

Submittal; the Cost Submittal; the Small Diverse Business (SDB) Participation Submittal (SDB-2) (which must include either the SDB Utilization Schedule (SDB-3), Good Faith Efforts Documentation to Support Waiver Request (SDB-4 and SDB-5), or both) and the Veteran Business Enterprise (VBE) Participation Submittal (VBE-2) (which must include either the VBE Utilization Schedule (VBE-3), Good Faith Efforts Documentation to Support Waiver Request (VBE-4 and VBE-5), or both). The electronic submission must be on CD, DVD or Flash drive in Microsoft Office or Microsoft Office compatible format and any spreadsheets must be in Microsoft Excel. The Offerors may not lock or protect any cells or tabs. The CD, DVD or Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the CD, DVD or Flash drive before it was submitted. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official or Commonwealth consultant. Each proposal page should be numbered for ease of reference. An official authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the **Proposal Cover Sheet** (Part VII to this RFP) and the Proposal Cover Sheet is scanned and provided in a PDF version in the Offeror's electronically submitted proposal, the requirement will be met. For this RFP, the proposal must remain valid for 120 days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through Best and Final Offers or negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror 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 Offeror 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. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a clearly identified revised electronic submission on CD, DVD or Flash drive marked as "Revised Proposal" which complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Offerors 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 Small Diverse Business and Veteran Business Enterprise cost data should be kept separate from and not included in the Technical Submittal. Offerors should not reiterate technical information in the cost submittal. Each electronic proposal shall consist of the following **Three** separate electronic files:

1. Technical Submittal, in response to **Part III**;
2. SDB Participation Submittal (SDB-2) (which must include the SDB Utilization Schedule (SDB-3), Good Faith Efforts Documentation to Support Waiver Request (SDB-4 and SDB-5), or both), in response to RFP **Part V**; and

3. VBE Participation Submittal (VBE-2) (which must include the VBE Utilization Schedule (VBE-3), Good Faith Efforts Documentation to Support Waiver Request (VBE-4 and VBE-5), or both), in response to RFP **Part V**.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror'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 Offeror to perform the Project, and the Offeror 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 Offeror fails to satisfy the Issuing Office that such Offeror is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

- I-12. **Economy of Preparation.** Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.
- I-13. **Alternate Proposals.** The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.
- I-14. **Discussions for Clarification.** Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and 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-15. **Prime Contractor Responsibilities.** The selected Offeror must perform at least 50% of the total contract work. Nevertheless, the contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.
- I-16. **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. 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 in 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 III of this RFP, such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

I-17. Best and Final Offers (BAFO).

- A.** While not required, the Issuing Office reserves the right to conduct discussions with Offerors for the purpose of obtaining “best and final offers.” To obtain best and final offers from Offerors, 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 an online auction; and
 4. Enter into pre-selection negotiations.
- B.** The following Offerors will **not** be invited by the Issuing Office to submit a Best and Final Offer:
1. Those Offerors which the Issuing Office has determined to be not responsible or whose proposals the Issuing Office has determined to be not responsive.
 2. Those Offerors which the Issuing Office has determined in accordance with **Part II, Section II-5** from the submitted and gathered information, do not possess the experience or qualifications to assure good faith performance of the contract.
 3. Those Offerors whose score for their technical submittal of the proposal is less than 75% of the total amount of technical points allotted to the technical criterion.
 4. Those Offerors who do not conform to the requirements of the Bureau of Diversity, Inclusion, and Small Business Opportunities.

The Issuing Office may further limit participation in the best and final offers process to those remaining responsible offerors which 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.
- I-18. News Releases.** Offerors 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 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 Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other Commonwealth personnel and/or competing Offeror personnel may be disqualified.
- I-20. Issuing Office Participation.** Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work.
- I-21. Term of Contract.** The term of the contract will commence on the Effective Date and **will end five years later sometime in February/March, 2029.** The Term will be five years.

The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and the Commonwealth shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract.

- I-22. Offeror's Representations and Authorizations.** By submitting its proposal, each Offeror 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.
- L. The Offeror is not currently engaged, and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

I-23. Notification of Selection.

- A. Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

I-24. Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section I-25** of this RFP).

I-25. 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 that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror 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. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

I-26. Use of Electronic Versions of this RFP. This RFP is being made available by electronic means. If an Offeror electronically accepts the RFP, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of a conflict between a version of the RFP in the Offeror's possession and the Issuing Office's version of the RFP, the Issuing Office's version shall govern.

PART II

CRITERIA FOR SELECTION

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

- A. Be timely received from an Offeror (see **Part I, Section I-10**); and
- B. Be properly signed by the Offeror (see **Part I, Section I-11A**); and
- C. Contain a completed SDB Participation Submittal (SDB-2) (which must include the SDB Utilization Schedule (SDB-3), Good Faith Efforts Documentation to Support Waiver Request (SDB 4 and SDB-5), or both); **and** either (a) agree to meet the SDB participation goal in full or (b) receive an approved waiver from any unmet portion of the SDB participation goal; and
- D. Contain a completed VBE participation submittal (VBE-2) (which must include the VBE Utilization Schedule (VBE-3), Good Faith Efforts Documentation to Support Waiver Request (VBE 4 and VBE-5), or both); **and** either (a) agree to meet the VBE participation goal in full or (b) receive an approved waiver from any unmet portion of the VBE participation goal.

