

Request for Proposals
for
Loan Modification Title Insurance Services

Issued by:
Pennsylvania Housing Finance Agency

Request for Proposals
PHFA 2020/21 LOAN MODIFICATION TITLE INSURANCE SERVICES

Issue Date: September 25, 2020

Response Date: October 16, 2020, 2:00 P.M. EST

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Section I
General Information

I-1 Purpose

This Request for Proposals ("RFP") provides interested Vendors (as defined in Section II-1) with information to prepare and submit proposals for consideration by the Pennsylvania Housing Finance Agency ("PHFA") to provide **Loan Modification Title Insurance Services for its Single Family Residential Mortgage Portfolio**.

I-2 Issuing Office

This RFP is being issued for and by PHFA. PHFA is the sole point of contact for this RFP. You may contact Kate Newton if you have any questions or require clarification **in writing only** as follows.

Proposal Submission:

Kate Newton
Director of Loan Servicing
Pennsylvania Housing Finance Agency
211 N. Front St.
Harrisburg, PA 17101
Voice: 717-780-3891
Email: knewton@phfa.org

From the issue date of this RFP until PHFA selects a proposal for award, the above referenced individual at PHFA is the sole point of contact concerning this RFP. Any violation of this condition may cause the Issuing Office to reject the offending Vendor's proposal. A Vendor who shares information contained in its proposal with other Commonwealth personnel and/or competing Vendor personnel may be disqualified.

Calendar of Events	
Deadline for Proposal Submission	October 16, 2020 (2 pm EST)

I-3 Scope

This RFP contains instructions governing the responses to be submitted and the material to be included therein, a description of the services to be provided and requirements that must be met to be eligible for consideration.

I-4 Rejection of Proposals

PHFA reserves the right, in its sole and complete discretion, to reject any and all responses received from any party as a result of this RFP process, and to cancel this solicitation at any time.

I-5 Contract for Services

A specific customized form of that Contract entered into directly with PHFA will govern this procurement including any additional specific contract terms and conditions which may be set forth in writing and agreed upon by PHFA and the successful Vendor

("Engagement Letter"). **Any Vendor must be willing to agree to the Commonwealth Contracting Provisions ("Exhibit A").**

I-6 Term of Engagement

The Term of the Engagement, as set forth in the Engagement Letter/Contract for Services, will commence on the Effective Date, as defined therein, and will generally last for a defined term, unless earlier terminated or extended in accordance with the terms of the Engagement Letter/Contract for Services.

I-7 Vendor's Representations and Authorizations

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

- A. All of the Vendor's information and representations in the proposal are material and important, and PHFA may rely upon the contents of the proposal in entering into an Engagement Letter. PHFA 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) in its proposal independently and without consultation, communication or agreement with any other Vendor or entity, if and as applicable.
- C. The Vendor has not disclosed any aspect of its proposal to any other entity and it shall not disclose any of these items on or before the proposal submission deadline applicable to this RFP.
- D. The Vendor has not attempted, nor will it attempt, to induce any entity or person to refrain from submitting a proposal, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal, if and as applicable.
- 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, if and as applicable.
- F. To the best knowledge of 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 Vendor and except as the Vendor has otherwise disclosed in its proposal, the Vendor has no outstanding or 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 contacted PHFA with any recommendations concerning the need for the services described in its proposal.
- J. Until the selected Vendor receives a fully executed and approved Engagement Letter from PHFA, there is no legal and valid contract, in law or in equity. Vendor understands that fees and costs are generally the responsibility of the Obligor/Conduit Borrower and are contingent upon closing of the financing transaction.

I-8 Incurring Costs

PHFA is not liable for any costs or expenses incurred by the Vendor in the preparation or submission of their proposal to this RFP.

I-9 Prime Contractor Responsibilities

The Contract (and the Engagement Letter) requires the selected Vendor to assume responsibility for all services offered in its proposal. PHFA will consider the selected Vendor to be the sole point of contact with regard to contractual matters.

