



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG**

Dear Supplier:

You are invited to submit a response to the attached INVITATION FOR BID (IFB). The Department of General Services, acting in partnership with the Department of State, will award contracts to all responsive and responsible bidders to provide Commonwealth certified Voting Machine Systems, Components and related services to County Election Officials in the Commonwealth of Pennsylvania.

The Commonwealth of Pennsylvania is mandated by the Federal Help America Vote Act of 2002 (HAVA) to meet certain requirements in all of its precincts by the May 2006 Primary. Counties within the Commonwealth will be purchasing Voting Machine Systems during the last quarter of 2005. We anticipate the counties will purchase between 13,000 to 22,000 voting machines from September through December 2005. However, there are no purchase guarantees and the counties are under no obligation to use the contracts once awarded.

The purpose of this IFB is to provide purchase options and competitive pricing to County Election Officials throughout the Commonwealth as they purchase new voting systems to meet HAVA requirements beginning with the 2006 Primary Elections. Although pricing will not be a factor of award for this contract, it certainly will be a factor for each County Election Officials' final selection of a supplier and product. Consequently, each bidder needs to present their very best response to this IFB.

Responses must be submitted to the following location no later than 2:00 PM EST July 14, 2005:

**DGS Bureau of Procurement
Bid Room
Room 414 North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17125
Or
P.O. Box 1365
Harrisburg, PA 17105-8365**

Questions should be directed via e-mail to Dawn Spero (dspero@state.pa.us) no later than Noon on June 28, 2005.

Sincerely,

Dawn Spero, CPPB



COMMONWEALTH OF PENNSYLVANIA
Department of General Services

COSTARS
INVITATION FOR BIDS
COVER SHEET

Contract No.: COSTARS-10
Short Description of Supply: VOTING SYSTEMS
Bid Mailing Date: June 1, 2005
Bid Opening Date & Time: July 14, 2005, 2:00 P.M.
Bid Opening Room: Room 414 North Office Building, Harrisburg, PA 17125

This Invitation For Bids is comprised of the following documents:

1. COSTARS Bid/Contract, GSPUR-15 COSTARS (04/04/05)
2. Instructions To Bidders for COSTARS Contracts, COSTARS 11 (Rev. 04/04/05)
3. COSTARS Contract Standard Terms and Conditions, COSTARS 12 (Rev. 04/04/05)
4. COSTARS Contract Special Terms and Conditions
5. Exhibit A Commonwealth of Pennsylvania Requirements of Electronic Voting Systems
6. Exhibit B Title III of Help America Vote Act (HAVA)
7. Exhibit C Directive Concerning the Conduct of Electronic Voting System Examination by the Commonwealth of Pennsylvania issued by the Secretary of the Commonwealth with Attachment I: Outline of the Content and Format for a Presentation Affidavit; Attachment II: An Explanation and Selected Examples of "the Pennsylvania Method"; and Attachment III: Indemnification and Warranty.
8. Exhibit D Training Requirements for County Election Officials and Staff
9. Exhibit E Source Code Escrow
10. Bid Item Workbook

Unless included with this Invitation For Bids, these documents are available on-line at www.dgs.state.pa.us or by contacting the Bureau of Procurements' Vendor Service Section (Fax No. 717-787-0725, Telephone No. 717-787-2199 or 4705).

In addition to complying with the bid submission requirements of Section 1 of the Instructions To Bidders for COSTARS Contracts, the bidder is required to submit all other specified documents as stated in this Invitation For Bids. Failure to meet these requirements may be cause for rejection of the bid.

The COSTARS contract(s) resulting from this Invitation For Bids are intended **ONLY** for the use of local public procurement units and state affiliated entities. Commonwealth executive and independent agencies are prohibited from procuring items through COSTARS contracts.

Please note that all bidders must submit with their bid a check or money order in the amount of \$500 payable to "Commonwealth of Pennsylvania" for administrative fees (see #9. Administrative Fees in Instructions to Bidders, page 5).

Return Bid To:
DGS Bureau of Procurement
Bid Room
Room 414 North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17125
Or
P.O. Box 1365
Harrisburg, PA 17105-8365

INSTRUCTIONS TO BIDDERS FOR COSTARS CONTRACTS

1. **BID SUBMISSION:**

The Department of General Services (DGS) requests bids for the item(s) described in the Invitation for Bids. The Invitation for Bids Cover Sheet, the COSTARS Bid/Contract form, these Instructions To Bidders For COSTARS Contracts, the COSTARS Contract Standard Terms and Conditions ("Standard Terms and Conditions"), the COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions") and all the documents referenced on these forms will be referred to collectively as the IFB, and the COSTARS Contract that may be awarded as a result of this IFB will be referred to as the "Contract" in this document.

a. The Bidder must complete the COSTARS Bid/Contract form with the information relevant to the bid, including the Bidder's name and address; federal identification number or social security number; contact person name, telephone and fax numbers, and e-mail and web addresses; prompt payment discount (if any); and number of days required for delivery following receipt of any purchase order ("PO") issued under the Contract.

b. The individual(s) signing the Bid must be authorized to sign for and to bind the Bidder to provide the item(s) at the price(s) and in accordance with the terms and conditions set forth in the Bidder's Bid and in the IFB.

c. The Bidder must sign the Bid in ink. DGS will reject any bid priced or signed in pencil.

d. The Bidder shall submit its Bid, consisting of the completed and signed COSTARS Bid/Contract form and all other documents required by the IFB, in a sealed envelope clearly marked "Bid" on the front near the submission address. The front of the Bid envelope must also include the assigned Contract number and the bid opening date and time.

e. Each Bidder is responsible to ensure that DGS receives the Bid in the Bid Opening Room (shown on the Invitation for Bids Cover Sheet) prior to the date and time set for the opening of Bids ("Bid Opening Time"), regardless of the method of delivery used. DGS will reject as untimely any Bid that arrives at the Bid Opening Room after the exact Bid Opening Time, regardless of reason for the late arrival. In the event that, due to inclement weather, natural disaster, or other cause, the DGS office where the Bid Opening Room is located is officially closed at the Bid Opening Time, the Bid opening shall be automatically postponed until the next Commonwealth business day at that location, unless DGS otherwise notifies the Bidders. The Bid opening time shall remain the same for any opening automatically occurring on the next Commonwealth business day.

1. To ensure that a mailed Bid arrives in the Bid Opening Room prior to Bid Opening Time, DGS must receive the mailed Bid at the Commonwealth's Central Mail Processing Location, Farm Show Building, North Cameron Street, Harrisburg, PA ("Central Processing"), at least twenty-four hours prior to the Bid Opening Time. "Mailed Bids" include Bids submitted through the United States Postal Service or any express mail service. If a Bidder decides to mail its Bid by United States Postal Service, the Bidder should include adequate time for mail delivery to Central Processing at least twenty-four hours prior to the Bid Opening Time. If a Bidder uses an express delivery service, it shall advise the service to deliver the Bid to the Central Processing Location at least twenty-four hours prior to Bid Opening Time. DGS will not accept any express delivery packages at the Bid Opening Room.

2. If a Bidder decides to deliver its Bid in person or through an authorized representative, such delivery can only be made by an individual that the Bidder has specifically authorized to deliver Bids to DGS. Authorized individuals delivering Bids must, before the Bid will be received by the Department, present picture identification and provide written evidence from the Bidder of his/her authorization to deliver the Bid on behalf of the Bidder.

f. DGS will open all Bids timely received in the Bid Opening Room publicly, in the presence of one or more witnesses, at the Bid Opening Time and in the Bid Opening Room.

g. Bids must be firm, with no qualifications. If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions referenced in the IFB, DGS will reject the Bid. If

the items the Bidder offers are not in conformance with the Contract specifications, as determined in the DGS's sole discretion, DGS will reject the Bid.

2. BIDDER'S REPRESENTATION AND AUTHORIZATION:

a. Each Bidder, by making its Bid, understands, represents, and acknowledges all of the following terms:

1. The Bidder has read and understands the terms and conditions of the IFB and makes its Bid in accordance with those terms and conditions.

2. The item(s) offered in the Bid will conform to the specifications in the IFB, without exceptions or qualifications.

3. The Bidder has determined its Bid price(s) and amount independently, and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder, excepting contacts with potential subcontractors or suppliers for this Contract.

4. The Bidder has not disclosed the Bid price(s) nor the amount to any other firm or person who is a bidder or potential bidder, nor will the Bidder disclose the Bid price(s) or amount to such persons before Bid Opening Time.

5. The Bidder has not attempted, and agrees it will not attempt, to induce any firm or person to refrain from bidding on the Contract, to submit a bid higher than the Bidder's price(s) or amount, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

6. The Bidder submits its Bid in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

7. To the best of the knowledge of the person signing the Bid for the Bidder, the Bidder, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as disclosed by the Bidder in its Bid.

8. Neither the Bidder, nor any of its subcontractors or suppliers included in this Bid, are under suspension or debarment by the Commonwealth, or any governmental entity, instrumentality, or authority, and if the Bidder cannot so certify, then it shall submit with its Bid a written explanation of why it cannot make such certification.

9. To the best of the knowledge of the person signing the Bid for the Bidder, except as the Bidder has otherwise disclosed in its Bid, the Bidder 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 Bidder that is owed to the Commonwealth.

10. All of the Bidder's information and representations in the Bid are material and important and will be relied upon by the Commonwealth in awarding the Contract and by any Purchaser issuing a PO under the Contract. DGS will treat, and any Purchaser may treat, any Bidder misstatement as fraudulent concealment of the true facts relating to the Bid submission, as a punishable offense under Section 4904 of the Pennsylvania Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes.

11. In accordance with Section 6 of the Standard Terms and Conditions, the Bidder understands that it has no expectation or guarantee of any specific quantity or number of POs from prospective Purchasers.

2. BIDDER'S REPRESENTATION AND AUTHORIZATION (continued):

12. Neither DGS nor any Commonwealth agency will make purchases under the Contract. Only third-party Purchasers as defined in Section 2 of the Standard Terms and Conditions may issue Contract POs.

b. Each Bidder, by making its Bid, authorizes all Commonwealth agencies to release to DGS information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

c. If DGS awards a Contract to the Bidder, the Bidder agrees that it intends to be legally bound to the Contract, which is formed between DGS and the Bidder, and to any PO from a Purchaser under the Contract.

3. PRICES:

The successful Bidder(s) will be required to provide the awarded items to Purchasers issuing POs under this Contract at the prices quoted in its Bid for the duration of this Contract. The successful Bidder(s) may offer voluntary price reductions and provide the awarded items at prices that are lower than its Contract prices.

4. CONTRACT DELIVERABLES:

Unless otherwise specified in the Special Terms and Conditions, all products offered by Bidders must be new or remanufactured. A "new" product is one for which the Purchaser will be the first user after the product is manufactured or produced. A "remanufactured" product is one that 1) has been rebuilt, using new or used parts, to a condition which meets the original manufacturer's most recent specifications for the item; 2) does not, in DGS's sole discretion, differ in appearance from a new item; and 3) has the same warranty as a new product. Unless otherwise specified in the Special Terms and Conditions, a Bidder may propose only new and remanufactured products in its Bid. This clause shall not be construed to prohibit Bidders from offering products with recycled content, provided the product itself is new or remanufactured.

5. MODIFICATION OR WITHDRAWAL OF BID:

A Bidder may withdraw or modify its Bid only in accordance with the following requirements:

a. A Bidder may modify its Bid prior to the Bid Opening Time as follows:

1. If a Bidder intends to modify its Bid by written notice, the Bidder must deliver the Bid modification in a sealed envelope with a notation on the cover identifying the assigned Contract Number and the Bid Opening Time, marked with the words "Bid modification" on the face of the envelope. The notice contained in the sealed envelope must identify the particular Bid to be modified, including the specific modification being made, and the Bidder must sign the notice in ink, including evidence of authorization for the individual signing to modify the Bid on the Bidder's behalf. To ensure that Bid modifications that a Bidder sends by US Mail or by express delivery service arrive in the Bid Opening Room prior to Bid Opening Time, the Bidder must send the modification in sufficient time so that it is received at the Central Processing Location at least twenty-four hours prior to the Bid Opening Time. DGS will reject any Bid modification received after the Bid Opening Time.

2. If a Bidder intends to modify its Bid in person, the individual who will modify the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification, and provide evidence of his/her authorization by the Bidder to modify the Bid. If a Bidder intends to modify its Bid in person, the Bidder may do so only in the presence of a DGS employee, who will observe the Bidder representative's actions to modify the Bid without reading either the original Bid or the modification.

