

REQUEST FOR PROPOSALS

Pennsylvania Universal Fund External Auditor RFP

ISSUING OFFICE

**Pennsylvania Public Utility Commission
Bureau of Technical Utility Services**

Pa PUC RFP 2015-1

DATE OF ISSUANCE

February 20, 2015

CALENDAR OF EVENTS

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

Activity	Responsibility	Date
Deadline to submit Questions via email to the Issuing Officer Spencer Nahf at snahf@pa.gov .	Potential Auditors	Monday March 2, 2015
Non-mandatory Pre-Proposal Conference at 1:30 P.M. in Hearing Room 5, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. The Issuing Officer will take questions.	Issuing Office/Potential Auditors	Thursday March 5, 2015 1:30 P.M.
Answers to all Potential Auditor questions posted to the Commission website at http://www.puc.state.pa.us/general/requestforproposal.aspx	Issuing Office	Thursday March 12, 2015
Please monitor website for all communications regarding the RFP on an ongoing basis. http://www.puc.state.pa.us/general/requestforproposal.aspx	Potential Auditors	Ongoing
Sealed proposal must be received by the Issuing Office at address indicated in Section I-11 by <u>3 p.m.</u>	Auditors	<u>Tuesday</u> <u>March 31, 2015</u> <u>3 p.m.</u>

PART I

GENERAL INFORMATION

I-1. PURPOSE. This Request for proposals (RFP) provides interested accounting firms with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Public Utility Commission (Commission or PUC) to conduct a financial statement audit of the statements, assets, liabilities, and fund balance covering both collections and disbursements of the Pennsylvania Universal Service Fund (Pa USF or Fund) for the previous fiscal year. The audit will be conducted pursuant to the Commission's statutory authority at 66 Pa.C.S. §§ 331, 501, 506, and 516 (a) and (c), and its regulatory authority at 52 Pa. Code § 63.168.

The term of the Contract will be from the Effective Date of the Contract until July 31, 2020, and, if requested by the Commission, one optional one-year term thereafter.

I-2. ISSUING OFFICE. This RFP is issued by the Pennsylvania Public Utility Commission's Law Bureau in conjunction with the Bureau of Technical Utility Services (TUS).

The sole point of contact in the Commonwealth of Pennsylvania (Commonwealth) for this RFP shall be the Issuing Officer Spencer Nahf, at snahf@pa.gov or (717) 787-5164. Please refer all inquiries to the Issuing Officer.

I-3. SCOPE. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the service to be provided; requirements that must be met to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

I-4. PROBLEM STATEMENT. To assist the PUC in its task of regulating the Pa USF, an independent external auditor (Auditor or Contractor) chosen by the Commission will audit the Fund annually and prepare and submit a report to the Commission and the administrator by July 1 of each year. Such audits will be used by the Commission to determine the extent to which the administrator's management has contained costs, developed reasonable long and short range plans for the Fund's continued operation, and provided proper service to the carriers it serves. Each audit report should make recommendations regarding the finances of the Fund and should identify undercollections and overcollections experienced by the Pa USF in the previous year.

The Commission is seeking to retain an independent accounting firm that will perform its obligations in a professional manner in accordance with (1) the United States General Accountability Office's "Standards for Audit of Government Organizations, Programs, Activities, and Functions" as applicable to public utilities; (2) Generally Accepted Auditing Standards (GAAS). The Auditor will work primarily with Commission staff from Law Bureau and TUS regarding the Pa USF and to provide analysis and advice in this area.

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.”

Estimated budget: \$20,000 - \$28,000 per year.

I-5. TYPE OF CONTRACT. If the Issuing Office enters into a contract as a result of this RFP, it will be a contract based upon the chosen Auditor’s usual fee agreement, as well as this RFP and the chosen Auditor’s Proposal. This RFP and all exhibits, appendices, addenda, and other attachments thereto, as well as the Proposal of the Auditor who is awarded the contract and all exhibits, appendices, addenda, and other attachments thereto are incorporated into the contract by reference. The Commission reserves the right to negotiate revisions to the selected Auditor’s usual fee agreement. Total payments under this contract will not exceed the total cost quoted in the Proposal. The Auditor selected by the Commission will have the opportunity to enter into final contract negotiations with the Commission to address any potential issues related to the contract, prior to finalizing the contract.

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 Auditors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible and capable of performing the annual audit of the Fund.

I-7. INCURRING COSTS. The Commission is not liable for any costs incurred by Auditors prior to issuance of a Contract. The Auditor shall not begin compensable work until so notified by the Commission.

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 potential Auditors to ask questions to clarify the RFP. Auditors may also submit written questions prior to the Pre-proposal Conference in accordance with Part I, Section I-9. Auditors 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 written answers will be posted on the PUC website at http://www.puc.pa.gov/contact_us/request_for_proposals.aspx by the date stated in the Calendar of Events and will become an addendum to, and shall become part of, this RFP and the Contract.