II-2. Technical Nonconforming Proposals. The four (4) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-D) 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 Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

II-3. Evaluation. The Issuing Office has selected a committee of qualified personnel to review and evaluate timely submitted proposals. The Issuing Office will notify in writing of its selection for negotiation the responsible Offeror 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.

The Commonwealth will not score the SDB and VBE Participation Submittals. Rather, Offerors must commit to meeting the SDB and VBE participation goals or make good faith efforts to meet the SDB and VBE participation goal as more fully explained in **Part V**. Although the SDB and VBE Participation Submittals will not be scored, the Issuing Office, in conjunction with BDISBO when necessary, will evaluate the SDB Participation Submittal, the VBE Participation Submittal, and additional required documentation to determine whether they have been completed in accordance with Part V and in a manner that demonstrates the Offeror is responsive and responsible.

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 **100%** of the total points. Evaluation will be based upon the following (in descending order of importance.):

1. **Experience in matters relating to labor and employment law.**
2. **Overall legal experience.**
3. **Availability of associate and partner level attorneys for various levels of work.**
4. **Subject matter staff located in Capitol region.**

This is a professional services RFP issued pursuant to 62 Pa.C.S. § 518, Competitive Selection Procedures for Certain Services. This Procurement section is applicable because the Commission is seeking attorney services. Pursuant to 62 Pa.C.S. § 518(e), the award is based on best qualified bidder based on the evaluation factors set forth in the RFP. The bidders shall be ranked from most qualified to least qualified, and the Commission shall approve at Public Meeting the ranked list to direct Commission staff proceed to final contract negotiations to seek fair and reasonable compensation with highest ranked bidder on the list. If Commission staff cannot negotiate fair and reasonable compensation with the highest ranked bidder, Commission staff will proceed down the list until they obtain a bidder which will agree to fair and reasonable compensation. *See* Section II-4(B) below for more information.

B. Cost: This is a professional services RFP issued pursuant to 62 Pa.C.S. § 518, Competitive Selection Procedures for Certain Services. This Procurement section is applicable because the Commission is seeking attorney services. Pursuant to 62 Pa.C.S. § 518, cost is not an initial factor in determining the most qualified bidder. Specifically, Section 62 Pa.C.S. § 518(e) provides:

(e) Award. Award shall be made to the responsible offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

62 Pa.C.S § 518(e).

C. Bureau of Diversity, Inclusion, and Small Business Opportunities: Bidders must comply with the requirements of BDISBO.

- II-5. 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:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to 75% of the **available technical points**;
- B. Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program; and
- C. Bidders must comply with the requirements of the Bureau of Diversity, Inclusion, and Small Business Opportunities.

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 and rank the bidders from most qualified to least qualified.
- B. The Issuing Office must select for contract negotiations the offeror with the highest technical score. Commission staff will then negotiate fair and reasonable compensation with the bidder. If Commission staff cannot negotiate fair and reasonable compensation with the bidder, Commission staff will then seek to negotiate fair and reasonable compensation with bidders in order down the list until the Commission can agree to terms for fair and reasonable compensation with one of the bidders. *See* 62 Pa.C.S. § 518(e).
- C. 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

III-1. Qualifications.

- A. **Prior Experience.** Indicate experience in Labor and Employment Law.

Offeror Response

- B. **Personnel.** Include the number of attorneys who will be engaged in the work. Show where these personnel will be physically located. Include the attorney's name and, through a resume or similar document, the attorney's education and experience.

Offeror Response

- C. **Potential Conflicts of Interest.** Describe how your firm may represent other clients before the Commission and how you will ensure a barrier between your firm's practice before the Commission (if any) and those attorneys in the firm that will assist and represent the Commission in Human Resources, Labor and Employment Law matters.

Offeror Response

- D. **Subcontractors:** Provide a subcontracting plan for all subcontractors, including Small Diverse Business and Veteran Business Enterprise subcontractors, who will be assigned to the Project. The selected Offeror is prohibited from subcontracting or outsourcing any part of this Project without the express written approval from the Commonwealth. Upon award of the contract resulting from this RFP, subcontractors included in the proposal submission are deemed approved. For each position included in your subcontracting plan provide:

1. Name of subcontractor;
2. Address of subcontractor;
3. Geographical location of staff; and
4. Resumes.

Offeror Response

- III-2. **Objections and Additions to Standard Contract Terms and Conditions.** The Offeror will identify which, if any, of the terms and conditions (contained in **Part VI**) it would like to negotiate and what additional terms and conditions the Offeror would like to add to the standard contract terms and conditions. The Offeror's failure to make a submission under this paragraph will result in its waiving its right to do so later, but the Issuing Office may consider late objections and requests for additions 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 to the standard contract

terms and conditions. The Offeror shall not request changes to the other provisions of the RFP, nor shall the Offeror request to completely substitute its own terms and conditions for **Part VI**. All terms and conditions must appear in one integrated contract. The Issuing Office will not accept references to the Offeror'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 Offeror must submit its proposal, including the cost proposal, on the basis of the terms and conditions set out in **Part VI**. The Issuing Office will reject any proposal that is conditioned on the negotiation of the terms and conditions set out in **Part VI or to other provisions of the RFP as specifically identified above.**

Offeror Response

PART IV

COST SUBMITTAL

IV-1. Cost Submittal.