5. MODIFICATION OR WITHDRAWAL OF BID (continued):

b. A Bidder may withdraw its bid prior to the exact hour and date specified for Bid Opening Time as follows:

1. If a Bidder intends to withdraw its Bid by written notice, the Bidder must deliver a written withdrawal that specifically identifies the Contract number for the Bid being withdrawn. The Bidder must sign the notice in ink, including evidence of authorization for the individual signing to withdraw the bid on the Bidder's behalf. To ensure that a Bid withdrawal that a Bidder sends by US Mail or express delivery service arrives at the Bid Opening Room prior to Bid Opening Time, the Bidder must send the withdrawal notice in sufficient time so that it is received at the Central Processing Location at least twenty-four hours prior to the Bid Opening Time. Except as provided in Subsection 5.c. of these General Conditions, DGS will reject any Bid withdrawal received after the Bid Opening Time.

2. If a Bidder intends to withdraw its Bid in person, the individual who will withdraw the Bid must arrive in the Bid Opening Room prior to the Bid Opening Time, show a picture identification, and provide evidence of his/her authorization by the Bidder to withdraw the Bid.

c. A Bidder is permitted to withdraw a Bid after the Bid Opening Time only under the following conditions:

1. The Bidder submits a written request for withdrawal.

2. The Bidder presents credible evidence in its written request that the reason for a lower Bid price was a clerical or mathematical mistake as opposed to a mistake in judgment and was due to an unintentional arithmetical error/omission of a substantial quantity of work, labor, material, or services in the direct computation of the Bid amount.

3. The Bidder's request for relief with supporting documentation of the error must reach the Issuing Office within three (3) business days after the Bid opening, and before the Contract award.

4. The Bid withdrawal cannot result in the award of the Contract on another Bid of the same Bidder, its partner, or a corporation or business venture owned by or in which the Bidder has a substantial interest.

5. The Bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor, without the written approval of the Issuing Office.

d. Except as provided in subsection c. of this Section 5., a Bidder may not modify, withdraw, or cancel its Bid for a minimum period of sixty (60) days following the Bid Opening Date. This award period may be extended by mutual agreement. If the Bidder withdraws its Bid (except as permitted in subsection c.) prior to the expiration of the award period or fails to comply with the requirements set forth in the IFB, including but not limited to any requirement to submit performance or payment bonds or insurance certificates within the required time period, the Bidder shall be liable to DGS for costs and damages associated with any re-award or re-bid.

e. After the receipt of Bids, the Issuing Office shall have the right to contact any Bidder to:

1. clarify the Bid to confirm the Issuing Office's understanding of statements or information in the Bid, or

2. obtain additional information on the items offered, provided the IFB does not require the rejection of the Bid for failure to include such information.

6. REJECTION OF BIDS:

DGS reserves the right to reject any and all Bids, to waive technical defects or any informality in Bids, and to accept or reject any part of any Bid in the best interests of the Commonwealth, as determined in DGS's sole discretion. An unsigned Bid is not a waivable technical defect or informality.

7. AWARDS:

DGS is using the multiple award method of contract award as set forth in Section 517 of the Commonwealth Procurement Code, 62 Pa.C.S. § 517, to contract for the items covered by this IFB. Unless DGS rejects all Bids, and except as otherwise provided by law, DGS will award a COSTARS contract by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive Bidders.

8. APPLICABILITY:

COSTARS contracts are solely for the use of local public procurement units and state affiliated entities, as defined in Section 2 of the COSTARS Contract Standard Terms and Conditions. Commonwealth executive and independent agencies are prohibited from procuring items through COSTARS contracts.

9. ADMINISTRATIVE FEES:

As specified in Section 1902 of the Commonwealth Procurement Code, *as amended*, 62 Pa.C.S. § 1902, DGS will award Contracts to Bidders for the sole benefit of the third party Purchasers. Contractors will be required to pay a \$500 one-time set-up fee and a \$500 annual renewal fee for the privilege of selling to Purchasers under the Contract.

a. The Bidder shall submit with the Bid a check in the amount of five hundred dollars (\$500), made payable to "Commonwealth of PA," as a one-time Contract set-up fee. DGS will not award a contract to any Bidder until the Bidder has paid the \$500 Contract set-up fee. If DGS does not receive the fee, DGS may reject the Bid as nonresponsive. DGS will return the check of any Bidder whose Bid is rejected.

b. The Contract will renew automatically on the anniversary of the Effective Date, or the date specified in the Special Terms and Conditions, as applicable, up to the number of renewals specified in the Special Terms and Conditions, unless: (1) the Contractor fails to submit a check made payable to "Commonwealth of PA" in the amount of five hundred dollars (\$500) no later than 30 days prior to the anniversary date; (2) either party provides the other party with written notice that it does not intend to renew; or (3) the Contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

10. BID PROTEST PROCEDURE:

DGS's bid protest procedures are set forth on the DGS website at www.state.pa.us, and DGS will disregard any protest that is not filed in compliance with these procedures. The Bidder acknowledges that a Contractor may not file any protest, claim, or other action against DGS or the Commonwealth when such action is based upon a PO, and that such actions shall be taken directly to the Purchaser.

11. QUESTIONS:

Interested parties shall direct any questions concerning Contract conditions and specifications to the attention of the DGS Commodity Specialist identified in the IFB.

COSTARS CONTRACT STANDARD TERMS AND CONDITIONS

1. PURPOSE OF CONTRACT

The Department of General Services ("DGS") is establishing this COSTARS Contract ("Contract") for the exclusive use of local public procurement units and state affiliated entities in accordance with the requirements of Act 77 of 2004, amending Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902.

2. PURCHASERS UNDER THE CONTRACT

a. The Contractor understands that it will not be providing any items directly to DGS or to any Commonwealth agency under the Contract. DGS is acting as a facilitator for local public procurement units and state-affiliated entities (together, "Purchasers") who may wish to purchase supplies under the Contract. A "local public procurement unit" is:

- Any political subdivision;
- Any public authority;
- Any tax exempt, nonprofit educational or public health institution or organization;
- Any nonprofit fire, rescue, or ambulance company; and
- To the extent provided by law, any other entity, including a council of governments or an area government that expends public funds for the procurement of supplies, services, and construction.

A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency.

b. Purchasers are required to register with DGS, and only those entities registered with DGS may purchase from the Contract. Currently, there are several thousand potential Purchasers registered with DGS. To view a list of the registered entities, please visit the DGS COSTARS Website at www.dgs.state.pa.us/costars.

c. Purchasers have the option to purchase from a Contract awarded under this IFB, from a DGS Statewide contract with awarded contractor(s) for Commonwealth agencies' use, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements.

d. Purchasers who participate in this Contract and issue purchase orders ("POs") to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this contract without joining the Commonwealth or DGS as a party.

3. TERM OF CONTRACT

The term of the Contract shall commence on the Effective Date (as defined in this Section 3) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

a. The Effective Date shall be:

1) the date the contract is fully executed and all approvals have been obtained as required by Commonwealth contracting procedures, or

2) the date identified in the COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions"), whichever is later. The Contract shall not be legally binding until after DGS sends the fully-executed Contract to the Contractor.

b. The Contractor shall not start performance under this Contract, nor shall the Contractor represent to any prospective Purchaser that the Contractor is authorized to provide supplies under this Contract, until the Effective Date has arrived and the Contractor has received a copy of the fully-executed Contract from DGS. The Contractor understands and accepts that a Purchaser has no obligation to pay the Contractor for any supply furnished, work performed, or expenses incurred under this Contract at any time, and that only a PO from a Purchaser shall trigger any delivery under this Contract.

c. The Contract will renew automatically on the anniversary of the Effective Date, or the date specified in the Special Terms and Conditions, as applicable, up to the number of renewals specified in the Special Terms and Conditions, unless: (1) no later than 30 days prior to the anniversary date, the Contractor fails to submit a check in the amount of five hundred dollars (\$500), made payable to "Commonwealth of PA"; (2) either party provides the other party with written notice that it does not intend to renew; or (3) the contract was earlier terminated in accordance with the provisions of Section 24 of the Standard Terms and Conditions.

d. DGS reserves the right, upon notice to the Contractor, to extend the Contract or any part of the Contract for up to three months upon the same terms and conditions. DGS will extend the Contract only to prevent a lapse in Contract coverage for Purchasers, and only for up to three months, until DGS enters into a new contract covering the Contract items.

4. PURCHASE ORDERS

Purchasers may issue POs against the Contract either directly using the Contractor's dedicated website ("online orders") or through any other means acceptable to the Contractor. Each PO will incorporate the terms and conditions set forth in the Contract.

Any PO delivered or transmitted to the Contractor after 4:00 p.m. will be considered received the following business day.

For electronically-issued POs, the following terms apply:

a. Upon receipt of a PO, the Contractor shall in return promptly deliver or transmit an acknowledgement to the Purchaser. A PO shall not give rise to any Contractor obligation to deliver or to any Purchaser obligation to receive and pay for delivered products, unless and until the Purchaser has received a Contractor acknowledgement of the PO.

b. The parties agree that no writing in addition to the PO and acknowledgement shall be required to make the PO legally binding, notwithstanding contrary requirements in any law. The parties agree not to contest the validity or enforceability of an electronic PO or acknowledgement under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements are required to be in writing signed by the parties. A printed record of any electronic PO or acknowledgement will be admissible as evidence in any judicial, arbitration, mediation, or administrative proceedings to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall contest the admissibility of copies of POs or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the PO or acknowledgement were not in writing or signed by the parties. A PO or acknowledgment shall be deemed to be genuine for all purposes if it is transmitted to the location designated in these Terms and Conditions for such documents.

c. Each party will immediately take steps to verify any document that appears to be garbled in transmission or improperly formatted, including re-transmission of any such document.

5. INDEPENDENT CONTRACTOR

In performing the required Contract obligations, the Contractor agrees that it will act as an independent contractor, and not as an employee or agent of the Commonwealth, DGS, or any Purchaser.

6. THIRD PARTY BENEFICIARIES

The Contractor understands and acknowledges that there is no guarantee that any prospective Purchaser will place a PO under this Contract, and that it is within the sole discretion of the Purchaser whether to procure from the Contract or to use another procurement vehicle.

a. The selection of a particular contractor to provide a Contract item to a particular Purchaser will be based upon best value or return on investment, within the sole discretion of the Purchaser. The Contractor shall have no right to protest Purchaser's selection of a contractor under this procurement or any other contract.

b. The Contractor agrees that any dispute concerning a particular PO will be resolved between the Contractor and the Purchaser, without DGS participation.

7. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Contract.

8. ENVIRONMENTAL PROVISIONS

In the performance of this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

9. CONTRACTOR DEDICATED WEBSITE

DGS strongly encourages the Contractor to provide a dedicated website for Purchasers ("COSTARS Website"), including a complete listing with Contract pricing for all items required under the Contract, product and customer support information, and the capability for COSTARS purchasers to place online orders for Contract items. If the Contractor provides a COSTARS Website, the Contractor agrees to permit DGS to provide a link from the DGS website to the COSTARS Website to facilitate access by prospective Purchasers.

10. PRICING, COMPENSATION, AND INVOICES

The Contractor shall be required to furnish the awarded item(s) to Purchasers issuing POs under this Contract at the price(s) quoted in the Contractor's bid for the term and any and all renewals of this Contract, as further specified in this Section. After delivering the Contract item(s) to the Purchaser, the Contractor shall promptly send an invoice, including the PO number and itemized by line item, to the Purchaser's address specified in the PO. The invoice should include only those amounts due under the PO for items timely and satisfactorily delivered to the Purchaser.

a. The Contractor may offer voluntary price reductions and provide Contract items at prices lower than the Contractor's Contract prices for the items. The Contractor shall be compensated only for item(s) delivered to and accepted by the Purchaser.

b. The pricing for each Contract item shall include the cost of delivery to any destination within the Commonwealth of Pennsylvania as may be further limited by the Special Terms and Conditions, and there shall be no minimum order for shipments qualifying for F.O.B. delivered prices.

c. Because some smaller Purchasers may not have readily available Internet access, awarded Suppliers will also be required to provide hard copies of pricing information via fax or mail to any Purchaser requesting such information within five (5) working days after receipt of the Purchaser's request.

d. The Contractor's price shall include the warranty specified in Paragraph 13 below.

11. PAYMENT

Purchasers electing to participate in the Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor. DGS shall require the Purchaser to put forth reasonable efforts to make payment by the Required Payment Date, defined as (a) the date on which payment is due under the PO terms, (b) 30 days after a Purchaser receives a completed invoice for items the Purchaser has accepted at its "Bill To" address on the PO if no payment date is specified in the PO, or (c) any later payment date specified on the invoice.

a. The Purchaser may delay payment if the invoice amount is greater than the Contract price(s).

b. The Contractor shall not construe any payment as the Purchaser's acceptance of any Contract item(s).

c. DGS, on behalf of the Purchasers, reserves the right for any Purchaser to conduct testing and inspection after payment within a reasonable time after delivery, and for that Purchaser to reject any or all Contract item(s) if such post payment testing or inspection discloses any defect or failure to meet Contract specifications.

d. The Contractor agrees to accept any Purchaser payment made through the use of a VISA card or MasterCard.

