



County of Allegheny

RICH FITZGERALD
COUNTY EXECUTIVE



City of Pittsburgh

WILLIAM PEDUTO
MAYOR

In conjunction with the City of Pittsburgh

**DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PURCHASING AND SUPPLIES**

REQUEST FOR PROPOSAL

FOR

**CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND
COUNTY OFFICE BUILDING**

SPECIFICATION NO. 7908

This Request for Proposal contains requirements for proposers to assist the County and the City in meeting M/W/DBE goals and our Veteran owned small business goals. Therefore, proposers must document their plan or good faith efforts to meet those goals. Please see the Requirements and fill out the Participation Statement.

RFP DUE DATE: Wednesday, April 26, 2017, 3:00 P.M., E.T.

**SUBMIT TO: Division of Purchasing and Supplies
County Office Building
542 Forbes Avenue, Room 201
Pittsburgh, PA 15219
Andy De Lancey, S.P.S.M.
412-350-4497
fdelancey@alleghenycounty.us**

REQUEST FOR PROPOSAL

RFP NUMBER: 7908

TITLE: RFP for CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING

DUE DATE: Wednesday, April 26, 2017

ADVERTISING DATE: Thursday, March 30, 2017

DESCRIPTION: Proposal to provide **CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING** to the County of Allegheny and City of Pittsburgh.

The undersigned hereby offers to furnish and deliver the articles or services as specified in strict accordance with the RFP and scope of proposal, all of which are made a part of this request. This offer is not subject to withdrawal without permission of the County of Allegheny Chief Purchasing Officer.

FULL LEGAL COMPANY NAME: _____

STREET ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

AUTHORIZED SIGNATURE: _____

PRINT NAME: _____

TITLE OF AUTHORIZED SIGNER: _____

TELEPHONE #: _____

FAX #: _____

E-MAIL ADDRESS: _____

COMPANY INFORMATION

(This information is for tracking purposes only and has no role in the determination of the lowest, responsive, responsible proposer.)

- check here if your firm is registered with the Allegheny County Department of Minority, Women and Disadvantaged Business Enterprises
- check here if your firm is a "Minority Business Enterprise" or "MBE" as defined in the Small Business Act, 15 USC
- check here if your firm is a "Women Business Enterprise" or "WBE" as defined in the Small Business Act, 15 USC
- check here if your firm is a "Small Business" as defined by the Small Business Administration (13 C.F.R. 121.201, in most cases, this means a business with 500 or fewer employees)

NOTE: THIS PAGE MUST BE SUBMITTED WITH YOUR PROPOSAL. ALL PAGES REQUIRE A LIVE SIGNATURE SIGNED IN BLUE INK.

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1. GENERAL INSTRUCTIONS TO SUPPLIERS

1.1 Purpose of Request for Proposals

The purpose of this document is to provide interested parties with information to enable them to prepare and submit a proposal for the provision of **CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING** (the “RFP”) to the County of Allegheny, (the “County”). The County as represented by its Division of Purchasing and Supplies, intends to use the results of this process to award a contract to one or possibly more successful suppliers.

1.2 About this Document

This document is a Request For Proposal. It differs from an invitation for bid in that the County is seeking a solution, not a quotation meeting firm specifications for the lowest price. As such, the lowest price proposal shall not guarantee an award recommendation. Sealed proposals shall be evaluated based upon criteria formulated around the most important features of a product or service, of which quality, testing, references, experience in the field, availability or capability may be overriding factors. Price may not be determinative in the issuance of a contract award. The proposal evaluation criteria should be viewed as a standard that measures how well a supplier’s proposal meets the desired requirements and needs of the County. The criteria considered in evaluating the award are set forth in this document.

The County shall thoroughly review all proposals received. The County shall also utilize its best judgment when determining which suppliers to schedule meetings with after receipt of all proposals. The request for proposal process allows the County to negotiate with suppliers prior to awarding a contract. A contract shall be awarded to a qualified responsible supplier(s) submitting the best proposal. The County reserves the right to select, and subsequently recommend for an award, the proposed service which best meets its required needs, quality levels, and budget constraints.

The issuance of this RFP does not obligate the County to enter into contract for any services or equipment.

1.3 Terminology

“**Agreement**” means the negotiated contract between the County and the Contractor to provide the Contract Services or Contract Items.

“**Proposer**” or “**Supplier**” means the person, firm, or corporation that submits a proposal to the Court and County, in response to the RFP, seeking to be selected as the Contractor.

“**Contractor**” means the entity selected by the County to perform the Contract Services or provide the Contract Items.

