



PENNSYLVANIA  
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**REQUEST FOR PROPOSALS FOR**

**Actuarial Services for the Pennsylvania 529 Guaranteed Savings Plan**

**ISSUING OFFICE**

**Pennsylvania Treasury Department  
Bureau of Support Services  
Procurement Division  
Room 3T, Finance Building  
Harrisburg, PA 17120-0018**

**RFP NUMBER**

**RFP 14-005**

**DATE OF ISSUANCE**

**April 28, 2015**



**REQUEST FOR PROPOSALS**  
**FOR**  
**Actuarial Services for the Pennsylvania 529 Guaranteed Savings Plan**

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## CALENDAR OF EVENTS

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

Activity	Responsibility	Date
Issue of RFP 14-005 posted to <a href="http://www.patreasury.gov/RFP14-005">www.patreasury.gov/RFP14-005</a>	Issuing Office	April 28, 2015
Sealed hard copy proposal must be received by the Issuing Office no later than 11:30 A.M. at: <b>Pennsylvania Treasury Department</b> <b>Bureau of Support Services</b> <b>Procurement Division</b> <b>Room 3T, Finance Building</b> <b>Harrisburg, PA 17120</b> <b>Attention: Mark Lavelle</b>  <b>ELECTRONIC SUBMISSIONS WILL NOT BE ACCEPTED.</b>	Vendors	May 8, 2015

**PART I**  
**GENERAL INFORMATION**

**I-1. Purpose**

This Request for Proposals ("RFP") provides to those interested in submitting proposals for the subject procurement ("Vendors") sufficient information to enable them to prepare and submit proposals for the Department of Treasury ("Treasury") to satisfy a need for Actuarial Services for the Pennsylvania 529 Guaranteed Savings Plan (PA 529 GSP).

Unless otherwise stated, "Department" shall mean the "Treasury" and herein "Commonwealth" shall refer to all other state agencies, Boards or Commissions.

**I-2. Scope**

Treasury is issuing this RFP limited to bids for actuarial services described by the requirements established in the Work Statement and Appendices. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the services to be provided; requirements which Vendors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

**I-3. Issuing Office**

Treasury is the "Issuing Office." The sole point of contact for this RFP shall be Mark Lavelle, Chief Administrative Officer ("Issuing Officer"). Please refer all inquiries to the Issuing Officer by email at [RFP14-005@patreasury.gov](mailto:RFP14-005@patreasury.gov).

**I-4. Problem Statement**

Treasury is seeking proposals to provide actuarial services for the PA 529 GSP. Created by the Tuition Account Program and College Savings Bond Act of 1992, the PA 529 GSP is administered by the Tuition Account Programs Bureau within Treasury. The PA 529 GSP is a qualified tuition program under Section 529 of the Internal Revenue Code.

Treasury administers two 529 plans: The first plan and the one for which actuarial services are needed is the PA 529 GSP, in which growth is based on college tuition inflation when the account is used to pay for qualified higher education expenses. For example, if a family has saved enough for 120 credits at a Pennsylvania State System of Higher Education school, they will have enough for that many credits at that university in the future, regardless of how much tuition has increased. PA 529 GSP investments are overseen by the Pennsylvania Treasury Department. Attachment A, the PA 529 GSP Disclosure Statement, provides a full description.

The second plan is the Pennsylvania 529 Investment Plan (PA 529 IP), in which returns are based on performance of the financial market. The PA 529 IP offers 13 different investment options provided by the Vanguard Group.

**Treasury does not anticipate that the successful Vendor will provide any services described in this RFP for the PA 529 IP.**

#### **I-5. Questions and Answers**

Vendors must submit questions by email (with the subject line **RFP 14-005 Questions**) to the Issuing Officer. The Vendor shall not attempt to contact the Issuing Officer by any other means. The Issuing Officer shall transmit all questions and responses to each vendor that has received this RFP.

Each Vendor shall be responsible to monitor the Treasury website for new or revised RFP information. The Issuing Office shall not be bound by any verbal information nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation.