Attendance at the pre-proposal conference is optional.

I-9. QUESTIONS & ANSWERS. If an Auditor has any questions regarding this RFP, the Auditor may submit the questions by email (with the subject line “RFP-2015-1 USF Auditor RFP Question”) to the Issuing Officer no later than the date indicated in the Calendar of Events. Auditors may also ask questions at the Pre-Proposal Conference. The Auditor 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 hereby incorporated herein by reference. Each Auditor shall be responsible to monitor the PUC website for new or revised RFP information. 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 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.state.pa.us. Protests should be filed with the Issuing Officer.

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 Auditor’s responsibility to periodically check 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 considered, the proposal and any addendum thereto must arrive at the Issuing Office on or before the time and date specified in the Calendar of Events via the appropriate address listed below.

U.S. Mail First Class Delivery Address

Spencer Nahf
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services
P.O. Box 3265
Harrisburg, PA 17105-3265

Overnight Delivery Service Address

Spencer Nahf
Pennsylvania Public Utility Commission
Bureau of Technical Utility Services
3rd Floor West, Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Auditors delivering proposals by any form of delivery service should allow for delivery time to insure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth 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 Commonwealth business day on which the office is open, unless the Issuing Office otherwise notifies Auditors. 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. To be considered, Auditors must submit a complete response to this RFP, using the format provided in Part II. No other distribution of proposals will be made by the Auditor. Proposals must be signed by an official authorized to bind the Auditor to its provision. Moreover, except as otherwise noted herein, the contents of the proposal of the selected Contractor will become contractual obligations of the Contractor if a contract is entered into with the Commission. If the winning Proposal materially conflicts with the terms and conditions of the fully executed and approved written contract between the Commission and the successful Auditor, the following order of precedence shall apply in resolving conflicts: 1. RFP and 2. Proposal.

If the Issuing Office selects the Auditor's proposal for award, the contents of the selected Auditor's proposal will become, except to the extent the contents are changed through final contract negotiations, contractual obligations. The information in the proposal will become a public record upon contract execution. Pursuant to the Pennsylvania *Right-to-Know Law*, Per Section 106 (b)(1) of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 106 (b)(1), all proposals will be public records, except for parts of the proposals that show a bidder's financial information (such as tax records).

Each Auditor submitting a proposal specifically waives any right to withdraw or modify it, except that the Auditor 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. An Auditor 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. An Auditor 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.

All work is to be done in a professional manner in accordance with the United States General Accounting Office's *Standards for Audit of Government Organizations, Programs, Activities, and Functions*, as applicable to public utilities, with audit emphasis on issues of management economy, efficiency and effectiveness.

I-13. SMALL DIVERSE BUSINESS INFORMATION. The Issuing Office encourages participation by small diverse businesses as prime contractors, and encourages all prime contractors to make a significant commitment to use small diverse businesses as subcontractors and suppliers.

A Small Diverse Business is a DGS-verified minority-owned business, woman-owned business, veteran-owned business or service-disabled veteran-owned business.

A small business is 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.

Questions regarding this Program can be directed to:

Department of General Services
Bureau of Small Business Opportunities
Room 611, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: gs-bsbo@pa.gov
Website: www.dgs.state.pa.us

The Department's directory of BSBO-verified minority, women, veteran and service disabled veteran-owned businesses can be accessed from: [Searching for Small Diverse Businesses](#).

I-14. PRIME CONTRACTOR RESPONSIBILITIES. The successful Auditor will be the prime Contractor and will be required to assume responsibility for all services offered in its proposal including those of any subcontractors. Further, the Commission will consider the prime Contractor to be the sole point of contact with regard to contractual matters.

I-15. ECONOMY OF PREPARATION. The proposal should be a straight-forward, concise description of the Auditor's ability to meet the requirements of the RFP.

I-16. ALTERNATE PROPOSALS. The Issuing Office has identified the basic approach to meeting its requirements, allowing prospective vendors to be creative and propose their best solution to meeting these requirements. However, in order to allow for evaluation of the proposals, the Issuing Office will not accept alternate proposals that do not satisfy the stated work requirements.

I-17. DISCUSSIONS FOR CLARIFICATION. Auditors who submit a proposal may be required to make an oral or written clarification of their proposal to the Commission's Evaluation Committee to ensure thorough mutual understanding and Auditor responsiveness to the solicitation requirements. Only the Issuing Office may initiate requests for clarification.

I-18. NEWS RELEASES. Auditors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this Project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

I-19. RESTRICTION OF CONTACT. From the issue date of this RFP until the Commission 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 Auditor's proposal. If the Issuing Office later discovers that the Auditor has engaged in any violations of this condition, the Issuing Office may reject the offending Auditor's proposal or rescind its contract award. Auditors must agree not to distribute any part of their proposals beyond the Issuing Office. An Auditor who shares information contained in its proposal with other Commonwealth personnel and/or competing Auditor personnel may be disqualified.

