



**REQUEST FOR APPLICATION FOR
MANAGED CARE ORGANIZATIONS
TO PROVIDE CHILDREN'S HEALTH INSURANCE PROGRAM SERVICES
IN THE COMMONWEALTH OF PENNSYLVANIA**

ISSUING OFFICE

**Commonwealth of Pennsylvania
Department of Human Services
Bureau of Financial Operations
Division of Procurement and Contract Management
Room 402 Health and Welfare Building
625 Forster Street
Harrisburg, PA 17120**

RFA NUMBER

02-17

DATE OF ISSUANCE

[Include date]

**REQUEST FOR APPLICATIONS FOR
CHILDREN’S HEALTH INSURANCE PROGRAM SERVICES
COMMONWEALTH-WIDE**

RFA No.
02-17

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CALENDAR OF EVENTS

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

Activity	Responsibility	Date
Deadline to submit Questions via email to RA-pwrfaquestions@pa.gov	Potential Applicants	
Preapplication Conference—Location:	DEPARTMENT/ Potential Applicants	
Answers to Potential Applicant questions posted to the DGS website http://www.emarketplace.state.pa.us/Search.aspx no later than this date.	DEPARTMENT	
Please monitor website for all communications regarding the RFA.	Potential Applicants	
Sealed application must be received by the Issuing Office at: Commonwealth of Pennsylvania Department of Human Services Bureau of Financial Operations Division of Procurement Room 402 Health and Welfare Building 625 Forster Street Harrisburg, PA 17120	Applicants	2:00 pm

PART I

GENERAL INFORMATION

- I-1. Purpose.** This request for applications (“RFA”) provides to those interested in submitting applications for the subject procurement (“Applicants”) sufficient information to enable them to prepare and submit applications for the Department of Human Services’ (“Department” or “DHS”) consideration on behalf of the Commonwealth of Pennsylvania (“Commonwealth”) to satisfy a need for Commonwealth licensed Health Maintenance Organizations (“HMO”) to operate as a Managed Care Organization (“MCO”) to provide physical and mental health services for children in the Children’s Health Insurance Program (“Project” or “CHIP”) in the Commonwealth. This RFA contains instructions governing the requested applications, including the requirements for the information and material to be included; a description of the service to be provided; requirements which Applicants must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFA.
- I-2. Issuing Office.** The **Bureau of Financial Operations, Division of Procurement and Contract Management** (“Issuing Office”) has issued this RFA on behalf of the Commonwealth. The sole point of contact in the Commonwealth for this RFA shall be Michelle Smith, the Project Officer for this RFA. Please refer all inquiries to the Project Officer at RA-pwrfaquestions@pa.gov.
- I-3. Overview of the Project.** The Children’s Health Insurance Program provides free or low-cost health insurance to uninsured children and teens up to age 19 that are not eligible for or enrolled in Medical Assistance (“MA”). CHIP is available for families whose income is above the minimum federal poverty level (“FPL”) established for CHIP.
- I-4. Objectives.**
- A. General. The CHIP MCO contracts are ending November 30, 2018. A procurement must be conducted to procure Children’s Health Insurance Program services in all of the sixty-seven (67) counties of the Commonwealth. The department is cognizant of the need for providers in underserved areas and is particularly interested in how Applicants will address this problem.
- B. Specific. CHIP offers comprehensive physical and mental health care benefits across five different subprograms as indicated in the chart below.

Program	Federal Limit	Poverty
Free	133 - 208	
Subsidized 1 (Enrollee pays 25% of negotiated rate per month, per child)	>208 - 262	
Subsidized 2 (Enrollee pays 35% of negotiated rate per month, per child)	>262 - 288	
Subsidized 3 (Enrollee pays 40% of negotiated rate per month, per child)	>288 - 314	
Full Cost (Enrollee pays 100% of negotiated rate per month, per child)	>314	

Population projections for CHIP can be uncertain and can be affected by changes in the economy, law and regulations, and policies. The department publishes monthly and historical enrollment reports capturing many specific geographic and statistical elements. These reports can be reviewed at <http://chipcoverspakids.com> and in the [Data Book \(Appendix A\)](#).

CHIP Enrollment by Program for 2016

Month	Total	Free	Sub1	Sub2	Sub3	Full Cost
January	152,180	110,071	25,905	6,787	4,748	4,669
February	152,776	110,637	25,912	6,815	4,815	4,597
March	154,673	112,111	26,122	6,859	4,912	4,669
April	159,026	115,072	26,934	7,138	5,039	4,843
May	160,598	115,795	27,406	7,257	5,075	5,065
June	162,422	116,768	27,930	7,334	5,121	5,269
July	163,606	117,427	28,245	7,373	5,145	5,416
August	162,006	115,939	27,976	7,428	5,134	5,529
September	165,418	118,580	28,394	7,510	5,192	5,742
October	166,900	119,338	28,876	7,617	5,218	5,851
November	168,238	119,921	29,166	7,717	5,366	6,068
December	169,367	120,928	29,155	7,729	5,441	6,114

I-5. Type of Agreement. If the department enters into agreements as a result of this RFA, they will be full risk, capitated Agreements. Regardless of the number of counties which are awarded to the MCO, the Department will have one Agreement with the MCO that covers all awarded counties. Please see Appendix B for the draft agreement.

As a result of this procurement, the Department anticipates awarding a minimum of two (2) MCO Agreements for each county. The department may enter into additional agreements with additional qualified MCOs in future years.

The department will pay each selected MCO using a schedule of per member per month (“PMPM”) capitation rates. The department may make other types of payments, as provided by the Agreement.

Agreement pricing for 2018

This RFA does not require a cost application. The Department will solicit rate submissions from the selected MCOs approximately nine (9) months before the December 1, 2018 start date of the Agreement. Selected MCOs are required to submit the requested rate submission to the Department. The Department will review the rates for actuarial soundness. The Department will negotiate with the MCO to obtain a mutually agreed upon rate. Rates are considered final when a rate letter is sent to the MCO. Rate submissions will be submitted on an annual basis with rates taking effect each December 1 through November 30. The Department may request rate submissions at other times throughout the rate period due to substantial changes to federal or state laws, regulations, and policies; which would require a change in rates.

The Department will determine a date by which negotiations must be completed and an agreement must be signed by the selected Offerors. If the Offeror does not accept the Department’s final rate offer, the Department may, at its sole discretion, reject the application.

I-6. Rejection of Applications. The Department may, in its sole and complete discretion, reject any application received as a result of this RFA.

- I-7. Incurring Costs.** The Department is not liable for any costs the Applicant incurs in preparation and submission of its application, in participating in the RFA process, or in anticipation of agreement award.
- I-8. Preapplication Conference.** The Department will hold a preapplication conference as specified in the Calendar of Events. The purpose of this conference is to provide an opportunity for clarification of the RFA. Offerors should forward all questions to the RFA Project Officer in accordance with **Part I, Section I-9** to ensure adequate time for analysis before the Department provides an answer. Offerors may also ask questions at the conference. In view of the limited facilities available for the conference, offerors should limit their representation to no more than five (5) individuals per Offeror. The preapplication conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, by the Department. All questions and written answers will be posted on the Department of General Services' ("DGS") website as an addendum to, and shall become part of, this RFA. Attendance at the Preapplication Conference is **optional, but strongly encouraged**.
- I-9. Questions & Answers.** If an Offeror has any questions regarding this RFA, the Offeror must submit the questions by email (**with the subject line "RFA 02-17 Question"**) to the Project Officer named in **Part I, Section I-2** of the RFA. If the Offeror has questions, they must be submitted via email **no later than** the date indicated on the Calendar of Events. The Offeror shall not attempt to contact the Project Officer by any other means. The Department shall post the answers to the questions on the DGS website by the date stated on the Calendar of Events. An Offeror who submits a question *after* the deadline date for receipt of questions indicated on the Calendar of Events assumes the risk that its application will not be responsive or competitive. This is because the Department is not able to respond before the application receipt date or in sufficient time for the Offeror to prepare a responsive or competitive application. When submitted after the deadline date for receipt of questions indicated on the Calendar of Events, the Project Officer *may* respond to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFA. To the extent that DHS decides to respond to a non-administrative question *after* the deadline date for receipt of questions indicated on the Calendar of Events, the answer must be provided to all Offerors through an addendum.

All questions and responses as posted on the DGS website are considered as an addendum to, and part of, this RFA in accordance with RFA **Part I, Section I-10**. Each Offeror shall be responsible to monitor the DGS website for new or revised RFA information. DHS shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFA or formally issued as an addendum by DHS.

- I-10. Addenda to the RFA.** If the Department deems it necessary to revise any part of this RFA before the application response date, the DHS will post an addendum to the DGS website at <http://www.emarketplace.state.pa.us/Search.aspx>. It is the Offeror's responsibility to periodically check the website for any new information or addenda to the RFA. Answers to the questions asked during the Questions & Answers period will also be posted to the website as an addendum to the RFA.
- I-11. Response Date.** To be considered for selection, applications must arrive at the Issuing Office on or before the time and date specified in the RFA Calendar of Events. The Department will **not** accept applications via email or facsimile transmission. Offerors who send applications by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their applications. If, due to inclement weather, natural disaster, or any other cause, the Commonwealth office location to which applications are to be returned is closed on the application response date, the deadline for submission will automatically be extended until the next Commonwealth business day on which the office is open, unless the Department otherwise notifies Offerors. The hour for submission of applications shall remain the same. The Department will reject unopened or late applications.

