

Pennsylvania Energy Development Authority 2020 Financial Assistance Guidelines



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Introduction

The Pennsylvania Energy Development Authority (PEDA) is offering assistance to aid in recovery to COVID-19 by providing an opportunity to apply for approximately \$2 million in funding for clean, advanced energy projects, as well as for businesses conducting manufacturing or production operations in Pennsylvania.¹ PEDA will consider projects such as the manufacturing of alternative energy or energy efficiency equipment or materials; the development and deployment of innovative, clean, advanced and efficient technologies; the generation of alternative energy or the production of alternative fuels; or the implementation of energy efficiency/demand side projects.

In light of recent events, PEDA seeks to award **Restart Grants (“grant(s)”)** up to \$250,000 to assist with the completion of eligible projects initiated but then disrupted due to the COVID-19 response, and/or to facilitate eligible projects that were planned, but not yet started.

- Restart Grant awards may be applied retroactively only towards the costs of eligible equipment procured and delivered between January 1, 2019 and the date of grant application submission, thus allowing funds to flow into putting workers back to work and finishing the project.
- Restart Grant awards may also be applied as up-to 100% working capital to complete existing projects or begin projects which were planned prior to the Emergency Declaration resultant of COVID-19 but not yet started.

Note: Applicants may request both reimbursement for existing equipment as well as working capital within the same grant application with the grant award to a single applicant not to exceed \$250,000.

Note: Working capital will be distributed as a lump sum and may be applied to costs (defined in section C. Eligible Uses of Funds) starting on or after grant application date.

All awarded Grantees will be required to purchase a surety bond in the total amount of the grant award and matching funds plus a 10% maintenance surety as a condition of receipt of the grant funds and to ensure that the project is completed within 24 months of grant award. Projects completed before the publication date of these guidelines are ineligible.

PEDA encourages the hiring of Pennsylvania contractors, suppliers, labor and minority, veteran, service-disabled veteran and women-owned businesses. African American and Latinx people experience higher rates of unemployment. Many sectors of the energy economy employ African American, Latinx, and female workers at lower rates than the national average and Latinx workers in the U.S. energy economy are suffering higher job losses than their non-Latinx peers due to the COVID-19 pandemic.

PEDA encourages applicants to seek funding for clean, advanced energy projects which will provide backup power for critical operations as socioeconomic status, race and ethnicity, sex, gender, age, language proficiency, and disability constitute major factors in vulnerability to climate disasters and energy disruptions. Projects that support revitalization by reusing or redeveloping brownfields and previously developed sites in urban, suburban and rural communities are desired.

¹ This program is authorized by PEDA and Emergency Powers Act, Act of Dec. 14, 1982, P.L. 1213, No. 280, as amended, 71 P.S. § 720.1 et seq.; the Act of July 13, 2005, P.L. 213, No. 45, amending the Environmental Stewardship and Watershed Protection Act, 27 Pa. C.S. §§ 6101 et seq.;

Key Considerations

- PEDA expects award Grant funds in amounts of \$250,000 or less.
- Funded activities must be conducted entirely in Pennsylvania.
- All eligible projects must include a research component directly related to alternative energy resources to be eligible for this solicitation.
- A grant award applied retroactively to equipment will be disbursed as a one-time payment for eligible costs incurred between January 1, 2019 and the date the grant application is submitted.
- A Grant award applied as working capital will be provided as a lump sum payment for expenditures only on eligible costs incurred after the application submission date and up to the project completion date.
- All Grants funds requested must be matched with applicant-provided monetary commitments in at least a 1:1 ratio.
 - Only costs incurred after the application submission date can be used to meet the match requirement.
- PEDA Grant funds cannot be used to pay for the surety bond.
- All projects must be fully completed within 24 months of grant award.
- The 24-month period of performance for the project to expend working capital and the pledged/committed matching funds will begin upon the grant award date.
- PEDA grant applications are public information and subject to disclosure to the public upon request. Any information included in the grant applications that the applicant wishes the commonwealth to consider as proprietary must be submitted separately and must be clearly marked as proprietary.
- All projects must be in compliance with all applicable laws and regulations.
- Projects involving construction or installation of facilities are required to provide a long-term operation, maintenance and replacement plan to be included in the grant application.
- PEDA may inspect any project supported with PEDA funds at any time and may compel a third-party audit of any project's financial transactions or compliance with grant agreement terms.
- Applicants may not have any outstanding obligations to the commonwealth, including payment of all state and local taxes, and may not have any unresolved environmental violations.
- Applicants must have been, and remain, in compliance with all relevant laws, orders, and regulations during the period of the COVID-19 disaster emergency under the Governor's proclamation dated March 6, 2020, and any and all subsequent renewals.
- Applicants shall demonstrate how this award will mitigate the impact of a disruption experienced associated with the COVID-19 response and how the provision of a grant will enhance the ability to complete the project in an expeditious manner. This includes, but is not limited, to:
 - Re-hire of workers or hiring of additional workers to complete the project quickly.
 - Ability to make immediate equipment payments to restart the supply chain.
 - Overcome lost revenue due to market stagnation.
- Applicants shall demonstrate how this award will incentivize further development of clean and advanced energy projects in Pennsylvania.