#### **I-6. Pre-proposal Conference**

*There will be no pre-proposal conference.*

#### **I-7. Contracting Terms and Conditions**

In the event that the Issuing Office enters into a contract as a result of this RFP, it is the intention to utilize a contract containing the Standard Contract Terms and Conditions as shown in Appendix E.

The Issuing Office, in its sole discretion, may undertake negotiations with Vendors whose proposals, in the judgment of the Issuing Office, show them to be qualified, responsible, and capable of performing the services described in this RFP.

#### **I-8. Electronic Version of RFP**

This RFP is being made available via the Treasury website ([www.patreaury.gov](http://www.patreaury.gov)). The Vendor acknowledges and accepts full responsibility to insure that its proposal responds to the RFP as published on these websites, as amended, if at all, by subsequent electronic means and/or addenda on the Treasury website. In the event of a conflict between a version of the RFP in the Vendor's possession and the Issuing Office's final version of the RFP, the Issuing Office's final version shall govern.

#### **I-9. Addenda to RFP**

If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will publish updated documents on the Treasury website.

#### **I-10. Response Date**

To be considered, Vendors must deliver hard copy proposals to the Issuing Office on or before the time and date specified in the RFP Calendar of Events.

Please remember to allow sufficient mail delivery time to ensure timely receipt of the proposal. If, due to inclement weather, natural disaster, or any other cause, the Issuing Office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission shall be automatically extended until the next business day on which the Department office is open, unless

the Vendors are otherwise notified by Treasury. The time for submission of proposals shall remain the same even if the response date is extended. Late proposals shall not be considered.

**I-11. Incurring Costs**

The Issuing Office is not liable for any costs the Vendor incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of the contract.

**I-12. Economy Of Preparation**

Vendors should submit proposals that are simple and economical, providing a straightforward, concise description of the Vendor's ability to meet the requirements of the RFP.

**I-13. Proposal Contents**

- a. **Confidential Information.** The Department is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Vendors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Vendors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Vendor who determines that it must divulge such information as part of its proposal must follow the procedure described below:
  - (1) Prepare an un-redacted version of the appropriate document, and
  - (2) Prepare a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret, and
  - (3) Prepare a signed written statement that states:
    - i) The attached document contains confidential or proprietary information or trade secrets;
    - ii) The Contractor is submitting the document in both redacted and un-redacted format in accordance with 65 P.S. § 67.707(b); and
    - iii) The Contractor is requesting that the document be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.
  - (4) Submit the two documents along with the signed written statement to Treasury.
  - (5) This information may be subject to Right-to-Know Law as such Section 53 would apply.
- b. **Treasury Use.** All material submitted with the proposal shall be considered the property of Treasury and may be returned only at the Issuing Office's option. Treasury has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Vendor copyright designations contained on proposals, the Treasury shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.

- c. **Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. § 67.101, et seq. If a proposal submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. § 67.707(b) for the information to be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests. Financial capability information submitted in response to Part II, Section II-8 of this RFP is exempt from public records disclosure under 65 P.S. § 67.708(b) (26).

#### **I-14. Vendor's Representations and Authorizations**

By submitting its proposal, each Vendor understands, represents, and acknowledges that:

- a. All of the Vendor's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in making an award. The Treasury shall treat any misstatement, omission or misrepresentation as fraudulent concealment of the true facts relating to the proposal submission, punishable pursuant to 18 Pa. C.S. § 4904.
- b. The Vendor has arrived at the price(s) and amounts in its proposal independently and without consultation, communication, or agreement with any other Vendor or potential Vendor. This provision has no application to those Vendors who partner to provide a comprehensive solution.
- c. The Vendor has not disclosed the price(s), the amount of the proposal, nor the approximate price(s) or amount(s) of its proposal to any other firm or person who is a Vendor or potential Vendor for this RFP, and the Vendor shall not disclose any of these items on or before the proposal submission deadline specified in the Calendar of Events of this RFP.
- d. The Vendor has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The Vendor makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the Vendor, the Vendor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Vendor has disclosed in its proposal.
- g. To the best of the knowledge of the person signing the proposal for the Vendor and except as the Vendor has otherwise disclosed in its proposal, the Vendor 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 Vendor that is owed to the Commonwealth.

