

SHIREMANSTOWN BOROUGH COUNCIL
SHIREMANSTOWN BOROUGH STORAGE AND MAINTENANCE BUILDING

Section 3
Contract 15609.655-1

GIBSON-THOMAS ENGINEERING CO., INC.**INSTRUCTIONS TO BIDDERS****TABLE OF CONTENTS**

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INSTRUCTIONS TO BIDDERS

1. GENERAL

The following instructions relate to the proper form and method for the submitting of Bids, to the required security, to provisions for the letting of contracts and to such other matters, all prior to the execution of the Contract Documents.

Project Title: "Shiremanstown Borough Storage & Maintenance Building"

Owner: Shiremanstown Borough
1 Park Lane
Shiremanstown, PA 17011-6377

Engineer: Gibson-Thomas Engineering Co. Inc.
3552 Gettysburg Road, Suite 201
Camp Hill, PA 17011

Architect: KD3 Design Studio, Inc.
426 S. Third Street, Suite 101
Lemoyne, PA 17043

2. SUBMITTAL OF BIDS

All bids shall be submitted online via the PennBid Program (www.PennBid.net).

A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid.

3. EXAMINATION OF CONTRACT DOCUMENTS

Complete sets of the Bidding Documents may be obtained online at no cost via the PennBid Program (www.PennBid.net).

Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

It is the responsibility of each Bidder before submitting a Bid to:

- a. Examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- b. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local and Site conditions that may affect cost, progress, and performance of the Work;
- c. Become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- d. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;
- e. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety and precautions and programs;
- f. Agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies or data are necessary for the determination of its Bid for performance of the Work at the price bid within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- g. Become aware of the general nature of the work to be performed by Owner and Others at the Site that relates to the Work as indicated in the Bidding Documents;
- h. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
- i. Determine that the Bidding Documents are generally sufficient to indicate and convey understand of all terms and conditions for the performance and furnishing of the Work; and
- j. Agree that submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

4. EXAMINATION OF PROJECT LOCATION

The Bidders shall examine the location of the proposed work and determine, each in his own way; the difficulties which may be encountered in the execution of the work. No additional claims for compensation will be considered due to obstructions or conditions at the location of the work, even though such obstructions or conditions are not shown on the Contract Plans or indicated in the

Contract Documents; and no claim shall be made against the Owner or Engineer by the Bidder for such failure.

5. PRE-BID CONFERENCE

A pre-Bid conference will be held at the time and location stated in the invitation or advertisement to bid. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

6. BASIS OF BID

Lump Sum

- a. Bidders shall submit a bid on a lump sum basis as set forth in the Bid Form.

Unit Price

- a. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- b. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with the General Conditions.
- c. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

7. PROPOSAL FORM / PREPARATION OF BIDS

The Bid Form is located within PennBid's "Bid" tab.

- a. All blanks on the Bid Form shall be completed.
- b. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words "No Bid" or "Not Applicable" Within the Comment field next to the line item.

A Bid by corporation shall be submitted in the corporate name by a corporate officer. The corporate address and state of incorporation shall be shown.

A Bid by a partnership shall be submitted in the partnership name. The partnership's address for receiving notices shall be shown.

A Bid by limited liability company shall be submitted in the name of the firm by member or other authorized person. The state of formation of the firm and the firm's address for receiving notices shall be shown.

A Bid by individual shall show the Bidder's name and address for receiving notices.

A Bid by a joint venture shall be submitted by an authorized representative. The joint venture's address for receiving notices shall be shown.

The Bid shall contain an acknowledgement of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

Post and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualifications prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall be also shown on the Bid Forms.

Bids of any Bidder or Bidders who engage in sham or collusive bidding will be rejected. Any Bidder who submits more than one Bid Form in such manner as to make it appear that the Bids submitted are on a competitive basis from different parties will be considered a collusive bidder.

If the Bidder is an individual, the Bid shall be signed by the Bidder or by some person whom the Bidder has authorized, by a properly executed Power of Attorney, to sign the Proposal for him.

If the Bidder is a Partnership, the Proposal shall be signed by one of the Partners or by some person whom the Partnership shall have authorized to sign the Proposal for it thus by a properly executed Power of Attorney.

If the Bidder is a corporation, the Proposal shall be signed by an officer of the corporation or by some other person authorized by a proper Resolution of its Board of Directors, regularly adopted, to sign the Proposal for it. All such signatures will be properly witnessed or attested. The Bidder shall also fill out and sign such other forms attached to the Proposal Form requiring execution by the Bidder and include any other such information called for on the Proposal Form.