I-12. Application Requirements.

- A. Application Submission:** To be considered, Applicants should submit a complete response to this RFA to the Issuing Office, using the format provided in **Section I-12B**, providing one (1) original and five (5) paper copies of the Technical Submittal and two (2) paper copies of the Small Diverse Business and Small Diverse (“SDB/SB”) Submittal and related Letter(s) of Intent.

In addition to the paper copies of the application, Applicants shall submit one **complete and exact** copy of the entire application (Technical and SDB/SB submittals, along with all requested documents) on CD-ROM or flash drive in Microsoft Office or Microsoft Office-compatible format. The electronic copy must be a mirror image of the paper copy and any spreadsheets must be in Microsoft Excel. Additionally, on the CD-ROM or flash drive, include separate folders which contain a complete and exact copy of the entire Technical (excluding financial capability) Submittal in PDF (portable document format). To the extent that an Applicant designates information as confidential or proprietary or trade secret protected in accordance with RFA Part I, Section I-17, the Applicant must also include one (1) redacted version of the Technical Submittal, excluding financial capability on a CD-ROM or flash drive in Microsoft Office or Microsoft Office-compatible format. The CD or flash drive should clearly identify the Applicant and include the name and version number of the virus scanning software that was used to scan the CD or flash drive before it was submitted. The Applicants may not lock or protect any cells or tabs. The Applicant shall make no other distribution of its application to any other Applicant or Commonwealth official or Commonwealth consultant. Each application page should be numbered for ease of reference. An official authorized to bind the Applicant to its provisions must sign the application. If the official signs the **Application Cover Sheet (Appendix C)** and the Application Cover Sheet is attached to the Applicant’s application, the requirement will be met. For this RFA, the application must remain valid for 120 days or until an agreement is fully executed. If DHS selects the Applicant’s application for award, the contents of the selected Applicant’s application will become, except to the extent the contents are changed through negotiations, obligations under the agreement.

Each Applicant submitting an application specifically waives any right to withdraw or modify it, except that the Applicant may withdraw its application by written notice received at the Issuing Office’s address for application delivery prior to the exact hour and date specified for application receipt. An Applicant or its authorized representative may withdraw its application in person prior to the exact hour and date set for application receipt, provided the withdrawing person provides appropriate identification and signs a receipt for the application. An Applicant may modify its submitted application prior to the exact hour and date set for application receipt only by submitting a new sealed application or sealed modification which complies with the RFA requirements.

- B. Application Format:** Applicants must submit their applications in the format, including heading descriptions, outlined below. To be considered, the application must respond to all application requirements. Applicants should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Application. All SDB/SB cost data should be kept separate from and not included in the Technical Submittal. Each Application shall consist of the following **two (2)** separately sealed submittals:

1. Technical Submittal:

- a. In response to Part III; and**

The Technical Submittal must include a Transmittal Letter and include Tabs 1 through 9. Applicants must format their responses as follows:

- Tab 1 Table of Contents
- Tab 2 Counties of Operations
- Tab 3 Management Summary
- Tab 4 Prior Experience
- Tab 5 Personnel
- Tab 6 Work Statement Questionnaire
- Tab 7 Financial Capability
- Tab 8 Objections to Standard Terms and Conditions
- Tab 9 Applicant's Managed Care Experience and References

- b. Complete, sign, and include **Appendix D – Domestic Workforce Utilization Certification;** and
- c. Complete, sign, and include **Appendix E – Lobbying Certification and Disclosure**

2. Small Diverse Business and Small Business (SDB/SB) Participation Submittal, in response to RFA **Part V:**

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

Applicants may submit one application for multiple counties, however; if an Applicant is proposing on multiple counties, any and all portions of the application that describe different, separate, or additional components specifically designed to address RFA requirements in one particular county should be provided as separate Tabs of the Applicant's response for a particular section or question, and clearly labeled as "Tab or Question [insert number and name of relevant section or question] CHIP [county name] County", and "Section or Question [insert number and name of relevant section or question] CHIP [county name] County" respectively. For example, Applicants should note that in Section III-?? "Personnel", the Department is specifically requesting that any such different, separate, and/or additional organizational structure(s) or personnel be provided under separately tabbed sections of the Applicant's application, and clearly labeled as Section III-?? CHIP [county name] Personnel and Section III-?? CHIP [county name] Personnel, respectively.

Applicants must submit applications in the following format:

- a. Pages must be 8.5 by 11 inches with right and left margins of one (1) inch; and be double-sided.
- b. Must use Arial or Calibri font with a size of twelve (12).
- c. Tab and Section Headings must be used.
- d. Each page must include a page number and identification of the Applicant in the page footer.
- e. Materials provided in an Appendix must identify the proposal section, including the page number to which it applies. Appendices also must be specifically referenced in the body of the proposal section to which it applies.
- f. Exceptions for paper and font size are permissible for project schedule (Microsoft Project) or for graphical exhibits, tables, and material in appendices which may be printed on white paper with dimensions of 11 by 17 inches, however a font size lower than nine (9) should not be used.

DHS may request additional information which, in the Department's opinion, is necessary to assure that the Applicant's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFA.

DHS may make investigations as deemed necessary to determine the ability of the Applicant to perform the Project, and the Applicant shall furnish to the Department all requested information and data. DHS may reject any application if the evidence submitted by, or investigation of, such Applicant fails to satisfy DHS that such Applicant is properly qualified to carry out the obligations of the RFA and to complete the Project as specified.

- I-13. Economy of Preparation.** Applicants should prepare applications simply and economically, providing a straightforward and concise description of the Applicant's ability to meet the requirements of the RFA and the Agreement.
- I-14. Discussions for Clarification.** Applicants may be required to make an oral or written clarification of their applications to the Department to ensure thorough mutual understanding and Offeror responsiveness to the solicitation requirements. The Project Officer will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.
- I-15. Oral Presentations.** Applicants may be required to make an oral presentation of their proposals to DHS to demonstrate an Applicant's capabilities and ability to provide the services required in the RFA. DHS will initiate requests for oral presentations; which may include a request that key personnel be present. The oral presentation will be held in Harrisburg, Pennsylvania. Oral presentations may be requested at any stage of the evaluation and selection process prior to agreement award.
- I-16. Prime Contractor Responsibilities.** The agreement will require the selected Applicants to assume responsibility for all services offered in its application whether it produces them itself or by subgrant. Further, the Department will consider the selected Applicants to be the sole point of contact with regard to all agreement matters.
- I-17. Application 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 Applicant's submissions in order to evaluate applications submitted in response to this RFA. Accordingly, except as provided herein, Applicants should not label application submissions as confidential or proprietary or trade secret protected. Any Applicant who determines that it must divulge such information as part of its application must submit the signed written statement described in Subsection C below and must additionally provide a redacted version of its application, in accordance with RFA Part I, Section I-12, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
 - B. Commonwealth Use.** All material submitted with the application shall be considered the property of the Commonwealth of Pennsylvania and may be returned only at the Department's discretion. The Commonwealth has the right to use any or all ideas not protected by intellectual property rights that are presented in any application regardless of whether the application becomes part of a contract. Notwithstanding any Offeror copyright designations contained on applications, the Commonwealth shall have the right to make copies and distribute applications 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 RFA, all application 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 an application 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. Refer to **Appendix H** of the RFA for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable. If financial capability information is submitted in response to **Part III-7** of this RFA such financial capability information is exempt from public records disclosure under 65 P.S. § 67.708(b)(26).

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 Department and then only in coordination with the Department.

I-19. Restriction of Contact. From the issue date of this RFA until the Department selects an application for award, the Project Officer is the sole point of contact concerning this RFA. Any violation of this condition may be cause for DHS to reject the offending Applicant's application. If DHS later discovers that the Applicant has engaged in any violations of this condition, the Department may reject the offending Applicant's application or rescind its agreement award. Applicants must agree not to distribute any part of their application beyond the Issuing Office. An Applicant who shares information contained in its application with other Commonwealth personnel and/or competing Applicant personnel, may be disqualified.

I-20. Department Participation. Applicants shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this **Part I, Section I-20**.

Prior to the enrollment of CHIP enrollees with a selected Applicant, the Department will conduct a Readiness Review. CHIP enrollees will not be able to enroll with a selected Applicant and the Department will not enter into an agreement with the selected Applicant until the Department determines that the Applicant has satisfied the Readiness Review requirements. The Department will monitor selected Applicants for compliance with the requirements of the Children's Health Insurance Program CHIP Agreement. The Department will designate staff to coordinate the project, provide or arrange for technical assistance, monitor for Readiness Review, and be in compliance with agreement requirements, the approved program policies and procedures. At its discretion, the Department may commence monitoring before the effective or operational dates of the agreement, and before the formal Readiness Review period.

I-21. Term of Agreement The term of the agreement will commence on 12/1/2018 and will have a three (3) year term. The Department may choose to extend the term of the agreement for two (2) additional periods of one (1) year. DHS will fix the effective date after the agreement has been fully executed by the selected Applicant and by the Commonwealth and all approvals required by Commonwealth and Federal procurement procedures have been obtained.