12. TAXES

A Purchaser may be exempt from excise taxes imposed by the Internal Revenue Service, Pennsylvania state sales tax, local sales tax, public transportation assistance taxes, and fees and vehicle rental taxes. A Purchaser may be registered with the Internal Revenue Service to make tax-free purchases. DGS will require each Purchaser claiming any tax exemption to complete the appropriate areas on the PO form to notify the Contractor of the applicable tax exemptions. The Pennsylvania Department of Revenue's regulations provide that exemption certificates are not required for sales made to governmental entities and no such certificates are issued.

13. WARRANTY

The Contractor warrants that all item(s) furnished by the Contractor, either itself or through its agents and subcontractors, shall be free and clear of any defects in workmanship or materials.

a. The Contractor shall pass through to the Purchaser the manufacturer's warranty for all Contract Items. The Contractor shall correct any problem with the Contract Item(s) and/or replace any defective part with a part of equivalent or superior quality, without additional cost to the Purchaser.

b. The Contractor warrants that all items to be provided under the Contract meet the requirements of Section 4 of the Instructions To Bidders ("Contract Deliverables").

c. The warranty period for a Contract Item shall commence upon delivery of the Contract Item to the Purchaser at the Purchaser's specified address.

14. DELIVERY

The Contractor shall deliver all item(s) F.O.B. Destination to the address specified on the PO.

a. The Contractor shall deliver all items ordered from this Contract within time period specified in the Contract, and, if no time period is specified, within a reasonable time, not to exceed 30 calendar days after receipt of any order, unless the Contractor and the Purchaser shall otherwise agree in writing. Time is of the essence in the performance of this Contract and, in addition to any other remedies, the Purchaser may terminate any PO for failure to make delivery as specified in this Contract and the PO.

b. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to the Purchaser's receipt of the items. The Contractor also agrees that such loss, injury, or destruction shall not release the Contractor from any of its contractual obligations to the Purchaser or DGS.

15. SALES REPORTS

The Contractor shall furnish to the DGS COSTARS Program Office a monthly electronic Contract use report detailing the previous month's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed report no later than the fifteenth calendar day of each month in the Contract period beginning with month two

a. The Contractor shall either e-mail the reports to GS-PACostars@state.pa.us or send the reports on compact disc via US Postal Service to the DGS COSTARS Program Office, Room 414 North Office Building, Commonwealth Avenue & North Street, Harrisburg, PA 17125.

b. The Contractor shall include on each report the Contractor's name and address, the Contract number, and the period covered by the report. For each PO received the Contractor shall include the following information on the report:

- Registered Purchaser
- Item Description
- Quantity
- Unit Price
- Total Price
- Delivery Date

c. Failure to provide the Monthly Sales Report in the specified time constitutes a default under Section 24 of these Standard Terms and Conditions and may result in termination of the contract.

16. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any item(s) or process covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided or used in the performance of this Contract or any PO issued under this Contract. The Contractor shall defend any suit or proceeding brought against DGS or any Purchaser on account of any alleged patent, copyright, or trademark infringement in the United States of the item(s) provided or used in the performance of this Contract or any PO, upon condition that DGS or the Purchaser shall provide prompt notification to the Contractor in writing of such suit or proceeding; full right, authorization, and opportunity to conduct the defense; and all reasonable information and cooperation required for the defense. As principles of governmental or public law may be involved, DGS or any Purchaser may participate in or choose to conduct, in its sole discretion, the defense of any such action. If DGS or any Purchaser furnishes information and assistance at the Contractor's written request, it shall be furnished at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization.

The Contractor shall indemnify and hold DGS and any Purchaser harmless from all damages, costs, and expenses, including attorney's fees that the Contractor, DGS, or the Purchaser may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any item(s) provided or used in the performance of the Contract or any PO. If any of the item(s) provided by the Contractor are held in such suit or proceeding to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement item(s), replace them with noninfringing equal performance item(s), or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which is obtained contemporaneously with the infringing item(s), or, at the option of the Purchaser, only those items of equipment or software which are held to be infringing, and to pay the Purchaser 1) any amounts the Purchaser paid towards the item(s) of the product, less straight line depreciation; 2) any license fee the Purchaser paid for the use of any software, less a reasonable amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance the Purchaser paid to the Contractor. The Contractor's obligations under this Section continue without time limit. No costs or expenses shall be incurred for the Contractor's account without its written consent.

17. OWNERSHIP RIGHTS

Each Purchaser issuing a PO under this Contract shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Purchaser as part of the performance of the PO.

18. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and DGS recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Purchaser under each Contract PO. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to each Purchaser issuing a Contract PO all right, title and interest in and to

any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the supplies and services which are the subject of the Contract PO.

19. HOLD HARMLESS PROVISION

The Contractor shall hold the Commonwealth and each Purchaser harmless from, and indemnify them against, any and all claims, demands, and actions based upon or arising out of any activities the Contractor and its employees and agents may perform under this Contract and any PO. At the request of DGS or any Purchaser, the Contractor shall defend any and all actions brought against DGS or any Purchaser based upon any such claims or demands. The Contractor shall hold the Commonwealth and DGS harmless from any liability whatsoever arising out of the specifics of a Purchaser-issued PO under this Contract.

20. AUDIT PROVISIONS

DGS and its designees, including without limitation any Purchaser issuing a PO under this Contract, shall have the right, at reasonable times and at a site DGS may designate, to audit the Contractor's books, documents, and records to the extent that such books, documents, and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records that will support its prices charged and costs incurred for the Contract.

The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to DGS, Purchasers who have issued Contract POs, and/or their authorized representatives.

21. INSPECTION AND REJECTION

No item(s) received by any Purchaser issuing a Contract PO shall be deemed accepted until the Purchaser has had a reasonable opportunity to inspect the item(s). The Purchaser may reject any item(s) discovered to be defective or failing to conform to the Contract specifications upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. The Contractor shall have the duty to remove rejected item(s) from the Purchaser's premises without expense to the Purchaser within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Purchaser shall have the right to dispose of the item(s) as its own property and shall retain that portion of the proceeds of any sale that represents the Purchaser's costs and expenses for the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with other non-defective items conforming to the specifications. If the Contractor fails, neglects, or refuses to do so, the Purchaser shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies then or later due to the Contractor, the difference between the price stated in the Contract and the actual cost of the item(s) to the Purchaser.

22. DEFAULT

a. DGS or any Purchaser may, subject to the provisions of Section 23 of this Contract ("Force Majeure"), and in addition to its other rights under this Contract, declare the Contractor in default under the Contract as to DGS, or under any PO issued under the Contract as to the issuing Purchaser, by written notice to the Contractor. DGS may terminate (as provided in Section 24 of this Contract, "Termination Provisions") the whole or any part of this Contract, or in the case of any Purchaser, terminate a PO issued under this Contract, for any of the following reasons:

1. Failure to deliver the awarded item(s) within the time specified in the Contract or PO or as otherwise specified;
2. Improper delivery;
3. Failure to provide an item or items conforming with the specifications referenced in the Invitation For Bids;
4. Delivery of a defective item;

5. Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
6. Insolvency or bankruptcy;
7. Assignment made for the benefit of creditors;
8. Failure to protect, to repair, or to make good any damage or injury to property; or
9. Breach of any provision of this Contract or any PO.

b. In the event that any Purchaser terminates a PO as provided in Subsection a. of this Section 22, any Purchaser may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those in any PO so terminated, and the Contractor shall be liable to Purchaser for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.

c. If the Contract is terminated in whole or in part as provided in Subsection a. above, a Purchaser, in addition to any other rights provided in this Section 22, may require the Contractor to transfer title and deliver immediately to the Purchaser in the manner and to the extent directed by the Purchaser, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the PO as has been terminated. Except as provided below, payment for any partially manufactured or delivered item(s) accepted by the Purchaser shall be in an amount agreed upon by the Contractor and the Purchaser. The Purchaser may withhold from amounts otherwise due the Contractor for such partially manufactured or delivered item(s), such sum as the Purchaser determines to be necessary to protect the Purchaser against loss.

d. The rights and remedies of DGS and the Purchaser provided in this Section 22 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

e. Failure to exercise any rights or remedies provided in this Section shall not be construed to be a waiver by DGS or the Purchaser of any rights and remedies in regard to the event of default or any succeeding event of default.

f. Following exhaustion of the Contractor's administrative remedies against DGS as set forth in Section 25 of this Contract, the Contractor's exclusive remedy against DGS shall be to seek damages in the Board of Claims.

g. In the event a Purchaser terminates a PO under this Contract, the Contractor's exclusive remedy shall be against the Purchaser and not against DGS. The Contractor shall seek remedies against any Purchaser under a PO under the laws of the Commonwealth of Pennsylvania as they relate to contract disputes against non-Commonwealth parties, unless the Purchaser is subject to the jurisdiction of the Board of Claims, in which event the Contractor's exclusive remedy shall be to seek damages against the Purchaser before the Board as provided in Title 63 Pa.C.S. Part II, Subchapter C.

23. FORCE MAJEURE

No Purchaser will incur any liability to the Contractor, and the Contractor shall not incur any liability to any Purchaser, if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without its fault or negligence. Causes beyond the control of the Contractor or Purchaser may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Purchaser and the DGS Commodity Specialist orally within five (5) days, and in writing within ten (10) days, of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or

prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Purchaser and the DGS Commodity Specialist may reasonably request. After receipt of such notification, the Purchaser and the DGS Commodity Specialist may individually elect either to cancel the Contract or PO, as applicable, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Purchaser and DGS, by notice to the Contractor, may suspend all or a portion of the Contract or PO, as applicable.

24. TERMINATION PROVISIONS

DGS has the right to terminate this Contract, and any Purchaser shall have the right to terminate a PO issued under this Contract, upon written notice to the Contractor, for any of the following reasons:

a. DGS shall have the right to terminate this Contract, and any Purchaser shall have the right to terminate any PO issued under this Contract, for its convenience if DGS or the Purchaser, as applicable, determines termination to be in its best interest. The Contractor is entitled to complete any PO initiated prior to the effective date of the termination for which the Purchaser receives delivery of a satisfactory product, but in no event shall the Contractor fill any POs received after the termination date of this Contract.

b. DGS shall have the right to terminate this Contract, and any Purchaser shall be entitled to terminate any PO issued under this Contract, for Contractor default as defined in Section 22 of this Contract, or for any other cause specified in this Contract or by law upon written notice to the Contractor. If it is later determined that DGS or the Purchaser erred in terminating the Contract or PO for cause, then, at the discretion of DGS or the Purchaser, as applicable, the Contract shall be deemed to have been terminated for convenience under Subsection a. of this Section 24.

25. CONTRACT CONTROVERSIES

a. In the event of a controversy or claim arising out of this Contract (except when the claim relates to a specific PO, as specified in Subsection d. of this Section) the Contractor must, within six months after the cause of action accrues, file a written claim with the DGS contracting officer for a determination and, in the case of a claim involving a PO, with the Purchaser. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.

b. The DGS contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.

c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

d. In the event of a controversy or claim arising out of a PO, the Contractor shall file a written claim directly with the Purchaser.

26. ASSIGNABILITY AND SUBCONTRACTING

a. Subject to the terms and conditions of this Section 26, the Contract shall be binding upon the parties and their respective successors and assigns.

b. The Contractor shall not subcontract with any person without the Purchaser's prior written consent, which consent may be withheld at the Purchaser's sole and absolute discretion.

c. The Contractor may not assign, in whole or in part, this Contract or any rights, duties, obligations, or responsibilities under this Contract without DGS's prior written consent, which consent may be withheld at DGS's sole and absolute discretion.

d. Notwithstanding anything else in this Contract, the Contractor may, without DGS's consent, assign its rights to payment under this Contract or any PO issued under this Contract, provided that the Contractor provides written notice of such assignment to the DGS Commodity Specialist and the Purchaser together with a written acknowledgement from the assignee to DGS that any such payments are subject to all of the terms and conditions of this Contract.

e. For the purposes of this Contract, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor, provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.

f. DGS's consent to any assignment, other than an assignment of payment as specified in subsection d. of this Section 26, shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all Contract terms and conditions and to assume the Contract duties, obligations, and responsibilities being assigned.

g. Any Contractor change of name that does not change the Contractor's federal identification number shall not be considered an assignment of this Contract. The Contractor shall give the DGS Commodity Specialist and the Purchaser written notice of any such change of name.

27. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

During the term of the Contract, Contractor agrees as follows:

a. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, 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.

b. 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.

c. The Contractor and subcontractors shall establish and maintain a written sexual harassment policy and shall inform its 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.

d. The Contractor 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.

e. The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the contracting officer and the Department of General Services' Bureau of Minority and Women Business Opportunities for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Minority and Women Business Opportunities.

f. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

g. 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.

28. CONTRACTOR INTEGRITY PROVISIONS

a. For purposes of this Section 28 only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.