If the Bidder is a limited liability company, the Proposal shall be signed by all members of the limited liability company, or by an officer of the company authorized by proper Resolution of its members to sign the Proposal for it. All such signatures will be properly witnessed or attested.

8. INTERPRETATION AND ADDENDA

All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing via PennBid's "Questions" tab. Interpretations or clarifications considered necessary by Engineer and Architect in response to such questions will be issued by Addenda and posted within PennBid's "Documents" tab. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Addenda will be issued at least five (5) days prior to the date of Bid opening.

Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

9. MODIFICATION AND WITHDRAWAL OF BID

A bid may be withdrawn at any time prior to the date and time for the opening of Bids via PennBid's "Withdraw Bid" function.

A bid may be modified at any time prior to the date and time for the opening of Bids via PennBid bidding system.

If within 3 days after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, the Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

10. BIDDER'S SURETY

A Bid must be accompanied by security made payable to the Owner in an amount of 10% percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Document) issued by a surety meeting the requirements of 3.b of the Standard Contract Provisions.

The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

11. BID OPENING

Bids will be opened via the PennBID system and publicly read aloud at the time and place set forth in the Public Advertisement or Contract Documents.

12. EVALUATION OF BIDS AND AWARD OF CONTRACT

Owner reserves the right to reject any of all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time or change in the Work.

All Bids will remain subject to acceptance for the period of time stated in the Advertisement, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Total Base Bid.

Evaluation of Bids

- a. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- b. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Form. To determine the Bid prices for purpose of comparison, Owner shall announce to all bidders a "Base Bid plus alternates" budget after receiving all Bids, but prior to opening them. For comparison purposes alternates will be accepted, following the order of priority established in the Bid Form, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, responsibility, and other factors set forth in these Instructions, the award may be made to Successful Bidder on its Bids and any combination of its additive alternate Bids for which Owner determines funds will be available at time of award.

13. AWARD OF CONTRACT

After all bids submitted have been properly evaluated and compared, the Owner may either reject all bids or award the Contract to the lowest responsible Bidder. The Bidder will be required to deliver to the Owner or Engineer all insurance policies and certificates specified to be furnished within ten (10) days (or such reasonable time not less than ten (10) days, as may be stated in the notice) after the deposit in the mails, postage prepaid and properly addressed, of a notice to him that a Contract has been awarded to him and the Contract Documents are prepared for signature. The award will be contingent upon receipt of information from the

Bonding Company as stipulated herein and verification that the information provided by the Bidder is accurate. In case the Bidder shall fail or neglect to do so, the Owner will be entitled to consider all rights arising out of the Owner's acceptance of the Bid as abandoned and as a forfeiture of the Bid Bond. The Owner may thereupon award the Contract to the next lowest bidder or re-advertise or otherwise award said Contract and collect the costs and losses of the Owner incident to such abandonment, re-advertisement or award from the Bidder including the bid security posted by the Bidder. Owner reserves the right, at its discretion, to approve or reject any major sub-contractor or supplier identified in the Proposal Form and to request that Bidder name an alternate who is acceptable to the Owner.

14. QUALIFICATIONS OF BIDDERS

The Bidder, if ordered by the Owner or Engineer, shall promptly submit such data and information as may be deemed necessary to permit determination by the Owner or Engineer of the qualifications of the Contractor to perform the work included under the Contract. The Owner reserves the right to reject any bid if such data and information indicates, in the opinion of the Owner, that the Contractor is not qualified. Specific areas of concern may be such items as prior performance record, technical qualifications, and financial responsibility.

To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit with its Bid (a) written evidence establishing its qualifications such as financial data, previous experience, and presents commitments and (b) the following information"

- a. No Bidder shall be eligible to submit a Bid who has been barred from public work projects, including but not limited to, failure to comply with the Public Works Employment Verification Act 127 of 2012.
- b. Evidence of Bidder's authority to do business in the state where the Project is located.
- c. Bidder's state or other contractor license number, if applicable.
- d. Subcontractor and Supplier qualification information; coordinate with provisions of Section of these Instructions, "Subcontractors, Suppliers, and Others."

A Bidder's failure to submit required qualification information within the items indicated may disqualify Bidder from receiving an award of the Contract.

No requirement in this document to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

Bidder is advised to carefully review those portions of the Bid Forms requiring Bidder's representations and certifications.