Eligibility

A. Eligible Applicants

The following entities are eligible to apply under this solicitation:

- Corporations, partnerships, limited liability companies, associations and other legal business entities;
- Non-profit corporations;
- Pennsylvania schools, colleges and universities; and
- Any Pennsylvania municipality and any public corporation, authority or body whatsoever.

Eligible Applicants must have been, and remain, in compliance with all relevant laws, orders, and regulations during the period of the COVID-19 disaster emergency under the Governor's proclamation dated March 6, 2020, and any and all subsequent renewals. The foregoing includes, but is not limited to, orders by the Governor, Secretary of Health, or other commonwealth officials empowered to act during the emergency. Any noncompliant business will be ineligible for funding under this program and may be required to return all, or a portion, of the funds awarded.

B. Eligible Projects

The following types of projects are eligible:

- Advanced Energy Projects
 - Projects which deploy: solar energy, wind, low-impact hydropower, geothermal, biomass, biologically derived methane gas including landfill gas, fuel cells, coal-mine methane, waste coal, and demand management measures including recycled energy and energy recovery, energy efficiency and load management
- Clean Alternative Fuels, Alternative Energy Manufacturing and Alternative Energy Research
 - Construction of new facilities to produce alternative fuels for transportation
 - Construction of new facilities to provide alternative fuels refueling infrastructure
 - Projects which support manufacture of component parts of the alternative energy sector
 - Projects which support research to advance or commercialize alternative energy projects

All eligible projects must include a research component directly related to alternative energy resources to be eligible for this solicitation.

C. Ineligible Projects

The following types of projects are ineligible:

- Projects completed prior to the publication date of these guidelines;
- Projects which are required by law or as a result of an environmental violation to obtain environmental compliance (components of a project which result in additional economic and environmental benefits beyond environmental compliance would be eligible). Projects that request PEDA funding to replace existing state or federal grant funds.
- Projects that purchase or convert vehicles to run on alternative fuels, including electric, compressed natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (LPG) and others.

D. Eligible Uses of Funds

Funding under this solicitation may be used by the applicant for some or all of the following types of project costs (please refer to Appendix A - *A Primer for Fitting Expenditures within Budget Categories*):

For Grant Funds:

- Equipment costs for items directly related to the project costing greater than \$5,000 per unit which improve a property, building or facility and which have a lifespan of 10 years or more;
- Supplies, meaning individual items directly related to the project costing less than \$5,000 per unit. Supplies shall not exceed 10 percent of grant funds requested.

For Matching Funds

- Staff salaries and wages, and associated employee benefits for employees working directly on the implementation and construction of the project;
- Construction costs, including materials, equipment and labor;
- Contractual costs for design or construction of a project. Design costs are allowable only if they are a part of a project involving construction;
- Equipment costs for items directly related to the project costing greater than \$5,000 per unit which improve a property, building or facility and which have a lifespan of 10 years or more;
- Supplies, meaning individual items directly related to the project costing less than \$5,000 per unit. Supplies shall not exceed 10 percent of grant funds requested.

Ineligible uses of funds include, but are not limited to:

- Administrative costs;
- Salaries not directly related to the project;
- Equipment not directly related to the project;
- Supplies not directly related to the project;
- Travel;
- Legal fees;
- Costs associated with lobbying;
- Entertainment, food and clothing.