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

**I-15. Restriction of Contact**

From the issue date of this RFP until the Issuing Office selects a proposal for award, the Issuing Officer is the sole point of contact concerning this RFP. Any violation of this condition may be cause for the Issuing Office to reject the offending Vendor's proposal. If the Issuing Office later discovers that the Vendor has engaged in any violations of this condition, the Issuing Office may reject the offending Vendor's proposal or rescind its contract award pursuant to terms and conditions.

Vendors must agree not to distribute any part of their proposals beyond the Issuing Office. A Vendor who shares information contained in its proposal with other Treasury personnel and/or competing Vendor personnel may be disqualified.

**I-16. Prime Vendor Responsibilities**

The selected Vendor will be required to assume responsibility for all services offered in the proposal whether it produces them itself or by subcontract. The Issuing Office will consider the selected Vendor to be the sole point of contact with regard to contractual and contract matters.

**I-17. Rejection of Proposals**

The Issuing Office reserves the right, in its sole and complete discretion, to reject any or all proposals received in response to this RFP, or to negotiate separately with competing Vendors.

**I-18. Discussion for clarifications**

Vendors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and Vendor responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification.

**I-19. Best and Final Offer (BAFO)**

While not required, the Issuing Office reserves the right to conduct discussions with Vendors for the purpose of obtaining "best and final offers." To obtain best and final offers from Vendors, the Issuing Office may do one or more of the following:

- a. Schedule individual interviews;
- b. Request revised proposals;

- c. Enter into pre-selection negotiations.

The Issuing Office will limit any discussions to responsible Vendors (those that have submitted responsive proposals and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance) whose proposals the Issuing Office has determined to be reasonably susceptible of being selected for award. The requirements listed in Part II, Section II-2, shall also be used to evaluate the best and final offers.

**I-20. Notification of Selection**

The Issuing Office will notify the selected Vendor in writing of its selection for negotiation after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to Treasury.

**I-21. Term of Contract**

The term of the contract will commence on the Effective Date and will extend for **three (3) years, with the option to renew for two (2) additional one-year periods. The contract must grant to Treasury sole discretion to determine the exercise of renewal options, if any, in single or multiple year increments.** The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Vendor and by the Treasury and all approvals required by Commonwealth contracting procedures have been obtained.

**I-22. Debriefing Conferences**

Vendors whose proposals are not selected will be notified of the name of the selected Vendor and given the opportunity to be debriefed. The Issuing Office will schedule the time and location of the debriefing. The debriefing will not compare the Vendor with other Vendors, other than the position of the Vendor's proposal in relation to all other Vendor proposals. A Vendor's exercise of the opportunity to be debriefed does not constitute the filing of a protest.

**I-23. News Releases**

Vendors shall not issue news releases, internet postings, advertisements or any other public communications pertaining to this project without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

PART II  
PROPOSAL REQUIREMENTS

**II-1. General Requirements**

Vendors must submit their proposals in the format, including heading descriptions, outlined below using the RFP 14-005 Technical Requirements Response form include in Attachment B of this RFP. To be considered, the proposal must respond to all requirements in this part of the RFP. Vendors should provide any other information thought to be relevant, but not applicable to the enumerated categories, as an appendix to the Proposal. All cost data relating to this proposal should be kept separate from and not included in the Technical Submittal. Each Proposal shall consist of the following **three** separately sealed submittals:

- a. Technical Submittal, which shall be a response to **RFP 14-005**.
- b. Cost Submittal, in response to **RFP 14-005**.
- c. Redacted Technical submission, if necessary.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Vendor's competence, business organization, and financial resources are adequate to deliver the RFP requirements.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Vendor to deliver and support the solution, and the Vendor shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Vendor fails to satisfy the Issuing Office that such Vendor is properly qualified to carry out the services described in this RFP.

**II-2. Technical Submittal**

- a. **Statement of the Problem:** State in succinct terms your understanding of the services required by this RFP.
- b. **Vendor Qualifications:** Provide documentation and other evidence as required in Part IV-2 of this RFP.
- c. **Services to be Provided:** Provide documentation and other evidence that you are able to complete the services required by this RFP, as listed in Part IV, Section IV-3 of this RFP.
- d. **Financial Capability:** Describe your company's financial stability and economic capability to demonstrate the likelihood that you will be able to continue to provide the services set forth in this RFP. Financial documents such as audited financial statements or recent tax returns may be submitted.