I-10 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Vendor's ability to meet the requirements of this RFP. Succinct responses are encouraged.

I-11 Proposal Contents

- A. **Confidential Information.** PHFA is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of any submission in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, proposal submissions should not be labeled as confidential, privileged or proprietary or trade secret protected. Any Vendor who determines that it must divulge such information as part of its proposal must submit a signed written statement described below, and must additionally provide a redacted version of its proposal, which removes only the confidential, privileged, proprietary information and trade secrets for required public disclosure purposes.
- B. **Commonwealth Use.** All material submitted with the proposal shall be considered the property of PHFA and may be returned only at its option. PHFA 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, PHFA 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 Federal statute or regulation, or rule or order of any court of competent jurisdiction.

- C. **Public Disclosure.** After the selection pursuant to this RFP, 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, privileged, 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.

I-12 **Information about this RFP and Addenda to the RFP**

This RFP will be posted on the PHFA website at www.phfa.org.

RFPs are generally listed under "Procurement Opportunities" on PHFA's website. Any questions regarding this RFP must be submitted directly ONLY to the above designated individuals at PHFA **in writing only**. Questions and responses, if any, may be provided as an addendum to this RFP and any such addenda will also be posted and available on the PHFA website. Each Vendor shall be responsible for new or revised RFP information. PHFA 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 PHFA. If PHFA deems it necessary to revise any part of this RFP before the proposal response date, PHFA will issue an addendum to all Vendors.

I-13 **News Releases**

Vendors shall not issue news releases, Internet postings, advertisements or any other public communications pertaining to this RFP without prior written approval of PHFA.

I-14 **Response Date**

To be considered, **proposals must be received by PHFA no later than 2:00 p.m.** on the due date listed above. Late submissions will not be accepted. (PHFA in its discretion may accept submissions that are delayed due to exigent circumstances.)

I-15 **Proposals**

To be considered, proposals must consist of a complete response using the format provided in Section IV of this RFP. Proposals must be submitted to PHFA and shall include a paper copy and a complete and accurate copy of all three separate submissions requirements.

Vendors shall make no other distribution of its proposal to any other person or entity. If PHFA selects the Vendor's proposal for award, the contents of the selected Vendor's proposal may become, except to the extent the contents are amended and revised or changed through negotiations, contractual obligations set forth in an addendum to the Contract for Services/the Engagement Letter.

I-16 **Clarifications/Discussions**

Vendors may be required to make an oral or written clarification of their proposal to PHFA to ensure thorough mutual understanding and Vendor's responsiveness to the

solicitation requirements. PHFA will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process. While not required, PHFA reserves the right to conduct discussions with any responsible Vendor to determine the Vendor's qualifications for further consideration and to contact identified references and related entities referenced in submissions. Discussions shall not disclose any information derived from proposals submitted by other Vendors.

I-17 **Contract Award**

Award will be made to the Vendor determined to be the best qualified based on the evaluation factors set forth in this RFP. **PHFA will be using technical qualification as the primary determinant of selection and PHFA expects to look at the totality of the technical proposal, without a point system of gradation.**

Section II

Background/Issuer Information

II-1 **Background**

PHFA services a portfolio of approximately 65,000 mortgages, of which about 55,000, with a balance of just under \$5 billion, are first lien purchase money or refinanced mortgages. All mortgages secure properties located within Pennsylvania. Over half of the 55,000 loans are insured by FHA; about 9% are USDA guaranteed; about 3% are VA guaranteed. The remainder are conventional loans, some of which, but not all, are owned by Fannie Mae.

In situations where the owner is facing a financial hardship and cannot afford their mortgage payment, PHFA pursues loss mitigation options per the requirements of the federal insurer and/or investor with the end goal of helping the borrower retain their home. This often results in a modification to the existing mortgage whereby the terms are modified to make the monthly mortgage payment affordable. This generally entails an increase to the current principal balance, an extension of the maturity date, and a reduction to the interest rate. Federal mortgage insurers and investors require that the existing mortgage, as modified, retain first lien position. To this end, PHFA seeks the services of a vendor to provide property searches, document recording and retrieval services, and certain title insurance products.