15. PARTS OF CONTRACT

The following documents and plans, referred to as Contract Documents, supplement each other and are each a part of each bid submitted and of the Contract:

- a. Public Advertisement
- b. Instructions to Bidders (General and Supplemental)
- c. Proposal
- d. Agreement
- e. Standard Contract Provisions
- f. Bidder's Bond
- g. Performance Bond
- h. Labor and Material Bond
- i. Other Bonds specified
- j. State Government Requirements, if any
- k. Specifications, Standard, Specific and Supplemental
- l. Contract plans and General Construction Standards
- m. Such other documents and plans, and addenda

16. INSURANCE

The Contractor shall, following the award of the Contract and prior to its execution, submit to the Owner Certificates of Insurance in accordance with the following requirements and subject to the approval and acceptance by the Owner:

The Contractor shall name the Owner as "additionally insured" on the Certificate.

a. Compensation Insurance

The Contractor shall take out and maintain during the life of this Contract Workmen's Compensation Insurance for all employees employed on this project, and in case any work is sublet, the Contractor shall require the Sub-Contractor similarly to provide Workmen's Compensation Insurance or all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor.

b. Public Liability and Property Damage Insurance

The Contractor shall take out and maintain during the life of his contract such Public Liability and Property Damage Insurance as shall protect him and any Sub-Contractor performing work covered by this contract from claims for personal injury, including accidental death, as well as claims or property damage which may arise from operations under this Contract, whether such operations be by himself or by any Sub-Contractor or by anyone directly or indirectly employed by either of the Contractor or Sub-Contractor, and the amounts of such insurance shall be as follows:

Public Liability Insurance in an amount of not less than \$1,000,000 for injuries, including accidental death, to any one person and, subject to the same limit for each person, in an amount of not less than \$1,000,000 on account of one accident; and Property Damage Insurance in an amount not less than \$1,000,000 to any one person and subject to the same limit for each person, in amount of not less than \$1,000,000 on account of one accident. The policy shall include an endorsement for contractual liability.

c. Insurance Covering Special Hazards

Hazards relative to the use of automobiles or trucks on the site or going to or coming from the site, to explosion, collapse, and underground utilities, and to blasting shall be covered in the same amounts by rider or riders to the Public Liability and/or Property Damage Insurance Policy or Policies herein elsewhere required to be furnished by this Contractor or by separate policies of insurance.

17. CONTRACT BONDS

In accordance with the Pennsylvania Public Works Contractors' bond Law of 1967, the successful Bidder shall furnish to the Owner the following Bonds on the forms prescribed which will become binding upon the awarding and execution of the Contract Agreement:

For verification purposes, the Contract Bonds shall include documentation that includes the following information: Name of Bonding Co.; Contact Person; Attorney in Fact; Telephone Number; Fax Number.

- a. A Performance Bond in the amount of one hundred percent (100%) of the Contract amount, conditioned upon the faithful performance of the Contract, in accordance with the Plans, specifications, and conditions of the Contract. Such Bond shall be solely for the protection of the Owner.
- b. A Payment Bond in the amount of one hundred percent (100%) of the Contract amount. Such Bond shall be solely for the protection of individuals, firms, corporations, partnerships, and associations supplying labor or materials to the Contractor or to any of his Sub-Contractors in the prosecution of the work provided for in the contract and shall be conditioned for prompt payment of all such material furnished or labor supplies or performed in the prosecution of the work.
- c. A Maintenance Guarantee and Bond will be required. Unless otherwise specified elsewhere in the Proposal documents, the Contractor shall agree for himself, his heirs, executors, administrators, successors and assigns to maintain all the work done under this Contract in good condition for a period of two years from the date of final acceptance of the same, the Owner being the judge of the condition of the work; and upon the acceptance of the completed work and before the surety which has furnished the Performance Bond is released, the Contractor, at no additional cost to the Owner, shall furnish a Maintenance Bond executed by a responsible corporate surety company

in the full amount of the final cost of the Owner or in a lesser amount if so stipulated elsewhere in the Contract Documents.

The bond shall be executed by a responsible corporate surety company legally authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Owner and shall be payable to the Owner as Oblige.

18. NOTICE TO PROCEED

The Notice to Proceed shall be issued by the Owner within ten (10) days of the execution of the Contract Agreement. Should there be a valid reason why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the ten (10) day period or within such period as is mutually agreed upon, the Contractor may terminate the Contract Agreement without further liability on the part of either party.

19. DATE OF STARTING AND COMPLETING WORK

The Contract work shall be started immediately upon receipt of a written notice from the Owner and shall continue in full force until completion, unless approval to suspend work is granted by the Owner or delays occur due to unfavorable weather. The work shall be completed in the number of days as indicated in the Public Advertisement and/or the Contract documents and Notice to Proceed.