I-22. Applicant's Representations and Authorizations. By submitting its application, each Applicant understands, represents, and acknowledges that:

- A. All of the Applicant's information and representations in the application are material and important, and the Department may rely upon the contents of the application in awarding the agreement(s). The Commonwealth shall treat any misstatement, omission, or misrepresentation as fraudulent concealment of the true facts relating to the Application submission punishable pursuant to 18 Pa. C.S. § 4904.
- B. The Applicant has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal to this RFA, or to submit a noncompetitive proposal or other form of complementary application.
- C. The Offeror makes its application 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 application.
- D. To the best knowledge of the person signing the application for the Applicant, the Applicant, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four (4)** years been convicted of 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 or agreement, or have been excluded from participating in any federal health care program, except as disclosed in its application. Further, to the best knowledge of the person signing the application for the Applicant, the Applicant has no relationships which are prohibited under 42 C.F.R. §438610 Prohibited Affiliations with individuals debarred by Federal agencies.
- E. To the best of the knowledge of the person signing the application for the Applicant and except as the Applicant has otherwise disclosed in its application, the Applicant 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 Applicant that is owed to the Commonwealth.
- F. The Applicant is not currently under suspension or debarment and has not been excluded from participation in any federally funded health care program by the Commonwealth, any other state or the federal government, and if the Applicant cannot so certify, then it shall submit along with its application a written explanation of why it cannot make such certification.
- G. The Applicant has not made, under separate contract with the Department, any recommendations to the Department concerning the need for the services described in its application or the specifications for the services described in the application.
- H. Each Offeror, by submitting its application, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Applicant's Pennsylvania taxes, unemployment compensation and workers' compensation liabilities.
- I. Until the selected Applicant receives a fully executed and approved written agreement from the Department, there is no legal and valid agreement, in law or in equity, and the Applicant shall not begin to perform.

I-23. Notification of Selection.

A. Negotiations. The Department will notify all Applicants in writing of the Offeror(s) selected for negotiations after the Department has determined, taking into consideration all of the evaluation factors, the application that is the most advantageous to the Commonwealth.

B. Award. Applicants whose applications are not selected will be notified when negotiations have been successfully completed and the Department has received the final negotiated agreement signed by the selected Applicant(s).

I-24. Debriefing Conferences. Upon notification of award, Applicants whose applications 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 Applicant with other Applicants, other than the position of the Applicant's application in relation to all other Offeror applications. 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 RFA).

I-25. RFA Protest Procedure.

Applicants and prospective Applicants who are aggrieved in connection with the solicitation or award of the agreements under this RFA may file a protest with the Department. Any such protest must be in writing and must comply with the requirements set forth in the Commonwealth Procurement Code at 62 Pa.C.S. §1711.1.

Any protest filed in relation to this RFA must be delivered to:

Department of Human Services
Office of Administration, Bureau of Financial Operations
Division of Procurement and Contract Management
Health and Welfare Building Room 402
625 Forster Street
Harrisburg, Pennsylvania 17120
Attn: Mac Spiker
Email address: wspiker@pa.gov
Fax: 717-787-7615

Applicants and prospective Applicants may file a protest electronically or by facsimile but also must simultaneously send a hard copy and electronic version of the protest to the address listed above.

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

I-27. Information Technology Policies. To the extent applicable, services provided as a result of this RFA are subject to the Information Technology Policies (ITPs) {formerly known as Information Technology Bulletins} issued by the Office of Administration, Office for Information Technology (OA-OIT); and the DHS Business and Technical Standards created and published by DHS. ITPs may be found at <http://www.oa.pa.gov/Policies/Pages/itp.aspx>. The DHS Business and Technical Standards may be found at <http://www.dhs.pa.gov/provider/busandtechstandards/index.htm>.

All applications must be submitted on the basis that all ITPs and DHS Business and Technical Standards are applicable. It is the responsibility of the Applicant to read and be familiar with the ITPs and DHS Business and Technical Standards. Notwithstanding the foregoing, if the Applicant believes that any ITP or DHS Business and Technical Standard is not applicable to this procurement, it must list all such ITPs in its technical response, and explain why it believes the ITP or DHS Business and Technical Standard is not applicable. DHS may, in its sole discretion, accept or reject any request that an ITP and/or DHS Business and Technical Standard not be considered to be applicable to the procurement. The Applicant's failure to list an ITP and/or DHS Business or Technical Standard will result in its waiving its right to do so later, unless DHS, in its sole discretion, determines that it would be in the best interest of the Commonwealth to waive the pertinent ITP or DHS Business and Technical Standard.

DRAFT

PART II

CRITERIA FOR SELECTION

- II-1. Mandatory Responsiveness Requirements.** To be eligible for selection, an application must:
- A. Be timely received from an Offeror (see **Part I, Section I-11**); and
 - B. Be properly signed by the Offeror (see **Part I, Section I-12A**).
- II-2. Technical Nonconforming Applications.** The two (2) Mandatory Responsiveness Requirements set forth in **Section II-1** above (A-B) are the only RFA requirements that the Commonwealth will consider to be *non-waivable*. The Department may, in its sole discretion, (1) waive any other technical or immaterial nonconformities in an Applicant's application, (2) allow the Applicant to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Applicant's application.
- II-3. Evaluation.** The Department has selected a committee of qualified personnel to review and evaluate timely submitted applications. Independent of the committee, BDISBO will evaluate the Small Diverse Business and Small Business Participation Submittal and provide the Department with a rating for this component of each application. The Department will notify in writing of its selection for negotiation the responsible Applicant whose application is determined to be the most advantageous to the Commonwealth as determined by the Department after taking into consideration all of the evaluation factors.
- II-4. Evaluation Criteria.** The following criteria will be used in evaluating each application:
- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFA as 80% of the total points. Evaluation will be based upon the following in order of importance:
 - 1. **Work Statement Questionnaire/Soundness of Approach.** For the counties that an Applicant includes in its application, the Department's evaluation will include, but is not limited to, review of:
 - Whether the Applicant has fully and appropriately accounted for the particular and/or unique health care resources available to and health care challenges faced by Children's Health Insurance Program enrollees in the counties;
 - Content that demonstrates how the Applicant's approach has been specifically crafted to address the particular and/or unique demographic, cultural, economic, geographic, or other relevant characteristics of the municipalities within the county.
 - Whether the Applicant has fully and appropriately demonstrated how its past performance had improved quality, access, and value for a similar program.
 - 2. **Personnel Qualifications and Staffing**
 - 3. **Prior Experience and Performance**
 - B. **Small Diverse Business and Small Business Participation:**

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

1. The Small Diverse Business and Small Business point allocation is entirely based on the percentage of the contract cost committed to Small Diverse Businesses and Small Businesses.
2. A total combined SDB/SB commitment less than one percent (1%) of the total contract cost is considered de minimis and will receive no Small Diverse Business or Small Business points.
3. Two thirds (2/3) of the total points are allocated to Small Diverse Business participation (SDB%).
4. One third (1/3) of the total points is allocated to Small Business participation (SB%).
5. Based on a maximum total of 200 available points for the Small Diverse Business and Small Business Participation Submittal, the scoring mechanism is as follows:

<p>Small Diverse Business and Small Business Raw Score =</p> <p>200 (SDB% + (1/3 * SB %))</p>

6. Each Applicant's raw score will be pro-rated against the highest Applicant's raw score by applying the formula set forth on the following webpage:

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

7. The Applicant's prior performance in meeting its contractual obligations to Small Diverse Businesses and Small Businesses will be considered by BDISBO during the scoring process. To the extent the Applicant has failed to meet prior contractual commitments, BDISBO may recommend to the Issuing Office that the Applicant be determined non-responsible for the limited purpose of eligibility to receive Small Diverse Business and Small Business points.

C. Domestic Workforce Utilization: Any points received for the Domestic Workforce Utilization criterion are bonus points in addition to the total points for this RFA. The maximum amount of bonus points available for this criterion is 3% of the total points for this RFA.

To the extent permitted by the laws and treaties of the United States, each application will be scored for its commitment to use domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those Applicants who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. See the following webpage for the Domestic Workforce Utilization Formula:

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

II-5. Applicant Responsibility. To be responsible, an Applicant must submit a responsive application 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 Applicant to be considered responsible for this RFA and therefore eligible for selection for negotiations:

- A.** The total score for the technical submittal of the Applicant's application must be greater than or equal to **70%** of the **available technical points**;
- B.** Applicant, or related party, must possess current and valid Pennsylvania HMO Certification of Authority;
- C.** Applicant must possess a valid Pennsylvania Operational Authority for all counties for which the Applicant makes application. If the Applicant does not possess either the Certificate of Authority or Operational Authority for all counties in which it seeks to operate at the time of application, the Department may provisionally qualify the Applicant conditioned upon its acquiring the necessary Certificate of Authority and Operation Authority by December 1, 2018 or such date as may be specified by the Department;
- D.** Applicants must possess the financial stability and economic capability to perform as a MCO as required by this RFA and any resulting Agreement.