“**Contract Services**” means the services provided under the Scope of Contract as set forth in Section 2 of the RFP and as finalized, through negotiations, and incorporated into the Agreement.

“**Contract Items**” means the goods provided under the Scope of Contract as set forth in Section 2 of the RFP and as finalized, through negotiations, and incorporated into the Agreement.

1.4 Issuing Office

This RFP is issued for the County by the Division of Purchasing and Supplies (Issuing Office). The Issuing Office is the sole point of contact in the County for this RFP. Please refer all inquiries in writing to.

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Point-of-Contact:

Andy De Lancey, Purchasing Agent

fdelancey@alleghenycounty.us

Phone: 412-350-4497 / Fax: 412-350-5883

It is proposed that if a contract is entered into as a result of this RFP, it shall be a fixed price contract, unless otherwise stated, on a list of products or services and / or a percentage discount from catalog list price for list of manufacturers covered by the contract. The contract shall incorporate by reference this RFP and the General Conditions and Instruction to Suppliers.

Proposers who have received the RFP from a source other than through Public Purchase central notification are advised to contact the point-of-contact above to provide their company’s contact information. Proposers who have received the RFP by any method are responsible for checking the website to obtain any addenda.

1.5 Proposal Delivery, Time, Date and Place

Separate and sealed proposals in response to this RFP shall be due by **Wednesday, April 26, 2017, at 3:00 p.m., E.T.**

Proposals received after **3:00 p.m., E.T.** shall be returned unopened. No exceptions shall be made.

The County reserves the right to extend or postpone the date and time for accepting proposals through an addendum.

All proposals, responses, inquiries, or correspondence relating to or in reference to this RFP, and all electronic media, reports, charts, and other documentation submitted by supplier shall become the property of the County when received. Nothing submitted shall be considered confidential or proprietary.

CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING
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Timeline

Advertise and Post RFP	3/30/17
Site-Visit RSVP	4/7/17
Mandatory Site-Visit	4/13/17
Question and Answer Period	4/13/17 – 4/20/17
Proposals Due	4/26/17
Proposal Review and Evaluation	4/27/17 – 5/8/17
Meetings with Proposers (if required)	5/9/17 – 5/12/17
Contract Award Recommendation	5/15/17 – 5/19/17
MWDBE Review	5/22/17 – 5/25/17
Contract Completion Process	5/26/17- 5/31/17
Contract Start Date	6/1/17

1.6 Proposal Submissions

Proposers are requested to submit **one (1) original, four (4) photocopies and one (1) electronic copy on CD-ROM or FLASH DRIVE** of their proposal and samples, if required. Proposers must include their company name and address on the outside of each envelope or container. The envelopes or containers must be sealed. The words **RFP for CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING, Specification Number 7908** must appear on the outside of the envelope or container. Proposals shall be accepted in person, by U.S. Mail or by private courier service. **NO Proposals shall be accepted via oral or e/mail communication, telephone or fax transmission.** Proposals are due at the Division of Purchasing and Supplies, County Office Building, 542 Forbes Avenue, Room 201, Pittsburgh, PA.

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Proposals must be submitted in the format, described in this RFP. To be considered, the proposal must respond to all requirements in the RFP. The contents of this RFP and your proposal shall become part of any contract(s) entered into as a result of this RFP.

The County reserves the right to request additional information which, in the County's opinion, is necessary to assure that the proposer's competence, business organization, and financial resources are adequate to perform in accordance with this RFP and any resultant contract.

The County may make such investigation as it sees fit to determine the ability of the proposer to perform the work, and the proposer shall furnish the County all such information and data for this purpose as requested by the County. The County reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy the County that such proposer is properly qualified to carry out the obligations of the contract and to satisfactorily perform the work specified.

When asked, proposers shall also include their answers to the questions listed in this RFP using the same answering sequence as put forth in the RFP.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's ability to meet the requirements of the RFP.

Any other information thought to be relevant, but not applicable to the enumerated questions, should be provided as an appendix to the proposal.

1.7 Clarification of Requirements & General Questions

It is the intent and purpose of the County that this RFP permit competitive proposals. It shall be the supplier's responsibility to advise the point-of-contact if any language, requirements, or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notifications and general questions regarding this solicitation must be submitted electronically via the Public Purchase system www.PublicPurchase.com and must be received no later than seven (7) days prior to the date and time noted above. A review of such notification and questions will be made and a timely response will be posted on the Public Purchase site.

1.8 Mandatory Site Visit

A MANDATORY site visit will be scheduled for Thursday, April 13, 2017 at 3:00 pm. Please RSVP to Andy DeLancey at 412-350-4497 or fdelancey@alleghenycounty.us no later than 3:00 p.m., Friday, April 7, 2017.