### **II-3. Cost Submittal**

The Cost Submittal shall be placed in a separate sealed envelope clearly labeled Cost Submittal within the sealed proposal, separated from the technical submittal. In completing the Cost Submittal, Vendors shall use the RFP 14-005 Cost Response included in Attachment C of this RFP.

The Vendor shall agree that all terms, warranties, and prices, as a whole, are comparable to or better than the equivalent terms, warranties, and prices, as a whole, offered by the Vendor to any present customer meeting substantially the same requirements or qualifications as the Treasury. If the Vendor shall, during the term of this contract, enter into arrangements with any other customer providing greater benefits or more favorable terms, as a whole, the Vendor shall provide the same to the Treasury.

The Cost Proposal must not include exceptions or additional terms and conditions.

Vendors should direct by email to the Issuing Office pursuant to Part I, Sections I-3, and I-5, of this RFP any questions about whether a cost or other component is included or applies. All Vendors will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

### **II-4. Cost Proposal – Total Not to Exceed Cost**

The Vendor's total cost for all services provided must be presented as the Total Not To Exceed Cost for each year of the contract, using the RFP 14-005 Cost Response included in Attachment C of this RFP.

**PART III**  
**CRITERIA FOR SELECTION**

**III-1. Mandatory Responsiveness Requirements**

To be eligible for selection, a proposal must be:

- a. Timely received from the Vendor; and
- b. Properly signed by the Vendor.

**III-2. Nonconforming Proposals**

The Issuing Office reserves the right, in its sole discretion, to waive technical or immaterial nonconformities in a Vendor's proposal.

**III-3. Evaluation Committee**

Proposals will be reviewed and evaluated by a committee of qualified personnel selected by Treasury. This committee will recommend for selection the proposal which it determines is the most advantageous to Treasury after considering all of the evaluation factors.

Award will only be made to a Vendor determined to be responsible in accordance with Commonwealth Management Directive 215.9, Contractor Responsibility Program.

**III-4. Vendor Responsibility**

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

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

The Vendor's financial information must demonstrate that the Vendor possesses the financial capability to assure good faith performance of the contract. A Vendor which fails to demonstrate sufficient financial capability to assure good faith performance of the contract may be considered by the Issuing Office, in its sole discretion, for best and final offers or contract negotiation contingent upon such Vendor providing contract performance security for the first contract year cost proposed by the Vendor in a form acceptable to the Issuing Office. Based on the financial condition of the Vendor, the Issuing Office may require a performance bond conditioned upon the faithful performance of the contract by the Vendor. If a performance bond is required by the issuing office, the Vendor shall purchase a performance bond from a surety licensed to do business in the Commonwealth.

The performance bond shall be in the same amount as the total not to exceed cost and shall entitle the Treasury to call upon the surety to complete the contract in one of three ways: 1) The surety completes the contract by hiring a completion contractor; 2) The surety and the Treasury choose a new contractor to complete the project and the surety pays the costs; or 3) The Treasury alone chooses a new contractor and the surety pays the costs, the surety assumes the same risk as the original Vendor. The performance bond shall be attached as an exhibit to, and shall be incorporated by reference in, the contract. The cost of the required performance security will be the sole responsibility of the Vendor and cannot increase the Vendor's cost proposal or the contract cost to the Treasury.

Further, the Issuing Office will award a contract only to a Vendor determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

## PART IV WORK STATEMENT/REQUIREMENTS

### **IV-1. Overview**

The Pennsylvania Treasury Department is seeking proposals to provide actuarial services for the Pennsylvania 529 Guaranteed Savings Plan PA 529 GSP. Created by the Tuition Account Program and College Savings Bond Act of 1992, the PA 529 GSP is administered by the Tuition Account Programs Bureau within the Pennsylvania Treasury Department. The PA 529 GSP is a qualified tuition program under Section 529 of the Internal Revenue Code.