1. **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.

2. **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 execution of this agreement.

3. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.

4. **Financial interest** means:

A. Ownership of more than a five percent interest in any business; or

B. Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

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

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

c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.

d. 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 for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. 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 or request of any officer or employee of the Commonwealth.

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

g. 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.

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

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

j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form that refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.

k. 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, and debar and suspend the Contractor from doing business with the Commonwealth. 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.

29. CONTRACTOR RESPONSIBILITY PROVISIONS

a. The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of the bid/contract, that neither the Contractor, nor any subcontractors, nor any suppliers 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, a written explanation of why such certification cannot be made.

b. The Contractor must also certify, in writing, that as of the date of its execution of the bid/contract, it has no tax liabilities or other Commonwealth obligations.

c. 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 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.

d. 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.

e. 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, which 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.

f. 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

30. AMERICANS WITH DISABILITIES ACT

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

b. 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 subsection a above.

31. HAZARDOUS SUBSTANCES

The Contractor shall provide information to DGS and any Purchaser under this Contract about the identity and hazards of hazardous substances the Contractor may supply or use in the performance of this Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated at 4 Pa. Code Section 301.1 *et seq.*

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

1. Hazardous substances:

- A. The chemical name or common name,
- B. A hazard warning, and
- C. The manufacturer's name, address, and telephone number.

2. Hazardous mixtures:

- A. The common name or, if no common name exists, the trade name;
- B. The chemical or common name of special hazardous substances comprising .01% or more of the mixture;
- C. The chemical or common name of hazardous substances comprising 1.0% or more of the mixture;
- D. A hazard warning; and
- E. The manufacturer's name, address, and telephone number.

3. Single chemicals:

- A. The chemical or common name;
- B. A hazard warning, if appropriate; and
- C. The manufacturer's name, address, and telephone number.

4. Chemical Mixtures:

- A. The common name or, if no common name exists, the trade name;

- B. A hazard warning, if appropriate;
- C. The manufacturer's name, address, and telephone number; and
- D. The chemical or common name of either the top five substances by volume or those substances comprises 5.0% or more of the mixture.

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

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

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

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

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

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

32. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract on any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies the Contractor may maintain for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate this Contract without liability.

33. APPLICABLE LAW

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

34. INTEGRATION

The RFQ - Invitation For Bids form and the Contract form, including all documents referenced on the forms, as well as the applicable provisions of the POs issued by the Purchasers, constitute the entire agreement between the parties. No agent, representative, employee, or officer of DGS or the Contractor has authority to make, or has made, any oral or written statement, agreement, or representation which may in any way

be deemed to modify, add to, detract from, or otherwise change or alter the terms and conditions of, this Contract. No negotiations between the parties, nor any custom or usage, shall modify or contradict any of the terms and conditions of this Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms, other than in a PO authorized by any individual Purchaser, shall be valid or binding unless accomplished by a written amendment signed by both parties or by a DGS- signed change order on the appropriate Commonwealth form.

35. CHANGES

DGS reserves the right to make changes at any time during the term of this Contract, including any renewals or extensions:

- a. to increase or decrease the quantities resulting from variations between any estimated and actual quantities;
- b. to make changes to the supply within the scope of the Contract;
- c. to notify the Contractor that the Commonwealth is exercising any Contract termination, renewal, or extension option; or
- d. to modify the time of performance so long as the modification does not alter the scope of the Contract or extend the Contract completion date beyond the Expiration Date specified in the Contract, including any renewals or extensions.

Any such change shall be made by the contracting officer shown on the Contract form, by notifying the Contractor in writing. The change shall be effective as of the date of the notification of change, unless the change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract. The Contractor agrees to provide the supply to all subsequent Purchasers in accordance with the change. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through Section 25 of this Contract ("Contract Controversies").

**COSTARS CONTRACT
SPECIAL TERMS AND CONDITIONS**

These COSTARS Contract Special Terms and Conditions ("Special Terms and Conditions") shall be part of the contract for the supply and delivery of voting machines between the Commonwealth of Pennsylvania, acting through the Department of General Services ("DGS"), and each successful bidder ("Contractor").

1. **Order of Precedence.** These Special Terms and Conditions supplement the COSTARS Contract Standard Terms and Conditions ("Standard Terms and Conditions") for this procurement. Should any discrepancy occur, the order of precedence shall be that these Special Terms and Conditions shall prevail over all other Contract documents, the Standard Terms and Conditions shall prevail over the Instructions to Bidders for COSTARS Contracts ("ITB") and the Bidder's bid submission, and the ITB shall prevail over the Bidder's bid submission.
2. **Contract Scope.** For purposes of this Contract, Voting Machines may include Optical Scan, Direct Record Electronic (DRE) Full Face, or Direct Record Electronic Touch Screen voting systems, each corresponding Election Management System software ("EMS Software"). Purchasers may elect to purchase complete Voting Machine Systems and EMS Software (collectively, the "Systems"). These complete Systems purchases will include all necessary hardware and software components; training and training materials; equipment installation, set up and acceptance testing; programming; administrative and technical support; on site support during all elections occurring within one year of the date the System is fully operational, but in no event less than two regular (May and November) elections; standard manufacturer's warranty; and standard maintenance agreement. Purchasers may also elect to purchase system Components, and Optional Items offered by Contractor in its bid proposal. Purchasers and Contractors may supplement the terms of the Contract to provide for additional EMS software programming, additional Systems warranty and maintenance, and additional service requirements at mutually agreed upon pricing.
3. **Contract Award.** In accordance with Section 7 of the ITB, this is a multiple award contract.
 - a. To be eligible for contract award, a bidder must be a manufacturer, wholesaler, dealer, distributor or reseller of the offered products.
 - b. DGS will award a COSTARS contract by issuing a copy of the fully-executed and approved contract documents to all responsible and responsive bidders. Because DGS will award a contract to every responsive and responsible bidder, DGS will not compare bidders' pricing submittals for this procurement.
 - c. A bidder will not be excluded from the bidding process if unable to provide a dedicated website for Purchasers ("COSTARS Website"). While DGS strongly encourages the Contractor to provide a COSTARS Website (see Section 9 of the Standard Terms and Conditions), it is not required and will NOT be a factor in contract award.
 - d. DGS reserves the right to issue supplemental invitations for bids to procure additional Contractors for the COSTARS Purchasers upon contract renewal, or whenever DGS deems it to be in the best interest of the Purchasers.
4. **Contract Period.** The Contract effective date will be no earlier than September 1, 2005. DGS will establish the Contract effective date as specified in Section 3 of the Standard Terms and Conditions. The Contract will expire on August 31, 2006, unless renewed or extended in accordance with the requirements of the Standard Terms and Conditions as supplemented by this section. The Contract includes four one-year renewal options.

5. **Mandatory Requirements.** Bid responses will be accepted from all bidders who have completed, or are in the process of completing, the requirements outlined in the documents listed below in Subparagraphs a, b and c. DGS will execute contracts only with those bidders who have completed all listed requirements by September 1, 2005. In addition, Exhibit D lists all mandatory training and associated documentation Contractors are required to provide to Purchasers for each System offered in response to this Invitation For Bids ("IFB").
 - a. Commonwealth of Pennsylvania Requirements of Electronic Voting Systems, Exhibit A.
 - b. Title III of HAVA – Uniform and Non-Discriminatory Election Technology and Administration Requirements, Exhibit B.
 - c. Directive concerning the conduct of Electronic Voting System Examinations by the Commonwealth of Pennsylvania issued by the Secretary of the Commonwealth, Exhibit C, with Attachments I, II and III.
 - d. Training Requirements for County Election Officials and Staff, Exhibit D.
6. **Pricing.** The bidder shall complete the Bid Item Workbook. In Part I of the Bid Item Sheet Tab of the Bid Item Workbook, the bidder shall provide firm prices for each complete System package being offered. In Part II of the Bid Item Sheet, the bidder shall state firm prices for the voting machine Components listed. In Part III of the Bid Item Sheet, the bidder shall list any Optional Equipment or services being offered that are not listed in Parts I and II. The bidder shall return the completed Bid Item Workbook and all specified attachments in a sealed envelope. Failure to do so may result in DGS' rejection of the bid.
 - a. The bidder must identify the offered System on the Bid Item Sheet of the Bid Item Workbook, specifying the System name (model/version), System type (Optical Scan, Direct Record Electronic Touch Screen or Direct Record Electronic Full Face), included features (Precinct Tabulation, Central Count Tabulation, Paper Audit Trail), and EMS Software. Omission of this information from the Bid Item Sheet may be cause for DGS to reject the bid. A complete description of each System, including System specifications, Manufacturer's Warranty and Maintenance Agreement, shall be submitted with the Bid Item Workbook.
 - b. It is suggested, but not required, that the bidder offer volume pricing, provided in a format similar to the example provided on the Bid Item Sheet of the Bid Item Workbook.
 - c. A Contractor may update its Contract pricing annually at the time of contract renewal. Such pricing changes shall only be applicable to Purchase Orders issued after the pricing update.
 - d. Notwithstanding the language in Subsection c. of this Section, if, as a result of legislation, rulemaking, rate-making, or any related act of a legislative or regulatory body subsequent to bid opening which requires modifications to Contractor's Systems package, Components or Optional Items to remain compliant, or due to unusual market conditions, the Contractor's cost of supplying Systems increases more than ten percent, the Contractor may adjust its prices more frequently. In no event shall the Contractor make price adjustments more than once a month, during the Contract term. The Contractor shall retain documentation supporting any such cost increases in its files for DGS or Purchaser audit and inspection.
 - e. Purchasers and Contractors may supplement the terms of the Contract to provide for additional EMS software programming, additional Systems warranty and maintenance, and additional service requirements at mutually agreed upon pricing.

Contractor shall update its Optional Items price list to reflect such additional items and make them available to all Purchasers.

7. **Delivery.** All items covered under this contract shall be delivered FOB destination within 90 days of the Contractor's receipt of a purchase order unless otherwise agreed to in writing by the party issuing the purchase order. Contractor agrees to deliver to multiple sites within the county as specified in the Purchase Order.
8. **Warranty and Maintenance.** Contractor warrants that all Systems, system Components and Optional Items provided by Contractor pursuant to this Contract shall be free and clear of any defects in workmanship or materials for one year following each purchase. Contractor shall pass through to the Commonwealth and Purchasers the manufacturer's standard warranty for all Systems, system Components and Optional Items provided under the Contract. Contractor shall correct any problem or replace any defective part or software with one of equivalent or superior quality without any additional cost to the Commonwealth or Purchasers during the warranty period. Contractor shall provide all manufacturer-recommended maintenance to the Systems, system Components and Optional Items at no additional cost to the Commonwealth or Purchasers during the term of the warranty period.
9. **Modifications.**
 - a. During the contract period, the Contractor shall make any modifications to System components required by changes to the Federal Voting System Standards or Pennsylvania State law as determined by the Secretary of the Commonwealth, but in no event less than thirty (30) days before an election. If the Contractor makes *any* changes to the system subsequent to the date of its examination, it must *immediately* notify both the Pennsylvania Department of State and the relevant independent testing authorities (ITAs). Failure to do so can result in the decertification of this voting system in the Commonwealth of Pennsylvania. The Secretary of the Commonwealth will determine whether re-certification of the system is necessary.
 - b. Price changes for any required modifications may be submitted to DGS upon successful completion of the recertification process or at the time of annual contract renewal. Pricing changes shall only be applicable to Purchase Orders issued after the pricing update. Contractor shall not accept Purchase Orders pending the completion of required modifications and recertification of its Systems package, Components or Optional Items are not in compliance with Federal Voting Systems Standards then in effect.
10. **Source Code Escrow.** All Contractors shall comply with the requirements of Exhibit E.
11. **Training Materials.** The Commonwealth and any Purchaser shall have the right to copy, use, and distribute to voters, political candidates, political committees, civic organizations, news organizations, and elections staff and volunteers, the materials the Contractor furnishes to the Purchaser for training or instruction of any nature for the use and operation of the System. Such materials may include, without limitation audio and video instructional materials, printed manuals, and any other information supplied pursuant to the requirements of Exhibit D to this procurement. The Commonwealth and any Purchaser may make as many copies of any or all of these materials as deemed necessary for election-related purposes, and they may distribute these materials to any individual or organization to provide election-related information. The Commonwealth and any Purchaser shall ensure that all such materials are copied and distributed in their complete original state and display all original copyright notices.
12. **On-Site Support and Help Desk.** Contractor shall provide on-site support during all elections occurring within one year of the date the System becomes fully operational, but in no event less than two regular (May and November) elections, at each Purchaser's county election

office commencing one hour before and ending one hour after poll hours for all elections occurring within one year following each purchase. Additionally, Contractor shall make a Help Desk available during normal business hours commencing four days prior to the election through the day after election day. Additionally, the Help Desk shall be available from 6:00 a.m. on election day through 6:00 a.m. the following day. Contractor shall respond to site-specific issues within the Purchaser counties within one hour of notification.