There is no cost submittal. Please see 62 Pa.C.S. § 518(e). After approval by the Commission at Public Meeting of the ranked list of bidders, Commission staff will negotiate with the winning bidder for fair and reasonable compensation.

The Issuing Office will reimburse the selected Offeror 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 VETERAN BUSINESS ENTERPRISE PARTICIPATION INFORMATION

- V-1. SDB and VBE Participation Goals.** The Issuing Office and BDISBO have set an SDB Participation Goal and a VBE Participation Goal for this RFP which are listed on the SDB and VBE Participation Summary Sheet. The SDB and VBE Participation Goals were calculated based upon the market availability of SDBs and VBEs for work scopes identified for this solicitation and an assessment of past performance under the prior contract.

This is a significant programmatic change from the SDB and SB Participation program contained in prior RFPs issued by the Commonwealth. Offerors now must agree to meet the SDB and VBE Participation Goals in full or demonstrate they have made Good Faith Efforts to meet the Goals and obtain an approved waiver.

- V-2. Small Diverse Business (SDB) Participation Submittal, Part X.** The SDB Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing SDB Participation Submittal and SDB Utilization Schedule and shall be submitted electronically in accordance with Part 1, Section I-11A.

- V-3. Veteran Business Enterprise (VBE) Participation Submittal, Part XI.** The VBE Participation Submittal and associated required documentation shall be submitted in accordance with the Instructions for Completing VBE Participation Submittal and VBE Utilization Schedule and shall be submitted electronically in accordance with Part 1, Section I-11A.

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 SDB or VBE Status or entitle an Offeror to receive credit towards the SDB or VBE participation goals.

- V-3. Contract Requirements—SDB and VBE Participation.**

- A. SDB and VBE Participation Documents. All documents completed and submitted by the selected Offeror in connection with its SDB Participation Submittal (including the SDB Participation Submittal (SDB-2), SDB Utilization Schedule (SDB-3), and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal (SDB-4 and SDB-5)) and its VBE Participation Submittal (including the VBE Participation Submittal (VBE-2), VBE Utilization Schedule (VBE-3), and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal (VBE-4 and VBE-5)) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto.
- B. Required contract terms. All contracts containing SDB and/or VBE participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:

1. Each SDB participation commitment and each VBE participation commitment which was credited by BDISBO and the total percentage of the SDB participation commitments and VBE participation commitments made at the time of proposal submittal or contract negotiations, as applicable, become contractual obligations of the selected Offeror upon execution of its contract with the Commonwealth.
2. For purposes of monitoring compliance with the selected Offeror's SDB participation commitments and VBE participation commitments, the contract cost is the total amount paid to the selected Offeror throughout the initial contract term and all renewal option terms.
3. The selected offeror cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Issuing Officer and BDISBO.
4. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the contract is assigned to another prime contractor.

C. Subcontract requirements.

1. The selected offeror and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the selected offeror and the SDB or VBE within 30 calendar days of the final execution date of the Commonwealth contract. A Model Form of Small Diverse Business/Veteran Business Enterprise Subcontractor Agreement which may be used to satisfy this requirement – is available as Part VIII.
2. In addition to any requirements in the offeror's contract documents, the subcontract must contain:
 - a. The specific work, supplies or services the SDB or VBE will perform; location for work performed; how the work, supplies or services relate to the contract; 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;
 - b. The fixed percentage commitment and/or associated estimated dollar value that each SDB or VBE will receive based on the final negotiated cost for the initial term of the prime contract and any renewal option terms;
 - c. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within 14 calendar days of the selected offeror's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods;
 - d. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected offeror's contract with the Commonwealth and that do not place disproportionate risk on the SDB or VBE

relative to the nature and level of the SDB's or VBE's participation in the contract; and

- e. The requirement that the SDB or VBE submit to BDISBO utilization reports.
3. If a subcontract agreement is required by the solicitation document and the subcontract terms omit any of the information required in subparagraph 2 but that information is otherwise reflected within the selected offeror's SDB Participation Submittal (SDB-2), VBE Participation Submittal (VBE-2), or associated documents (SDB Utilization Schedule (SDB-3), VBE Utilization Schedule (VBE-3) , and Letters of Commitment (SDB-3.1 and VBE-3.1)), the information listed in the SDB Participation Submittal (SDB-2), VBE Participation Submittal (VBE-2), or associated documents is incorporated into the subcontract agreement. To the extent that any subcontract terms conflict with the requirements of paragraph (2) or information contained within the selected offeror's SDB Participation Submittal (SDB-2) or VBE Participation Submittal (VBE-2) and associated documents, the order of precedence is as follows: 1) the requirements of paragraph 2, 2) the selected offeror's SDB Participation Submittal (SDB-2), VBE Participation Submittal (VBE-2), and associated documents; and 3) the terms of the subcontract agreement.
4. If the selected offeror and a SDB listed on the SDB Utilization Schedule (SDB-3) or VBE listed on the VBE Utilization Schedule (VBE-3) cannot agree upon a definitive subcontract within 30 calendar days of the final execution date of the Commonwealth contract or as specified in the solicitation, the selected offeror must provide written notification to the issuing Agency and BDISBO.
5. The prime contractor must provide a copy of any required subcontract with an SDB or VBE to BDISBO or the Agency within ten (10) business days of receiving such a request.