The Pennsylvania Treasury Department administers two 529 plans:

The first plan and the one for which actuarial services are needed is the PA 529 GSP, in which growth is based on college tuition inflation when the account is used to pay for qualified higher education expenses. For example, if a family has saved enough for one through 120 credits at a Pennsylvania State System of Higher Education school, they will have enough for that many credits at that university in the future, regardless of how much tuition has increased. PA 529 GSP investments are overseen by the Pennsylvania Treasury Department. Attachment A, the PA 529 GSP Disclosure Statement, provides a full description.

The second plan is the Pennsylvania 529 Investment Plan (PA 529 IP), in which returns are based on performance of the financial market. The PA 529 IP offers 13 different investment options provided by the Vanguard Group.

**The Pennsylvania Treasury Department does not anticipate that the successful Vendor will provide any services described in this RFP for the PA 529 IP.**

Additional information about the PA 529 GSP may be found at [PA529.com](http://PA529.com).

### **IV-2. Vendor Qualifications**

Describe the experience and qualifications of your firm and the project team related to the services which you seek to provide.

Provide the following:

- The name(s) of each member of the project team and identification of each person's role in providing, and qualifications to provide, the requested services.
- Proof that the project team member(s) primarily responsible for performing the duties detailed in Part IV, Section IV-3, below ("Responsible Team Member") has no less than five years' experience providing actuarial services to 529 plans including the production of an annual actuarial report as described in Part I, Section I-1A. above. Describe the duties that person has performed for 529 plan clients.
- Proof that the Responsible Team Member is a member of the American Academy of Actuaries and an associate of the Society of Actuaries.

- A copy of an annual actuarial status report completed within the last two years that the Responsible Team Member has created for a 529 plan. The report should explain the methodologies and assumptions used in analyzing the actuarial status of the 529 plan, describe any significant changes from the last such report, include a chart showing the year-by-year present value of assets and liabilities, sensitivity testing, and stochastic analysis, and be able to be read and understood by a layperson.
- A list of all 529 clients for which the Responsible Team Member has provided actuarial services with contact information. Clients will be contacted to review the quality of the team member's work product.
- A certification that if the Responsible Team Member leaves the project team, additional team member(s) who meet these requirements will join the project team.

#### **IV-3. Services to be Provided**

The successful Vendor will provide the following services:

- Consultation Regarding Setting Annual PA 529 GSP Credit Rates and Fees.

In June, July, and August of each year of the contract, provide analysis, consultation, and recommendations to aid in deciding what Credit Rates should be set for each Tuition Level in the PA 529 GSP for the academic year commencing in the fall and what fees should be charged. Analyze the actuarial impact of different Credit Rate and fee scenarios as requested by the Department. Include a discussion of the Credit Rates and fees set and the adequacy of those rates in the annual actuarial report (see below).

- Annual Actuarial Report.

Preparation and submission of annual actuarial reports for the PA 529 GSP as of June 30 for each year of the contract period. The report must make use of commonly accepted methods and principles used by the actuarial profession, include all backup, charts, assumptions, and data necessary to support the conclusions articulated within the report, and contain the following:

- As described above, an analysis of PA 529 GSP Credit Rates for the contribution period beginning September 1 of each year of the contract period and the projected dollar-value impact of those rates;
- A quantification of the actuarial reserve, as currently expressed in Attachment D, the annual actuarial report as of June 30, 2014;
- An explanation of the methodologies and assumptions used in analyzing the actuarial status of the 529 plan;
- An explanation of any significant changes in methodologies and assumptions from the last such report;
- A chart showing a reconciliation of the actuarial reserve for each fiscal year of the contract period compared with the projected reserve made in the previous year illustrating the dollar impact of such things as actual experience compared to assumptions and impact of changes in assumptions, which is similar to the chart on page 17 of Attachment D, the annual actuarial report as of June 30, 2014;