13. Compliance.

In the event that the Secretary of the Commonwealth decertifies Contractor's Systems, the Commonwealth or Purchasers may procure, upon such terms and in such manner as it determines, sufficient certified Systems similar or identical to those decertified, and/or utilize alternative certified voting methods, necessary for the proper conduct of elections until Contractor's Systems are re-certified. In addition to its obligations to make modifications required for re-certification, Contractor shall be liable to the Commonwealth or Purchasers for any and all reasonable costs incurred to obtain and utilize such replacement Systems and alternative voting methods for all elections occurring during the term of this Contract.

Liquidated damages may be imposed in the amount of \$100 per hour per call in the event that the Contractor responds to Help Desk service calls beyond one hour as provided by Paragraph 12 above.

Contractor shall indemnify and save harmless the Commonwealth and Purchasers from any and all Federal and civil suit fines, penalties, judgments and costs due to Systems failures during the term of this Contract.

14. Court Orders. If a court of competent jurisdiction issues a subpoena or other order directing either the Purchaser or the Contractor to produce any proprietary or confidential data under this Contract, including without limitation software source code and object code, software and hardware documentation, training materials, and component pricing information, in any form whatsoever, the party served with the order shall promptly notify the party whose information is subject to the order to provide said party with sufficient opportunity to contest the order. Such notice shall not be required in the event the information subject to the subpoena or order is public information under the Right to Know Law, 66 P.S. §§ 65.1-66.9, or any other law which may require disclosure, or the data subject to the order is already lawfully within the public domain.

15. Contract Security. No performance security is required for this bid.

16. Estimated Quantities. The Commonwealth of Pennsylvania estimates that, as a result of this procurement, Purchasers may order between 13,000 and 22,000 voting machines during the months of September, October, November, and December of 2005. However, there is no guarantee of any purchase quantities, nor that a particular contractor will receive any purchase orders.

17. Inquiries. Direct all questions concerning this IFB to the following contact person:

Dawn Spero
dspero@state.pa.us
(717) 346-4296
c/o DGS Bureau of Procurement
COSTARS Program
P.O. Box 8365
Harrisburg, PA 17105-8365

or to Bureau of Procurement, COSTARS Program, 414 North Office Building, Harrisburg, PA 17125.

- a. A pre-bid conference, also known as a Business Information Day, will be held Tuesday June 14, 2005, 1:30 P. M. Building, Hearing Room # 2, 414 North Office Building, Harrisburg, PA 17120. The purpose of this conference is to provide an overview of this procurement and to answer all previously submitted questions. In view of the limited facilities available for the conference, it is requested that prospective bidders send no more than two attendees to the conference. The pre-proposal conference is for information only. Any answers furnished during the conference are not considered official; the only official answers are those that DGS verifies and posts in writing on the DGS website as addenda to the bid documents. DGS posts the written questions and answers on its website to give all prospective bidders equal access to the information. DGS will post an updated written summary of all questions and answers as addenda to the bid documents on the DGS website in the order that questions are received.

- b. DGS will accept written questions concerning this procurement via email to dspero@state.pa.us until 4:30 p.m. Tuesday June 28, 2005 ("Deadline"). DGS encourages prospective bidders to submit any technical questions and requests for clarification prior to the date of the prebid conference. Prospective bidders may submit additional questions or requests for information resulting from the conference to the same e-mail address until the Deadline. DGS will disregard questions submitted after that time.

Exhibit A

Commonwealth of Pennsylvania Requirements of Electronic Voting Systems

To be used in Pennsylvania, an electronic voting system must meet three requirements as established by Section 1105-A of the Election Code. Each system must a) be approved by a federally recognized independent testing authority, b) meet any voting system performance and test standards established by the Federal Government (Pennsylvania requires the 2002 FEC standards adopted by the EAC pursuant to HAVA) and c) must have been examined and approved by the Secretary of the Commonwealth. The Secretary examines each electronic voting system for the 17 requirements contained in section 1107-A of the Election Code as listed below.

All electronic voting systems must:

(1) Provide for voting in absolute secrecy and prevent any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.

(2) Provide facilities for voting for such candidates as may be nominated and upon such questions as may be submitted.

(3) Permit each voter, at other than primary elections, to vote a straight political party ticket by one mark or act and, by one mark or act, to vote for all the candidates of one political party for presidential electors and, by one mark or act, to vote for all the candidates of one political party for every office to be voted for, and every such mark or act shall be equivalent to and shall be counted as a vote for every candidate of the political party so marked including its candidates for presidential electors, except with respect to those offices as to which the voter has registered a vote for individual candidates of the same or another political party or political body, in which case the automatic tabulating equipment shall credit the vote for that office only for the candidate individually so selected, notwithstanding the fact that the voter may not have individually voted for the full number of candidates for that office for which he was entitled to vote.

(4) Permit each voter, at other than primary elections, to vote a ticket selected from the nominees of any and all political parties, from the nominees of any and all political bodies, and from any persons whose names are not in nomination and do not appear upon the official ballot.

(5) Permit each voter to vote for any person and any office for whom and for which he is lawfully entitled to vote, whether or not the name of such person appears upon the ballot as a candidate for nomination or election.

(6) Permit each voter to vote for as many persons for any office as he is entitled to vote for and to vote for or against any question upon which he is entitled to vote and precludes each voter from voting or from having his vote tabulated for any candidate, or upon any question, for whom or upon which he is not entitled to vote.

(7) If it is of a type that registers the vote electronically, the voting system shall preclude each voter from voting for more persons for any office than he is entitled to vote for or upon any question more than once.

(8) Preclude each voter from voting or from having his vote tabulated more than once for any candidate for the same office or upon any question, except in districts and for offices where cumulative voting is authorized by law.

(9) Permit each voter at a primary election to vote only for the candidates seeking nomination by a political party in which such voter is registered and enrolled, and for any candidate for nonpartisan nomination, and for any question upon which he is entitled to vote.

(10) If it is of a type that registers the vote electronically, the voting system shall permit each voter to change his vote for any candidate or upon any question appearing on the official ballot up to the time that he takes the final step to register his vote and to have his vote computed. If it is of a type that uses paper ballots or ballot cards to register the vote and automatic tabulating equipment to compute such votes, the system shall provide that a voter who spoils his ballot may obtain another ballot; any ballot thus returned shall be immediately cancelled and at the close of the polls shall be enclosed in an envelope marked "spoiled" which shall be sealed and returned to the county board.

(11) Is suitably designed for the purpose used, is constructed in a neat and workmanlike manner of durable material of good quality, is safely and efficiently useable in the conduct of elections and, with respect to the counting of ballots cast at each district, is suitably designed and equipped to be capable of absolute accuracy, which accuracy shall be demonstrated to the Secretary of the Commonwealth.

(12) Provide acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards.

(13) When properly operated, record correctly and compute and tabulate accurately every valid vote registered.

(14) Is safely transportable.

(15) Is so constructed that a voter may readily learn the method of operating it.

(16) If the voting system is of a type which provides for the computation and tabulation of votes at the district level, the district component of the automatic tabulating equipment shall include the following mechanisms or capabilities:

(i) A public counter, the register of which is visible from the outside of the automatic tabulating equipment component into which the ballots are entered, which shall show during any period of operation the total number of ballots entered for computation and tabulation.

(ii) A lock, or locks, by the use of which all operation of the tabulation element of the automatic tabulating equipment is absolutely prevented immediately after the polls are closed or where the tabulation of votes is completed

(iii) It shall be so constructed and controlled that, during the progress of voting, it shall preclude every person from seeing or knowing the number of votes theretofore registered for any candidate or question; and it shall preclude every person from tampering with the tabulating element.

(iv) If the number of choices recorded for any office or on any question exceeds the number for which the voter is entitled to vote, it shall reject all choices recorded on the ballot for that office or question, provided, that if used during the period of voting it may also have the capacity to indicate to a voter that he has improperly voted for more candidates for any office than he is entitled to vote for, and in such case it shall have the capacity to permit the voter to mark a new ballot or to forego his opportunity to make such correction.

(v) It shall be equipped with an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set to zero and with an element which generates a printed record at the finish of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate whose name appears on the ballot, and the total number of votes cast for, or against, any question appearing on the ballot.

(17) If the voting system is of a type which provides for the computation and tabulation of all votes at a central counting center or if it provides for the tabulation of district totals at such a central counting center, the central automatic tabulating equipment shall include the following mechanisms or capabilities:

(i) It shall be constructed so that every person is precluded from tampering with the tabulating element during the course of its operation.

(ii) If the number of choices for any office or on any question exceeds the number for which the voter is entitled to vote, it shall reject all choices recorded on the ballot for that office or question.

(iii) It shall have a means by which to verify that the counters for each candidate position and for each question are all set to zero and shall be able to generate a printed record of each election district showing the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate whose name appears on the ballot, and the total number of votes cast for, or against, any question appearing on the ballot. It may also be capable of generating cumulative election reports.

Exhibit B

TITLE III--UNIFORM AND NONDISCRIMINATORY ELECTION
TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

<< 42 USCA prec. § 15481 >>

Subtitle A--Requirements

<< 42 USCA § 15481 >>

SEC. 301. VOTING SYSTEMS STANDARDS.

(a) REQUIREMENTS.--Each voting system used in an election for Federal office shall meet the following requirements:

(1) IN GENERAL.--

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) AUDIT CAPACITY.--

(A) IN GENERAL.--The voting system shall produce a record with an audit capacity for such system.

(B) MANUAL AUDIT CAPACITY.--

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.--The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual accessibility for

Exh. B Title III HAVA

the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) ALTERNATIVE LANGUAGE ACCESSIBILITY.--The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

(5) ERROR RATES.--The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE.--Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) VOTING SYSTEM DEFINED.--In this section, the term "voting system" means--

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used--

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used--

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) CONSTRUCTION.--

(1) IN GENERAL.--Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) PROTECTION OF PAPER BALLOT VOTING SYSTEMS.--For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) EFFECTIVE DATE.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

<< 42 USCA § 15482 >>

SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.

(a) PROVISIONAL VOTING REQUIREMENTS.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote

Exh. B Title III HAVA

and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

- (1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.
- (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--
 - (A) a registered voter in the jurisdiction in which the individual desires to vote; and
 - (B) eligible to vote in that election.
- (3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).
- (4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.
- (5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system

established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted. States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) VOTING INFORMATION REQUIREMENTS.--

(1) PUBLIC POSTING ON ELECTION DAY.--The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) VOTING INFORMATION DEFINED.--In this section, the term "voting information" means--

- (A) a sample version of the ballot that will be used for that election;
- (B) information regarding the date of the election and the hours during which polling places will be open;
- (C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- (D) instructions for mail-in registrants and first-time voters under section 303(b);
- (E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have

Exh. B Title III HAVA

been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE.--Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) EFFECTIVE DATE FOR PROVISIONAL VOTING AND VOTING INFORMATION.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

<< 42 USCA § 15483 >>

SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.

(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.--

(1) IMPLEMENTATION.--

(A) IN GENERAL.--Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) EXCEPTION.--The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) COMPUTERIZED LIST MAINTENANCE.--

Exh. B Title III HAVA

(A) IN GENERAL.--The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) CONDUCT.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST.--The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS.--The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) VERIFICATION OF VOTER REGISTRATION INFORMATION.--

(A) REQUIRING PROVISION OF CERTAIN INFORMATION BY APPLICANTS.--

(i) IN GENERAL.--Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (i) applies), the last 4 digits of the applicant's social security number.

(ii) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR

SOCIAL SECURITY NUMBER.--If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the

Exh. B Title III HAVA

applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) DETERMINATION OF VALIDITY OF NUMBERS PROVIDED.--The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) REQUIREMENTS FOR STATE OFFICIALS.--

(i) SHARING INFORMATION IN DATABASES.--The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY.--The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).

<< 42 USCA § 405 >>

(C) ACCESS TO FEDERAL INFORMATION.--Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

"(8)(A) The Commissioner of Social Security shall, upon the request of the official responsible for a State driver's license agency pursuant to the Help America Vote Act of 2002--

"(i) enter into an agreement with such official for the purpose of verifying applicable information, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met; and

"(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any applicable information disclosed and procedures to permit such agency to use the applicable information for the purpose of maintaining its records.

"(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

"(C) The Commissioner shall develop methods to verify the accuracy of information provided by the agency with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided instead of a driver's license number.

"(D) For purposes of this paragraph--

"(i) the term 'applicable information' means information regarding whether--

"(I) the name (including the first name and any family forename or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

"(II) such individual is shown on the records of the Commissioner as being deceased; and

"(ii) the term 'State driver's license agency' means the State agency which issues driver's licenses to individuals within the State and maintains records relating to such licensure.