D. Utilization Reports.

1. The prime contractor must submit a Monthly Utilization Report to BDISBO and the contracting officer of the Issuing Office in the format required by BDISBO and within ten (10) business days at the end of each month of the contract term and any subsequent options or renewals. The Monthly Utilization Report must list payments made to each SDB or VBE subcontractor and any unpaid invoices over 30 calendar days old received from an SDB or VBE subcontractor, and the reason payment has not been made. This information will be used to track and confirm the actual dollar amount paid to SDB or VBE subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment(s). If there was no activity, the form must be completed by stating "No activity". A late fee of \$100.00 per day may be assessed against the prime contractor if the Utilization Report is not submitted in accordance with the schedule above.
2. The prime contractor must include in its agreements with its SDB and VBE subcontractors a requirement that the SDB and VBE subcontractors submit to BDISBO, within the time frame set forth within the solicitation document, a report identifying the prime contract, and listing:

- a. Payments received from the prime contractor within the time frame covered by the report, and
- b. Invoices for which the subcontractor has not been paid.

E. Noncompliance with SDB and/or VBE commitments.

1. Upon BDISBO notifying the contracting Agency that a prime contractor did not comply with the SDB commitments or VBE commitments, the contracting Agency shall notify the prime contractor in writing of its findings and shall specify what corrective actions are required. The prime contractor is required to initiate the corrective actions within 10 business days and complete them within the time specified by the contracting Agency.
2. If a contracting Agency determines that material noncompliance with SDB or VBE contract provisions exists and that the prime contractor refuses or fails to take the corrective action required by the contracting Agency, the contracting Agency, in consultation with BDISBO, may impose any and all sanctions and remedies available under the contract as it deems appropriate. Such sanctions or remedies include, but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the prime contractor's SB, SDB, and/or VBE status; a determination that the Offeror's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth.

PART VI

DRAFT CONTRACT

This Contract for Legal Services (“Contract”), by and between **NAME OF LAW FIRM**, hereinafter called the “Law Firm” and the Pennsylvania Public Utility Commission, hereinafter called the “PUC” or Commission.”

WHEREAS, the Commission has a need for professional and specialized legal services to represent the Commission in matters described in Appendix A; and

WHEREAS, the Law Firm has represented that it is qualified to and has agreed to perform such professional and specialized legal services.

NOW, THEREFORE, the Commission and the Law Firm, with the intention of being legally bound, hereby agree as follows:

Incorporation by Reference. The Request for Proposal, Questions and Answers posted on the Commission website, and the selected Proposer’s Proposal are hereby incorporated into this Contract by Reference.

1. Definitions. The following definitions shall apply when used in this Contract:

- a. “Chief Counsel” shall mean the Chief Counsel of the Commission, who serves as chief legal advisor to the Commission and supervises, coordinates, and administers the legal services for the Commission.
- b. “Commission” shall mean the Pennsylvania Public Utility Commission, an independent governmental entity of the Commonwealth of Pennsylvania. The Issuing Officer shall serve as the main contact for all references to “Commission” in this Contract.
- c. “Effective Date” shall mean: a) the date the Contract has been fully executed by the Law Firm and by the Commission and all approvals required by Commission contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later. The Contract shall not be a legally binding contract until after a copy of the fully-executed Contract and a Notice to Proceed have been sent to the Law Firm.
- d. “Notice to Proceed” shall mean a written notice sent to the Law Firm stating that the contract has been fully executed and that the Law Firm may commence performance. The Commission shall send a Notice to Proceed to the Law Firm either via U.S. Mail or via email, and the Commission shall send a fully executed copy of the contract with the notice to proceed.
- e. “Guidelines” shall mean the Retention Guidelines for Outside Counsel promulgated by the Office of General Counsel, setting forth policies and procedures.

The Guidelines are attached to this Contract as Appendix J, and are incorporated into this Contract as if set forth fully herein. In case of a conflict between this Contract and the Guidelines, the Contract shall control.

2. Services. The Law Firm shall perform the services described in Appendix A of this Contract.
3. Compensation. The Law Firm shall be compensated by the Commission for the services contracted for **in an amount not to exceed \$600,000**, in accordance with the provisions established in Appendices B and C of this Contract.
4. Term of Contract.

- a. The term of this Contract shall commence on the Effective Date and shall end on the Termination Date subject to the other provisions of this Contract.

The Termination Date of the Contract is five years after execution of the contract.

- b. Except as otherwise specifically provided for herein, the Commission of Pennsylvania, including the Commission, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred before the Effective Date of the Contract.

- c. With the approval of the Chief Counsel, the Commission and the Law Firm may extend the term of this Contract at any time during the term of the Contract or any renewals or extensions thereof pursuant to Paragraph 9 of this Contract.

- d. If the services to be provided by the Law Firm hereunder have been approved by the Commission as an emergency procurement until full execution of this Contract, the Law Firm may provide these services based upon such emergency approval. Upon full execution of this Contract, all services provided during the period between the date of emergency approval and the Effective Date of the Contract shall be merged into and covered by the terms of this Contract.

5. Billing. The Law Firm shall submit monthly invoices to the Commission for services performed during each billing period. Invoices shall be forwarded to the following contact and address:

Terri Benzel
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

- a. Each invoice shall be under cover of a letter on law firm letterhead and itemized listing the services performed by attorney and legal assistant by date, by hours worked, and by rate and shall generally follow the format appearing in Appendix D of this Contract. The following information must be included on all invoices. Failure to

include this information will result in return of the invoice and a request for a new invoice:

- (1) Funds Commitment Number;
- (2) Invoice Date;
- (3) Service Dates (i.e., start and end dates for services covered by invoice);
- (4) Invoice Number;
- (5) Gross/Total Amount.