- A chart showing the year-by-year present value of assets and liabilities, which is similar to the chart on page 18 of Attachment D, the annual actuarial report as of June 30, 2014;
- A stochastic analysis of the PA 529 GSP's actuarial reserve using no fewer than 10,000 scenarios generated from the historic volatility of tuition and investment asset classes used by the PA 529 GSP Fund;
- A set of sensitivity analyses that, based on the successful Vendor's judgment, provide meaningful information to the Department. These analyses will be based on changes to both tuition inflation and investment returns; and
- Any other data or analyses required, as jointly determined by the Department and the successful Vendor.
- At a minimum, the annual actuarial report must include all information and analyses contained in Attachment D, the annual actuarial report as of June 30, 2014, and be written in a manner that is understandable to a layperson.
- If the methods or approaches differ from those used in the immediate past annual actuarial reports, the differences, the reasons those methods or approaches were changed, and the dollar value impact of those differences must be explained in the current report. Each annual actuarial report must be provided no later than one week before the date of the second quarter meeting of the Tuition Account Program Advisory Board (Board), typically held in early August of each year. The Department will make reasonable effort to communicate the tentative date of the meeting to the successful Vendor in November of each year.
- In person presentation of the annual actuarial report to the Board at its second quarter meeting.

- Quarterly Valuations of Actuarial Reserves.

Preparation and submission of an updated quantification of actuarial reserve using the assumptions established as of June 30 of each year but using then-current account and contribution inventories for the first, third, and fourth quarters of each calendar year of the contract period. The valuation must be provided no later than one week before each quarterly Board meeting. Quarterly Board meetings typically occur in mid-November, mid-February, and mid-May. The Department will make reasonable effort to communicate the tentative dates of the each year's meetings to the successful Vendor in November of the previous year.

At a minimum the quarterly valuation of actuarial reserves must include all information contained in Attachment E, the quarterly valuation of actuarial reserves for the fourth quarter of 2014, and be written in a manner that is understandable to a layperson.

- Monthly Valuation of Actuarial Reserves.

Preparation and submission of an updated quantification of actuarial reserve on a monthly basis for each month in which an annual report or quarterly valuation is not

performed for each calendar year of the contract period using the same methodology as the quarterly valuation of actuarial reserves, as described above.

- Consultation.

On an as-needed basis, provide consultative services regarding 1) the financial effects and actuarial impact on the PA 529 GSP of potential administrative, programmatic, or legislative changes; 2) responses to media inquiries; and 3) any other topic requested by the Department. The extent of the work performed will be jointly determined by the Treasury and the successful Vendor.

- Travel.

In addition to the August Board meeting (see above), attend other meetings, conferences, or hearings as required by Treasury.

## LIST OF ATTACHMENTS & APPENDICES

<b>Section</b>	<b>Title</b>	<b>Description</b>
Appendix A	Proposal Cover Sheet	Vendor response required.
Appendix B	Contractor Integrity Provisions	
Appendix C	Contractor Responsibility Provisions	
Appendix D	Nondiscrimination/Sexual Harassment Clause	
Appendix E	Standard Contract Terms and Conditions	

<b>Section</b>	<b>Title</b>	<b>Description</b>
Attachment A	Pennsylvania 529 Guaranteed Savings Plan Disclosure Statement	
Attachment B	RFP 14-005 Technical Requirements Response	
Attachment C	RFP 14-005 Cost Response	
Attachment D	June 30, 2014 Annual Actuarial Report on the Pennsylvania 529 Guaranteed Savings Plan Fund	
Attachment E	December 31, 2014 Quarterly Valuation of Actuarial Reserves	

**Appendix A**  
**PROPOSAL COVER SHEET**  
**PENNSYLVANIA DEPARTMENT OF TREASURY**  
**RFP 14-005**

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

<b>Vendor Information:</b>	
Vendor Name	
Vendor Mailing Address	
Vendor Website	
Vendor Contact Person	
Contact Person's Phone Number	
Contact Person's Facsimile Number	
Contact Person's E-mail Address	
Vendor Federal ID Number	

<b>Submittals Enclosed and Separately Sealed:</b>	
<input type="checkbox"/>	Technical Submittal
<input type="checkbox"/>	Cost Proposal

<i>Signature</i>	
Signature of an official Authorized to bind the Vendor to the provisions contained in the Vendor's proposal:	
<b>Printed Name:</b>	
<b>Title:</b>	

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

## Appendix B

### CONTRACTOR INTEGRITY PROVISIONS

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

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

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no

bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

9. Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
  - a. Approved in writing by the Commonwealth prior to its disclosure; or
  - b. Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d. Necessary for purposes of Contractor's internal assessment and review; or
  - e. Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g. Otherwise required by law.
10. Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
  - a. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1) Obtaining;
    - (2) Attempting to obtain; or
    - (3) Performing a public contract or subcontract.