**Meeting address: City-County Building
414 Grant Street
Pittsburgh, PA 15219**

1.9 Addenda and Modifications

Any changes, additions, deletions, or clarifications to the RFP are made by amendments (addenda).

Any supplier in doubt as to the true meaning of any part of the RFP documents may request any interpretation thereof from the Issuing Office. At the request of the supplier, or in the event the Issuing Office deems the interpretation to be substantive, the interpretation shall be made by written addendum issued by the Issuing Office. Such addendum issued by the Issuing Office shall become part of the proposal package having the same binding effect as provisions of the original RFP. No verbal explanations or interpretations shall be binding. In order to have a request for interpretation considered, the request must be submitted in writing and must be received by the Issuing Office no later than seven (7) days prior to the proposal closing date.

All addenda, amendments, and interpretations of this solicitation shall be in writing. Any amendment or interpretation that is not in writing shall not legally bind the County. Only information supplied by the County in writing or in this RFP should be used in preparing proposal responses. All contact that a supplier may have had before or shall have after receipt of this RFP with any individuals, employees, or representatives of the County and any information that may have been read in any news media or seen or heard in any communications facility regarding this RFP should be disregarded in preparing responses.

The County does not assume responsibility for the receipt of any addendum sent to suppliers. A copy of all addenda issued must be signed and returned with your proposal.

1.10 Examination of Documents and Requirements

Proposers shall carefully examine all RFP documents and thoroughly familiarize themselves with all requirements prior to submitting a proposal to ensure that the proposal meets the intent of this RFP.

Before submitting a proposal, each proposer shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements effecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the supplier from an obligation to comply, in every detail, with all provisions and requirements of the RFP.

1.11 Minority, Women or Disadvantaged Business Enterprise (M/W/DBE) Requirements.

M/W/DBE's shall receive equal opportunities to submit proposals and shall not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award.

A MWDBE is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

A listing of MWDBE's certified by the County and the Pennsylvania Unified Certification Program can be found at <http://www.alleghenycounty.us/mwdbecertifiedfirms.aspx>.

1.12 Veteran Owned Small Business

Allegheny County and the City of Pittsburgh have an annual goal of not less than five (5) percent participation by veteran-owned small businesses in all contracts. The participation goal shall apply to the overall dollar amount expended with respect to contracts. The County and City, therefore, requires that all prospective Contractors demonstrate good faith efforts to obtain the participation of veteran-owned small businesses in work to be performed under County and City contracts. In order to demonstrate this good faith commitment, all prospective Contractors are required to complete and submit with their bids an MBE/WBE/Veteran Owned Solicitation and Commitment Form, which details the efforts made by the prospective Contractor to obtain such participation. Failure to submit an MBE/WBE/Veteran Owned Solicitation and Commitment Form will result in rejection of the bid.

- A. Veteran-owned small business is defined by the County and City as a business having one hundred (100) or fewer full-time employees and not less than fifty-one (51) percent of which is owned by one (1) or more veterans, or in the case of any publicly owned business, not less than fifty-one (51) percent of the stock of which is owned by one (1) or more veterans, and the management and daily business operations of which are controlled by one (1) or more veterans. Vendor **MUST** provide proof of veteran ownership including percentage & name and address of business.

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- B. For contracts under one hundred thousand dollars (\$100,000.00), veteran-owned small businesses shall be exempt from all bonding requirements.
- C. THE ATTACHED FORMS (VETERAN OWNED SMALL BUSINESS PARTICIPATION STATEMENT AND VETERAN OWNED SMALL BUSINESS-WAIVER REQUEST) MUST BE COMPLETED AND SUBMITTED WITH ALL BIDS AND PROPOSALS. FAILURE TO SUBMIT THESE DOCUMENTS MAY RESULT IN THE REJECTION OF YOUR BID OR PROPOSAL.
- D. Attach a copy of vendor(s) DD 214 discharge form to participation statement.

1.13 Conflict of Interest

The proposer shall not accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the County.

By signing their proposal, the proposer certifies and represents to the County that the proposer has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantaged information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this RFP.

1.14 Proposal Preparation Costs

Issuance of this RFP does not commit the County, in any way, to pay any costs incurred in the preparation and submission of a proposal. The issuance of this RFP does not obligate the County to contract for any services or equipment. All costs related to the preparation and submission of a proposal shall be paid by the proposer.