"(E) Nothing in this paragraph may be construed to require the provision of applicable information with regard to a request for a record of an individual if the Commissioner determines there are exceptional circumstances warranting an exception (such as safety of the individual or interference with an investigation).

"(F) Applicable information provided by the Commission pursuant to an agreement

Exh. B Title III HAVA

under this paragraph or by an individual to any agency that has entered into an agreement under this paragraph shall be considered as strictly confidential and shall be used only for the purposes described in this paragraph and for carrying out an agreement under this paragraph. Any officer or employee or former officer or employee of a State, or any officer or employee or former officer or employee of a contractor of a State who, without the written authority of the Commissioner, publishes or communicates any applicable information in such individual's possession by reason of such employment or position as such an officer, shall be guilty of a felony and upon conviction thereof shall be fined or imprisoned, or both, as described in section 208."

(D) SPECIAL RULE FOR CERTAIN STATES.--In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.--

(1) IN GENERAL.--Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) REQUIREMENTS.--

(A) IN GENERAL.--An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) FAIL-SAFE VOTING.--

(i) IN PERSON.--An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).

(ii) BY MAIL.--An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).

(3) INAPPLICABILITY.--Paragraph (1) shall not apply in the case of a person--

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

Exh. B Title III HAVA

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);

(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) CONTENTS OF MAIL-IN REGISTRATION FORM.--

(A) IN GENERAL.--The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form."

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) INCOMPLETE FORMS.--If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) CONSTRUCTION.--Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before the date of the enactment of this Act to comply with such a provision after such date.

(c) PERMITTED USE OF LAST 4 DIGITS OF SOCIAL SECURITY NUMBERS.--The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) EFFECTIVE DATE.--

(1) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.--

(A) IN GENERAL.--Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) WAIVER.--If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in

Exh. B Title III HAVA

subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

(2) REQUIREMENT FOR VOTERS WHO REGISTER BY MAIL.--

(A) IN GENERAL.--Each State and jurisdiction shall be required to comply with the requirements of subsection (b) on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) APPLICABILITY WITH RESPECT TO INDIVIDUALS.--The provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003.

<< 42 USCA § 15484 >>

SEC. 304. MINIMUM REQUIREMENTS.

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

<< 42 USCA § 15485 >>

SEC. 305. METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

Exhibit C

DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE SECRETARY OF THE COMMONWEALTH

Pursuant to Section 1105-A of the Pennsylvania Election Code, at 25 P. S. §3031.5, and revised as required by Act 150 of 2002, the following Directive is issued by the Secretary of the Commonwealth for all electronic voting system examinations conducted in the Commonwealth of Pennsylvania.

1. Vendors interested in having an electronic voting system (system) examined in the Commonwealth of Pennsylvania must submit a written request to the Secretary of the Commonwealth. Each request shall be accompanied by an examination fee of \$ 3,000.00, established by the Secretary and payable to the Commonwealth of Pennsylvania, for each system to be examined. Any stand-alone equipment, which can be sold separately, constitutes a system for the purposes of examination and requires a separate fee.
2. The Department will review a system(s) **if** the system(s) either:
 - (a) Has been qualified by the independent testing authority (ITA) or authorities for compliance with the most recent Federal standards, known as the 2002 Federal Election Commission Voting Systems Performance and Test Standards as deemed adopted by the Election Assistance Commission under Section 222(e) of the Help America Vote Act of 2002, 42 U.S.C. § 15362(e) (If so, each request for a system examination by the Department shall also include a copy of the most recent ITA testing report(s) qualifying the system.);
 - or
 - (b) Has been submitted for examination by federally recognized ITA(s) using the most recent testing standards (the 2002 Standards) (If so, the vendor must submit a copy of its request for examination to the federally recognized ITA(s) for the most recent testing standards (the 2002 Standards)).
3. In the event that a system that has been previously approved by an ITA is later found by the ITA or its successor not to be in compliance with the federal standards, the Secretary of the Commonwealth reserves the right to reexamine that system.
4. Upon application for an examination, the vendor must submit to the Secretary of the Commonwealth and his designated representative(s) a detailed Representation Affidavit, including (a) a list of all components (including hardware and software, as well as the software version and number, if any); (b) the number assigned by the National Association of State Election Directors (NASSED), or its successor, unless the system(s) is being examined pursuant to paragraph 2(b); (c) a statement that the system is available in sufficient quantity to meet the needs of voters in the various counties in the Commonwealth; and (d) complete documentation for each system to be examined, including operating manuals, training manuals, setup manuals, repair manuals, procedures manuals and programming instructions. (A copy of the Outline of the Content and Format for a Representation Affidavit is

enclosed as Attachment I.) The Commonwealth will retain the examination fee if any false statement is provided in the Representation Affidavit. The Secretary will schedule the examination upon receipt of the examination fee, the Representation Affidavit, and the ITA approvals or evidence indicating submission of the system(s) to recognized ITAs, pursuant to paragraph 2.

5. Upon receipt of the written request, the examination fee, and the documentation referred to in paragraphs 2 and 4 above, the Secretary will forward to the vendor the Guidelines and Instructions for the Representation Affidavit, a copy of Article XI-A of the Pennsylvania Election Code, 25 P.S. §3031.1 *et seq.*, and other relevant information.
6. The Secretary will forward the ballot simulation to be used at the examination and any further instructions to the vendor no later than twenty (20) days prior to the scheduled examination.
7. Regularly scheduled examinations of systems will be conducted on the following days: the fourth Wednesday of January, June and September. The Secretary will schedule an exam if he receives the examination fee, the Representation Affidavit, and all system documentation referenced in paragraphs 2 and 4 above thirty (30) days before the exam. Examinations may also be scheduled at the discretion of the Secretary of the Commonwealth.
8. The examination fee will be returned to the vendor when a vendor cancels a scheduled examination more than 20 days prior to the scheduled examination. The examination fee will not be returned to the vendor when a vendor cancels an examination less than 20 days before the scheduled examination or if any false statement is provided in the Representation Affidavit or documentation, as specified in paragraphs 2 and 4 above.
9. The examination will be conducted in accordance with Article XI-A of the Pennsylvania Election Code. A demonstration may be videotaped at the sole discretion of the Secretary. Any feature that the vendor wants to have approved for use in the Commonwealth must be presented for examination. If a component is not presented for examination, the Secretary may approve or disapprove such component at his discretion. The vendor must present the system to the Secretary and his designated representative(s) in a condition that enables them to manipulate and examine the system including election definition and ballot setup, if appropriate. The vendor must also provide to the Secretary and his designated representative(s) the ability to program and set up an election of their own design should it be deemed necessary. The Pennsylvania Standardized Test will be used to verify that the system complies with the criteria established in section 1107-B of the Pennsylvania Election Code, at 25 P.S. § 3031.7, including the "Pennsylvania method" at section 1107-B(3), at 25 P.S. § 3031.7(3). (See the Explanation of the Pennsylvania Method at Attachment II.) Based on prior experience, the Department strongly recommends that each vendor bring a skilled technician who can answer technical questions regarding that system.
10. The system under review must meet all of the criteria set forth in the Pennsylvania Election Code at the scheduled examination. If the Secretary does not approve the system, and another examination or demonstration of the same system is required, the Secretary of the Commonwealth shall determine the fee.
11. Either at the time of the examination or as soon thereafter as is practicable, the vendor, by its duly authorized officer, shall execute an indemnification and warranty in the form provided by the

Secretary. See Attachment III. Thereafter, if the vendor's system has been approved by the Secretary, the vendor or its successor shall re-execute the prescribed indemnification every three (3) years or within ninety (90) days of (a) any change in ownership of the vendor, the vendor's assets, or the structure of the vendor's organization; (b) the filing for bankruptcy protection by the vendor; or (c) an assignment for the benefit of the vendor's creditors.

12. Each designated representative(s) of the Secretary will submit a written report to the Secretary no later than 45 days after the date of the examination, unless otherwise directed by the Secretary. The report shall describe whether the system examined can be safely used by voters at elections as provided in the Pennsylvania Election Code and whether it meets all of the requirements specified in the Election Code.
13. The Secretary will issue an official examination report after all of the reports of the designated representative(s) have been received. For those systems reviewed under Item 2(b), if the Secretary does not receive a copy of the ITA report(s) confirming compliance with the most recent standards by the date that the Secretary issues a report, any approval granted by the report will be deemed tentative and conditional until the Secretary receives a copy of the ITA report(s). Before a county can execute a purchase order or contract with the vendor, both the county and the Secretary must receive a copy of the ITA report(s) confirming compliance with the most recent standards. Before final certification by the Secretary of the Commonwealth, the vendor must provide the number assigned by the National Association of Election Directors (NAED), or its successor, for each voting system examined. The Secretary will forward to the vendor a copy of the official examination report as soon as it is issued.
14. The Secretary's report will specify (a) the capacity of the components of the system; (b) the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment that comprise the system; and (c) the number of clerks and machine inspectors required, if any, based on the number of registered electors in any election district in which the system is to be used.
15. Any change that affects the accuracy, efficiency or capacity of an approved system must be presented to the Secretary. At his discretion, the Secretary may request a demonstration or an examination of the system with any changes. In addition, the Secretary may, at any time and at his discretion, reexamine any system previously examined and approved by him.
16. Subject to the terms and conditions below, this Directive shall be binding upon any vendor and its respective successors and assigns.
 - a. The vendor may not assign, in whole or in part, its rights, duties, obligations, or responsibilities with respect to development, service and maintenance of a system approved by the Secretary without written notification to the Secretary. For the purposes of this Directive, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge or other transfer of any ownership interest in the system approved by the Secretary.
 - b. Any assignment shall be evidenced by a written agreement executed between the vendor and its assignee, in which the assignee agrees to be legally bound by all of the terms and conditions of this Directive, as well as the requirements for systems contained in the Pennsylvania Election Code, and to assume the duties, obligations and responsibilities being assigned.

17. Failure by a vendor to adhere to any of the terms and conditions contained in this Directive may result in delay or termination of the certification process if the Secretary has not yet approved the system of the vendor. Failure by a vendor or its assignee to adhere to any of the terms and conditions contained in this Directive may result in the revocation of the certification of the system if the Secretary has already approved the system of the vendor. If the Secretary revokes the certification of the system when a vendor or its assignee fails to adhere to any of the terms and conditions contained in this Directive and the vendor or its assignee has sold the system to a county within the Commonwealth of Pennsylvania or to the Commonwealth of Pennsylvania, then the vendor or its assignee must reapply for certification with the Secretary.

Attachments:

Attachment I: A copy of the Outline of the Content and Format for a Representation Affidavit, referenced in paragraph 4.

Attachment II: Explanation of the Pennsylvania Method, referenced in paragraph 9.

Attachment III: Indemnification and Warranty, referenced in paragraph 11.

Attachment 1 to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT A TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

**OUTLINE OF THE CONTENT AND FORMAT FOR A REPRESENTATION
AFFIDAVIT**

Pursuant to the DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE SECRETARY OF THE COMMONWEALTH (Directive), a Representation Affidavit (Affidavit) must be submitted by all vendors that apply for an electronic voting system examination. The Affidavit must be submitted in the format outlined below containing all relevant information.

The Affidavit will become public record and will be available to the public upon request as well as to state, county and municipal officials.

After reviewing the Affidavit, an electronic voting system examination will be scheduled for the next regularly scheduled examination occurring more than 30 days after receiving the Affidavit.