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

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

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

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

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

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.

14. 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.
15. Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
16. 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.
17. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.
  - a. "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - 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 pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - d. "Financial interest" means:
    - (1) Ownership of more than a five percent interest in any business; or
    - (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

- e. “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.
- f. “Immediate family” means a spouse and any un-emancipated child.
- 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 Vendor.
- h. “Political contribution” means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## Appendix C

### CONTRACTOR RESPONSIBILITY PROVISIONS

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

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

Department of General Services  
Office of Chief Counsel

603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## Appendix D

### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## Appendix E

### STANDARD TERMS AND CONDITIONS

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1. Show Service Purchase Contract number on all invoices and correspondence relating to this contract. Address inquiries concerning the payment of invoices to the Comptroller.
2. 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. No exemption certificates are required and none will be issued.
3. The Commonwealth is exempt from Pennsylvania Sales Tax. The Sales and Use Tax Regulations provide that exemption certificates are not required for sales made to government entities. Exemption Certificates will not be issued.
4. Contractor agrees to comply with all applicable laws and regulations of the Commonwealth in carrying out this contract.
5. Contractor, its agents and employees, shall act in an independent capacity and shall not act or be deemed to act as officers, employees or agents of the Commonwealth.
6. Send itemized invoices as directed on contract promptly upon service rendered. Don't include in one invoice items on more than one contract number. (Consider as one contract a consecutive series of service purchase contract forms bearing a single total and number.)
7. Questions concerning this contract should be directed to the Agency Procurement Officer. Any correspondence concerning invoices or the payment of bills should be directed to the "Bill To" address.
8. Regardless of provisions to the contrary found elsewhere in the provisions of this contract, the laws of the Commonwealth of Pennsylvania shall be used in the interpretation of this contract and shall prevail over the laws of any other state in the construction of this contract.
9. Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in this contract.
10. Performance of this contract is not assignable without prior written consent of the Commonwealth.
11. The Commonwealth may terminate this contract for its convenience if Commonwealth determines termination to be in its best interest. Contractor shall be paid for work completed.
12. The Commonwealth's obligations are contingent upon appropriation of funds for the contract purpose.

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13. In carrying out this contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

14. This contract and/or attachments constitutes the entire agreement between the parties.

15. In the event of conflict between any of these terms and conditions and any attachment hereto, these terms and conditions shall prevail.

16. Contractor agrees to report and deliver any abandoned or unclaimed property held by Contractor or its agents, subcontractors or assignees, as defined by and in accordance with the Disposition of Abandoned and Unclaimed Property Act (DAUPA), 72 P.S. §1301.1 *et seq.* A negative report must be filed if Contractor determines, after a records review, that there is no reportable unclaimed property. Instructions and assistance in filing the report are available from the Bureau of Unclaimed Property holder hotline at **1-800-379-3999** or via e-mail at [unclaimedpropertyreporting@ptreasury.gov](mailto:unclaimedpropertyreporting@ptreasury.gov). Additional information regarding the Pennsylvania Abandoned and Unclaimed Property Program is located at [www.ptreasury.gov](http://www.ptreasury.gov).

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#### **ASSIGNMENT OF ANTITRUST CLAIMS**

Vendor and the Commonwealth recognize that in actual economic practice, overcharges by vendor'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 this contract, and intending to be legally bound, vendor assigns to the Commonwealth all right, title and interest in and to any claims vendor now has or may hereafter acquire under state or federal antitrust laws relating to the goods or services which are the subject of this contract.

#### **CONTRACTOR RESPONSIBILITY PROVISIONS**

1. Contractor certifies that it, its affiliates and subsidiaries are not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.