1.15 Insurance

The supplier shall obtain and maintain during the life of the Contract, with an insurance supplier rated not less than A- by A.M. Best, authorized to do business in the Commonwealth of Pennsylvania, the following insurance requirements:

Automobile Liability. Bodily injury and property damage liability covering all non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage. Bodily injury and property damage liability covering all owned automobiles for limits of not less than \$300,000 bodily injury each person, each accident and \$300,000 property damage, or \$300,000 combined single limit – bodily injury and property damage.

Commercial General Liability. Bodily injury and property damage liability as shall protect the Supplier and any subcontractor performing work under the Contract, from claims of bodily injury or property damage which arise from operation of the Contract, whether such operations are performed by the supplier, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of the Contract.

Professional Liability. (Required for Professional Services Only) Coverage as shall protect the Supplier and any subcontractor performing work under the Contract, from claims errors and omissions which arise from operation of the Contract, whether such operations are performed by the Supplier, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 each occurrence/aggregate and \$1,000,000 excess liability, each occurrence/aggregate.

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Worker's Compensation and Employers Liability. The supplier shall meet the statutory requirements of the Commonwealth of Pennsylvania, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

Proof of Insurance. The supplier shall not commence any work in connection with the Contract until it has obtained all of the foregoing types of insurance and proof of such insurance has been approved by County. The supplier shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

Deductibles. The County shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the supplier and/or subcontractor providing such insurance.

Additional Insured. Allegheny County and the City of Pittsburgh shall be named as an additional insured for operations or services rendered under the general liability coverage. The supplier's insurance shall be primary of any self-funding and/or insurance otherwise carried by the County and City for all loss or damages arising from the supplier operations under this agreement. Certificates of such insurance will be furnished to the County and City and shall contain the provision that the County and City be given thirty (30) days written notice of any intent to amend or terminate by either the insured or the insuring supplier.

Documents. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the County Department of Insurance shall be furnished. If any part of the work under the Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in the Contract, provided that types and amounts of insurance to be maintained by each subcontractor shall be adjusted to an amount reasonably necessary to cover the risks associated with such subcontractor's role in the project. The parties stipulate that the supplier shall maintain each type of insurance set forth above at a coverage level equal to at least half of the amount set forth above for such type of insurance. However, nothing contained herein shall relieve the supplier from meeting all insurance requirements or otherwise being responsible for the subcontractor.

No program of self-insurance shall apply to any of the foregoing coverages without prior approval of the County.

The successful bidder shall be responsible to require his sub-contractors to comply with all of the insurance requirements of this agreement.

The Chief Purchasing Officer may waive or modify any of the insurance requirements at his discretion.

1.16 Option to Extend

The Division of Purchasing and Supplies, reserves the right, upon notice to the supplier, to extend the Agreement or any part of the Agreement for up to three (3) months, upon the same terms and conditions after the indicated expiration date as described in the Agreement. This shall be utilized to prevent a lapse in Agreement coverage for the goods or services indicated on the Agreement, and only for the time necessary to enter into a new Agreement. When applicable, an extension notice shall be issued defining the exact extension of the Agreement; all other terms and conditions of the extended Agreement shall remain in full force and effect.

1.17 Right to Terminate

The County retains the right to terminate any contract(s) resulting from this solicitation upon thirty (30) days written notice.

2. SCOPE OF CONTRACT

2.1 Scope of Work - General

2.1.1 INTENT AND DEFINED TERMS

It is the intent of this Request For Proposal to solicit proposals for **CONCESSIONAIRE SERVICES FOR THE CITY-COUNTY BUILDING AND COUNTY OFFICE BUILDING** on the first floor of the City-County Building and the first floor of the County Office Building to provide employees and visitors to the building with access to basic food and beverages at an economical cost. The County and the City reserve the right to utilize its property to serve the County’s and the City’s best interest at their sole option. Please note the County and City will share in the utility and maintenance expenses related to the concession stand.

For the purpose of this solicitation:

“Concession Stand” shall mean the first floor of the City-County Building and the first floor of the County Office Building and storage area assigned thereto.

“County/City” shall mean the County of Allegheny and the City of Pittsburgh.

“Buildings” shall mean City-County Building and County Office Building.

Following are the locations of the City-County Building and County Office Building:

City-County Building	County Office Building
414 Grant Street	542 Forbes Avenue
Pittsburgh, PA 15219	Pittsburgh, PA 15219

The awardee may request in writing to the County/City, whose contact information is included in this specification, a price increase to its items only once during a contract year period. The awardee shall also indicate its justification for requesting a price increase. The County/City shall have the right to accept or deny pricing increases.

2.1.2 GENERAL SPECIFICATIONS

Hours of operation shall be Monday through Friday 6:00 a.m. to 2:00 p.m.

The term of this Agreement shall be from June 1, 2017 through May 31, 2020 with two (2) one year options to renew.