I-20. COPIES OF PREVIOUS WORK. Auditors who submit proposals must, as necessary, provide copies of recent previous relevant work products for review by the staff. These work products should be submitted at the same time as the proposal and may be redacted, as necessary, to preserve confidentiality.

I-21. DISCLOSURE OF PROPOSAL CONTENTS.

- A. **Confidential Information.** The Commonwealth is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror 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 information and trade secrets, 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 Offeror 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 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-22. DEBRIEFING CONFERENCES. Auditors whose proposals are not selected will be notified of the name of the selected Auditor and given the opportunity to be debriefed if such request is made within seven days after the Auditor 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. An Auditor's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

I-23. TERM OF CONTRACT. The term of the contract will commence on the Effective Date, which date shall be fixed by the Issuing Office after the contract has been fully executed by the Auditor and the Commission and all approvals required by the Commonwealth contracting

procedures have been obtained. The selected Auditor shall not start the performance of any work prior to the Effective Date of the contract and neither the Commission nor the Contracting Officer shall be liable to pay the selected Auditor 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 July 31, 2020, and, if requested by the Commission, one optional one-year term thereafter.

I-24. COMMISSION PARTICIPATION. A Project Officer will be designated by the Commission to coordinate the activities of the Contractor with the Commission to ensure satisfactory and timely performance of the contract when awarded. The Project Officer or his designate(s) will be the sole source of contact for the Contractor in any discussions with the Commission during the course of the Contract.

The Commission's staff will take an active part in the Contractor's work and the Auditor should be prepared to work with Commission Staff throughout the course of the Project. The Commission will rely upon its staff to answer various questions from time to time about the Project. It will be necessary, therefore, that the Commission's staff be closely involved in the work of the Contractor. The Auditor's willingness to work with the Commission's staff in the described manner is a material obligation of the Contract.

I-25. AUDITOR'S REPRESENTATIONS AND AUTHORIZATIONS.

Each Auditor, by submitting its proposal, understands, represents, and acknowledges that:

- A. All of the Offeror'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 Offeror has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C. The Offeror 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 an Offeror or potential offeror for this RFP, and the Offeror 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 Offeror 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 Offeror 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 Offeror, the Offeror, 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 Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror 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 Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror 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 Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.

I-26. NOTIFICATION OF SELECTION. The Issuing Office will notify the selected Auditor 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-27. RFP PROTEST PROCEDURE. A protest by a party who did not submit a proposal must be filed within seven (7) calendar days after the protesting party knew or should have known of the facts giving rise to the protest, but no later than seven (7) days after the proposal submission deadline specified in the RFP Calendar of Events. Auditors who did submit a proposal may file a protest within seven (7) calendar days after the protesting Auditor knew or should have known of the facts giving rise to the protest. The date of filing is the date of receipt

of the protest. A protest must be filed in writing with the Issuing Office as provided in Section I-11. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-28. PAYMENT. Payment will be for services rendered, as invoiced annually by the Auditor to the Project Officer when the audit is approved detailing its services and expenses, as categorized in the proposal, for conducting the audit. The Commission will review invoices and approve the Fund's Administrator to pay approved expenses within thirty days of the date of invoice.

I-29. KEY PERSONNEL. Auditor agrees to notify the Commission at least 30 days in advance of a change in personnel used by the Auditor to perform Contract work, including changes in personnel at any subcontractors. Commission reserves the right to require Commission approval of changes in the Auditor's key personnel. Changes in key personnel should also include a transition period of appropriate length to ensure continuity of operations.

PART II

INFORMATION REQUIRED FROM AUDITORS

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

The Issuing Office may make such investigations as deemed necessary to determine the ability of the Auditor to perform the work, and the Auditor shall furnish to the Issuing Office all such information and data for this purpose as requested by the Issuing Office. The Issuing Office reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Auditor fails to satisfy the Issuing Office that such Auditor is properly qualified to carry out the obligations of the contract and to complete the work specified.

Please submit the following:

1. Signed Cover Sheet (Appendix B) (1 copy);
2. Non-collusion Affidavit (Appendix A) (1 copy);
3. Statement of Potential Conflicts of Interest (II-3) (1 copy);
4. Prior Experience submission (II-1) (10 copies);
5. Personnel submission (II-2) (10 copies);
6. Cost submission (II-4) (2 copies); and
7. Disadvantaged Business submission (II-5) (separate envelope) (2 copies).

II-1. PRIOR EXPERIENCE. Indicate the prior experience of your firm in providing financial statement auditing services in accordance with Generally Accepted Auditing Standards (GAAS) and to government organizations. Submit a statement of similar management audits conducted in the previous five (5) years. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company including work samples of management audit reports or similar project reports completed by your firm. Projects referred to should be identified and the name of the client shown, including the name, address and phone number of the responsible official of the client, company or agency who may be contacted.