Grant funded projects may be subject to Pennsylvania Prevailing Wage Act requirements:

- The grantee shall insure where necessary that construction projects with a cost in excess of \$25,000, which are subject to Pennsylvania's Prevailing Wage Act requirements, are paid appropriate wages commensurate with the Act.
- For information about the applicability of Prevailing Wage, applicants are encouraged to contact the Department of Labor and Industry at (800) 932-0665 or visit their website at <http://www.dli.pa.gov>. It is solely the responsibility of a grantee to ensure the Act is followed if applicable.

Application Evaluation Criteria

Applications will be reviewed by PEDAs and Department of Environmental Protection (DEP) staff. Recommendations for awards will be made to the PEDAs Board of Directors. PEDAs may call upon the Department of Community and Economic Development (DCED) or other outside technical experts to assist in the review process. The PEDAs Board of Directors will determine by vote whether to approve any and all applications for award of funding based on the projects ability to meet PEDAs Mission.

The Authority's mission is to expand the market for Pennsylvania's clean, diverse, indigenous energy resources, and to make contributions to energy conservation, energy efficiency, resiliency and development. The actions of the Authority will help to mitigate the impacts of climate change through the reduction of greenhouse gas emissions. The Authority will support energy projects that improve public health and protect the environment, while incentivizing a restart of economic activities and job creation in Pennsylvania.

The following criteria, and potentially others, may be used to evaluate applications:

- Demonstration that COVID-19 has had an adverse economic impact and makes this grant request necessary to support the completion of the project;
- Demonstration how this award will mitigate the impact of the disruption experienced associated with the COVID-19 response and the ability to complete project. This includes, but is not limited, to:
 - Re-hire of workers or hiring of additional workers to complete the project;
 - Ability to make immediate payments to restart the supply chain;
 - Overcome lost revenue due to market stagnation.
- Demonstration on how this award assists the applicant in creating a foundation for further development of clean and advanced energy projects in Pennsylvania;
- Demonstration of the use of Pennsylvania contractors, suppliers, labor, minority workforce and minority, veteran, service-disabled veteran and women-owned businesses;
- Technical and financial feasibility of the project; Project readiness and whether the applicant has demonstrated that it can fully complete the project within 24 months from the grant award date;
- The level of non-PEDA investment in the project (matching funding in excess of the minimum required and additional leverage);
- Quantity of alternative energy or alternative fuel generated or produced by the project or the amount of conventional energy-saved or peak electric load reduced by the project;
- Environmental benefits resulting from the project;
- Number of jobs or job hours resultant of the project during the period of performance or the potential of the project create jobs beyond the period of performance;
- Potential economic benefits for the state, future growth potential, new investment, savings to consumers and/or revenue generation for other beneficiaries such as agricultural businesses, local governments or other landowners;
- Level of support provided to a new business or venture engaging in the demonstration of new applications of or next phase clean advanced energy technology deployment with potential for widespread applicability in the state;
- Whether the research component of the project is sound and has the potential for the return of significant benefits relative to PEDAs mission.

Applications, and the projects that they describe, may be determined to be incomplete and as such ineligible for an award where the application or project:

- Is submitted by an ineligible applicant;
- Provides incomplete or inaccurate information;
- Requests grant funds in excess of \$250,000
- Requests funds for activities which are conducted outside of Pennsylvania;
- Requests funding for an ineligible activity or project;
- Requests funding for an ineligible use of funds;
- Does not provide financial commitment documentation for all matching funding sources.
- Does not provide surety bond information
- Does not demonstrate that COVID-19 has had an adverse economic impact and is necessary to support the completion of the project.