This is an RFP seeking a vendor to provide a variety of services relating to loan modification title insurance services in conjunction with its single family residential mortgage portfolio.

II-2 **Issuer Information**

PHFA is a body corporate and politic constituting a public corporation and a governmental instrumentality of the Commonwealth of Pennsylvania, created by the housing finance law (1959, Dec 3, P.L. 1688, amended 1972, Dec 5, P.L. 1259, No. 282, the "Act"). PHFA is authorized under the Act, *inter alia*, to provide financing for rental housing for persons and families of low and moderate income, including the elderly and to participate in specialized federal housing assistance programs.

PHFA works to provide affordable homeownership and rental apartment options for senior adults, low- and moderate-income families, and people with special housing needs. Through its carefully managed mortgage programs and investments in multifamily housing developments, PHFA also promotes economic development across the state.

Since its creation by the legislature in 1972, PHFA has generated more than \$14.3 billion of funding for more than 176,600 single-family home mortgage loans, helped fund the construction of 136,215 rental units, distributed more than \$109.2 million to support local housing initiatives, and saved the homes of more than 50,130 families from foreclosure. PHFA programs and operations are funded primarily by the sale of securities and from fees paid by program users, not by public tax dollars.

PHFA's programs and operations are funded through the income we generate through investment activity, through program fees and through financing programs. As a mission-driven agency providing affordable housing products to the citizens of the Commonwealth, we offer programs and administer funds on behalf of state, federal government, and tax related programs and we receive fees to deliver these programs.

In connection with its single family mortgage portfolio, PHFA uses the services of title insurance companies to provide certain services and products relating to title insurance for loans being modified as part of a loss mitigation program.

Services of the Vendor for PHFA will entail expertise and proficiency in a variety of aspects concerning real estate, federal and state law, regulation and guidelines, as well as investor/insurer title insurance and lien priority guidelines.

Section III

Work Statement

III-1 Submission Requirements

Vendors seeking to be considered to provide Loan Modification Title Insurance Services to PHFA must submit all items described below in each of the following two Sections: Technical Submission and Cost Submission.

Vendors shall make no other distribution of its proposal to any other person or entity.

III-2 Technical Submission

Technical Submission shall be the primary determinant in selection under this RFP.

- A. PHFA is seeking the services identified below. In narrative form, outline the Vendor's ability to timely and satisfactorily fulfill each of the services. The description of the Vendor's abilities should also include information regarding staffing size and expertise, experience with other Housing Finance Agencies, proficiency and ability to comply with applicable federal and state law and regulation as well as any investor/insurer guidelines relating to loan modifications and title insurance (including whether the Vendor has dedicated regulatory compliance personnel on staff), and any established relationships with title

insurance companies. The description should also note if the Vendor is familiar with and is able to utilize the Black Knight LoanSphere Invoicing system in order to submit invoices electronically to PHFA.

1. Provide property reports to show voluntary and involuntary liens and judgments filed as well as a listing of any delinquent property taxes. Please also indicate whether PHFA would be able to both order the searches and track them online.
 2. Provide a lien priority title insurance product in the form of an ALTA residential limited coverage Mortgage Modification Policy (MMP), or a title endorsement to an existing ALTA title policy.
 3. Document recording services.
 4. Document retrieval as needed, such as payoff statements from municipal lienholders or copies of other recorded liens.
 5. Provide invoices to PHFA on at least a monthly basis. Please also indicate whether the Vendor currently utilizes the Black Knight LoanSphere Invoicing system (the "Invoicing System") to submit invoices and, if not, whether the Vendor would be willing to implement the Invoicing System. PHFA can assist in getting the selected vendor onboarded to the Invoicing System if needed.
- B. Please describe Vendor's customer relations and the ability of clients to gain expedient contact with the proper personnel to resolve any title issues.
- C. Identify whether Vendor has specialized counsel to handle any insurance or claims litigation.
- D. In narrative form, please describe Vendor's information and data security infrastructure by addressing the items below.
1. Data Protection/ Data Breach and Consumer Information Protocols.
 2. Describe Vendor's security systems to protect consumer data.
 3. Have you had a data breach within the past three years? If so, please describe Vendor's response to the breach.
 4. What are Vendor's employee training programs/requirements?
 5. What systems and steps does Vendor undertake to safeguard communications and confidential information with clients?