Before filing his bid, the Bidder shall have made all arrangements to be fully equipped to expeditiously carry on all work should he be awarded a Contract and he shall have made all arrangements to permit immediate transportation to the site of the work of all equipment, materials and other facilities required to execute the work. In scheduling his operations, the Contractor shall take into consideration all delays that may occur due to unfavorable weather, failure of public utilities or others to install, remove, or adjust their structures when required; and the uncertainties prevailing on account of a national emergency in regard to obtaining critical materials and labor to complete the various portions of such work in time.

20. LIQUIDATED DAMAGES

For each calendar day that the work under this Contract shall remain uncompleted after the expiration of the period fixed for completion, a sum per day as set forth in the Public Advertisement and/or the Contract Documents shall be deducted from the monies due or to become due the Contractor, not as a penalty, but as an approximation of the actual damages which the Owner will sustain per diem for failure of the Contractor to promptly complete the work, it being agreed that the amount of actual damages is to be determined by the Engineer. The Owner, upon recommendation of the Engineer, at its discretion may waive the liquidated damages by reason of delay due to causes over which the Contractor has no control.

21. GOVERNING LAWS AND REGULATIONS

The successful Bidder on the Contract will be required to comply with all applicable Local, State and Federal Laws, including those relating to safety, wage rates, employment, environmental protection and restoration of disturbed areas.

22. ADVERTISEMENT INCLUDED IN INSTRUCTIONS TO BIDDERS

All the information and requirements in the Public Advertisement shall be read into and considered a part of the Instructions to Bidders.

23. MINIMUM WAGE RATES - PENNSYLVANIA CONTRACTS

The minimum wage rates for each craft or classification of all workmen needed to perform this Contract during the anticipated term hereof shall be governed, as applicable, by the "Pennsylvania Prevailing Wage Act" (43 P.S. 165-1 to 165-16). The Contractor's attention is directed to these two statutes in order that the applicable provisions of these Acts be strictly adhered to in the performance of this Contract. Failure to adhere to the provisions of the applicable Act shall be sufficient grounds for the Owner to either declare contract in default or to terminate same. The minimum wage rates applicable to all Contracts, as established and to the extent available, are set forth in the Contract Documents.

24. PROCUREMENT ACTS

Where applicable, the Bidder shall comply with and assure Owner's compliance with, any laws or regulations of the Commonwealth of Pennsylvania or the United States of America specifying or restricting the origin or manufacture of products, including but not limited to, the Steel Products Procurement Act, (Act of March 3, 1978, 73 P.S. Section 1881 et seq.) Any steel products used or supplied in the performance of the contract or subcontracts thereunder shall be from steel made in the United States.

25. SUBSTITUTION OF MATERIALS

The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

All products that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

26. UNDERGROUND STRUCTURES, ACT 287 OF 1974 AS AMENDED BY ACT 121 OF 2008

The Owner shall not incur any obligation to a Bidder based on the location, number, size, character or condition of any of the underground installation shown on the Plans, such as sewers, water lines or underground structures of any public utility company or other party. Any information shown on the Plans as to such underground installations is based on information which has been obtained from records, surveys and other sources in compliance with Pennsylvania Act 287. The Bidder shall make its own independent investigation of these conditions and no claim for extra compensation or for any other loss or damage to the Bidder or any third party will be considered by reason of any error in its information, nor shall any successful Bidder be relieved of its sole responsibility for any claim arising therefrom. Following the award of a Contract, the Contractor shall comply with all provisions of Act 121 of 2008 requiring a three (3) day notice to all utilities through the One-Call System.

a. Alleged Violation Reports (AVR)

The Contractor shall be responsible to contact both the Owner and the Engineer should an AVR be filed for a mismarked/damaged utility no more than five (5) business days after the report is filed.

The Contractor shall also be responsible to contact both the Owner and Engineer should a Facility Owner file an AVR on the Contractor for a utility strike on the project. This should occur no more than two (2) business days after receipt.

Information provided to the Owner and Engineer should be as follows:

- PUC Case number, if known;
- Related AVR Serial Number;
- Original Design Serial # noted on Plan Drawings;
- Event Location – County, Township, City or Borough. Street address if pertinent;
- Affected Facility
- Contractor's Representative on Site (Phone number and email address)
- Contractor's business address;
- A clear and accurate description of the event;
- Photos to document the event;
- Should an AVR be filed by a Facility Owner, include owner's name, address, phone #, email address and representative name.