Grant Award Contract Conditions

- Projects selected for funding will receive a letter from the PEDA Chairman or designee, addressed to the contact person specified in the application.
- Grant awardees will be assigned a DEP project advisor and grantees may be required to meet with DEP staff to review contract requirements.
- After the announcement of a grant award, DEP will forward a grant agreement to the recipient; grantees will be required to execute (sign) the grant agreement, including a detailed scope-of-work, project schedule, budget and other information.
- Applicants awarded a grant will enter into an agreement with the commonwealth which includes in part the terms and conditions contained in **Appendix B**.
- Grantees that have not had previous contracts or grant agreements with the commonwealth will be required to obtain a vendor identification number through the Central Vendor Management Unit, www.vendorregistration.state.pa.us/cvmu/paper/GranteeRegistration.aspx (Non-Procurement Registration Link) and to submit a Form W-9, Request for Taxpayer Identification Number and Certification.
- The Grantee will have 24-months to complete the project after the grant agreement has been awarded.
- Grants award funds will be paid upon execution of the grant agreement, by request for up-to 100% working capital, provision of invoices and proof of payment for eligible costs and provision of the surety bond.
- Grantees will be required to execute a surety bond² (performance bonds), covering satisfactory performance of the work contracted, in the sum of one hundred percent (100%)

² All contract bonds must be executed by a corporate surety authorized to do business in the Commonwealth. If the contract bonds are executed by a non-resident agent, they must be countersigned by a resident agent registered with the Commonwealth's Department of Insurance. The same surety must execute all contract bonds and should the surety upon such contract bonds become unsatisfactory to the Department, the grantee must promptly furnish such additional security as may be required from time to time to protect the interests of the Department and of any individual, partnership, joint venture, corporations or other legal entity supplying materials, utility services, equipment and/or labor in the prosecution of the work contemplated by the grant.

If the grantee selects a surety company who must obtain reinsurance in another surety company, co-suretyship, etc., by deposit with it, in pledge of conveyance to it in trust for its protection of property or by conveyance or mortgage for its protection, such reinsurance, co-suretyships, etc., will be reviewed by the Department and any costs associated with appraisals or evaluations of pledged assets shall be borne by the grantee. The Department in its sole discretion will evaluate the reinsurance, co-suretyship, etc., to insure that the public is adequately protected under the grant.

of the grant and match funds identified in the budget. This is to include a payment bond covering the prompt payment in full for materials, utility services rendered and all equipment furnished and/or labor supplied or performed, in the prosecution of the work, also in the sum of one hundred percent (100%); and a maintenance bond in the sum of ten percent (10%) of the budget amount, conditioned for the Grantee's remedy, without cost to the Department, of any defects which develop during the remedy guarantee period of one year after project completion.

- Except for projects which included and were awarded funds for eligible costs which occurred prior to the date of the application, but not before January 1, 2019, projects will not be reimbursed for work performed prior to the application submission date.
- Grants including working capital will be paid upon execution of the grant agreement and provision of a surety bond.
- Costs incurred before the grant award announcement are not eligible for matching funding.
- Working capital funds can only be utilized during the period after the application submission date and until the conclusion of the grant period of performance.
- Proof of payment for expenditure of the awarded working capital funds must be provided prior to the end of the grant period of performance.
- A project must be awarded and a grant contract must be executed to receive working capital funds.
 - Note: Any costs incurred which are associated with an application for working capital are at the risk of the applicant. Should an application not be awarded or a grant contract not be executed, funds will not be provided.
- DEP will require provision of a quarterly Statement of Expenditures form, accompanying invoices, and adequate proof of payment documentation throughout the term of the grant contract until all funds identified in the grantee budget have been fully documented.
- DEP will not account for costs in excess of the grant and match amount.
- Any PEDA grant funds not expended will be returned to PEDA at the end of the period of performance.
- Any matching funds identified in the budget but not expended by the end of the period of performance will result in the return of PEDA grant funds in the ratio of grant funds to matching funds identified in the grant agreement, at the end of the agreement.
- The 10% maintenance surety bond will be released only after final financial settlement has occurred with PEDA and the contract conditions are settled to PEDA's satisfaction including the submission of the 1-year follow-up report.
- Reporting and Statements of Expenditures:
 - The grantee must submit a quarterly report, on the correct form, for the duration of the grant period; quarterly reports are due to the DEP project advisor by the fifth of the month following the quarter that is being reported.
 - Grantees must ensure current Quarterly Progress Report forms are on file with DEP for the periods covered by each Quarterly Statement of Expenditures, as outlined in the grant agreement.
 - The grantee will use the report forms provided by DEP; these forms will be referenced in the grant agreement, but not attached to the grant agreement.
 - The grantee will be responsible for providing all the information required to complete the Quarterly Progress Reports and Statement of Expenditures.
 - Grantees must submit a Final Report within 30 days of the completion of the grant project.