II-2. PERSONNEL/INFRASTRUCTURE. Include the names and job titles of all personnel that will be engaged in the work. You must include resumes for accountants indicating their education and experience in auditing and management evaluations. In addition, leadership personnel shall be subject to personal interviews by Commission staff, if so requested by the Commission's Evaluation Committee. Any interviews conducted will be at the Commission's offices in Harrisburg prior to the final selection of a Contractor. Include a list of your office locations, and indicate the support staff levels at each location.

II-3. STATEMENT OF POTENTIAL CONFLICTS OF INTEREST. The Auditor shall identify any relationships between itself and/or its employees and the Commission and/or its employees. This would include any work currently being performed by the Auditor or its employees or any work performed by the Auditor or its employees during the past five years for

the Commission or involving the current Commissioners. If there have been no such relationships, a statement to that effect is to be included in the proposal.

II-4. COST. Please submit your fee schedule for accountants and other support staff.

II-5. SMALL DIVERSE BUSINESS PARTICIPATION SUBMITTAL.

- A. To receive credit for being a Small Diverse Business or for subcontracting with a Small Diverse Business (including purchasing supplies and/or services through a purchase agreement), an Offeror must include proof of Small Diverse Business qualification in the Small Diverse Business participation submittal of the proposal, as indicated below:

A Small Diverse Business verified by BSBO as a Small Diverse Business must provide a photocopy of their verification letter.

- B. In addition to the above verification letter, the Offeror must include in the Small Diverse Business participation submittal of the proposal the following information:

1. ***All*** Offerors must include a numerical percentage which represents the total percentage of the work (as a percentage of the total cost in the Cost Submittal) to be performed by the Offeror and not by subcontractors and suppliers.
2. ***All*** Offerors must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Offeror commits to paying to Small Diverse Businesses (SDBs) as subcontractors. To support its total percentage SDB subcontractor commitment, Offeror must also include:
 - a) The percentage and dollar amount of each subcontract commitment to a Small Diverse Business;
 - b) The name of each Small Diverse Business. The Offeror will not receive credit for stating that after the contract is awarded it will find a Small Diverse Business.
 - c) The services or supplies each Small Diverse Business will provide, including the timeframe for providing the services or supplies.
 - d) The location where each Small Diverse Business will perform services.
 - e) The timeframe for each Small Diverse Business to provide or deliver the goods or services.
 - f) A subcontract or letter of intent signed by the Offeror and the Small Diverse Business (SDB) for each SDB identified in the SDB Submittal. The subcontract or letter of intent must identify the specific work, goods or services the SDB will perform, how the work, goods or services relates to the project, and the specific timeframe during the term of the contract and any option/renewal periods when the work, goods or services will be performed or provided. In addition, the subcontract or letter of intent must identify the fixed percentage commitment and associated estimated dollar value that each SDB will receive based on the total value of the initial term of the contract as

provided in the Offeror's Cost Submittal. Attached is a letter of intent template which may be used to satisfy these requirements.

- g) The name, address and telephone number of the primary contact person for each Small Diverse Business.
- 3. The total percentages and each SDB subcontractor commitment will become contractual obligations once the contract is fully executed.
- 4. The name and telephone number of the Offeror's project (contact) person for the Small Diverse Business information.
- C. The Offeror is required to submit **two** copies of its Small Diverse Business participation submittal. The submittal shall be clearly identified as Small Diverse Business information and sealed in its own envelope, separate from the remainder of the proposal.
- D. A Small Diverse Business can be included as a subcontractor with as many prime contractors as it chooses in separate proposals.
- E. An Offeror that qualifies as a Small Diverse Business and submits a proposal as a prime contractor is not prohibited from being included as a subcontractor in separate proposals submitted by other Offerors.

PART III

CRITERIA FOR SELECTION

III-1. MANDATORY RESPONSIVENESS REQUIREMENTS. To be eligible for selection, a proposal must be:

- a) Timely received from an Auditor; and
- b) Properly signed by the Auditor.

III-2. TECHNICAL NONCONFORMING PROPOSALS. The Issuing Office reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in an Auditor's proposal.

III-3. EVALUATION. The Issuing Office has selected a committee of qualified personnel (Evaluation Committee or Committee) to review and evaluate timely submitted proposals. Independent of the committee, BSBO will evaluate the Small Diverse Business participation submittal and provide the Issuing Office with a rating for this component of each proposal. After the Committee completes its evaluation, the Issuing Office will recommend the selection of an Auditor to the Commission. The Issuing Office's recommendation shall be subject to the approval of the Commission. The Commission reserves the right to exercise discretion in selecting the qualified bidder that best meets the RFP requirements and the needs of the Commission. The Issuing Office will notify the selected Auditor in writing of the Commission's selection followed by negotiation with the Auditor.