Concessionaire will have the exclusive right to conduct and operate as an independent contractor and not as an employee or agent of the County/City.

Concessionaire shall conduct its said business in the designated space but in no event shall the Concessionaire have an estate therein as tenant or otherwise. The Concession herein granted shall embrace only the serving, and sale for a consideration, of foodstuffs, beverages and non-food items as may be approved by the County/City.

The Concession shall include the use of the Concession Stand and storage facilities in the basement known as Room 45 in the City-County Building, and such other areas as may be subsequently approved by the Directors, together with the right to sell the items mentioned herein, except as may be limited or prohibited herein.

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The Concession shall not include sale of food, beverages or cigarettes through the use of automatic vending machines. County/City reserves the right to use automatic vending machines in other areas of the building.

Concessionaire shall conduct its said business at all times to the satisfaction and subject to the approval of the County/City and the right granted by this Agreement may be revoked or canceled by the County/City at any time for any breach by Concessionaire of any terms and conditions of this Agreement or any amendment hereto. All of the Concessionaire's activities as herein described shall be subject to the policies and regulations of the County/City, which may vary from time to time.

Concessionaire shall maintain current with all taxes due City, County and School Districts and other agencies within Allegheny County as well as public water supplies.

County/City covenants and agrees to grant to Concessionaire reasonable ingress and egress to the Buildings (Use of sidewalk freight elevators, bypass metal detection scanning of sealed food items).

The Concessionaire shall, at its expense, display at stand temporary or permanent signs or price lists, which set forth the prices of all articles offered for sale. All such signs and price lists shall be approved by the County/City. Signs may be posted outside the designated area of the Concession Stand with written approval from the County and City.

This Concession does not include the right to sell space for temporary or permanent signs, advertising any product in, on, or around the Concession Stand, the County/City reserving such rights to itself.

Concessionaire covenants and agrees to:

Procure at its sole expense such Permits and Licenses as may be required by law to conduct its business.

To pay at its sole expense all charges, fees and taxes as may be required by law.

To provide at its sole expense ALL equipment, supplies, materials, merchandise, transportation and labor necessary for the satisfactory operation of said Concession and portable self-contained carts, except for any particular items of which specific mention is made within this Agreement.

To provide at its sole expense self-contained food carts as may be agreed.

The Concessionaire shall furnish copies of all Permits and Licenses to the County/City prior to opening the operation to the public or as required by law, as well as current copies of such documents upon their renewal. Documents shall be sent to:

Andy De Lancey, Purchasing Agent
Room 201, County Office Building
542 Forbes Avenue
Pittsburgh, PA 15219

The Concessionaire represents and warrants that no officer, employee or agent of County of Allegheny and/or City of Pittsburgh is directly or indirectly involved in Concessionaire's business or has any financial interest in Concessionaire's business.

In the event of a total destruction of the Concession Stand or damage to or destruction of a portion thereof so substantial that the remainder is not economically operable for the purpose herein contemplated, by fire, windstorm, or other hazard, operation of the premises shall be suspended until the portions thereof so destroyed or damaged are

rebuilt, repaired or replaced. It is understood and agreed by the parties hereto that the County/City is under no obligation to rebuild, repair or replace the Concession Stand in such event. However, in the event the County/City elects not to rebuild, repair or replace, then the Concessionaire may terminate this Agreement. In the event such damage or destruction is less substantial so that the remainder of the premises is economically operable, operation shall continue to the extent practical while restoration is under way. Concession fee will be prorated upon a partial or a complete shutdown.

The County/City shall not be liable for any loss or damage suffered by the Concessionaire arising out of the interruption or cessation of this Agreement or for any loss suffered by the Concessionaire in the performance of its obligations under this Agreement, resulting from any strike or other work stoppage, breakdown or failure of apparatus, equipment, machinery employed in the operation of the Concession or the building, any temporary stoppage for repairing, improvement or replacement thereof, any order or act of any official or agency of local, state or federal government, or any act or condition beyond its control. However, in the event the Concessionaire is forced to suspend operations hereunder for a period of six months or longer in either Building due to a declared national emergency or declaration of war or any act of the County/City, then that portion of this Agreement covering that Building shall ipso facto terminate.

Concessionaire agrees to indemnify the County/City from, and to assume all liability for, the payment of taxes or assessments of any kind whatever that by law shall or may be levied on the premises occupied by Concessionaire or arising out of the operation of Concessionaire's business or by reason of Concessionaire's occupancy of the Concession Stand.

The County/City shall have the right to terminate and rescind this contract in its entirety or in part at the option of the County/City immediately upon the happening of any of the following events:

Filing by Concessionaire of a Voluntary Petition in Bankruptcy.