- Grantees will be required to submit a One-Year Follow-Up Report, including performance measures and jobs created or retained, one year after the project completion date.
- Completion of project:
 - The project must be completed as described in the grant agreement; modifications to the project will not be considered, except for limited scope and budget changes approved by DEP. Changes may include replacements of equal quality and function, and reallocation of funds within the budget, as long as the maximum contract dollar amount for PEDA and Grantee matching funds is not exceeded.
 - All documentation of costs including project invoices must be received no later than 60 days after project completion.
- Permits:
 - Grantees must secure all permits or approvals otherwise required for the project to proceed; this includes any permits required by DEP.
 - If building permits are required for the project, copies of the permits shall be submitted prior to the receipt of the grant payment; DEP will not make payments to the grantee prior to receiving a copy of the required permit.
- Grantees must comply with all applicable laws and local ordinances including local, state and federal requirements in the implementation of the project.
- Accounting and financial controls:
 - A grantee may request to receive 100% of the grant award upon full execution of the Grant Agreement and fulfillment of any conditions within the grant agreement to receive payment. A fully executed Grant Agreement is one that has been signed by the Grantee and by the Grantor and contains all approvals.
 - Grantees must properly manage and account for funding received; a complete spending record for all expenditures will be required, including invoice receipts, logs of record and other properly certified documents.
 - Grant funds provided for Working Capital Grants must be promptly deposited in a non-interest-bearing account in a bank or other financial institution insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or equivalent insurer. The advance payment funds (working capital) shall be expended by the grantee on eligible expenses to fulfill objectives of the project.
 - Matching funds provided by the applicant must be spent during the grant period of performance; no credit will be given for funds spent prior to the grant period of performance; matching funds must correspond to eligible categories as outlined in the project budget; documentation will be required for matching funds as well as grant funds.
 - All funding must be spent in accordance with the spending plan included in the grant agreement; DEP reserves the right to terminate the project and/or recover funding from grant recipients that the department determines are either, not performing or not properly managing the funding, as per the conditions of this PEDA solicitation or the grant agreement.
 - If the actual total project expenditures are less than described in the spending plan DEP reserves the right to require return of the amount of the PEDA grant funds provided to the grantee in an amount equal to the PEDA grant portion of the project expenditure shortfall.
 - Extensions will not be granted, unless the department concludes it to be necessary by determination or request.
 - Requests for extensions to the grant period of performance must be received 30 days prior to the end date of the period of performance on a DEP Change

Scope, Change Budget or Extension Request form; A Change Scope, Change Budget or Extension Request form may be obtained from the grant project advisor.

- DEP reserves the right to inspect projects financed with PEDA funds and to audit or require a third-party audit of any project's financial transactions or compliance with grant agreement terms.
- PEDA grant proposals are public documents and subject to disclosure to the public; any information included in the grant proposal that the applicant wishes the commonwealth to consider as proprietary must be on a separate sheet of paper and must be clearly marked as proprietary.
- Grantees shall insure where necessary that construction projects with a cost in excess of \$25,000, which may be subject to Pennsylvania's Prevailing Wage Act requirements, are paid appropriate wages commensurate with the act.

Application Submission, Deadline and Fees

Applications will be received any time after the grant opening date of August 17, 2020 until the application deadline of October 2, 2020 at 4 p.m. All applications must be submitted online through DCED's Electronic Single Application (ESA) system. <http://www.esa.dced.state.pa.us/> Emails, hard copy mailings, or faxes will not be accepted.

DEP CONTACTS

Project-Related Inquiries:

PEDA Grant Manager – 717-783-8411

Questions regarding the Financial Assistance offering may be directed to PEDA at the above number or by email at RA-PEDA@pa.gov.

Grants Processing, Application Submission and Deadlines:

For questions regarding the online application process, refer to the Help tab on the grant application website or contact:

PA Department of Community and Economic Development (DCED)

Customer Service

800-379-7448 8:30 am-5:00 pm

ra-dcedcs@state.pa.us

APPENDIX A

A Primer for Fitting Expenditures within Budget Categories

This is a guide to help grantees determine the types of project expenditures allowable under most commonwealth grants.