III-3 Cost Submission

Please provide a pricing schedule for the services described above. PHFA is seeking at least Net 30 payment terms. **This RFP provides services for the overall single family mortgage portfolio of PHFA on an as-needed basis. Accordingly, there is no set number of transactions determined as of this date. In submitting your cost proposal, minimum fee requirements must be articulated by the Vendor, but will be subject to negotiation and to any ultimate cap established by PHFA. Fees will be set forth in the addendum to the Contract for Services (the Engagement Letter).**

Section IV Information Required From Vendors

IV-1 **Proposal**

Vendors seeking to be considered to provide loan modification title insurance services to PHFA must submit all items described in Section III of this RFP.

- A. **Technical Submission** (This is the major determinant used by PHFA and should contain all information the Vendor wants PHFA to consider in making its determination of Vendor's qualification to provide services to PHFA). In addition, while the cost of services is a factor in selecting a vendor, other factors such as experience, ability to provide all of the services requested, and efficiency in providing all services will also be considered. Of critical importance is Vendor's ability to provide an efficient onboarding process as PHFA desires full implementation of services as soon as practicable, but not later than November 1, 2020.
- B. **Cost Submission.**

IV-2 **Instructions for Proposal Submissions**

- A. **Response Format.** Proposals are to be straightforward, clear, concise, and specific to the information requested.
- B. **What to Submit with Your Proposal.** Submit **only** the following documents:
 - 1. **Paper/Hard Copy Submission:**
 - a. In a separate sealed envelope - Document #1: Technical Submission—Submit one paper copy.
 - b. In a separate sealed envelope - Document #2: Cost Proposal—Submit one paper copy.
 - 2. **Electronic Submission:** Electronic submissions in response to this Request for Proposal will be accepted as long as they meet the following criteria:
 - a. Must be sent via email to: ServicingRFPs@phfa.org
 - b. Document standards:
 - i. Must be in Microsoft Word or PDF format
 - ii. File name must end in .doc, .docx or .pdf

Section V Criteria for Selection

V-1 Evaluation of Proposals

PHFA has selected a committee of qualified personnel to review and evaluate timely submitted proposals and to make its selection.

V-2 Evaluation Criteria

The following criteria will be used in evaluating each proposal:

A. Technical - **Technical criterion for this RFP shall be the predominant determinant of selection.** Evaluation will include a review of all of the following items listed in Section III-2 including:

1. Personnel Qualifications
2. Vendor Qualifications
3. Prior Comparable Experience

PHFA will look at the totality of technical qualification in its evaluation.

B. Cost Submission

V-3 Final Recommendation and Award

A. After any discussions with responsible Vendors, PHFA will combine the evaluation committee's final recommendations regarding technical submission and shall coordinate its selection of Vendors.

B. Award(s) will be made to one or more Vendors determined to be the best qualified to perform the specific work described in this RFP.

C. PHFA has the discretion to reject all proposals, or cancel this RFP at any time prior to the time a contract is fully executed, when it is in the best interests of PHFA. The reasons for the rejection or cancellation shall be made part of the contract file.