The commission by Concessionaire of any acts which constitutes an act of bankruptcy.

The occurrence of any act which operates to deprive Concessionaire of the rights, powers and privileges necessary for the proper conduct and operation of the concession described in this Agreement.

The abandonment or discontinuance of the operation of the concession described in this Agreement.

The failure of the Concessionaire to correct, within ten (10) days from the date they receive written notice from the Directors, any alleged breach or default by Concessionaire of any of the terms, covenants, and conditions hereunder.

The falsification by Concessionaire of its application, proposal, or any reports or documents received to be kept or submitted under this Agreement.

The indictment of Concessionaire or its Executive Officers for a felony.

Misrepresentations of products for sale, or unfair sales practices.

Discrimination against any employee or other person on account of race, color, sex, religious creed, ancestry, age or national origin.

It is further agreed that if the Concessionaire shall become insolvent, make any assignment for the benefit of creditors or otherwise commit any act of bankruptcy, or file a voluntary Petition in Bankruptcy, or if any final

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judgment shall be entered against Concessionaire and remain unsatisfied for thirty (30) days, or an Involuntary Petition in Bankruptcy be filed against the Concessionaire, or make any attempt to delegate duties without the prior written consent of the County/City, all commission reserved for the full term of this Agreement shall become due and collectable immediately by distraint or otherwise and the real property occupied, if any, shall be immediately surrendered to the County/City.

This Agreement and the space herein authorized shall not be assigned, transferred, sub-contracted or otherwise disposed of without the written approval of the County/City.

It is understood and agreed that nothing herein contained is intended or shall be construed to in any way create or establish the relationship of copartners between the parties hereto, or as constituting Concessionaire the general representative or agent of the County/City for any purpose whatsoever.

This Agreement, including any attached exhibits and endorsements, constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended, except by written endorsement duly executed on behalf of the parties and attached hereto. Concessionaire agrees that no representations or warranties expressed, implied, or otherwise have been made other than contained herein, nor shall any such warranties be binding upon the County/City unless expressed in writing herein.

Concessionaire shall have the right to operate, manage and maintain all of the properties and facilities according to the terms and conditions herein during the period of this Agreement and to sell merchandise and provide services ordinarily dealt in at facilities of this kind. Concessionaire shall not have the right to make any charge for the right to park any vehicles or to charge for admission. Concessionaire agrees that at termination of this Agreement, by expiration, or otherwise, to return the Concession Stand to the County/City in a condition of first-class maintenance.

Concessionaire agrees to render courteous, efficient daily service to the public from 6:00 AM to 2:00 PM, five (5) days a week, Monday through Friday in the City-County Building and the County Office Building; or for such hours as the County/City shall direct. Concessionaire may operate at other times during the term of this Agreement if approved by the County/City. Concession may be closed on holidays observed by both the City and the County. Reduced service hours may be requested for certain holidays that are observed by either the City or the County. Reduced service hours require the prior approval of the County/City.

Concessionaire agrees to keep the Concession Stand in a clean, sanitary and presentable condition at all times and to comply with all laws, rules, regulations, and orders of the County/City and other Governmental bodies, now in effect or hereinafter enacted, adopted or promulgated.

Keep the entire premises and facilities clean, sanitary and in a presentable condition at all times. The awardee shall remove debris, rubbish and discarded items from premises on a daily basis. The Concessionaire is also highly encouraged to recycle as per City of Pittsburgh guidelines. Should it be necessary that the County/City employ an extermination service resulting from an unclean Concession Stand, the awardee shall be solely responsible for paying the extermination company's invoice.

Concessionaire has examined and knows the condition of the premises and equipment, and has received the same in reasonable good repair, and further agrees that no misrepresentations as to the condition thereof have been made by the County/City prior to, or at the execution of this Agreement.

Concessionaire shall have the right to use the said premises only for the described purposes and only in keeping with purposes reasonably necessary to carry out the terms of this Agreement. Any deviation from said intent, or conflict with or between any provisions of this Agreement shall require County/City action and their written direction for correction. County/City will not permit any signs or placards to be placed on the outside walls of structures, except by written consent.

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SPEC #7908

Section 2

Concessionaire agrees not to make any alterations, deletions, or additions in or to premises without prior written approval of the Directors. In addition, Concessionaire agrees not to deface or mutilate the walls, floors, ceilings, equipment or other parts of the Concession Stand in any manner, not to permit any practice or acts injurious to the building, or which may affect the insurance on the building, or which may be contrary to law.

Concessionaire agrees that all permanent improvements to the Concession Stand become the property of the County/City unless otherwise specified herein.