Allowable Grant Expenditures

Equipment (A single item exceeding \$5,000)

Equipment dedicated or directly related to the implementation of the project is generally eligible.

Some typical examples follow:

- Equipment dedicated to the project (which may be owned by commonwealth following grant close-out)
- Tools dedicated to the project

Supplies (A single item less than \$5,000)

Supplies not dedicated to the project are considered “administration” and are not eligible for these funds. Materials and supplies that are incorporated into the construction site and remain as an integral part of the construction should be listed under “construction” rather than under this category. Supplies shall not exceed 10 percent of grant funds requested.

Some typical examples follow:

- Light fixtures
- Electronic control devices
- Piping, wiring etc.

Match

Match can be met with cash, in-kind goods and services or some combination of the two. Successful grantees should be certain to identify and document all match contributions with the submittal of the Statement of Expenditures. Match must be expended during the grant Period of Performance. Funds expended prior to the grant Period of Performance are not eligible.

Cash Match: Examples of documentation include but are not limited to:

- Copy of check from donor
- Letter of commitment from donor
- Federal grant award letter

Non-Cash Match: Charges allowed for match (rules for federal funds may differ):

- Value of volunteers' donated time, including time to travel to work sites
- Rate related to nature of work, not to volunteers' usual charge rate, i.e.:
 - Manual labor would be calculated at prevailing rate for manual labor
 - Donated professional engineer's time would be at prevailing engineer's rate
- Costs associated with preparing an application for a grant
- Administrative costs
- Travel at state travel rates

- Publicity charges, public relations costs, advertisement fees, unless specific to the project
- Indirect costs not otherwise listed under an eligible category
- Land acquisition to the extent it is associated with the project

Costs claimed as match can be paid for with other sources of grants (for example, federal grants such as 319 grants, or grants from private foundations), from the organization's normal operating budget, or out of fundraising specific to the project.

Salary

Salaries for staff members may only be used for activities that lead to the implementation and construction of the actual project. Salaries are to be itemized by name and duties of staff members. This category cannot include any mark-up above the salary actually paid to employees for direct labor hours worked on the project, documented by timesheets.

Students/graduate assistants, etc., will only be reimbursed on an hourly basis for actual work performed on the project. Hourly rates will need to be verified prior to grant award by providing appropriate documentation. Tuition/course credit is not a reimbursable expense.

Benefits

Benefits may only be used for activities that lead to the implementation and construction of the actual project. Fringe benefits that are proportional to hours worked for the grantee's staff must be itemized by name and duties of staff members. Benefits commonly include, among other items, health insurance, retirement, FICA withholding, workers compensation, vacation and sick leave. Vacation and sick leave cannot be logged on time sheets as contributing to the work of the project. They can be included pro rata under benefits.

Contractual

In some cases, a grantee may use a subcontractor to perform some or all of the grant work. Although the subcontractor selection process is determined by the grantee, DEP encourages grantees to use subcontractors in the most cost effective and efficient manner possible. In general, for a construction grant, the "contractual" category should not exceed 25 percent of the construction costs. Design costs are allowable only if they are a part of a project involving construction.

If a subcontract is bid as time and materials, typical costs include:

- Salaries and benefits for direct work on the project when such services are not available from volunteers or grantee's staff (itemized by names and duties of the consultant firm's staff members)
- Expenses for materials directly attributable to the project, i.e., substances that are incorporated into the project and left on site

Construction

In some cases, a grantee may use a subcontractor to perform some or all of the grant work. Although the subcontractor selection process is determined by the grantee, DEP encourages grantees to use subcontractors in the most cost effective and efficient manner possible. In general, construction costs for projects are eligible under many commonwealth grant programs.

If a subcontract is bid as time and materials, typical costs include:

- Salaries/benefits for construction work not available from volunteers or grantee's staff (itemized by names and duties of construction firm's staff members)
- Rental charges for construction equipment

- Materials that are expended, consumed or integral to construction, that is, those that remain on a construction site, e.g.:
 - Trees
 - Grass seed
 - Mulch
 - Rocks
 - Concrete
 - Gasoline or diesel fuels for equipment used in construction

Other

This category should be used to a minimum extent and only used for items that do not fit the specific budget categories and/or only for expenses approved for this category. Items within this category should be discussed with the project advisor.