III-4. CRITERIA FOR SELECTION. 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, in order of importance:

A. PROFESSIONAL PERSONNEL. This refers to the competence and appropriate assignment of the project management or lead personnel, professional support personnel, and administrative support personnel. Qualifications of personnel will be measured by education and experience, with particular reference to experience on projects similar to that described in the RFP.

B. WORK PLAN. Emphasis here is on the soundness of approach and reasonableness of the time allowances proposed. Evaluated under this criterion will be the techniques to be used for collecting and analyzing data; the sequence and relationships of major work steps; and methods of managing the audit. Also considered in this category will be the Auditor's compliance with specific RFP requirements as well as its understanding of the Commission's work involved, and the need for project management

controls and adequate quantification (and support for the quantification), where possible, for all findings, conclusions, and recommendations.

C. PRIOR WORK. This includes the ability of the Auditor to meet the terms of the RFP, especially the time constraint and the quality, relevancy and recency of projects completed by the Auditor. Technical expertise and operational auditing techniques will be considered.

D. LOCAL PRESENCE. Commissioners, Commissioner's staff, and the Commission's advisory legal staff are located in Harrisburg, Pennsylvania. In order to minimize travel costs and to facilitate effective legal counsel, the Commission will evaluate the Proposer's local presence in and around Harrisburg.

- b. Cost:** The Issuing Office has established the weight for the Cost criterion for this RFP as **30 %** of the total points.
- c. Small Diverse Business Participation:** BSBO has established the weight for the Small Diverse Business (SDB) participation criterion for this RFP as **20 %** of the total points. Each SDB participation submittal will be rated for its approach to enhancing the utilization of SDBs in accordance with the below-listed priority ranking and subject to the following requirements:
 - 1. A business submitting a proposal as a prime contractor must perform 60% of the total contract value to receive points for this criterion under any priority ranking.
 - 2. To receive credit for an SDB subcontracting commitment, the SDB subcontractor must perform at least fifty percent (50%) of the work subcontracted to it.
 - 3. A significant subcontracting commitment is a minimum of five percent (5%) of the total contract value.
 - 4. A subcontracting commitment less than five percent (5%) of the total contract value is considered nominal and will receive reduced or no additional SDB points depending on the priority ranking.

Priority Rank 1: Proposals submitted by SDBs as prime offerors will receive 150 points. In addition, SDB prime offerors that have significant subcontracting commitments to additional SDBs may receive up to an additional 50 points (200 points total available).

Subcontracting commitments to additional SDBs are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

Priority Rank 2: Proposals submitted by SDBs as prime contractors, with no or nominal subcontracting commitments to additional SDBs, will receive 150 points.

Priority Rank 3: Proposals submitted by non-small diverse businesses as prime contractors, with significant subcontracting commitments to SDBs, will receive up to 100 points. Proposals submitted with nominal subcontracting commitments to SDBs will receive points equal to the percentage level of their total SDB subcontracting commitment.

SDB subcontracting commitments are evaluated based on the proposal offering the highest total percentage SDB subcontracting commitment. All other Offerors will be scored in proportion to the highest total percentage SDB subcontracting commitment within this ranking. *See formula below.*

Priority Rank 4: Proposals by non-small diverse businesses as prime contractors with no SDB subcontracting commitments shall receive no points under this criterion.

To the extent that there are multiple SDB Participation submittals in Priority Rank 1 and/or Priority Rank 3 that offer significant subcontracting commitments to SDBs, the proposal offering the highest total percentage SDB subcontracting commitment shall receive the highest score (or additional points) available in that Priority Rank category and the other proposal(s) in that category shall be scored in proportion to the highest total percentage SDB subcontracting commitment. Proportional scoring is determined by applying the following formula:

$$\frac{\text{SDB \% Being Scored}}{\text{Highest \% SDB Commitment}} \times \frac{\text{Points/Additional Points Available}^*}{1} = \frac{\text{Awarded/Additional SDB Points}}{1}$$

Priority Rank 1 = 50 Additional Points Available

Priority Rank 3 = 100 Total Points Available

Please refer to the following webpage for an illustrative chart which shows SDB scoring based on a hypothetical situation in which the Commonwealth receives proposals for each Priority Rank:

http://www.portal.state.pa.us/portal/server.pt/community/rfp_scoring_formulas_overview/20124

III-5. POTENTIAL CONFLICTS OF INTEREST. The Issuing Office will determine, on a case-by-case basis, whether an actual or potential conflict of interest exists with the Auditor that bars the Auditor's proposal from consideration. The Auditor is required to explain, in detail, the measures that will be taken to avoid any conflict of interest or appearance of impartiality that may arise as a consequence of this contract.

III-6. OFFEROR RESPONSIBILITY. To be responsible, an Offeror 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 an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

The total score for the technical submittal of the Offeror's proposal must be greater than or equal to **70%** of the **available technical points**.