Further, the Department will award an agreement only to those Applicants determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

PART III

TECHNICAL SUBMITTAL

When possible, Applicants currently participating in CHIP are encouraged to describe their current practices and to also describe changes or improvements to their current operations and to use examples from their CHIP's line of business when explaining their future plans related to a question.

Applicants new to CHIP should provide responses on line(s) of business deemed to be most similar to the Pennsylvania CHIP. They should also describe how they would adapt their current line(s) of business to the Children's Health Insurance Program.

III-1. Requirements.

A. Covered Services. A full description of the requirements for the provision of covered services for CHIP is set forth in the draft Agreement (**Appendix B**)

B. Emergency Preparedness. To support continuity of operations during an emergency, including a pandemic, the Commonwealth needs a strategy for maintaining operations for an extended period of time. One part of this strategy is to ensure that essential contracts that provide critical business services to the Commonwealth have planned for such an emergency and put contingencies in place to provide needed goods and services.

1. Describe how you anticipate such a crisis will impact your operations.
2. Describe your emergency response continuity of operations plan. Please attach a copy of your plan, or at a minimum, summarize how your plan addresses the following aspects of pandemic preparedness:
 - Employee training (describe your organization's training plan, and how frequently your plan will be shared with employees)
 - Identify essential business functions and key employees (within your organization) necessary to carry them out
 - Contingency plans for:
 - How your organization will handle staffing issues when a portion of key employees are incapacitated due to illness.
 - How employees in your organization will carry out the essential functions if contagion control measures prevent them from coming to the primary workplace.
 - How your organization will communicate with staff and suppliers when primary communications systems are overloaded or otherwise fail, including key contacts, chain of communications (including suppliers), etc.

- How and when your emergency plan will be tested, and if the plan will be tested by a third-party.

III-2. Planned Approach. Provide a work plan for program implementation. At a minimum, the work plan should include:

- A. A description of all activities necessary to obtain required contracts for your provider network as specified in the Agreement

(Limit to two pages)

- B. An itemization of activities that you will undertake during the period between notification of selection to precede to Readiness Review and the implementation date of 12/1/2018. The activities shall have established deadlines and time frames.

(Limit to two pages)

III-3. Member Management.

- A. Describe the innovative approaches your organization takes to promote personal responsibility among enrollees by involving them in managing their own health care benefits and providing incentives that encourage wellness and healthy lifestyles. For any existing programs, include the number of enrollees engaged and any results. Describe how you plan to disseminate such programs. Describe the approaches to be used for the Children's Health Insurance Program.

(Limit to three pages)

- B. Describe the innovative approaches your organization uses to directly engage existing members and potential members as well as the approaches to be used for CHIP. Include a description of how your organization utilizes resources for grassroots efforts to engage potential members as well as retain membership.

(Limit to two pages)

- C. Describe your organization's experience using technology such as telehealth, social media, or other methods to engage enrollees in managing their health care benefits and provide access to resources. What is your planned use of technology and social media for CHIP? How do you assess the effectiveness of the use of technology and social media to achieve improved health outcomes?

(Limit to two pages)

- D. Describe the management techniques, policies, procedures, or initiatives you have implemented to promote health care equity (i.e., reductions in disparity in treatment and outcomes among disparate races and ethnic groups). Please provide evidence of success. Describe the strategy to be used for CHIP.

(Limit to four pages)

- E. Describe the wellness and disease management programs your organization has in place and how you have determined their success including how members are educated about their availability.

Incorporate how you coordinate with your care management programs to ensure there is a patient-centered approach taken for disease and care management activities including any technology to stratify and track those members that are most in need of case/disease management. Identify and describe the program(s) that will be used.

(Limit to two pages)

III-4. Utilization Management.

A. Describe your approach to utilization management for CHIP, including:

1. Policies and procedures related to utilization and individual medical necessity determinations
2. Data sources and processes to determine which services require prior authorization and how often these requirements will be re-evaluated
3. Prior authorization processes for enrollees requiring services from non-participating providers or for enrollees who require expedited prior authorization review and determination due to conditions that threaten the enrollee's life or health
4. Processes to ensure consistent application of criteria by individual clinical reviewers

(Limit to four pages)

B. Describe your methodology to ensure compliance with all federal Quality Management and Utilization Management program requirements and capacity to submit data in predetermined formats.

(Limit to two pages)

C. Describe your approach for training your staff and providers in the submission and review of medical necessity determinations, including supporting material so that appropriate and consistent utilization review decisions are made in accordance with CHIP's definition of medically necessary. Describe the steps to minimize the number of denials for services that are issued, especially for children's services, due to a lack of all information being submitted at the initial request.

(Limit to two pages)

III-5. Case Management.

A. Describe the techniques, policies, procedures, or initiatives you have in place to effectively and appropriately control avoidable hospital and emergency department admissions. Describe how you currently use, or plan to use, outreach staff to directly engage enrollees. Describe your strategy for working with CHIP to improve performance in this area.

(Limit to six pages)

B. Describe any specific programs that focus on children with mental illness and/or substance use disorder. Describe how you currently interact with your in-house behavioral health units or

behavioral health subcontractors. Describe your strategy for CHIP to improve performance in this area.

(Limit to three pages)

- C. Describe any specific programs that focus on children with disabilities or with high acuity levels. Provide outcomes of these programs. Describe how you connect members with the available social and community support services. Describe your plans to improve performance in this area for CHIP.

(Limit to two pages)

- D. Describe the techniques, policies, procedures, or initiatives you have in place to effectively and appropriately manage the Transition of Care (TOC) for members being discharged from inpatient care and how these techniques control hospital readmissions. Describe the strategy to be used with CHIP.

(Limit to two pages)

- E. Describe your experience related to the use of Health Homes and/or Patient Centered Medical Homes as well as any planned use. What are your plans for increasing the use of Health Homes and/or Patient Centered Medical Homes?

(Limit to one page)

III-6. Special Needs.

- A. Describe your process to ensure that appropriate coordination of care for home health services is occurring when enrollees are discharged to home from inpatient care.

(Limit to one page)

- B. Describe how patient-centered planning will be incorporated into your Special Needs and/or Case Management processes. (Limit to two pages)

(Limit to one page)

III-7. Coordination of Care.

- A. Describe the procedures and processes you have in place for continuity of care and care coordination when a child transitions between and among delivery systems, such as from one MCO to another MCO or to/from MA or the Federally Facilitated Marketplace (“FFM”) as well as those procedures and processes that will be used if selected for award.

(Limit to one page)

- B. Describe your plan to create, maintain, and continuously improve, collaboration with your behavioral health units or subcontractors.

1. Include a description of methods you will use to exchange information relevant to providing care coordination using behavioral health utilization.

2. Include any planned initiative to work with your behavioral health units or subcontractors to minimize and provide appropriate utilization of Psychotropic medication with children.

(Limit to two pages)

- C. Describe the process you will use to coordinate with County Offices of Children, Youth, and Families to provide Children in Substitute Care with necessary services. Describe challenges the organization anticipates or has experienced when coordinating care for children in substitute care, and provide any strategies that will be or have been used to improve coordination.

(Limit to two pages)

- D. Describe the processes you would use for transitioning and coordinating care for members who age out of the program once they reach the age of 19.

(Limit to one page)

III-8. Quality and Performance Management.

- A. Use the template provided in **Appendix I** to provide the rates and measurement. Provide HEDIS® performance measurement rates for the twenty (20) measures listed below.
 1. Weight management and counseling for nutrition and physical activity for children/adolescents (WCC)
 2. Childhood Immunization Status (CIS)
 3. Immunizations for Adolescents (IMA)
 4. Human Papillomavirus Vaccine for Female Adolescents (HPV)
 5. Chlamydia Screening for Female Adolescents (CHL)
 6. Annual Dental Visits (Ages 2 - 19) (ADV)
 7. Lead Screening in Children (LSC)
 8. Well Child Visits in the First 15 Months of Life, 6 or more visits (W15)
 9. Well Child Visits in the Third, Fourth, Fifth, and Sixth Years of Life (W34)
 10. Adolescent Well Care Visits (AWC)
 11. Appropriate Testing for Children with Pharyngitis (CWP)
 12. Appropriate Treatment of Children with Upper Respiratory Infection (URI)
 13. Medication Management for People with Asthma (MMA)
 14. Ambulatory Care – Outpatient Visits and Emergency Department Visits (AMB)
 15. Inpatient Utilization (IPU)
 16. Follow up Care for Children Prescribed Attention Deficit Hyperactivity Disorder Medication (ADHD)
 17. Follow up Care After Hospitalization for Mental Illness (FUH)
 18. Children and Adolescents’ Access to Primary Care Practitioners (CAP)
 19. Identification of Alcohol and Other Drug Services (IAD)
 20. Mental Health Utilization (MPT)

Applicants currently participating in CHIP must provide rates for HEDIS® 2016 and 2015 (reporting years are calendar years 2015 and 2014).

Applicants that do not currently participate in Pennsylvania's CHIP must provide rates for HEDIS® 2016 and 2015 (reporting years are calendar years 2015 and 2014) from a CHIP line of business from another state. If the Applicant has multiple CHIP lines of business it must choose the state that is most similar to Pennsylvania. Provide an explanation of how you determined which state's CHIP rates were submitted. A Medicaid or Commercial line of business if CHIP rates are not available can be substituted.

