor's Small Diverse Business or Small Business Commitment to Subcontractor must be submitted in writing to the Bureau which will make a recommendation to the Contracting Officer regarding a course of action.
25. Binding Effect. This Subcontract shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.
26. Counterparts. This Subcontract may be executed by the Parties in counterparts, each of which together shall be deemed an original but all of which together shall constitute one and the same instrument. A party's delivery of a duly executed signature page of this Subcontract in electronic format shall have the same force and effect as delivery of an original signature page.

ADDITIONAL TERMS AND CONDITIONS

[THE PARTIES MAY INCLUDE ADDITIONAL TERMS AND CONDITIONS APPROPRIATE FOR THE SERVICES TO BE PROVIDED SO LONG AS THEY ARE COMMERCIALY REASONABLE TERMS FOR THE APPLICABLE BUSINESS OR INDUSTRY, ARE NO LESS FAVORABLE THAN THE TERMS OF THE PRIME CONTRACT, AND DO NOT PLACE DISPROPORTIONATE RISK ON THE SMALL

DIVERSE BUSINESS OR SMALL BUSINESS RELATIVE TO THE NATURE AND LEVEL OF THE SMALL DIVERSE BUSINESS' OR SMALL BUSINESS' PARTICIPATION IN THE PROJECT. SUCH TERMS MAY INCLUDE:

- Background Checks
- Confidentiality/Disclosure of Information
- Data Security
- Insurance
- Invoicing Requirements
- Environmental Protection
- Intellectual Property Rights
- Record Retention/Audits
- Service Level Agreements (SLAs) (consistent with Prime Contract SLAs)
- Public Works Construction Requirements (including Bonding, E-Verify, Prevailing Wage, and Prompt Payment provisions)

IN WITNESS WHEREOF, the Parties hereto have caused this Subcontract to be executed by their duly authorized officers as set forth below.

Contractor

Subcontractor

Insert Company Name

Insert Company Name

By: _____
Signature

By: _____
Signature

Printed Name

Printed Name

Title

Title

Date

Date