County/City shall be responsible for major building maintenance. Concessionaire shall be responsible for all other maintenance to the Concession Stand including maintaining all equipment and property therein in good repair at Concessionaire's own expense. In addition, Concessionaire shall be responsible for any repairs to equipment, buildings, and all other parts of County/City property resulting from any act or negligence, or lack of due care on the part of Concessionaire, its employees or its customers.

County/City will cooperate with the Concessionaire in scheduling all its maintenance activities. Concessionaire understands and agrees that there are times the County/City may have to perform required maintenance during Concessionaire's business operations and that County/City will perform such maintenance with the least inconvenience and interruption of Concessionaire's business.

Concessionaire agrees to periodic maintenance inspections of said premises with County/City representatives. Concessionaire understands that County/City expects Concessionaire's maintenance to be first-class. Concessionaire agrees to correct any defects found within a reasonable amount of time, but in no event more than ten (10) days.

Concessionaire agrees to employ only competent and orderly employees who will keep themselves neat and clean and accord courtesies and competent treatment and service to all guests and patrons. Uniforms to be worn by persons working on the leased premises shall be of such type as are ordinarily worn by employees doing like work in similar places of business.

Use its best efforts to maintain order among its customers. Awardee agrees to bring to the attention of the County/City any violations by its patrons of the laws and regulations of the City of Pittsburgh, County of Allegheny and the Commonwealth of Pennsylvania committed while patrons are at the awardees' stand.

Store, handle, prepare and serve all food and beverages according to Allegheny County Health Department's document titled "Article III. Food Safety."

Serve fresh, flavorful food prior to the expiration dates.

Concessionaire shall comply with all Federal, State and local laws regarding obscenity. Violation of this provision shall be deemed to be a material breach of this Agreement.

Concessionaire may store its equipment on or in the premises during non-operating periods, providing this Agreement is not terminated. If Concessionaire should store its equipment on the leased premises, it is fully and mutually understood that said storage shall be at the Concessionaire's sole risk; that the County/City shall assume no obligation or responsibility for safeguarding Concessionaire's equipment from acts of vandalism, loss, fire, theft, damage or Acts of God.

It is fully understood by the parties hereto that the County/City does not guarantee any number of visitors to the City County Building and accepts no responsibility for lack of same for any reason other than may be herein set forth.

Concessionaire agrees to remove all personal property from the premises at the termination of this Agreement. Any property not removed within fifteen (15) days after the Agreement is terminated shall be considered as abandoned and the County/City may dispose of same without being accountable to Concessionaire. This time limit may be waived, in writing, at the County/City discretion.

Concessionaire agrees, upon termination of this Agreement, to return the Concession Stand to the County/City in good condition, non-negligent accidental loss or damage and ordinary wear and tear accepted. Dirt is not considered ordinary wear and tear. Also, upon termination of this Agreement, the following conditions shall be complied with before Concessionaire will be released from its obligation as stipulated in the agreement:

All payments due the County/City must be made.

All debris, rubbish and discarded items must be removed from premises.

The entire premises and facilities therein must be clean.

The Concession Stand and equipment will be inspected by County/City and approved according to statement of conditions and premises.

County/City shall not be responsible for the maintenance of access to the Concession Stand during inclement weather.

Concessionaire shall be responsible for providing extermination service to the stands, if needed.

Concessionaire recognizes, understands and will in all reasonable manner and ways, with the County/City consent, cause improvements that will only enhance the physical attributes of the Concession Stand as well as the contemplated public service, accommodations and use of the site to its benefit and the community in general. Contemplated construction, renovations, alterations, operations and maintenance shall be conducted with effective concern and practices as to prevent and protect the Concession Stands and the City-County Building from any adverse environmental impacts, and shall be done in accordance with City Fire and Building Codes.

County/City and Concessionaire agree that by mutual consent, this Agreement may be changed or amended from time to time, in writing, as may be required to protect the Concession Stand or County/City's other properties, or to add to the comfort and convenience of Concessionaire's operations.

It is deemed to be for the best interest of the County/City that all prices and qualities being equal, the Concessionaire purchase from suppliers having offices or plants located within the limits of the County of Allegheny all foods, drinks, and other products or incidental supplies which are to be sold or used in the operation of the Concession.

2.1.3 Sustainability/Green Initiative

All proposers must include a sustainability/green initiative plan in their proposal. Said Plan should include a recycling plan and should identify the types of containers and cups to be used. Proposer must acknowledge the use of styrofoam containers and cups is not permitted.

2.1.4 Commissions

Concessionaire shall provide his/her best offer of payment per month in his/her proposal.