(Limit to one page)

- B.** Describe your strategy for achieving improved quality performance and outcomes. Describe how you monitor quality performance throughout the calendar year to improve HEDIS® performance rates.

(Limit to four pages)

- C.** Provide Child Consumer Assessment of Healthcare Providers and Systems (CAHPS) measurement rates for the composite measures listed below.

1. Rating of All Health Care
2. Rating of Health Plan
3. Getting Needed Care – Composite measure
4. Getting Care Quickly – Composite measure

Applicants currently participating in Pennsylvania's CHIP must provide rates for HEDIS®/CAHPS 2016 and 2015 (reporting years are calendar years 2015 and 2014).

Applicants that do not currently participate in Pennsylvania's CHIP must provide rates for HEDIS®, CAHPS 2016 and 2015 (reporting years are calendar years 2015 and 2014) from a CHIP line of business from another state. If the Applicant has multiple CHIP lines of business it must choose the state that is most similar to Pennsylvania.

Provide an explanation of how you determined which state's Children's Health Insurance rates were submitted. A Medicaid or commercial line of business if CHIP rates are not available can be substituted.

(Limit to one page)

- D.** Describe your strategy for improving rates for member satisfaction. How do you incorporate the results of the CAHPS surveys into your quality management program?

(Limit to two pages)

- E.** Provide Administrative Performance Measures rates for the measures listed below:

1. Dental Sealants for 6-9 year olds with elevated caries risk
2. Number of eligible children who received preventive dental services (PDENT)
3. Developmental screening in the first three years of life (DEV)
4. Annual number of asthma patients with one or more asthma-related ER visits (ASMER)

Applicants currently participating in Pennsylvania's CHIP must provide rates for HEDIS®/CAHPS rates for 2016 and 2015 (reporting years are calendar years 2015 and 2014).

Applicants that do not currently participate in Pennsylvania's CHIP must provide rates for HEDIS®/CAHPS rates for 2016 and 2015 (reporting years are calendar years 2015 and 2014) from a CHIP line of business from another state. If the Applicant has multiple CHIP lines of business it must choose the state that is most similar to Pennsylvania. Provide an explanation of how you determined which state's CHIP rates were submitted. A Medicaid or commercial line of business if CHIP rates are not available can be substituted.

(Limit to one page)

Describe your strategy for achieving improved quality performance and outcomes. Describe how you monitor quality performance throughout the calendar year to improve performance rates.

(Limit to three pages)

III-9. Provider Network Composition and Network Management.

A. Describe the processes you have in place to ensure that requirements of network adequacy are met.

Describe provider incentives or programs used to encourage greater access throughout the network.

Describe your plan to ensure that physical and behavioral health providers are readily available in underserved, rural counties.

Describe your plan of action when there has been a significant change in the provider's operations that would affect the adequacy of capacity and services.

Describe how regular provider network adequacy and access monitoring is integrated in your overall quality improvement programs.

Describe the plan to maintain current providers, recruit new providers, and correct deficiencies, should they occur.

Describe the process of covering services out of network, if the provider network is unable to provide the necessary services.

Describe processes in place or planned to ensure adequacy of providers able to provide services to persons with disabilities or limited English proficiencies.

Describe process to recruit providers with diverse cultural competencies.

Describe the plan to provide female enrollees with direct access to women's health specialists within the provider network aside from a primary care physician.

Describe the methods your provider network support staff utilize to engage and educate providers.

Describe criteria for provider inclusion in your network and monitoring processes to ensure that only providers who meet the required criteria participate in your network.

(Limit to four pages)

- B.** Describe actions taken to incent growth in the dental provider network. Specifically discuss how your organization will increase access to pediatric and special needs dentistry through the use of incentives or other innovative provider attraction techniques. Provide recent examples of dental network improvements made by your organization.

(Limit to two pages)

- C.** Describe your organization's oversight process for subcontractors that manage provider networks—such as dental, vision, and other benefits managers.

Describe actions taken in the past as well as those that will be taken to correct identified network deficiencies or problems with accurate/timely provider reimbursement.

Describe incentives, quality improvement processes, or assessments pursued to increase network access and accessibility of subcontractor provider networks as well as those that will be used if selected for award.

(Limit to two pages)

- D.** Describe risk adjustment strategies and/or provider incentives you will employ in Primary Care Physician (“PCP”) contracting to provide members with complex medical needs with adequate access to primary care and care coordination services. How do you measure the adequacy of access and what programs will you have in place to measure the quality outcomes of the services?

(Limit to two pages)

- E.** Describe the processes to assess the satisfaction level of the provider network with your organization.

When low satisfaction rates are identified, indicate the processes to address those areas.

Describe the method of your organization to obtain a second opinion from a network provider or arranging for the enrollee to obtain one outside the network at no cost to the enrollee.

Indicate how provider satisfaction is integrated into the on-going provider network management.

Provide a specific example with results of a recent provider network satisfaction assessment and any improvement initiatives that resulted.

Provide your organization's timeline or schedule for visitation of network providers by your provider support or other staff. Describe the information that is discussed with providers during these visits.

(Limit to three pages)

- F. Describe the processes used to monitor and assess access and accessibility of the Applicants provider network. Specifically identify:

The network providers hours of operation that are no less than the hours of operation offered to commercial enrollees.

Amount and frequency of PCP network audits to confirm compliance with access and accessibility requirements for network providers over the past two (2) calendar years.

Amount and frequency of specialist network audits to confirm compliance with access and accessibility requirements over the past two (2) calendar years.

Indicate the corrective actions used when providers are identified as being non-compliant with access and accessibility requirements.

Provide the number of network providers identified as non-compliant with accessibility and access standards over the past two (2) calendar years.

Provide the number of corrective actions imposed upon providers for access and accessibility non-compliance over the past two (2) calendar years.

(Limit to three pages)

- G. Describe how your organization and your provider network demonstrate a willingness and ability to make the necessary distinctions between traditional treatment methods and/or non-traditional treatment methods that are consistent with the Enrollee's racial, ethnic, or cultural background and which may be equally or more effective and appropriate for the particular Enrollee.

Describe how your organization and provider network demonstrate consistency in providing quality care across a variety of races, ethnicities, and cultures. For example: language, religious beliefs, cultural norms, social-economic conditions, diet, etc., may make a treatment method more favorable to enrollees of a particular culture.

Provide how your organization's outreach services include specific provisions for reaching special populations.

(Limit to three pages)

III-10. Value Based Purchasing.

- A. Describe initiatives or processes your organization has in place to support a movement toward increasing Value Based Purchasing (VBP) strategies within your network contracts. Provide a breakdown of the specific VBP strategies employed.

(Limit to two pages)

- B. Describe your strategy for sharing data with providers that are in VBP contracting arrangements. What data is shared with providers? How often is the data shared? What support do you offer to providers to assist them in achieving their quantitative goals?

(Limit to two pages)

III-11. Pharmacy/Outpatient Drug.

- A.** Responses should be based on the requirements in section 19.9 Outpatient Drug Services in the CHIP Procedure's Handbook.

Describe the nature and scope of your prospective and retrospective drug use review programs including a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of the Drug Utilization Review (DUR) programs.

(Limit to two pages)

- B.** Describe how your formulary or preferred drug list will be developed and maintained.

Describe the Pharmacy and Therapeutics (P&T) Committee, including the membership and function.

(Limit to two pages)

- C.** Describe your pharmacy prior authorization policies, procedures, and process, including the following:

1. How is prior authorization criteria developed?
2. How are requests for prior authorization made?
3. How are temporary supplies obtained for drugs requiring prior authorization for new and ongoing medication?
4. How do providers (pharmacies and prescribers) and consumers learn about the authorization process and criteria?
5. Who makes medical necessity decisions?
6. What is the timeline for processing prior authorization requests?
7. Describe the prior authorization process for designated outpatient drugs:
 - i. Paid for under both the pharmacy and medical benefits
 - ii. Paid for under the pharmacy or medical benefit only

(Limit to four pages)

- D.** With regard to outpatient drug claims, explain:

1. How you provide access to all CHIP covered outpatient drugs?
2. How you prevent payment for coverage exclusions?

3. How the Applicant's payment methodology for outpatient drugs impact access?
4. Who will adjudicate your outpatient drug claims?
5. How will you ensure that all providers providing services to CHIP enrollees are enrolled with CHIP?
6. How do you achieve adequate oversight and monitoring of the drug claims processor, including fraud and abuse and encounter data?
7. Will all outpatient drugs be processed through NCPDP pharmacy point of sale? If not, what other method of claims processing will be used (e.g., professional claim with Healthcare Common Procedure Coding)?
8. How will the Applicants require that all paid outpatient drug claims include the accurate 11 digit National Drug Code (NDC) and corresponding NDC units for the product dispensed?
9. How will the Applicants ensure that NDC and units for physician-administered drugs is appropriate for the HCPCS code and HCPC units billed by the provider?
10. Describe the process by which the Applicants will audit pharmacy and medical billed outpatient drug claims for accuracy?

(Limit to six pages)

E. Describe your specialty pharmacy program and include the following:

1. The Applicant's definition of a specialty drug.
2. The clinical supports and programs to be provided by specialty pharmacies.
3. How the Applicant's care management programs will coordinate care for CHIP enrollees using specialty drugs.
4. Clinical and financial outcomes associated with the specialty pharmacy program.
5. Describe any innovative or future plans for your specialty pharmacy program including plans to purchase and effectively manage specialty drugs.