- b. The amount shown on each invoice for labor costs shall be in accordance with the rates set forth in Appendix B of this Contract.
- c. The invoices shall also list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this Contract.
- d. The Commission agrees to pay the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred in connection with performance of services under the Contract, as described in Appendix C of this Contract.
- e. The Commission will use its best effort to make payments on invoices within 45 days of their receipt, in final form.
- f. All invoices shall contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

- g. All invoices or accompanying letters of transmittal shall be signed by the Law Firm and shall set out the Law Firm's federal employer identification number.

6. Consultation. The Law Firm shall consult with and keep the Commission fully informed as to the progress of all matters covered by this Contract. The Law Firm will not make any offer, settlement, or compromise without the consent of the Commission.

7. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract or in the work covered by this Contract is prohibited without the prior written approval of the Commission. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged. The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Commission. The Commission's consent to the proposed assignment is required, and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may, with the prior written approval of the Commission or Chief Counsel, engage experts in

various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The hourly rates, fees, or other compensation to be paid to such experts shall also be subject to the approval of the Commission. Approved compensation of such experts, as incurred, shall be included in the Law Firm's invoices presented pursuant to the provisions of Paragraph 5 of this Contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts. The terms and conditions of this Contract including, but not limited to, the provisions of Appendices C and D, shall apply to and bind the subcontractors or experts engaged as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

8. Ownership Rights. All documents, data, and records produced by the Law Firm and any experts in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of the Commission.

a. The Commission shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and any experts and the Law Firm and any experts shall have no right or interest therein.

b. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, and records shall, if requested by the Chief Counsel or the Commission, be appropriately arranged, indexed, and delivered to the Chief Counsel or the Commission by the Law Firm.

c. Any documents, data, and records given to or prepared by the Law Firm and any subcontractors or experts under this Contract shall not be made available to any individual or organization by the Law Firm or any subcontractors or experts without the prior approval of the Chief Counsel. Any information secured by the Law Firm and any subcontractors or experts from the Commission in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by the Chief Counsel or is directed by a court or other tribunal of competent jurisdiction.

d. Notwithstanding the provisions of Paragraph 8 of this Contract, the Law Firm may retain copies of documents delivered to the Chief Counsel or to the Commission.

9. Modification or Changes. The Commission and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. Changes regarding funding of a Contract that refers to the total estimated amount of the Contract as set forth in paragraph 3 may be accomplished via a funding adjustment pursuant to Commission procedures. Changes regarding funding of a Contract that states an amount not to exceed as set forth in paragraph 3, or a change in Contract length, may be accomplished by a letter of mutual consent signed by the Commission and the Law Firm. All other changes to contract terms, including changes in the scope of work, must be

incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

10. Conflict of Interest. The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the Commission and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Commission. Any conflicting representation shall be promptly disclosed to the Commission and Chief Counsel. The Chief Counsel shall determine whether such conflict is cause for termination of this Contract. The process for obtaining conflict waivers is more fully described in the Office of Chief Counsel Conflict Waiver Procedure, which is attached as Appendix E of this Contract.

11. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals and, in particular, the principals assigned to this project, to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm shall, with respect to any replacement principal proposed to be assigned to this matter, consult with the Chief Counsel. The Chief Counsel's consent to the proposed replacement is required and may not be withheld unreasonably.

12. License to Appear. The Law Firm represents and warrants that attorneys involved in this representation are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of the Commission. The Law Firm, subject to approval by the Commission, may obtain a subcontractor to act as co-counsel where appearance by the commission is required in a forum or jurisdiction where its attorneys are not licensed to practice, provided, however, that the firm's use of the subcontractor in that circumstance is subject to Paragraph 7 of this Contract.

13. Independent Contractor. In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of the Commission.

14. Termination Provisions. The Commission has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. **Termination for Convenience**. The Commission shall have the right to terminate this Contract for its convenience if the Commission determines termination to be in its best interest. The Law Firm shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Law Firm be entitled to recover loss of profits.

b. **Non-Appropriation**. The Commission's obligation to make payments during any Commission 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 Commission shall have the right to terminate this Contract. The Law Firm shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.

c. **Termination for Cause.** The Commission shall have the right to terminate this Contract for Law Firm default upon written notice to the Law Firm. The Commission shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the Commission erred in terminating the Contract for cause, then, at the Commission's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 14.a.

15. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in appendices hereto shall have the same meanings as are ascribed thereto in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either the Commission or the Law Firm 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, 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 pursuant to Paragraph 9 of this Contract.

16. Nondiscrimination/Sexual Harassment. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto as Appendix F and incorporated by reference.

17. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Appendix G and incorporated by reference.

18. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto as Appendix H and incorporated by reference.

19. The Americans With Disabilities Act. The Law Firm agrees to comply with The Americans With Disabilities Act Provisions, which are attached hereto as Appendix I and incorporated by reference.

20. Audit Provisions. The Commission shall have the right, at reasonable times and at a site designated by the Commission, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for

this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of three years from the date of final payment hereunder. The Law Firm shall give full and free access to all records to the Commission and/or its authorized representatives.