Further, the Commission will award a contract only to an Auditor determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, *Contractor Responsibility Program*.

III-7. 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, BSBO's final small diverse business participation 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 offerors according to the total overall score assigned to each, in descending order.
- C. The Issuing Office must select for contract negotiations the offeror with the highest overall score; PROVIDED, HOWEVER, THAT AN AWARD WILL NOT BE MADE TO AN OFFEROR WHOSE PROPOSAL RECEIVED THE LOWEST TECHNICAL SCORE AND HAD THE LOWEST COST SCORE OF THE RESPONSIVE PROPOSALS RECEIVED FROM RESPONSIBLE OFFERORS. IN THE EVENT SUCH A PROPOSAL ACHIEVES THE HIGHEST OVERALL SCORE, IT SHALL BE ELIMINATED FROM CONSIDERATION AND AWARD SHALL BE MADE TO THE OFFEROR WITH THE NEXT 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 IV

Contract Terms

IV-1. Ongoing Obligations to Maintain Records. Data, records, and other materials collected or created by the Auditor for this Project is 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 Auditor must notify the Commission to allow the Commission to take custody of such materials, if it so chooses.

IV-2. Incorporation by Reference. 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 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 RFP. The RFP 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.

IV-3. Contractor Representative. 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.

IV-4. Termination. The Commission reserves the right to terminate this Contract with thirty days' notice to the Contractor if the Contractor's performance is, in the sole view of the Commission, unsatisfactory and not in keeping with the Proposal and the RFP, and/or for any material breach of the terms contained herein. The Commission shall pay the Contractor for approved work completed until the date of contract termination. The Commission and the Contractor will consult and the Commission will determine what work should be carried out between the time the notice of termination is given and the termination date of the Contract.

In the event of a material breach of the Contract terms by the Contractor, the Project Officer shall inform the Contractor's Representative of the breach. The Contractor shall have twenty days in which to cure the breach to the satisfaction of the Commission. This provision shall not be construed as a limitation on remedies by the Commission for breach of this Contract by the Contractor.

IV-5. Contract Requirements—Disadvantaged Business Participation and Enterprise Zone Small Business Participation. All contracts containing Disadvantaged Business participation must also include a provision requiring the selected Contractor to meet and maintain those commitments made to Disadvantaged Businesses at the time of proposal submittal or contract negotiation, unless a change in the commitment is approved by the BSBO.

The selected Contractor's commitments to Disadvantaged Businesses made at the time of proposal submittal or contract negotiation shall be maintained throughout the term of the contract and through any renewal or extension of the contract. Any proposed change must be submitted

to BSBO, which will make a recommendation to the Contracting Officer regarding a course of action. If a contract is assigned to another Contractor, the new Contractor must maintain the Disadvantaged Business.

The selected Contractor shall complete the Prime Contractor's Quarterly Utilization Report (or similar type document containing the same information) and submit it to the contracting officer of the Issuing Office and BSBO within **10** workdays at the end of each quarter the contract is in force. This information will be used to determine the actual dollar amount paid to Small Disadvantaged Business. Also, this information will serve as a record of fulfillment of the commitment the selected Contractor made and for which it received Disadvantaged Business and Enterprise Zone Small Business points. If there was no activity during the quarter then the form must be completed by stating "No activity in this quarter."

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 DISADVANTAGED BUSINESSES STATUS OR ENTITLE AN PROPOSER TO RECEIVE CREDIT FOR DISADVANTAGED BUSINESSES UTILIZATION.

IV-6. 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.

IV-7. Entire Agreement. This Contract, and all exhibits, appendices, addenda, and other attachments thereto, constitute the entire agreement among the parties, subject to the provisions of IV-9 "Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this Contract shall be deemed to exist for purposes of interpreting this Contract, nor shall any such agreements be enforceable against the Commission or the Contractor.

IV-8. 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 except as provided in this Contract.

IV-9. Applicable Law and Courts. This Contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania. Contractor expressly submits to the personal and subject matter jurisdiction of the Courts of the Commonwealth of Pennsylvania.

IV-10. Assignment and Delegation. Neither this Contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified by this Proposal, without prior written approval by the Commission. Any subcontract shall contain all of the provisions of this Contract.

IV-11. 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.

IV-12. 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.

IV-13. 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:

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.
5. Errors and Omission (Professional Liability) Insurance of \$1,000,000 for each occurrence and \$2,000,000 in general aggregate.

Proof of each insurance listed above must be provided to the Project Officer within thirty days of execution of the Contract. 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 (listed individually by name) will be named as an additional insured on the policies referred to in 2, 3, 4, and 5 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.

IV-14. Indemnity. The Contractor agrees and undertakes to indemnify, defend, and hold harmless 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 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.