State of _____

County of _____

_____, _____, of _____
(Name of Affiant) (Title or Position) (Name of Corporation)

Corporation, having been duly sworn, deposes and states the following:

I. Vendor Identification:

- A. Full name of company
- B. Address of principal office
- C. Agent for this examination
- D. Telephone number of agent
- E. Date and state of incorporation
- F. Number of full time employees
- G. Annual gross sales
- H. Other product lines

II. Electronic Voting System Identification:

- A. List all components involved in recording and/or tabulating votes; and for each give:
 - 1. Function
 - 2. Unit cost

B. If more than one configuration is possible, briefly describe the components and application of each

C. Briefly describe any available discounts

D. Describe support policies for:

1. Equipment installation
2. Training and instructional materials for voters and election officials
3. Providing supplies and associated equipment

III. Provide the following information for each vote recording or tabulating device:

A. Describe the general type (DRE, touch screen, optical scan, punch card, etc.)

B. Extent of use:

1. First year in use
2. States authorizing use
3. Number of jurisdictions in use

C. Describe the physical characteristics of each vote recording/tabulating device(s):

1. Construction materials
2. Dimensions
3. Storage requirements:
 - a. Space
 - b. Stacking capacity
 - c. Temperature and humidity restrictions
4. Operating requirements:
 - a. Space
 - b. Secrecy provisions
 - c. Lighting
 - d. Power requirements, tolerances
 - e. Temperature and humidity restrictions

D. Ballot form and use (vote recording devices):

1. Type (paper, card, DRE, etc.)
2. Size:
 - a. Minimum voting positions
 - b. Maximum voting positions
 - c. Provisions for oversize ballots
3. Capacity:
 - a. Voter speed
 - b. Recommended ration of devices per number of voters
4. Method of voting:
 - a. Description
 - b. Write-in procedure
 - c. Absentee ballot compatibility
 - d. Spoiled ballot/voter correction provisions
 - e. Overvote detection/warning
 - f. No-vote capability
5. Recount procedure/auditability

E. Processing characteristics (vote tabulating devices):

1. Tabulating method (precinct, central, combined)
2. Ballot security and control:

- a. Handling
 - b. Transportation
 - c. Storage
 - 3. Tabulation speed/device capacity
 - 4. Exception handling (misfeeds, mutilated ballots, etc.)
 - 5. Write-in processing
 - 6. Absentee ballot processing, if compatible ballot
 - 7. Overvote/undervote detection and processing
 - 8. Recount processing/Auditability
- F. Set-up, maintenance and repair:
 - 1. Recording devices and tabulating devices:
 - a. Set-up times
 - b. Training and level of expertise required
 - 2. Preventive maintenance requirements:
 - a. Performed by whom
 - b. Training and level of expertise required
 - 3. Corrective maintenance:
 - a. Performed by whom
 - b. Training and level of expertise required
- G. Additional or optional equipment associated with this device:
 - 1. Description
 - 2. Cost
- H. Data processing support required:
 - 1. Equipment
 - 2. Programming
 - 3. Personnel
 - 4. Supplies

CERTIFICATION

I, the undersigned, certify that I am an authorized representative of the below listed vendor and I have read and hereby agree to the terms and conditions contained in the Directive and this Representation Affidavit on behalf of the vendor. I further certify that the system referred to in this affidavit is being tested, or has been tested and deemed qualified by the independent testing authority or authorities for compliance with the most recent Federal standards, known as the 2002 Federal Election Commission Voting Systems Performance and Test Standards as adopted by the Election Assistance Commission in compliance with Section 222(e) of the Help America Vote Act, 42 U.S.C. § 15362(e). I understand that failure to abide by the terms and conditions of the Directive and this Representation Affidavit could result in the proposed voting system not being certified by the Secretary or revocation of an existing voting system certification.

Signature Date

Name (Printed)

Vendor Name

Vendor Address

On this, the _____ day of _____,
20____, before me _____,
the undersigned officer, personally appeared
_____, who acknowledged
himself/herself to be the _____
of _____, a
corporation, and that he/she as such
_____, being authorized to do so,
executed the foregoing instrument for the purpose
therein contained by signing the name of the
corporation by himself/herself
as_____. In witness
whereunto, I hereunto set my hand and official
seals.

(Title of Officer)

Attachment 2 to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT B TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

AN EXPLANATION AND SELECTED EXAMPLES OF “THE PENNSYLVANIA METHOD”

The Pennsylvania requirements for electronic voting systems are found in the Pennsylvania Election Code at 25 P.S. § 3031.7. The third requirement, at § 3031.7(3), is unique to Pennsylvania, and is often referred to as “the Pennsylvania method.”

To change a vote for a straight political party ticket in an election where more than one candidate is elected, the Election Code, at § 3031.7(3), requires the voter to make one mark for a candidate in the other party for whom the voter would like to vote. In doing so, this action requires that the votes previously made by the voter for all candidates for that office be erased. Then the voter must be able to select candidates of either party for that office up to the number allowed or write in an individual’s name, as provided at 25 P.S. § 3031.7(5) & (6).

As an example, assume that there are 3 Democratic candidates (Jones, Smith and Roberts) and 3 Republican candidates (Perry, James and O’Donnell) for school director, where voters may select up to 3 candidates in a general election. The voter initially selects a straight party ticket for all Democratic candidates. In this school director race, however, the voter then desires to vote for Mr. Perry, a Republican. The Pennsylvania Election Code requires that the voter be required to make one mark to vote for Mr. Perry. When the voter makes his mark for Mr. Perry, all of the Democratic candidates for the office of school director are deselected at the same time. Once the Democratic candidates are deselected, the voter must be able to reenter or mark the ballot for not more than 2 additional candidates from either party or write in not more than two additional names.

For a different example, assume that there are 3 Democratic candidates (Jones, Smith and Roberts) and 3 Republican candidates (Perry, James and O’Donnell) for school director, where voters may select up to 3 candidates in a general election. The voter initially selects a straight party ticket for all Democratic candidates. In this school director race only, however, the voter desires to vote only for one Democratic candidate, Jones. The Pennsylvania Election Code requires that the voter be required to make one mark to vote for Mr. Jones. When the voter makes his mark for Mr. Jones, all of the other Democratic candidates for the office of school director are deselected at the same time. Once the other two Democratic candidates are deselected, the voter must be able to reenter or mark the ballot for not more than 2 additional candidates from either party or write in not more than two additional names.

Once a voter has voted a straight party and voted for a candidate of the same or another party in the same office using the “Pennsylvania Method,” as explained above, the requirements of the Pennsylvania Election Code at § 3031.7(3) no longer apply. For example, the next time that the voter votes for another candidate in the same office after voting a straight party and then voting for a candidate of the same or another party, then he must deselect a candidate in that office before voting another time for another candidate for that same office.

NOTE: This document is intended to assist vendors in preparation for an examination of an electronic voting system. However, it is not meant to be an exhaustive analysis of all of the possibilities that § 3031.7(3) of the Pennsylvania Election Code may present.

Attachment III to Exhibit C

PENNSYLVANIA DEPARTMENT OF STATE

ATTACHMENT C TO THE DIRECTIVE FOR ELECTRONIC VOTING SYSTEMS

INDEMNIFICATION AND WARRANTY

For valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, the undersigned, (Corporate Name), a corporation of (State), having a mailing address of (Address), "(Corporate Name)", for itself and its agents, successors and assigns, states the following with respect to election-related products manufactured and/or sold by (Corporate Name) that have been certified according to statute by the Secretary of the Commonwealth of Pennsylvania ("The Products"):

I. INDEMNIFICATION

- A. (Corporate Name) hereby indemnifies and agrees to hold harmless the Commonwealth of Pennsylvania and any election jurisdiction therein (collectively referred to as "Pennsylvania") from and against any and all claims of third parties arising out of or in connection with the use by Pennsylvania of The Products and based upon allegations that any of The Products infringe one or more patents or copyrights owned by, or under which rights are held by, such third parties, provided Pennsylvania notifies (Corporate Name) in writing of any such claims within sixty (60) days after receipt thereof by Pennsylvania; (Corporate Name) will respond to Pennsylvania within thirty (30) days after receipt of such notification. All fees, costs and damages related to such third party claims and defense or settlement thereof, including, without limitation, attorney fees, court costs, expenses and damages resulting from any injunction prohibiting Pennsylvania's use of The Products, shall be borne by (Corporate Name), provided, however, that (Corporate Name) shall have the right to select its own counsel for defense of any such claim.

II. WARRANTIES

(Corporate Name) hereby warrants and represents as follows:

- A. That The Products conform to all applicable requirements of 25 P.S. §3031.7.
- B. That neither The Products nor any separable component thereof will be sold or otherwise transferred to Pennsylvania by (Corporate Name) unless such Product or component has been duly certified by Pennsylvania for election use.
- C. That it has the right to manufacture and/or sell The Products free of any known patent or copyright claim of any third party.
- D. That it will notify the Secretary of the Commonwealth of Pennsylvania and any existing or prospective purchasing jurisdictions within said Commonwealth of any claim or pending legal action relating to The Products, including but not limited to claims or actions arising under the United States Intellectual Property Laws; that such

notification will be made within ten days of the earlier of 1) the receipt of the claim by (Corporate Name), 2) filing of the action against (Corporate Name), or 3) the time of the examination; in any such case (Corporate Name) agrees to give such security, including but not limited to suitable bond, as shall be deemed appropriate by the Secretary of the Commonwealth under the circumstances.

III. RELIANCE BY PENNSYLVANIA

(Corporate Name) acknowledges that Pennsylvania is relying on the foregoing indemnification and warranties as a condition of certification of The Products for use in Pennsylvania, and that failure of (Corporate Name) to abide by the terms herein may result in decertification of The Products.

IV. PENNSYLVANIA LAW TO APPLY

(Corporate Name) agrees that this indemnification shall be interpreted and enforceable under and in accordance with the laws of Pennsylvania or the United States of America, as applicable, and that (Corporate Name) will accept jurisdiction of the federal and state courts of Pennsylvania for the purposes of resolving any disputes hereunder.

IN WITNESS WHEREOF, _____, by its duly authorized officer, has executed this Indemnification on the date set forth below.

(Corporate Name)

By: _____
(Name and Title)

(Date)

Attest: _____
(Name and Title)

STATE OF _____)

) ss:

COUNTY OF _____)

On this, the _____ day of _____, 20____, before me, the undersigned officer, a Notary Public in and for said State and County, personally appeared _____, who acknowledged h__self to be the _____ of (Corporate Name), and that _____ he/she, as such _____ being authorized to do so, executed the foregoing Indemnification for the purposes therein contained by signing the name of said Corporation by h__self as _____.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

_____ My Commission Expires: _____
Notary Public

Exhibit D

Training Requirements for County Election Officials and Staff (to be included in complete system price)

The vendor shall provide training and associated manuals that will include but not be limited to providing comprehensive classroom training with a workstation for hands-on experience for each trainee. At a minimum each trainee should be able to perform and understand the following concepts for the system upon the completion of training to the extent that these apply:

- Step by step processes to understand the definition and relationships to create an election database including offices, candidates, legislative districts, ballot questions for a Primary, General and Special Election
- Develop and process an election database including data collection, audio recording, linkage, and reports
- Programming of tabulators including preparation, setup, pre-election testing, and reports
- Complete all ballot layout and configuration tasks including lockout associations, sample ballots, and reports
- Produce all election materials including proof sheets, ballot face sheets, and memory cartridges
- System security and anti-tampering features including audit features, and reports
- Pre-election system testing, and reports
- Election Day setup and configuration, and reports (same training provided to district election officials)
- Election Day operations for the use of voting systems in polling places from the opening to the closing of the polls and all associated procedures (same training provided to district election officials)
- Breakdown of materials and equipment, and reports (same training provided to district election officials)
- Election Day operations for jurisdictions that require regional vote reading, transmission, central computation functions, unofficial election reports
- Election Day operations for jurisdictions that require central computation functions and unofficial election reports
- Troubleshooting to solve temporary problems
- Official canvass of vote returns and tabulation, and reports
- Backup procedures
- Post-election system testing, and reports
- Procedures for conducting a recount, and reports
- System and database backup procedures
- Service procedures and error codes
- Complete machine disassembly and reassembly
- Disaster recovery procedures
- A description of the procedures for placing service calls to the vendor

Exhibit E

SOURCE CODE ESCROW

- A. **Escrow requirement.** As a condition of any Contract resulting from the Invitation for Bids (IFB), the Contractor shall place the source code for all software licensed to Purchasers under the Contract (“Licensed Software”), along with all related materials required for a Purchaser to use the voting machines and related items provided under the Contract (collectively, the “Escrow Package”), into escrow with a selected Escrow Agent acceptable to the Commonwealth, to be specified upon contract award. This Source Code Escrow Package shall include, at minimum:
1. a complete copy, in machine-readable form, of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
 2. a complete copy of any existing design documentation and user documentation, including any updates or revisions as they may become available; and
 3. complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code, including precise identification of all compilers, library packages, and linkers used to generate executable code.
- B. **Escrow agreement.** The Contractor shall execute an escrow agreement with the Commonwealth-approved Escrow Agent no later than 30 days following any contract award pursuant to the IFB. Upon Commonwealth approval, the escrow agreement shall become a part of the final Contract with the Commonwealth.
- C. **Update requirement.** If the Contractor at any time during the term of the Contract provides a maintenance release or upgrade version of the Licensed Software, the Contractor shall within ten days of such maintenance release or upgrade deposit with the Escrow Agent a new Escrow Package for the maintenance release or upgrade. At the same time, the Contractor shall notify the Commonwealth that it has delivered the updated Escrow Package to the Escrow Agent.
- D. **Verification.** In addition to the release events specified in Subsection F. of this Section, the Commonwealth reserves the right, at any time upon written notice to the Contractor and the Escrow Agent, but not more than once a year, to obtain independent verification of the contents of the Escrow Package.
- E. **Escrow Fees.** The Contractor shall be responsible for all fees and expenses in connection with the Source Code Escrow.
- F. **Release Events.** The Commonwealth may direct the Escrow Agent to release the Escrow Package for the benefit of the Commonwealth and all Purchasers if the Contractor:
1. becomes insolvent, makes a general assignment for the benefit of creditors, or is the subject of any proceeding under bankruptcy or insolvency law; or
 2. voluntarily or otherwise discontinues support of the provided products or otherwise fails to fulfill its maintenance obligations and warranties under the Contract.
- G. **License.** Upon any release of the Escrow Package from the Escrow Agent, the Contractor automatically grants the Commonwealth and all Purchasers under the Contract a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create derivative works from the Licensed Software. Any such derivative works shall become the sole property of the Commonwealth.
- H. **Dispute.** – In the event of any Contract dispute, the Escrow Agent shall retain the Escrow Package without liability to any party until such dispute is settled either by mutual agreement or final order of a court of competent jurisdiction.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG**

Subject: Voting Systems
Contract No.: COSTARS-10
Bid Opening Date & Time: July 14, 2005, 1:30 PM
Flyer No.: 1

To All Bidders:

The attached are the Pre-Bid Conference Summary and Questions and Official Answers for the Pre-Bid Conference held on June 14, 2005.