27. TEST PITS AND BORINGS

The Bidder shall excavate such test pits and make such borings along the line of work as he believes necessary to determine the character and nature of the materials to be encountered. No extra payment will be allowed for the presence of rock. All excavation is unclassified.

28. PENNSYLVANIA RIGHT TO KNOW LAW OBLIGATIONS

- a. The Pennsylvania Right-to-Know Law (hereinafter referred to as the “RTKL”), 65 P.S. §§ 67.101-3104, applies to this Contract and all documents provided to the governmental organization in connection with contract. For the purpose of administering the matters relating to the RTKL set forth in this Section, the applicable “Commonwealth Agency” as provided in the RTKL shall be this governmental organization. Capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the RTKL.
- b. If a governmental organization needs the contractor’s assistance in any matter arising out of the RTKL, the governmental organization shall notify the contractor in writing.
- c. Upon written notification from governmental organization that it requires the contractor’s assistance in responding to a request under the RTKL for information that may be in the contractor’s possession, constituting, or alleged to constitute, a Public Record in accordance with the RTKL, contractor shall:
 - 1) Provide the governmental organization, within ten (10) calendar days after receipt of such notification, access to, and copies of, any document or information in the contractor’s possession arising out of this contract, that the governmental organization reasonably believes may be a Public Record under the RTKL (“Requested Information”), to permit the governmental organization to evaluate whether such Requested Information is, in fact, a Public Record within the scope of the subject RTKL information request; provided, however, that providing such Requested Information not previously in the governmental organization’s possession shall not be considered an admission by the contractor that such records are Public Records under the RTKL; and
 - 2) Provide such other assistance as governmental organization reasonably may request, in order to comply with the RTKL. If the contractor fails to provide the Requested Information within ten (10) calendar days after receipt of such request, the contractor shall indemnify and hold the governmental organization harmless for any damages, penalties, detriment or harm that the governmental organization may incur under the RTKL as a result of the contractor’s failure, including any statutory damages assessed against the governmental organization.
- d. If the contractor considers the Requested Information not to be a Public Record, or exempt from production due to the inclusion of trade secret, confidential proprietary information, or any other reason for exemption from production as a Public Record under the RTKL, the Funding Recipient shall provide a written statement to the governmental organization within seven (7) days of receipt of the governmental organization’s request for the Requested Information. This statement shall be signed by a representative of the contractor, explaining why the contractor considers the Requested Information exempt from public disclosure.

- e. If such a written statement is timely provided, the governmental organization will rely upon it in denying a RTKL request for the information. However, if governmental organization reasonably determines that such written statement is patently flawed or the Requested Information is, on its face, clearly not protected from disclosure under the RTKL, the contractor shall, subject to its rights of appeal, provide the Requested Information within five (5) business days of notification of the governmental organization's decision. If the contractor fails to provide the Requested Information within the five (5) business days, the contractor shall indemnify and hold the governmental organization harmless from any damages, legal fees, penalties, detriment or harm, including statutory damages assessed against the governmental organization that the governmental organization may incur under the RTKL as a result of the contractor's failure to provide the records.
- f. The contractor shall be entitled to challenge or appeal any decision of the governmental organization, the Commonwealth Office of Open Records ("OOR") or any applicable court mandating the release of any record to the public which the contractor believes is not properly subject to disclosure under the RTKL; provided, however, that:
 - 1) the contractor shall be solely responsible for all costs related to such action; and
 - 2) the contractor shall indemnify and hold harmless the governmental organization from and against any and all legal fees, damages, penalties, detriment or harm that the governmental organization may incur under the RTKL as a result of such action, including any statutory damages assessed against the governmental organization, regardless of the outcome of such legal challenge. If the contractor does not appeal or is not successful after final appeal from a determination by the OOR or Pennsylvania courts, the contractor agrees to waive all rights or remedies that may be available to it as a result of the governmental organization's subsequent disclosure of Requested Information pursuant to such a decision by the OOR or Pennsylvania courts. The governmental organization will reimburse the contractor for any costs associated with complying with this provision, but only to the extent allowed under the fee schedule established by the OOR, or as otherwise provided by the RTKL, if the fee schedule is inapplicable.
- g. Notwithstanding the foregoing, nothing set forth herein is intended, nor shall it be construed, to expand the contractor's obligations, or the governmental organization's authority, beyond those obligations and authority, respectively, as are set forth in the RTKL, and the sole remedy for any failure by the contractor to perform any obligation arising hereunder, or under the RTKL, shall be limited to those specifically provided for pursuant to the RTKL, and the failure of the contractor to comply with the provisions of this Section shall not constitute a default or Event of Default under the contract or the Contract Documents.