Charges not allowed for match or for reimbursement:

- Any costs associated with lobbying, alcohol or allowance for bad debts
- Contract contingency costs and other rate factors that do not reflect actual expenses
- Costs associated with legal action against the commonwealth
- Costs associated with illegal activities or substances
- Costs associated with goods or services for personal use of board members, officers or others
- Other DEP-provided funds

APPENDIX B

Provisions For Commonwealth Contracts

CONTRACTOR INTEGRITY PROVISIONS

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

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

- A. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
- B. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
- C. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth, and **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5% or more interest in the Contractor.
- D. **“Financial Interest”** means either:
 - 1) Ownership of more than a five percent interest in any business; or
 - 2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- E. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- F. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

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

A. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

B. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

C. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

D. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

E. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Entities have not:

- 1) been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- 2) been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- 3) had any business license or professional license suspended or revoked;
- 4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- 5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

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

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

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

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

I. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement,

contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third-party beneficiaries shall be created thereby.

J. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

OFFSET PROVISION

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

CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term Contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

- A. The Contractor must certify, in writing, for itself and all its subcontractors, as of the date of its execution of any Commonwealth 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 the bid/proposal, 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 any Commonwealth 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 contracting agency 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 contracting agency 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 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 which do not result in the Contractor's suspension or debarment.
- F. The Contractor may obtain the 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 Number: (717) 783-6472
FAX Number: (717) 787-9138

THE AMERICANS WITH DISABILITIES ACT

- I. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination", 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- II. 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 subparagraph a above.

RIGHT TO KNOW LAW

I. If this contract is a grant agreement:

- A. Grantee or Subgrantee understands that this Grant Agreement and records related to or arising out of the Grant Agreement are subject to requests made pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL"). For the purpose of these provisions, the term "the Commonwealth" shall refer to the granting Commonwealth Agency.
- B. If the Commonwealth needs the Grantee's or Subgrantee's assistance in any matter arising out of the RTKL related to this Grant Agreement, it shall notify the Grantee or Subgrantee using the legal contact information provided in the Grant Agreement. The

Grantee or Subgrantee, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

C. Upon written notification from the Commonwealth that it requires Grantee's or Subgrantee's assistance in responding to a request under the RTKL for information related to this Grant Agreement that may be in Grantee's or Subgrantee's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), Grantee or Subgrantee shall:

- 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in Grantee's or Subgrantee's possession arising out of this Grant Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
- 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Grant Agreement.

D. If the Grantee or Subgrantee considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that Grantee or Subgrantee considers exempt from production under the RTKL, Grantee or Subgrantee must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by the representative of Grantee or Subgrantee explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Commonwealth will rely upon the written statement from Grantee or Subgrantee in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, Grantee or Subgrantee shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

F. If Grantee or Subgrantee fails to provide the Requested Information within the time period required by these provisions, Grantee or Subgrantee shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure, including any statutory damages assessed against the Commonwealth.

G. The Commonwealth will reimburse Grantee or Subgrantee for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

H. Grantee or Subgrantee may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, Grantee or Subgrantee shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of Grantee's or Subgrantee's failure,

including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, Grantee or Subgrantee agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL

I. The Grantee's or Subgrantee's duties relating to the RTKL are continuing duties that survive the expiration of this Grant Agreement and shall continue as long as the Grantee or Subgrantee has Requested Information in its possession.

II. If this contract is a lease agreement:

A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL") applies to this Lease. For the purpose of these provisions, the term "Commonwealth" shall refer to the Department of General Services or the tenant Commonwealth agency.

B. If the Commonwealth needs the Lessor's assistance in any matter arising out of the RTKL related to this Lease, it shall notify the Lessor using the legal contact information provided in this Lease. The Lessor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

C. Upon written notification from the Commonwealth that it requires the Lessor's assistance in responding to a request under the RTKL for information related to this Lease that may be in the Lessor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information") the Lessor shall:

- 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Lessor's possession arising out of this Lease that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

- 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Lease.