IV-15. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL THE COMMISSION OR ANY OF ITS RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, BE LIABLE TO ANY OTHER PARTY OR THEIR RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.

IV-16. No Waiver of Commonwealth Immunity. Nothing contained in this Contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

IN WITNESS THEREOF, intending to be legally bound, the Contractor and the Commission have caused this Contract to be approved and executed under their signatures 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)

Pennsylvania Universal Fund External Auditor Contract
Nondisclosure Agreement

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

1. As part of the Pennsylvania Universal Fund External Auditor Contract, it will be necessary for the Contractor to review data, books, records, and documents of the Pennsylvania Universal Service Fund and/or the Commission that are considered to be confidential (proprietary information).

2. With respect to proprietary information provided under this Contract, 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 the Contract;
- (d) Not disclose the proprietary information publicly or privately to any third party in any manner; and
- (e) Advise the Contractor's representatives of their obligation with respect to the proprietary information.

3. The Consultant may make proprietary information available to the Commission's Staff under this Agreement provided, however, that in the event of such disclosure, the Commission's Staff shall also be bound by the terms of this Nondisclosure Agreement.

4. Proprietary information that is provided to the Contractor and/or Commission Staff will be protected from disclosure as proprietary information 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.

5. The Contractor recognizes that the provisions of this Nondisclosure Agreement are vitally important to the welfare of the Commission and other entities providing information pursuant to the Contract and that money damages may not be an adequate remedy for any violation by the Contractor thereof. Accordingly, in the event of any breach or violation by the Contractor of the provisions thereof, the Commission or other entity may institute and maintain a proceeding to compel specific performance by the Contractor thereof or to issue an injunction restraining such breach or violation hereunder by the Contractor.

6. Nothing in this Nondisclosure 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 a regulated entity, or to examine records of the cost to a regulated entity's affiliates for providing services or furnishing property to a regulated entity (where applicable) as permitted by the statutory and common law of the Commonwealth of Pennsylvania.

7. Nothing contained in this Nondisclosure Agreement shall affect, abridge, increase, or decrease the ability of the Commission to appeal to the Commonwealth Court to protect its rights.

8. 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 of the Pennsylvania Universal Fund External Auditor Contract.

(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

During the term of this Contract, CONTRACTOR agrees as follows:

1. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Contract or any subcontract, CONTRACTOR, subcontractor, or any person acting on behalf of CONTRACTOR or subcontractor, shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this PUC who is qualified and available to perform the work to which the employment relates.
2. Neither CONTRACTOR nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Contract on account of gender, race, creed, or color.
3. CONTRACTOR and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. CONTRACTOR and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which this Contract relates.
5. CONTRACTOR and each subcontractor shall, within the time periods requested by the PUC, furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the PUC and the Department of General Services, for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If CONTRACTOR or subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the PUC or the Department of General Services.
6. CONTRACTOR shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The PUC may cancel or terminate this Contract, and all money due or to become due under this Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the PUC may proceed with debarment or suspension and may place CONTRACTOR in the Contractor Responsibility File.

RESPONSIBILITY PROVISIONS

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

2. CONTRACTOR also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other PUC obligations.

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

4. The failure of CONTRACTOR to notify the PUC of its suspension or debarment by the PUC, any other state, or the federal government shall constitute an event of default of this Contract with the PUC.

5. CONTRACTOR agrees to reimburse the PUC for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of CONTRACTOR's compliance with the terms of this or any other Contract between CONTRACTOR and the PUC, which results in the suspension or debarment of 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. CONTRACTOR shall not be responsible for investigative costs for investigations that do not result in CONTRACTOR's suspension or debarment.

6. CONTRACTOR may obtain a current list of suspended and debarred PUC contractors either by searching the Internet at www.dgs.state.pa.us, or by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Phone: (717) 783-6472
Fax: (717) 787-9138

THE AMERICANS WITH DISABILITIES ACT PROVISIONS

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101, *et seq.*, CONTRACTOR understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, 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 PUC of Pennsylvania through contracts with outside contractors.

2. CONTRACTOR shall be responsible for and agrees to indemnify and hold harmless the PUC of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the PUC of Pennsylvania as a result of CONTRACTOR's failure to comply with the provisions of Paragraph 1 of this Exhibit.

CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Contractor” shall have the following definitions.

a. “Confidential information” means information that (1) is not already in the public domain; (2) is not available to the public upon request; (3) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; (4) has not become generally known to the public through an act or omission of Contractor; or (5) has not been independently developed by Contractor without the use of confidential information of the PUC.

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

c. “Financial Interest” means:

- (1) ownership of more than a 5% interest in any business; or
- (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

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

e. “Immediate family” means a spouse and any unemancipated child.

f. “Contractor” means the individual or entity that has entered into this Contract with the PUC, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.

g. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the PUC of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

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

3. Contractor shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.

4. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor's employee activity with the PUC and PUC employees, and which is distributed and made known to all employees of Contractor.

5. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any PUC employee to breach the standards of ethical conduct for PUC employees set forth in the *Public Official and Employees Ethics Act*, 65 Pa.C.S. §§1101 et seq.; the *State Adverse Interest Act*, 71 P.S. §776.1 et seq.; and the *Governor's Code of Conduct, Executive Order 1980-18*, 4 Pa. Code §7.151 et seq., or to breach any other state or federal law or regulation.

6. Contractor, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the PUC.

7. Contractor, its affiliates, agents and employees shall not, in connection with this or any other Contract with the PUC, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the PUC.

8. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a PUC official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18*, 4 Pa. Code §7.151 et seq. or any statute, regulation, statement of policy, management directive or any other published standard of the PUC.

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

10. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the PUC in writing and the Office of PUC consents to Contractor's financial interest no later than Contractor's submission of the contract signed by Contractor, and prior to PUC execution of the contract.

11. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this Contract without the prior written approval of the PUC, except as required by the *Pennsylvania Right-to-Know Law*, 65 P.S. §§ 67.101-3104, or other applicable law or as

otherwise provided in this Contract. Any information, documents, reports, data, or records secured by Contractor from the PUC or a third party in connection with the performance of this Contract shall be kept confidential unless disclosure of such information is:

- a. Approved in writing by the PUC prior to its disclosure; or
- b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior PUC approval; or
- c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- d. Necessary for purposes of Contractor's internal assessment and review; or
- e. Deemed necessary by Contractor in any action to enforce the provisions of this Contract or to defend or prosecute claims by or against parties other than the PUC; or
- f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- g. Otherwise required by law.

12. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the PUC in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:

- a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
 - (1) obtaining;
 - (2) attempting to obtain; or
 - (3) performing a public contract or subcontract.

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

- c. Violation of federal or state antitrust statutes.

- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 *et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or PUC of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

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

13. Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the PUC on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
- b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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

14. Contractor shall comply with requirements of the *Lobbying Disclosure Act*, 65 Pa.C.S. § 13A01 *et seq.*, and the regulations promulgated pursuant to that law. Actions by outside lobbyists on behalf of Contractor are not exempt and must be reported.

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

16. Contractor, by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that it has not violated any of these Integrity Provisions.

17. Contractor shall cooperate with the Office of the Inspector General in its investigation of any alleged PUC employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified employees of Contractor available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Inspector General of the PUC or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to 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. Such information shall be retained by Contractor for a period of three years beyond the termination of this Contract unless otherwise provided by law.

18. For violation of any of the above provisions, the PUC 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 hereunder, and debar and suspend Contractor from doing business with the PUC. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the PUC may have under law, statute, regulation or otherwise.

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 Auditor 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 Auditor 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, Auditor or potential Auditor.

(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 an Auditor or potential Auditor, 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
Pennsylvania Universal Fund External Auditor RFP
COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission
Pa PUC RFP-2015-1

Enclosed in one package are three separately sealed submittals that constitute the proposal of the Auditor identified below for the above-referenced RFP:

Auditor Information:	
Auditor Name	
Auditor Mailing Address	
Auditor Website	
Auditor Contact Person	
Contact Person's Phone	
Contact Person's E-Mail	
Auditor Federal ID Number	

Submittals Enclosed:	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Disadvantaged Business Submittal (separate sealed envelope)
<input type="checkbox"/>	Cost Submittal

Signature	
Signature of an official authorized to bind the Auditor to the provisions contained in the Auditor's proposal:	
Printed Name	
Title	
Date	

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

RFP TRANSMITTAL LETTER
Pennsylvania Universal Fund External Auditor RFP
COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Public Utility Commission

RFP-2015-1
February 20, 2015

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

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

You are invited to submit a proposal for the Commission's Pennsylvania Universal Fund External Auditor Request for Proposal, in accordance with the enclosed request for proposal.

All proposals must be submitted to the address stated in Section I-11 of the RFP no later than 3 p.m., Tuesday, March 31, 2015, 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-2015-1 Pa. USF External Auditor RFP Question") to Spencer Nahf at snahf@pa.gov no later than Monday, March 2, 2015, as stated in the Calendar of Events. All potential bidders will be provided with written answers to questions asked by any potential bidder by Thursday, March 12, 2015, as stated in the Calendar of Events.

In addition, a pre-proposal conference will be held on Thursday, March 5, 2015 at 1:30 p.m. in Hearing Room 5, Commonwealth Keystone Building, 400 North St., Harrisburg PA 17120. Questions may also be submitted at the pre-proposal conference, which will also be answered by Thursday, March 12, 2015. Attendance at the pre-proposal conference is optional.

Sincerely,

Spencer Nahf
Fixed Utility Analyst
Issuing Officer/Project Officer

Enclosure: USF External Auditor Request for Proposal