(Limit to three pages)

III-12. Management Information Systems.

A. Provide a general systems description, including:

1. A systems diagram that describes each component of the management information system and all other systems that interface with or support it.

2. How each component will support the major functional areas of CHIP (In-Plan Services; Coordination of Care; Member Services; Complaint, Grievance and CHIP Review; Special Needs; Provider Network; Provider Services; Service Access; Quality Management/Utilization Management (QM/UM) Claims Payment and Processing, and; Encounter Data Reporting System).

(Limit to seven pages including the diagram)

- B. Describe any modifications or updates to your Management Information System (MIS) that will be necessary within the next year to meet the requirements of the Agreement and your plan for their completion.

(Limit to two pages)

- C. What is the current capacity of your MIS/claims processing? Explain your process to readily expand your MIS/claims processing should the capacity of either be exceeded.

(Limit to two pages)

- D. Describe how you will verify that providers and subcontractor(s) submit timely, accurate, complete, and required encounter data elements for subsequent transmission to the Department, including the frequency of verification. Explain how you will handle the non-submission of encounter data by a provider or subcontractor. Explain how you will achieve the accurate and timely submission of complete encounter data to DHS consistent with required formats. Also explain how you will handle error reporting and the submission of corrected files to the Department.

(Limit to two pages)

- E. Describe in detail your process for utilizing the Department's daily and monthly 834 membership files to manage your membership. Include the process for resolving discrepancies and your process for resolving errors if a member record does not correctly process.

(Limit to two pages)

- F. Explain your process for maintaining your provider file with sufficient information on each provider to support provider payment and also meet the Department's reporting and Encounter Data Requirements. Include how you will cross-reference your internal Provider ID Number with the Medicaid Management Information System provider ID and Service Location and the provider's NPI number with taxonomy and zip code.

(Limit to two pages)

- G. Explain your processes for verifying that providers are enrolled in MA and have a valid MMIS Provider ID number/Service Location and NPI/taxonomy/zip code. Include how you will monitor your subcontractors to ensure their providers are enrolled in MA and have a valid MMIS Provider ID number/Service Location and NPI/taxonomy/zip code.

(Limit to two pages)

III-13. Financial Capability

The Applicant must submit information about the financial condition of the company in this section. For ease in assembling the application, the Applicant should append its financial documentation rather than including it in the main body of the application. The Applicant must provide the following information:

- A. The identity of each entity that owns at least five percent (5%) of the Applicant.
- B. For the Applicant and for each entity that owns at least five percent (5%) of the Applicant. (The Applicant may **also** include information for other affiliates as long as they still provide the requested information for each entity that owns at least 5%):
 1. Audited financial statements for the two (2) most recent fiscal years for which statements are available. The statements must include a balance sheet, statement of revenue and expense, and a statement of cash flow. Statements must include the auditor's opinion and the notes to the financial statements submitted by the auditor to the Applicant. If audited financial statements are not available, explain why, and submit unaudited financial statements.
 2. Unaudited financial statements for the period between the last date covered by the audited statements through the quarter before the submission of the application.
 3. Documentation about available lines of credit, including maximum credit amount and amount available thirty (30) business days prior to the submission of the application.
 4. The most recent sets of quarterly and annual financial statements filed with the Insurance Department.
 5. State of incorporation.
 6. Type of incorporation, as profit or non-profit.
 7. Bond rating.
 8. A.M. Best rating for life/health.
 9. Standard and Poor rating.
 10. Weiss rating.
 11. Its Risk Based Capital Ratio for the year filed most recently with the Pennsylvania Insurance Department.

If any information requested is not applicable or not available, provide an explanation. Applicants may submit appropriate documentation to support information provided.

- A. Describe your financial stability and economic capacity to perform CHIP requirements.
- B. If the Applicant plans to enter into a subcontract at a cost of at least eighty percent (80%) of anticipated agreement revenues received from the Department, and if the subcontract provides for financial risk

on the part of the subcontractor, provide items listed in Section II-6.B above, as they relate to the proposed subcontractor.

- C. The Applicant or entity(ies), identified in II.6.A above, who is a HMO or licensed insurer, must have SAP-basis equity, as of June 30, 2017 or a subsequent date prior to submission of the application, equal to the highest of the amounts determined by the following “Three (3) Part Test”:
- 1) \$20 million;
 - 2) 5.5% of revenue earned by the Applicant or entity(ies) during the most recent four (4) calendar quarters; or
 - 3) 5.5% of revenue earned by the Applicant or entity(ies) during the current quarter multiplied by three (3).

If the Applicant (not a related party) does not have the required SAP-basis equity, explain why and provide GAAP-basis equity. An assertion of equity must be supported by a copy of a filing with the Pennsylvania Insurance Department. If the Pennsylvania Insurance Department’s filing is not available, explain why and provide a balance sheet that is attested to by an independent public accounting firm.

Failure to comply with the equity requirement, or with the requirement to provide documentation satisfactory to the Department, may result in rejection of the application.

- D. The Department will not permit a selected Applicant to implement CHIP unless it has SAP-basis equity, as of the last day of the second quarter prior to the program implementation date, or a subsequent date as determined by the Department, equal to the highest of the amounts determined by the following “Three (3) Part Test”:
- 1) \$20 million;
 - 2) 5.5% of revenue earned by the Applicant during the most recent four (4) calendar quarters; or
 - 3) 5.5% of revenue earned by the Applicant during the current quarter multiplied by three (3).
The equity of an entity identified in II.6.A above may not be relied upon to satisfy this requirement.
- E. The Applicant shall explain how it will fund development and start-up costs, including the source of funds. Provide information and documentation to enable the Department to conclude whether sources have and are committed to providing the expected funds.
- F. List any ownership interest in proposed subcontractors. Copies of proposed subcontract arrangements are to be included as an appendix. The Department will approve all subcontracts used by the selected Applicant.
- G. The Applicant will state whether it has changed its independent actuary or independent auditor in the last two (2) years. If it has, it must provide the date and explain why.

The Commonwealth reserves the right to request additional information it deems necessary to evaluate an Applicant’s financial capability. If any information requested is not applicable or not available, provide an explanation. Applicants may submit appropriate documentation it deems necessary to evaluate an Applicant’s financial capability. If any information requested is not applicable or not available, provide an explanation. Applicant may submit appropriate documentation to support information provided.

H. Explain how your MIS system, and other associated systems, provide data security. Include your security protocols for transmission of data between systems. Also, include backup and recovery plans for your systems.

(Limit to four pages)

III-14. Objections and Additions to Standard Grant Terms and Conditions. The Applicant 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 Applicant would like to add to the standard grant terms and conditions. The Applicant's failure to make a submission under this paragraph will result in its waiving its right to do so later, but DHS may consider late objections and requests for additions if to do so, in DHS's sole discretion, would be in the best interest of the Commonwealth. DHS may, in its sole discretion, accept or reject any requested changes to the standard contract terms and conditions. The Applicant shall not request changes to the other provisions of the RFA, nor shall the Applicant request to completely substitute its own terms and conditions for **Part VI**. All terms and conditions must appear in one integrated contract. DHS will not accept references to the Applicant's, or any other, online guides or online terms and conditions contained in any application.

Regardless of any objections set out in its application, the Applicant must submit its application, on the basis of the terms and conditions set out in **Part VI**. DHS will reject any application that is conditioned on the negotiation of the terms and conditions set out in **Part VI** or to other provisions of the RFA as specifically identified above.

PART IV

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION SUBMITTAL

V-1. Small Diverse Business and Small Business General Information. The Department encourages participation by Small Diverse Businesses and Small Businesses as prime contractors, and encourages all prime contractors to make significant commitments to use Small Diverse Businesses and Small Businesses as subcontractors and suppliers.

A Small Business must meet each of the following requirements:

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

For credit in the RFA scoring process, a Small Business must complete the DGS/BDISBO self-certification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Small%20Business%20Contracting%20Program/Pages/default.aspx>.

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

For credit in the RFA scoring process, a Small Diverse Business must complete the DGS verification process. Additional information on this process can be found at:

<http://www.dgs.pa.gov/Businesses/Minority,%20Women%20and%20Veteran%20Businesses/Pages/default.aspx>.

An Applicant that qualifies as a Small Diverse Business or a Small Business and submits an application as a prime contractor is not prohibited from being included as a subcontractor in separate applications submitted by other Applicants.