D. If the Lessor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Lessor considers exempt from production under the RTKL, the Lessor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Lessor explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Commonwealth will rely upon the written statement from the Lessor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Lessor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

F. If the Lessor fails to provide the Requested Information within the time period required by these provisions, the Lessor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Lessor's failure, including any statutory damages assessed against the Commonwealth.

G. The Commonwealth will reimburse the Lessor for any costs associated with complying with these provisions only to the extent allowed under that fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

H. The Lessor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Lessor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Lessor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Lessor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

I. Lessor's duties relating to the RTKL are continuing duties that survive the expiration of this Lease and shall continue as long as the Lessor has Requested Information in its possession.

III If this contract is other than a grant or lease agreement:

A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104 ("RTKL") applies to this Contract. For the purpose of these provisions, the term "Commonwealth" shall refer to the contracting Commonwealth agency.

B. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.

C. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information") the Contractor shall:

- 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.

D. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.

E. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth determination.

F. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

G. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

H. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of the Requested Information pursuant to the RTKL.

I. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

PENNSYLVANIA ELECTRONIC PAYMENT PROGRAM (PEPP):

I. For Procurement Contracts:

A. The Commonwealth will make contract payments through the Automated Clearing House (ACH) Network. Within 10 days of award of the contract or purchase

order, the Contractor must submit or must have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

B. Contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Contractor to properly apply the Department's payment to the invoice submitted.

C. It is the responsibility of the Contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

D. Contractor may enroll for PEPP at:

<http://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf>

II. For Grant Contracts:

A. The Commonwealth will make payments to the Grantee through the Automated Clearing House (ACH) Network. Within 10 days of the grant award, the Grantee must submit or must have already submitted its ACH information to the Commonwealth's Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Services, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street - 9th Floor, Harrisburg, PA 17101.

B. The Grantee must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Grantee to properly apply the Department's payment to the respective invoice or program.

C. It is the responsibility of the Grantee to ensure that the ACH information contained in the Commonwealth's central vendor master file is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

D. Grantee may enroll for PEPP at:

<http://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf>

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 law 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 personal jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

APPENDIX C
Nondiscrimination/Sexual Harassment Clause [Grants]

The Grantee agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the grant agreement or any subgrant agreement, contract, or subcontract, the Grantee, a subgrantee, a contractor, a subcontractor, or any person acting on behalf of the Grantee shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, against any citizen of this commonwealth who is qualified and available to perform the work to which the employment relates.
2. The Grantee, any subgrantee, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any of its employees.
3. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the grant agreement, subgrant agreement, contract or subcontract.
4. Neither the Grantee nor any subgrantee nor any contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Grantee, any subgrantee, contractor or any subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the grant services are performed shall satisfy this requirement for employees with an established work site.
6. The Grantee, any subgrantee, contractor or any subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against any subgrantee, contractor, subcontractor or supplier who is qualified to perform the work to which the grant relates.

7. The Grantee and each subgrantee, contractor and subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws and regulations relating to nondiscrimination and sexual harassment. The Grantee and each subgrantee, contractor and subcontractor further represents that it has filed a Standard Form 100 Employer Information Report (“EEO-1”) with the U.S. Equal Employment Opportunity Commission (“EEOC”) and shall file an annual EEO-1 report with the EEOC as required for employers’ subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Grantee, any subgrantee, any contractor or any subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the granting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for the purpose of ascertaining compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause.
8. The Grantee, any subgrantee, contractor or any subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subgrant agreement, contract or subcontract so that those provisions applicable to subgrantees, contractors or subcontractors will be binding upon each subgrantee, contractor or subcontractor.
9. The Granter’s and each subgrantee’s, contractor’s and subcontractor’s obligations pursuant to these provisions are ongoing from and after the effective date of the grant agreement through the termination date thereof. Accordingly, the Grantee and each subgrantee, contractor and subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the grant agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. The commonwealth may cancel or terminate the grant agreement and all money due or to become due under the grant agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the granting agency may proceed with debarment or suspension and may place the Grantee, subgrantee, contractor, or subcontractor in the Contractor Responsibility File.

Commonwealth of Pennsylvania



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DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Energy Programs Office

“An Equal Opportunity Employer”