EXHIBIT A
CONTRACTING PROVISIONS

ARTICLE I.
CONTRACTOR'S INTEGRITY

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

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

- a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- c. "Contractor" means the individual or entity that has entered into this contract with the Commonwealth.
- d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
- e. "Financial Interest" means either:
 - (1) Ownership of more than a five percent (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.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with

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

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

ARTICLE II. INSURANCE AND LIABILITY

It is understood and agreed that Contractor's standard liability insurance policies shall protect, or shall be endorsed to protect, the Agency, for the Term of this Contract, from claims of bodily injury and/or property damage arising out of any activities performed by Contractor or its employees or agents under this Contract, including business and non-business invitees, and their property and all other property sustaining damage as a direct result of the execution of this project when validly present on Contractor premises, whether or not actually engaged in the project at the time the claim inures. Such policies shall not include any provision limiting then existing sovereign immunity rights of the Agency and/or the Commonwealth. Upon request, Contractor shall furnish to the Agency proof of insurance as required by this paragraph.

Contractor shall provide Workers' Compensation insurance where the same is required and shall accept full responsibility for the payment of premiums for Workers' Compensation and social security and any other taxes or payroll deductions required by law for its employees who are performing activities specified by this Contract.

**ARTICLE III.
INDEMNIFICATION**

Contractor shall indemnify and hold the Agency and the Commonwealth, harmless from any and all claims, demands and actions based on or arising out of any activities performed by the Contractor, any of its employees, agents or subcontractors under this Contract and shall defend any and all actions brought against the Agency or the Commonwealth based upon such claims or demands.

**ARTICLE IV.
CONTRACTOR'S RESPONSIBILITY**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, 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 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 Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

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**

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

**ARTICLE V.
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 discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or 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.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing 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 contracted services are performed shall satisfy this requirement for employees with an established work site.

6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
7. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
8. 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.
9. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. 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.

ARTICLE VI. AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of *the Americans with Disabilities Act*, 28 C.F.R. § 35.101 *et seq.* Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, 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 and the Lender through contracts with outside contractors. Contractor shall be responsible for and agrees to indemnify and hold the Agency and the Commonwealth harmless from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Agency and/or the Commonwealth as result of the Contractor's failure to comply with the provisions of this paragraph.

Contractor shall be responsible for and agrees to indemnify and hold the Agency and the Commonwealth harmless from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Agency and/or the Commonwealth as result of the Contractor's failure to comply with the provisions of this Article VI.

ARTICLE VII. RIGHT-TO-KNOW LAW

Contractor understands that this Contract and records related to or arising out of this Contract are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL"). Contractor is required to adhere to the following requirements:

1. Contractor shall notify the Agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
2. If Contractor fails to provide access to, and copies of the requested information to the Agency, within the period specified by the Agency, the failure shall be considered an event of default and Contractor shall pay, indemnify and hold the Agency harmless for any damages, penalties, detriment or harm that the Agency may incur as a result of Contractor's failure to produce the requested information.
3. Contractor agrees not to challenge the Agency's decision to deem the requested information a Public Record as defined by the RTKL, or in any way hold the Agency liable for such a decision. However, if Contractor believes the requested information to be a Trade Secret as defined by the RTKL, then Contractor will provide a statement signed by a representative of Contractor explaining why the requested material is exempt from public disclosure under the RTKL within the timeframe prescribed by the Agency. The Agency's determination as to whether the requested information is a Public Record is dispositive of the question as between the parties to this Contract.

ARTICLE VIII. CONFLICT OF INTEREST

Contractor, their subcontractors, and assignees, on behalf of employees and/ or agents, covenants that they presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of their activities hereunder. Contractor, their subcontractors, and assignees further covenant that in the performance of this Contract they will not knowingly employ any person having such interest.

ARTICLE IX. COMPLIANCE WITH APPLICABLE LAWS

Contractor must agree to carry out all responsibilities under this Contract in accordance with all applicable federal and state, laws, regulations and contracting provisions. If required by the funding source, Contractor must provide appropriate records and audits to support the funding and expenditures made hereunder and agrees to cooperate with the Agency to satisfy all applicable requirements.