21. Offset Provision. The Law Firm agrees that the Commission may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Commission against any payments due the Law Firm under any contract with the Commission.

22. Indemnity. The Law Firm shall indemnify and defend the Commission from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties (“Claims”), which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of its officers, agents, employees and/or representatives in relation to professional services provided to the Commission by the Law Firm under this Contract.

23. Insurance. The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of the Commission.

24. Notice. Any written notice to the Commission under this Contract shall be deemed sufficient if delivered to the Commission personally, or by electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

Michael E. Roberts
Director of Human Resources
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Any written notice to the Law Firm under this Contract shall be deemed sufficient if delivered to the Law Firm personally, or by electronic transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

CONTACT NAME, Esquire
LAW FIRM NAME ADDRESS
CITY, STATE ZIP CODE

25. Contract Controversies. In the event of a controversy or claim arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with the Chief Counsel for a determination. The Chief Counsel shall send a written determination to the Law Firm. In the event of further dispute, pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of the Chief Counsel, and the Commission shall compensate the Law Firm pursuant to the terms of this Contract.

26. Applicable Law. This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commission of Pennsylvania (without limitation by any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Law Firm consents to the jurisdiction of any court of the Commission of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Law Firm agrees that any such court shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

APPENDIX A
DESCRIPTION OF SERVICES

1. The Law Firm shall provide legal counsel and shall represent the Commission in matters relating to Human Resources, Labor and Employment Law.
2. The Law Firm shall consult with the Commission on legal issues involved in the matters referred to in Paragraph 1, above, of this Appendix A and in other matters requested by the Commission.
3. The Commission reserves the right to represent itself, using its Law Bureau, in any specific claims and determinations as the Commission, in its sole judgment, might determine.

APPENDIX B

**FIRM ENGAGEMENT LETTER
AND FEE SCHEDULE**

APPENDIX C COMPENSATION

The Commission shall pay the Law Firm for the services under this Contract and reimbursement of the Law Firm's eligible costs. The Contract provides for compensation of the Law Firm's fees and costs up for legal services related to Labor and Employment Law **in an amount not to exceed \$600,000. The overall contract amount can exceed \$600,000 only by written Amendment to this Contract.** Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to Paragraph 9 of this Contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established in Paragraphs 3 and 5 and Appendices B, C, and J of this Contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, subject to specific limitations such as those set forth in the Guidelines and Paragraph 5 of this Contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's obligations under this Contract. The Law Firm shall retain all receipts thereof and shall provide copies to the Commission if requested. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Commission for the use of personally owned motor vehicles. Expenses for lodging and meals shall be reimbursed at rates limited to the single-occupancy rate at the nearest Holiday Inn or other major moderately priced hotel or motel chain and the amount of reimbursement for meals shall be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement shall be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

(1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;

(2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$0.15 per page;

(3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and

(4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts thereto and shall, upon request of the Commission, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials required for and used solely in the fulfillment of this Contract. The Law Firm shall retain all receipts thereto and shall, upon request of the Commission, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs which the Law Firm expects to incur under this Contract outside of the Commission of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of the Chief Counsel, which approval shall not be unreasonably withheld. Prior approval by the Chief Counsel of travel to be undertaken by the Law Firm outside of the Commission of Pennsylvania as an incident of the Law Firm's performance of services under this Contract shall constitute approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Commission, provide any necessary documentation.

4. The Law Firm shall require approval by the Chief Counsel before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise the Chief Counsel and the Commission when direct labor and other costs reach 50% of the amount initially encumbered for performance of this Contract and also 50% of any amount encumbered by any amendment.

**APPENDIX D
INVOICE FORMAT**

COVER PAGE

LAW FIRM:
CONTACT:
PHONE:
CLIENT #:
MATTER #:
DATE:
INVOICE NO.:
ATTN: (COMMISSION EMPLOYEE MONITORING MATTER)
REGARDING: (MATTER)

TOTAL FEES FOR PROFESSIONAL SERVICES FROM (DATE) THROUGH (DATE)

\$ (TOTAL FEES)

TOTAL EXPENSES FROM (DATE) THROUGH (DATE)

\$ (TOTAL EXPENSES)

BALANCE DUE: \$ (GRAND TOTAL)

FEDERAL EMPLOYER I.D. NO. (FEDERAL I.D. NUMBER)

(RESPONSIBLE ATTORNEY AT LAW FIRM) on behalf of (LAW FIRM) hereby certifies that the services supplied and expenses incurred as stated in the attached invoice have met all of the required standards set forth in the Contract for Legal Services.