The bid opening date remains the same; however, the opening time is changed to 1:30 PM.

Attach this flyer to the original copy of your Invitation for Bids proposal. Failure to do so may result in bid disqualification. If you have already returned the original bid, return this flyer with your instructions, annotated or a cover memo attached, to:

DGS Bureau of Procurement
Bid Opening Room
Room 414 North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17125
Or
P. O. Box 1365
Harrisburg, PA 17105-8365.

IF YOU ARE CHANGING PRICE(S), DO NOT FAX this flyer and/or cover memo; you must furnish these instructions in a sealed envelope. Please indicate the contract number and opening date and time on the outside of the envelope.

Except as clarified and amended by this flyer, the instructions, terms and conditions of the Invitation for Bids and any previous flyers, remain as originally written.

Direct all questions concerning Invitation for Bids to:
Dawn Spero, Commodity Specialist, at 717-346-4296 or e-mail dspero@state.pa.us.

Very truly yours,

Doug Tinkey, COSTARS Program Manager
for John M. Troxel, Chief Procurement Officer
Bureau of Procurement

Subject: Voting Systems
Contract No.: COSTARS-10
Bid Opening Date & Time: July 14, 2005, 1:30PM
Flyer No.: 1

**Summary of the COSTARS Voting Systems Pre-Bid Conference,
1:30, 06/14/05, Hearing Room #2, North Office Building, Harrisburg, PA**

In Attendance:

For the Commonwealth:

Peter Dalina, Department of State
Gail Borger, Department of State
Judith Holjes, Department of State
Patrick Williams, Department of State
William Boehm, Department of State
Harry VanSickle, Department of State
Charles Anderson, Office of Chief Counsel
Dawn Spero, Department of General Services
Ray Cunningham, Department of General Services
Susan Phelan, Department of General Services

Contractors:

John Philpitt, Comfidex
Robert Diekman, Diebold
Howard T. Van Pelt, Advanced Voting Systems
Vince Shulte, Unisys
Pat Gorman, Accupoll
Gene Murphy, Unisys
Larry Tonelli, Sequoia Voting Systems
Matt Lilly, Danaher Controls
Molly Terry, Hart Intercivic
Dan McCurdy, Verizon

Dawn Spero, COSTARS commodity specialist, made opening remarks. She noted that she is to be the sole point of contact for anything having to do with procurement or administration of this COSTARS contract until contract award and execution is complete, with the exception that suppliers whose machines have not yet been certified must deal directly with the Department of State to obtain certification of the products. She also noted that anything discussed at the conference would not be considered an official response to any questions, and that the official response would be posted on the DGS website.

Ms. Spero stated DGS would post all official questions and answers to its website no later than Tuesday, June 21. She told the attendees that she would go over some of the specifics of the bid documents and the bid item workbook at the end of the presentation, and that if anyone should have questions, she would address them at that time. She requested that questions be written, and that if there was anything technical that could not be answered at the conference, it would be addressed in the official response to be posted on the DGS website.

Commonwealth representatives and contractor attendees then introduced themselves.

Peter Dalina from the Department of State then provided general information on the procurement from his agency's perspective. He said that the Commonwealth intended this contract solicitation to benefit Pennsylvania's counties in purchasing additional or replacement voting equipment, making a uniform selection available statewide, and to ensure that the

Commonwealth is in compliance with HAVA requirements for the Federal monies the Commonwealth has received. This statewide COSTARS contract permits the counties to acquire systems without the need for each county to solicit bids separately. He said it is the Commonwealth's goal to provide time and cost savings to the counties, which should be beneficial to everyone. He told the contractors attending that they would assist in providing the counties with the equipment that the counties require to carry out their voting obligations and processes.

Gail Berger, also from the Department of State, then added that the current solicitation is not intended to eliminate any contractors, but to try to get the broadest range of contractors to participate. She noted that the attending manufacturer representatives to be aware that they must get into the pipeline for Department of State certification of their machines, because no counties may issue a purchase order until the manufacturers are actually certified by the Secretary of the Commonwealth. Any contractor may bid on this contract, but a county will not be able to purchase from that contractor unless and until the Department of State certifies the offered equipment.

Ms. Spero then went over some issues specifically geared toward the Special Terms and Conditions. She reminded all present that no Commonwealth agencies will purchase under this contract and that it is solely for the counties' use. The contract period will be a one-year duration, with four renewal periods. DGS will award contracts to all responsive and responsible bidders. Department of State certification by the Department IS NOT REQUIRED to respond to the bid solicitation. She encouraged all contractors to bid.

Ms. Spero noted that all pricing must be included in the official bid item workbook submitted with the bid. She directed contractors to the DGS Procurement website and the "COSTARS Bid Contract" form to link to the bid item workbook. The first sheet in that workbook site is the instruction sheet for this workbook; the second sheet is the contractor/bidder data. She advised all bidders to remember to include a Social Security number if the bidder is a sole proprietor and the Federal ID Number if the bidder is another form of business entity; she also reminded that the bid must include information on any subcontractors as well.

She then went over the bid item sheet, which has three sections. The first is for the complete system price, software price, and discount prices (if the bidder offers discounts). The next section is called component pricing for obvious reasons, and there is also optional item pricing. The last sheet is the list of documents contractors must return with their bids. Ms. Spero reminded contractors to fill out the workbook section on COSTARS requirements; that they would be required to provide sales information, so that DGS may track the usefulness of this contract; and to be sure to sign the bid! The bid submissions are due by 1:30 p.m. July 14th 2005 at room 414 North Office Building.

NOTE: The machines offered do not have to be certified at the time DGS opens the bids. You must, however, be certified to receive a fully-executed contract. Please consider bidding even if your firm is not yet certified. If you do not respond by July 14, 2005, you will lose the opportunity to participate in this contract.

Please remember DGS will take questions only until the close of business June 28, 2005.

Subject: Voting Systems
Contract No.: COSTARS-10
Bid Opening Date & Time: July 14, 2005, 1:30PM
Flyer No.: 1

Questions and Answers

Q: Can we receive the bid information in MS Word form?

A: No, the bid documentation is available in .pdf (Adobe document) format only.

Q: What is the amount per precinct the state has allocated each county?

A: The maximum Commonwealth allocation is \$8,000 per precinct, but there are certain exceptions. Please refer to the State Plan available on the Department of State website (www.dos.state.pa.us) for information on these exceptions.

Q: Will all the companies that respond be approved to sell in Pennsylvania?

A: All contractors meeting the Department of State's certification requirements will be approved to sell voting machines in the Commonwealth. Any vendors whose products require certification are encouraged to apply to the Department of State immediately to ensure that contract awards may proceed to execution as soon as possible after the bid opening.

Q: Will Department of State-certified companies be approved to sell their products in Pennsylvania?

A: All responsive and responsible bidders under this COSTARS procurement will receive a contract award., provided that they offer machines that are certified at the time of award.

Q: When is the next opportunity to be examined for certification?

A: The Department of State conducts examinations according to an established schedule. Please contact Patrick Williams at 717-346-9004 for schedule information.

Q: May counties purchase machines from a company that is not on this State Contract?

A: Yes. Any county opting to do its own voting machine contracts would be required to comply with county procurement law and policy requirements.

Q: I am somewhat confused by the response, certification, and HAVA deadlines. Some counties (in Philadelphia, there is a bid-letting scheduled for Thursday, June 23) seem to be moving forward without benefit of what is contained in this process. Is this what you expected, and should we all be comfortable with that?

A: Counties are not required to purchase from this contract; they may elect instead to procure voting systems on their own. Suppliers are encouraged to bid on all contracts for which they may be eligible, at both state and local levels.

Q.: Is there a most-favored-nation clause in this contract?

A: No.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES
HARRISBURG**

Subject: Voting Systems
Contract No.: COSTARS-10
Bid Opening Date & Time: July 14, 2005, 1:30 PM
Flyer No.: 2

To All Bidders:

The attached are questions received by the Department of General Services regarding the above-mentioned Invitation for Bid, along with their answers.

The bid opening date and time remain the same.

Attach this flyer to the original copy of your Invitation for Bids proposal. Failure to do so may result in bid disqualification. If you have already returned the original bid, return this flyer with your instructions, annotated or a cover memo attached, to:

DGS Bureau of Procurement
Bid Opening Room
Room 414 North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17125
Or
P. O. Box 1365
Harrisburg, PA 17105-8365.

IF YOU ARE CHANGING PRICE(S), DO NOT FAX this flyer and/or cover memo; you must furnish these instructions in a sealed envelope. Please indicate the contract number and opening date and time on the outside of the envelope.

Except as clarified and amended by this flyer, the instructions, terms and conditions of the Invitation for Bids and any previous flyers, remain as originally written.

Direct all questions concerning Invitation for Bids to:
Dawn Spero, Commodity Specialist, at 717-346-4296 or e-mail dspero@state.pa.us.

Very truly yours,

Doug Tinkey, COSTARS Program Manager
for John M. Troxel, Chief Procurement Officer
Bureau of Procurement

Subject: Voting Systems
Contract No.: COSTARS-10
Bid Opening Date & Time: July 14, 2005, 1:30PM
Flyer No.: 2

Q: Are the machines to be provided under this contract required to support cumulative voting?

A.: Pennsylvania does not permit cumulative voting, so the machines to be provided under the contract would not be required to support this.

Q.: How should programs be structured with regard to permitting straight party voting? If a voter chooses an individual candidate and then decides to vote straight party, would the voter first have to deselect the individual candidate?

A.: Straight party voting is permitted only in the fall general elections, where voters may choose among candidates from all parties listed on the ballot. It should be possible for a voter to select straight party voting after selecting one or more candidates, provided that the already-selected candidates are from the same party as the straight ticket selection.

Q.: How would programs have to be structured to accommodate Pennsylvania's party-specific primary elections?

Because Pennsylvania's primary elections are "closed" primaries structured by political party rather than "open" primaries where voters are permitted to vote across party lines, the machines must be able to display a different voting screen for each participating political party, naming only the candidates running on that party's ticket. The individual party screens should be locked in by a security code known only to the elections officials, so that individual voters cannot change the screens to vote for a party other than the one in which they are registered.

Q: Is the vendor being asked to reply to each item individually in Exhibit B, Title III, HAVA, or is this being furnished for informational purposes only?

A.: Exhibit B is a mandatory requirement for contract award. All Voting Systems in Pennsylvania must meet the Federal standards of Title III of the Help America Vote Act. By submitting a bid, the bidder is certifying that it complies with the terms of Exhibit B.

Q.: Do we need to provide training and associated sample manuals with each IFB submittal?

A. The bidder is required to submit only one copy of these items with its bid documents.

Q.: With respect to the pricing workbook, where should we list the pricing for project management and election day support services?

Please refer to Special Terms and Conditions, Paragraph #2 (Contract Scope), which states, in pertinent part, "...These complete System purchases will include... administrative and technical support [and] on site support during all elections occurring within one year of the date the System is fully operational, but in no event less than two regular (May and November) elections...."

Any project management and election day services beyond those required in the Contract Scope should be included in the Optional Pricing Section of the Bid Item Sheet Tab of the Bid Item Workbook.

Q.: Our EMS software includes several modules available to a jurisdiction. Please provide guidance on where in the price workbook these individual modules and related pricing should be presented.

A.: Please list the complete System components in the format presented in Part I of the Bid Item Sheet Tab of the Bid Item Workbook. The System pricing must include all required system components.

Q.: Is the vendor allowed to modify the forms to present the products, software and services offered?

A.: The bidder is permitted to expand the cells in the Bid Item Workbook to include any products, software, and services to be offered; however, the format presented should be consistent with the format of the Bid Item Workbook.

Q. Please specify how many hard copies you would like to receive.

A.: One complete hard copy is required.

Q.: Please confirm the “ship to” address for the proposal.

A.: The Ship to Address is the Bid Room, 414 North Office Building, Commonwealth Avenue and North Street, Harrisburg, PA 17125. Anything addressed to that address is delivered to the Central Mail Processing Facility. It takes at least 24 hours for any mail to be forwarded from the Central Mail Facility to the Bid Room. To avoid late bids, all bidders must consider this 24 hour delivery time when submitting their bid responses by mail.