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

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

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

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

V-2. Small Diverse Business and Small Business (SDB/SB) Participation Submittal. All Applicants are required to submit two (2) copies of the Small Diverse Business and Small Business Participation Submittal Form contained in (**Appendix F** and related Letter(s) of Intent (**Appendix G**)). The submittal must be sealed in its own envelope, separate from the remainder of the application, and must be provided on the Small Diverse Business and Small Business Participation Submittal form, with information as follows:

- A.** Applicants must indicate their status as a Small Diverse Business **and** as a Small Business through selection of the appropriate checkboxes.
- B.** Applicants must include a numerical percentage which represents the total percentage of the total cost in the Cost Submittal that the Applicant commits to paying to Small Diverse Businesses and Small Businesses as subcontractors.
- C.** Applicants must include a listing of and required information for each of the Small Diverse Businesses and/or Small Businesses with whom they will subcontract to achieve the participation percentages outlined on the Small Diverse Business and Small Business Participation Submittal.
- D.** Applicants must include a Letter of Intent (attached as **Appendix G** is a Letter of Intent template which may be used to satisfy these requirements) signed by both the Applicant and the Small Diverse Business or Small Business for each of the Small Diverse Businesses and Small Businesses identified in the Small Diverse Business and Small Business Participation Submittal form. At minimum, the Letter of Intent must include the following:
 - 1.** The fixed numerical percentage commitment and associated estimated dollar value of the commitment made to the Small Diverse Business or Small Business; and
 - 2.** A description of the services or supplies the Small Diverse Business or Small Business will provide; and
 - 3.** The time frame during the initial contract term and any extensions, options, and renewals when the Small Diverse Business or Small Business will perform or provide the services and/or supplies; and

4. The name and telephone number of the Applicant's point of contact for Small Diverse Business and Small Business participation; and
5. The name, address, and telephone number of the primary contact person for the Small Diverse Business or Small Business.

E. Each Small Diverse Business and Small Business commitment which is credited by BDISBO along with the overall percentage of Small Diverse Business and Small Business commitments will become contractual obligations of the selected Applicant.

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

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

- V-3. Contract Requirements—Small Diverse Business and Small Business Participation.** All contracts containing Small Diverse Business and Small Business Participation must contain the following contract provisions to be maintained through the initial contract term and any subsequent options or renewals:
- A. Each Small Diverse Business and Small Business commitment which was credited by BDISBO and the total percentage of such Small Diverse Business and Small Business commitments made at the time of application submittal, BAFO or contract negotiations, as applicable, become contractual obligations of the selected Applicant upon execution of its contract with the Commonwealth.
 - B. All Small Diverse Business and Small Business subcontractors credited by BDISBO must perform at least 50% of the work subcontracted to them.
 - C. The individual percentage commitments made to Small Diverse Businesses and Small Businesses cannot be altered without written approval from BDISBO.
 - D. Small Diverse Business and Small Business commitments must be maintained in the event the contract is assigned to another prime contractor.
 - E. The selected Applicant and each Small Diverse Business and Small Business for which a commitment was credited by BDISBO must submit a final, definitive subcontract agreement signed by the selected Applicant and the Small Diverse Business and/or Small Business to BDISBO within thirty (30) days of the final execution date of the Commonwealth contract. A Model Subcontract Agreement which may be used to satisfy this requirement is provided in **Appendix J – Model Form of Small Diverse and Small Business Subcontract Agreement**. The subcontract must contain:
 1. The specific work, supplies, or services the Small Diverse Business and/or Small Business will perform; location for work performed; how the work, supplies, or services relate to the project; and the specific time frame during the initial term and any extensions, options, and renewals of the prime contract when the work, supplies, or services will be provided or performed.

2. The fixed percentage commitment and associated estimated dollar value that each Small Diverse Business and/or Small Business will receive based on the final negotiated cost for the initial term of the prime contract.
 3. Payment terms indicating that the Small Diverse Business and/or Small Business will be paid for work satisfactorily completed within fourteen (14) days of the selected Applicant's receipt of payment from the Commonwealth for such work.
 4. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the selected Applicant's contract with the Commonwealth and that do not place disproportionate risk on the Small Diverse Business and/or Small Business relative to the nature and level of the Small Diverse Business' and/or Small Business' participation in the project.
- F.** If the selected Applicant and a Small Diverse Business or Small Business credited by BDISBO cannot agree upon a definitive subcontract within thirty (30) days of the final execution date of the Commonwealth contract, the selected Applicant must notify BDISBO.
- G.** The selected Applicant shall complete the Prime Contractor's Quarterly Utilization Report and submit it to the DHS Grant Administrator and BDISBO within ten (10) business days at the end of each quarter of the contract term and any subsequent options or renewals. This information will be used to track and confirm the actual dollar amount paid to Small Diverse Business and Small Business subcontractors and suppliers and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the quarter, the form must be completed by stating "No activity in this quarter." A late fee of \$100.00 per day may be assessed against the Selected Applicant if the Utilization Report is not submitted in accordance with the above schedule.
- H.** The selected Applicant shall notify the DHS Grant Administrator and BDISBO when circumstances arise that may negatively impact the selected Applicant's ability to comply with Small Diverse Business and/or Small Business commitments and to provide a corrective action plan. Disputes will be decided by DHS and DGS.
- I.** If the selected Applicant fails to satisfy its Small Diverse Business and/or Small Business commitment(s), it may be subject to a range of sanctions BDISBO deems appropriate. Such sanctions include, but are not limited to, one or more of the following: a determination that the selected Applicant is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the contract together with consequential damages; revocation of the selected Applicant's Small Diverse Business status and/or Small Business status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

Part V

Standard Grant Terms and Conditions

1. Term of Grant

The term of the Grant shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Grant, subject to the other provisions of the Grant. The Effective Date shall be fixed after the Grant has been fully executed by the Grantee and by the Commonwealth and all approvals required by Commonwealth procedures have been obtained. No agency employee has the authority to verbally direct the commencement of any work under this Grant. The Commonwealth reserves the right, upon notice to the Grantee, to extend the term of the Grant for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in Grant coverage and only for the time necessary, up to three (3) months, to enter into a new Grant.

2. Independent Grantee

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

3. Compliance with Law

The Grantee shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Grant.

4. Environmental Provisions

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

5. Post-Consumer Recycled Content

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

6. Compensation/Expenses

The Grantee shall be required to perform the specified services at the price(s) quoted in the Grant. All services shall be performed within the time period(s) specified in the Grant. The Grantee shall be compensated only for work performed to the satisfaction of the Commonwealth. The Grantee shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Grant.

7. Invoices

Unless the Grantee has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Grantee shall send an *invoice itemized by line item* to the address referenced on the grant promptly after services are satisfactorily completed. The invoice should include only amounts due under the Grant agreement. The grant number must be included on all invoices. In addition, the Commonwealth shall have the

right to require the Grantee to prepare and submit a "Work In Progress" sheet that contains, at a minimum, the tasks performed, number of hours, hourly rate, and the Grant number or task order to which it refers.

8. Payment

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Grant; (b) thirty (30) days after a proper invoice actually is received at the "Provide Service and Bill To" address if a date on which payment is due is not specified in the Grant (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Grant. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Grantee as acceptance of the service performed by the Grantee. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Grantee agrees that the Commonwealth may set off the amount of any state tax liability, or other obligation of the Grantee or its subsidiaries to the Commonwealth against any payments due the Grantee under any Grant with the Commonwealth.
- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Grant or purchase order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Grantee will be required to pay and the Grantee will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Grantee. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Grantee or any other charges incurred by the Grantee, unless specifically stated in the terms of the Grant or purchase order.

9. Taxes

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees, and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction Grantee from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction Grant.

10. Warranty

The Grantee warrants that all services performed by the Grantee, its agents, and subgrantees, shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Grant, all services and parts are warranted for a period of one year following completion of performance by the Grantee and acceptance by the

Commonwealth. The Grantee shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the Commonwealth.

11. Patent, Copyright, and Trademark Indemnity

The Grantee warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Grant which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the Commonwealth under the Grant. The Grantee shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright, or trademark infringement in the United States of any of the products provided or used in the performance of the Grant. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Grantee's written request, it shall be at the Grantee's expense, but the responsibility for such expense shall be only that within the Grantee's written authorization. The Grantee shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Grantee or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Grant. If any of the products provided by the Grantee in such suit or proceeding are held to constitute infringement and the use is enjoined, the Grantee shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products, or modify them so that they are no longer infringing. If the Grantee is unable to do any of the preceding, the Grantee agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Grantee under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Grantee without its written consent.

12. Ownership Rights

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed, developed, and delivered to the Commonwealth as part of the performance of the Grant.

13. Assignment of Antitrust Claims

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

14. Hold Harmless Provision

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

15. Audit Provisions

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents, and records of the Grantee to the extent that the books, documents, and records relate to costs or pricing data for the Grant. The Grantee agrees to maintain records which will support the prices charged and costs incurred for the Grant. The Grantee shall preserve books, documents, and records that relate to costs or pricing data for the Grant for a period of three (3) years from date of final payment. The Grantee shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

16. Default

- a. The Commonwealth may, subject to the provisions of Paragraph 17, Force Majeure, and in addition to its other rights under the Grant, declare the Grantee in default by written notice thereof to the Grantee, and terminate (as provided in Paragraph 18, Termination Provisions) the whole or any part of this Grant for any of the following reasons:
 1. Failure to begin work within the time specified in the Grant or as otherwise specified;
 2. Failure to perform the work with sufficient labor, equipment, or material to ensure the completion of the specified work in accordance with the Grant terms;
 3. Unsatisfactory performance of the work;
 4. Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 5. Discontinuance of work without approval;
 6. Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 7. Insolvency or bankruptcy;
 8. Assignment made for the benefit of creditors;
 9. Failure or refusal within ten (10) days after written notice by the Granting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 10. Failure to protect, to repair, or to make good any damage or injury to property; or
 11. Breach of any provision of this Grant.
- b. In the event that the Commonwealth terminates this Grant in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated, and the Grantee shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical services included within the terminated part of the Grant.
- c. If the Grant is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Grantee to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Issuing Office, such partially completed work, including, where applicable, reports, working papers, and other documentation, as the Grantee has specifically produced or specifically acquired for the performance of such part of the Grant as has been terminated. Except as provided below, payment

for completed work accepted by the Commonwealth shall be at the Grant price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Grantee and Granting Officer. The Commonwealth may withhold from amounts otherwise due the Grantee for such completed or partially completed works, such sum as the Granting Officer determines to be necessary to protect the Commonwealth against loss.

- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Grantee's administrative remedies as set forth in Paragraph 19, the Grantee's exclusive remedy shall be to seek damages in the Board of Claims.

17. Force Majeure

Neither party will incur any liability to the other if its performance of any obligation under this Grant is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

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

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Grantee, may suspend all or a portion of the Grant.

18. Termination Provisions

The Commonwealth has the right to terminate this Grant for any of the following reasons. Termination shall be effective upon written notice to the Grantee.

- a. **Termination for Convenience:** The Commonwealth shall have the right to terminate the Grant for its convenience if the Commonwealth determines termination to be in its best interest. The Grantee shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Grantee be entitled to recover loss of profits.
- b. **Non-Appropriation:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Grant. The Grantee 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 Grant. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose

- c. **Termination for Cause:** The Commonwealth shall have the right to terminate the Grant for Grantee default under Paragraph 16, Default, upon written notice to the Grantee. The Commonwealth shall also have the right, upon written notice to the Grantee, to terminate the Grant for other cause as specified in this Grant or by law. If it is later determined that the Commonwealth erred in terminating the Grant for cause, then, at the Commonwealth's discretion, the Grant shall be deemed to have been terminated for convenience under the Subparagraph 18.a.

19. Grant Controversies

- a. In the event of a controversy or claim arising from the Grant, the Grantee must, within six (6) months after the cause of action accrues, file a written claim with the Granting officer for a determination. The claim shall state all grounds upon which the Grantee asserts a controversy exists. If the Grantee fails to file a claim or files an untimely claim, the Grantee is deemed to have waived its right to assert a claim in any forum.
- b. The Granting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the Granting officer and the Grantee. The Granting officer shall send written determination to the Grantee. If the Granting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The Granting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Grantee may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Grantee shall proceed diligently with the performance of the Grant in a manner consistent with the determination of the Granting officer and the Commonwealth shall compensate the Grantee pursuant to the terms of the Grant.

20. Assignability and Subgranting

- a. Subject to the terms and conditions of this Paragraph 20, this Grant shall be binding upon the parties and their respective successors and assigns.
- b. The Grantee shall not subgrant with any person or entity to perform all or any part of the work to be performed under this Grant without the prior written consent of the Granting Officer, which consent may be withheld at the sole and absolute discretion of the Granting Officer.
- c. The Grantee may not assign, in whole or in part, this Grant or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Granting Officer, which consent may be withheld at the sole and absolute discretion of the Granting Officer.
- d. Notwithstanding the foregoing, the Grantee may, without the consent of the Granting Officer, assign its rights to payment to be received under the Grant, provided that the Grantee provides

written notice of such assignment to the Granting Officer together with a written acknowledgment from the assignee that any such payments are subject to all of the terms and conditions of this Grant.

- e. For the purposes of this Grant, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Grantee provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Granting Officer shall be evidenced by a written assignment agreement executed by the Grantee and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Grant and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Grantee, following which the Grantee's federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Grantee shall give the Granting Officer written notice of any such change of name.

21. Nondiscrimination/Sexual Harassment Clause

During the term of the Grant, the Grantee agrees as follows:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. The Grantee, any subgrantee, contractor, or any subcontractor or any person on their behalf shall not in any manner discriminate in violation of the PHRA and applicable federal laws against or intimidate any of its employees.
- c. The Grantee, any subgrantee, contractor, or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement.
- d. The Grantee, any subgrantee, contractor, or any subcontractor shall not discriminate in violation of the PHRA and applicable federal laws against any subgrantee, contractor, subcontractor, or supplier who is qualified to perform the work to which the grant relates.
- e. The Grantee and each subgrantee, contractor, and subcontractor represents that it is presently in compliance with, and will maintain compliance with, all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor, and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for

employers subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor, or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Small Business Opportunities (BSBO), for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.

- f. The Grantee, any subgrantee, contractor, or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract, or subcontract so that those provisions applicable to subgrantees, contractors, or subcontractors will be binding upon each subgrantee, contractor, or subcontractor.
- g. The Grantee's and each subgrantee's, contractor's, and subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor, and subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- h. The Commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

22. Contractor Integrity Provisions

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

1. **Definitions.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **"Affiliate"** means two or more entities where (a) a parent entity owns more than fifty percent (50%) of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the entities; or c) the entities have a common proprietor or general partner.
 - b. **"Consent"** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. **"Contractor"** means the individual or entity that has entered into this contract with the Commonwealth.

- d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five percent (5%) or more interest in the Contractor.
- e. **“Financial Interest”** means either:
 - (1) Ownership of more than a five percent (5%) interest in any business; or
 - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- f. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the *Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b)*, shall apply.
- g. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive, or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor’s submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

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

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

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

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

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

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal, or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if, at any time during the term of the contract, it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

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

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

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

Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- h.** Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract, or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- i.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

23. Grantee Responsibility Provisions

- a.** The Grantee certifies, for itself and all its subgrantees, that as of the date of its execution of this Bid/Grant, that neither the Grantee, nor any subgrantees, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Grantee cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.
- b.** The Grantee also certifies, that as of the date of its execution of this Bid/Grant, it has no tax liabilities or other Commonwealth obligations.
- c.** The Grantee's obligations pursuant to these provisions are ongoing from and after the effective date of the Grant through the termination date thereof. Accordingly, the Grantee shall have an obligation to inform the Commonwealth if, at any time during the term of the Grant, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subgrantees are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension or debarment.
- d.** The failure of the Grantee to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Grant with the Commonwealth.

- e. The Grantee agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for Investigations of the Grantee's compliance with the terms of this or any other agreement between the Grantee and the Commonwealth, which results in the suspension or debarment of the Grantee. 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 Grantee shall not be responsible for investigative costs for investigations that do not result in the Grantee's suspension or debarment.
- f. The Grantee may obtain a current list of suspended and debarred Commonwealth Grantees by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

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

24. Americans with Disabilities Act

- a. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. § 35.101 et seq., the Grantee understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Grant or from activities provided for under this Grant on the basis of the disability. As a condition of accepting this Grant, the Grantee agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through Grants with outside Grantees.
- b. The Grantee shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Grantee's failure to comply with the provisions of subparagraph a above.

25. Hazardous Substances

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

- a. Labeling. The Grantee shall ensure that each individual product (as well as the carton, container, or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Grantee is clearly labeled, tagged, or marked with the information listed in Paragraphs (1) through (4):

1) Hazardous substances:

- a) The chemical name or common name;

- b) A hazard warning; and
- c) The name, address, and telephone number of the manufacturer.

2) Hazardous mixtures:

- a) The common name, but if none exists, then the trade name;
- b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture;
- d) A hazard warning; and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name, a hazard warning, if appropriate; and
- b) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

- a) The common name, but if none exists, then the trade name;
- b) A hazard warning, if appropriate;
- c) The name, address, and telephone number of the manufacturer; and
- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

- NFPA 704, Identification of the Fire Hazards of Materials
- National Paint and Coatings Association: Hazardous Materials Identification System

- American Society for Testing and Materials, Safety Alert Pictorial Chart
- American National Standard Institute, Inc. for the Precautionary Labeling of Hazardous Industrial Chemicals

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

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

26. Covenant Against Contingent Fees

The Grantee warrants that no person or selling agency has been employed or retained to solicit or secure the Grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Grant without liability, or in its discretion, to deduct from the Grant price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

27. Applicable Law

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

28. Integration

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

29. Change Orders

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

For purposes of this Grant, "change order" is defined as a written order signed by the Granting Officer directing the Grantee to make changes authorized under this clause.

30. Right-to-Know Law 8-K-1580

- a. Grantee or subgrantee understands that this Grant Agreement and records related to or arising out of the Grant Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL"). For the purpose of these provisions, the term "the Commonwealth" shall refer to the granting Commonwealth agency.
- b. If the Commonwealth needs the Grantee's or subgrantee's assistance in any matter arising out of the RTKL related to this Grant Agreement, it shall notify the Grantee or subgrantee using the legal contact information provided in the Grant Agreement. The Grantee or subgrantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires Grantee's or subgrantee's assistance in responding to a request under the RTKL for information related to this Grant Agreement that may be in Grantee's or subgrantee's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Grantee or subgrantee shall:
 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Grantee's or subgrantee's possession arising out of this Grant Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Grant Agreement.
- d. If Grantee or subgrantee considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Grantee or subgrantee considers exempt from production under the RTKL, Grantee or subgrantee must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of Grantee or subgrantee explaining why the requested material is exempt from public disclosure under the RTKL.

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