(SIGNATURE)

Date

ITEMIZED BILLING PAGES

DATE	HOURS	DESCRIPTION OF SERVICES	ATTORNEY

APPENDIX E
CONFLICT WAIVER PROCEDURE

1. The lawyer or law firm (hereinafter “law firm”) must promptly disclose any conflicting representation, unless it has been otherwise waived. (See the attached paragraph from the Contract for Legal Services.) Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver is cause for termination of the contract.
2. The law firm’s request for a waiver shall be submitted in writing to the Chief Counsel of the Commission. Requests shall be in letter form but may be sent electronically in PDF format.
3. The waiver request shall:
 - a. Identify all existing representations of Commission agencies;
 - b. Describe the nature of the conflict;
 - c. Set forth the measures the law firm will take to protect the Commission, its agencies, officials or employees from any prejudice or detriment if the conflict is waived, and
 - d. State that the other party the law firm represents or seeks to represent has granted a waiver (or a waiver has been sought, and if sought, a second written notice of the granting of such waiver shall be provided).
4. The Chief Counsel shall analyze the request and submit his recommendation to approve or disapprove the request with supporting legal analysis, including any applicable references to the Rules of Professional Conduct.
5. The Chief Counsel will make all waiver decisions and issue a letter to the law firm approving or disapproving the waiver request.
6. The decision in a matter shall not be binding on the Chief Counsel with respect to future matters unless the Chief Counsel so states.
7. A file for each waiver request and the resolution of each request will be maintained in the Office of Chief Counsel.

Conflict of Interest. The Law Firm represents and warrants that it has no conflicting representation that has not been fully disclosed to and waived by the Chief Counsel and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by the Chief Counsel. Any conflicting representation shall be promptly disclosed to the Chief Counsel. The Chief Counsel shall determine whether such conflict is cause for termination of this Contract.

APPENDIX F
NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of this Contract, the Law Firm 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, the Law Firm, subcontractor, or any person acting on behalf of the Law Firm or subcontractor, shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commission who is qualified and available to perform the work to which the employment relates.
2. Neither the Law Firm 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. The Law Firm 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. The Law Firm 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. The Law Firm and each subcontractor shall, within the time periods requested by the Commission, furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Commission; the Chief Counsel; and the Department of General of Services, Bureau of Small Business Opportunities, for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Law Firm or subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Commission; the Chief Counsel; or the Department of General Services, Bureau of Small Business Opportunities.
6. The Law Firm 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 Commission 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 Commission may proceed with debarment or suspension and may place the Law Firm in the Contractor Responsibility File.

APPENDIX G
INTEGRITY PROVISIONS

1. For purposes of these Integrity Provisions, the words “confidential information,” “consent,” “financial interest,” “gratuity,” and “Law Firm” 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 the Law Firm 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 the Law Firm without the use of confidential information of the Commission.
 - b. “Consent” means written permission signed by a duly authorized officer or employee of the Commission, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commission 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 tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
 - e. “Law Firm” means the individual or entity that has entered into this Contract with the Commission, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
2. The Law Firm 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 the Law Firm or that govern contracting with the Commission.
3. The Law Firm shall be subject to the obligations of confidentiality with which lawyers must comply under the applicable Rules of Professional Conduct.
4. The Law Firm shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Law Firm’s

employee activity with the Commission and Commission employees, and which is distributed and made known to all employees of the Law Firm.

5. The Law Firm, its affiliates, agents and employees and anyone in privity with the Law Firm 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 Commission in connection with performance of work under this contract, except as provided in this contract.
6. The Law Firm 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 Commission in writing and the Commission consents to the Law Firm's financial interest prior to Commission execution of the contract. The Law Firm shall disclose the financial interest to the Commission at the time of any proposal submission, or if no proposals are solicited, no later than the Law Firm's submission of the contract signed by the Law Firm.
7. The Law Firm certifies to the best of its knowledge and belief that within the last five (5) years that it, its officers, and its affiliates have not:
 - f. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - g. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
 - h. had any business license or professional license suspended or revoked;
 - i. 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
 - j. 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 the Law Firm cannot so certify to the above, then it must submit along with its contract a written explanation of why such certification cannot be made and the Commission will determine whether a contract may be entered into with the Law Firm. The Law Firm's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to immediately notify the Commission in writing if at any time during the term of the contract it becomes aware of any event which would cause the Law Firm's certification or explanation to change. The Law Firm acknowledges that the Commission 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.

8. The Law Firm 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 the Law Firm are not exempt and must be reported. The Law Firm also must comply with the requirements of Section 1641 of the *Pennsylvania Election Code* (25 P.S. §3260a).
9. When the Law Firm 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 Commission officer or employee which, if acted upon, would violate such ethical standards, the Law Firm shall immediately notify the Commission in writing.
10. The Law Firm, 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.
11. The Law Firm shall cooperate with the Office of the Inspector General in its investigation of any alleged Commission employee breach of ethical standards and any alleged Law Firm non-compliance with these provisions. The Law Firm agrees to make identified employees of the Law Firm available for interviews at reasonable times and places. The Law Firm, 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 the Law Firm's integrity and compliance with these provisions. Such information may include, but shall not be limited to, the Law Firm's business or financial records, documents or files of any type or form that refer to or concern this contract. The Law Firm 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 Commission and any such subcontractor, and no third-party beneficiaries shall be created thereby.
12. For violation of any of the above provisions, the Commission may terminate this and any other Contract with the Law Firm, 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 Law Firm to complete performance hereunder, and debar and suspend the Law Firm from doing business with the Commission. 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 Commission may have under law, statute, regulation or otherwise.