2. If Contractor enters into any subcontracts under this contract with subcontractors who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this contract or any extensions or renewals thereof, the Commonwealth shall have the right to require the Contractor to terminate such subcontracts.

3. The Contractor agrees that it shall be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth which results in the suspension or debarment of the Contractor.

#### **OFFSET PROVISION FOR COMMONWEALTH CONTRACTS**

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and not

being contested on appeal against any payments due the Contractor under this or any other contract with the Commonwealth.

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## CONTRACTOR INTEGRITY PROVISIONS

### 1. Definitions

a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.

b. Consent means written permission signed by a duly authorized officer or employe 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 execution of this agreement.

c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employes, and owners of more than 5 percent interest.

d. Financial Interest means:

(1) ownership of more than a 5 percent interest in any business; or

(2) holding a position as an officer, director, trustee, partner, employe, or the like, or holding any position of management.

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

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

3. The Contractor shall not disclose to others any confidential information gained by virtue of this agreement.

4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration of the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employe of the Commonwealth.

5. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction of request of any officer or employe of the Commonwealth.

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

7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

8. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.

9. The Contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.

10. The Contractor shall cooperate fully with an annual audit conducted by the Treasury Department and any additional audits as Treasury determines necessary. The Contractor will provide the Treasury Department with copies of any audits conducted by an independent entity or other state utilizing the Wagers system.

11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

#### **NONDISCRIMINATION CLAUSE**

During the term of this contract, Contractor agrees as follows:

1. Contractor shall not discriminate against any employe, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, physical ability, age or sex.

Contractor shall take affirmative action to ensure that applicants are employed, and that employes or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, physical ability, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training.

Contractor shall post in conspicuous places, available to employes, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

2. Contractor shall in advertisements or requests for employment placed by it or on its behalf state all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, physical ability, age or sex.

3. Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

4. It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor has delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that Contractor was not on notice of the third-party discrimination or made a good-faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

5. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

6. Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

7. Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency and the Office of Administration, Bureau of Affirmative Action for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Affirmative Action.

8. Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.

9. Contractor shall include the provisions of this nondiscrimination clause in every subcontract so that such provisions will be binding upon each subcontractor.

10. Contractor's obligations under this clause are limited to Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

#### **THE AMERICANS WITH DISABILITIES ACT**

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. §35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28

C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

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

#### **SOCIALLY/ECONOMICALLY RESTRICTED BUSINESS UTILIZATION**

The Contractor must provide the Department of General Services, Bureau of Contract Administration and Business Development, with quarterly reports that indicate whether the Contractor utilized a Minority Business Enterprise, Women's Business Enterprise, or Socially/Economically Restricted Business for activities under this Contract during the quarter and list the names of and the amount paid to the Minority Business Enterprise, Women's Business Enterprise, or Socially/Economically Restricted Business utilized. The first such report shall be due on the 100th day after the starting date of this contract, and subsequent reports shall be due each 100th day thereafter.

#### **NOTICE OF ELECTIONS CODE REPORTING REQUIREMENTS**

The Pennsylvania Election Code provides that any business entity which has been awarded a contract on a non-bid basis by the Commonwealth shall file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of each year. The Contractor may obtain a copy of the reporting form (DSEB-504) and other information regarding this requirement from the Department of State, Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, Pennsylvania 17120 or on the web at [www.dgsweb.state.pa.us/comod/campaignfinance.pdf](http://www.dgsweb.state.pa.us/comod/campaignfinance.pdf), or by phone at 717-787-5280.

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#### **BUDGET IMPASSE**

If the Commonwealth has not enacted an annual General Fund budget, which has been passed by the General Assembly and signed by the Governor, on or before the start of the new fiscal year on July 1, the Commonwealth shall be considered to be in a budgetary impasse. Under such circumstances, Contractor shall continue to render services to Treasury through the budgetary impasse and will invoice Treasury for such services. Once the Commonwealth General Fund budget has been passed by the General Assembly and signed by the Governor, Treasury will pay all outstanding invoices as soon as practically possible, but no later than 45 days. If there are no funds appropriate in the enacted General Fund budget to continue this Agreement, then the termination of this Agreement shall be effective, provided, however, Treasury shall pay for all services rendered during the impasse.