APPENDIX H RESPONSIBILITY PROVISIONS

1. The Law Firm certifies, for itself and all its subcontractors, that as of the date of its execution of this Contract, that neither the Law Firm, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commission or any governmental entity, instrumentality, or authority and, if the Law Firm cannot so certify, then it agrees to submit, along with its Contract, a written explanation of why such certification cannot be made.
2. The Law Firm also certifies, that as of the date of its execution of this Contract, it has no tax liabilities or other Commission obligations.
3. The Law Firm's obligations pursuant to these provisions are ongoing from and after the effective date of this Contract through the termination date thereof. Accordingly, the Law Firm shall have an obligation to inform the Commission if, at any time during the term of this Contract, it becomes delinquent in the payment of taxes, or other Commission obligations, or if it or any of its subcontractors are suspended or debarred by the Commission, 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 the Law Firm to notify the Commission of its suspension or debarment by the Commission, any other state, or the federal government shall constitute an event of default of this Contract with the Commission.
5. The Law Firm agrees to reimburse the Commission for the reasonable costs of investigation incurred by the Pennsylvania Office of Inspector General for investigations of the Law Firm's compliance with the terms of this or any other Contract between the Law Firm and the Commission, which results in the suspension or debarment of the Law Firm. 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 Law Firm shall not be responsible for investigative costs for investigations that do not result in the Law Firm's suspension or debarment.
6. The Law Firm may obtain a current list of suspended and debarred Commission 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

APPENDIX I
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.*, the Law Firm understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this Contract, the Law Firm 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 Commission of Pennsylvania through contracts with outside contractors.

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

APPENDIX J
RETENTION GUIDELINES FOR OUTSIDE COUNSEL

The Pennsylvania Public Utility Commission (“PUC”) expects to have a productive, professional and cost-effective relationship with outside counsel. These Guidelines apply to all engagements for services between PUC and your law firm, regardless of the law firm office from which those legal services are performed. Any exception must be approved in advance by PUC.

I. MATTER MANAGEMENT AND REPORTING

A. The Contract for Legal Services

Your firm has been retained by PUC to perform legal services as set forth in the Contract for Legal Services (“Contract”). The Contract shall define the scope of services covered by the matter which is the subject of the Contract; a “matter” may consist of a single representation or the provision of legal services in connection with a relatively routine, high volume practice area (e.g., workers’ compensation). The Contract identifies the principal PUC in-house attorney responsible for managing the work. For complex litigation matters, a senior-level PUC litigation manager also may be assigned or otherwise involved in the case. For high volume matters, a third-party administrator also may have a defined role in managing the work. You are expected to keep the Chief Counsel (s) informed of all significant developments that arise, as well as seek his or her direction on strategy and tactics.

Throughout the course of your representation, you must be mindful of conflict issues and disclose promptly any conflicting representation. The Conflict Waiver Procedure that is a part of the Contract for Legal Services sets forth the process for such disclosure. Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver from the Chief Counsel is cause for termination of the contract.

B. Effective Utilization of Personnel

PUC generally expects a single outside lawyer to be primarily responsible for each matter. Outside counsel should discuss with PUC the staffing requirements for each matter, including the number of attorneys and staff that may work on the matter. We encourage the use of law clerks and paralegals for those aspects of any matter that do not need to be performed by an attorney. Staffing should reflect management practices that are consistent with the delivery of the appropriate level and type of legal services required in order to achieve effective results and resource efficiency.

PUC generally expects one lawyer to attend all relevant depositions, meetings, hearings, trial, and other proceedings. In more complex matters, additional lawyers may be necessary to represent the Commission.

In concert with the Commission's commitment to workforce diversity, PUC expects each law firm it engages to use its best efforts to: (1) consider persons from diverse backgrounds for assignment to its PUC engagements; and (2) actively promote full and equal participation of women, racial and ethnic minority groups, and all other persons of diverse backgrounds in the legal profession, as evidenced by the firm's employment practices.

C. Matter Management, Budget and Reports

PUC expects regular communications with its counsel. The most effective representation results from a true partnership between the Chief Counsel and outside counsel. You must send to PUC an initial report within forty-five (45) days of the retention of your services covering the following areas:

- Management Plan and Budget – the Management Plan and Budget (“Plan”) should include an initial assessment of the assigned matter (see below) and a detailed strategy for handling the matter, including the feasibility of employing alternative dispute resolution techniques in litigation matters. The Plan must include an initial budget that estimates the legal fees and other costs to be incurred for the current calendar year as well as projected legal fees and costs for the entire duration of any matter that continues beyond the end of a calendar year. The firm must identify all personnel assigned to the matter, and their respective billing rates. An updated budget and personnel list, on firm stationery, must be submitted at the start of each subsequent calendar year or more frequently if there is a known material variance in the budget. PUC recognizes that it may be difficult at an early stage to project all the resources required for a matter; however, we believe that the plan and budget are important management tools.
- Initial Assessment of Litigation Claims¹ – The Initial Assessment must include a detailed description of the claim, applicable defenses, an assessment of potential liability and possible verdict range, any settlement demand by opposing counsel, and estimated trial date/time (if applicable).

You are expected to keep the Chief Counsel advised of the status of the matter. In the absence of material developments that require immediate notification, you should submit at least quarterly a confidential matter status report that (1) summarizes developments to date; (2) identifies actions that are planned to be taken in the forthcoming six (6) months; and (3) updates the previously submitted Management Plan and Budget. In those instances where the Chief Counsel is not present at a meeting, hearing, deposition or any other relevant event, you must send a prompt report of the event by telephone or electronic mail as directed by the Chief Counsel.

¹ If the matter involves litigation of a routine, high volume nature (e.g., workers' compensation), the Chief Counsel shall define for the firm the level of reporting required for each individual claim.