For each concession year, beginning on June 1, 2017 or from award notification and then June 1 of each succeeding year, Concessionaire shall pay the County and the City MINIMUM monthly payments in the amount proposed

within the (10) days after the expiration of each calendar month during the term of this Agreement. If the Concessionaire gains occupancy prior to the effective date of the Agreement and is able to operate on a limited basis in order to assure a continuity of service to the general public, Concessionaire shall pay rent on a pro-rated basis for that period of time.

Monthly fee may be increased annually by the County/City the amount of increase being equal to the rate of increase approved by the State of Pennsylvania Public Utility Commission for electrical utility usage or other utility increases that may apply.

The monthly payments and annual adjustments shall be paid as follows:

For the County: Deputy Director
Administrative Services
Room 202, Court House
436 Grant Street
Pittsburgh, PA 15219
Make checks payable to: "County of Allegheny"

For the City: Assistant Tax Supervisor
Department of Finance
City of Pittsburgh
First Floor, City-County Building
Pittsburgh, PA 15219
Make checks payable to: "City of Pittsburgh"

Concessionaire agrees to furnish to the County/City as they are filed, copies of all tax returns relating to the operation by Concessionaire of the Concession under the provisions hereof.

Concessionaire will, at the request of the County/City, provide true and correct copies of the original invoices as issued by the seller for the purchase of any equipment or furnishing or constructing any stand improvements.

2.1.5 AUDITS

The Concessionaire shall make available for inspection, upon reasonable prior notice, full and complete records including invoices and payments therefore, whenever possible, of all materials brought to or sold from the premises.

These shall be retained by the Concessionaire for a period of not less than fifteen months after incurred, paid or made.

The County/City shall have the right to inspect and audit the books and records of Concessionaire at all reasonable times during business hours.

The County/City shall have the right to observe any transaction or transactions between the Concessionaire and the public during the dispensing of foods, drinks or other items for the purpose of determining the quality and quantities of said foods, drinks or other items and as to the charges made thereof and the accountability of the revenue received there from.

The County/City shall have the right to make any and all examinations, tests, measurements, weightings, etc., as it may desire of all materials in the Concessionaire's possession for sale in accordance with the provisions of this Agreement, in order to determine the quality and quantity of the materials intended to be sold.

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Section 2

1. Facility _____
Address: _____

Main Tel. #: _____
Contact Name: _____
Contact Tel. #: _____
Time period during which the bidder has provided service to this facility _____
Description of the contract: _____

2. Facility _____
Address: _____

Main Tel. #: _____
Contact Name: _____
Contact Tel. #: _____
Time period during which the bidder has provided service to this facility _____
Description of the contract: _____

3. Facility _____
Address: _____

Main Tel. #: _____
Contact Name: _____
Contact Tel. #: _____
Time period during which the bidder has provided service to this facility _____
Description of the contract: _____

Please provide a brief description of your proposed implementation plan, including a timeline if awarded contract:

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Section 3

3. PRICE

Suppliers shall submit their pricing via the following format:

Please provide a menu and pricing of said menu items Concessionaire intends to offer to customers.

The menu offerings and prices will be considered in the evaluation of all proposals.

4. EVALUATION CRITERIA

4.1 Evaluation Process

All proposals are subject to be evaluated by the point-of-contact, the Chief Purchasing Officer or an evaluation committee made up of County department representatives and/or an independent consultant.

The County uses the concept of “Best Value” in evaluating proposals. “Best Value” means the overall combination of quality, price and various elements of required services that in total are optimal relative to the County’s needs and most advantageous.

4.2 Additional Information

Suppliers to this RFP may be required to submit additional information that the County may deem necessary to further evaluate the supplier’s qualifications.

4.3 Award Criteria

Suppliers are not to inflate prices in the initial proposal as cost is one of the factors in determining who may receive an award or be invited to formal negotiations.

Additionally, proposals shall be based on:

1. Proposed monthly payment to County/City
2. Proposed menu items and pricing.
3. Proposers Food Service/Management Experience
4. References which support proposers experience
5. Completeness, adequacy and format of proposal
6. Sustainability/Green Initiative plan proposed
7. Food Quality (actual samples may be requested)
8. Demonstrated financial wherewithal to fulfill the requirements of the contract: provide last two years P&L Statements
9. Number and scope of conditions attached to the proposal
10. Other such relevant information as the County/City may secure

The County/City reserves the right to award in part, to reject any and all proposals in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interests of the County/City shall not be served.

As stated above, respondents may be required to provide an oral presentation, followed by a question and answer session. A limited number of samples may be requested as part of this process. The number of finalists to be selected for an oral presentation has not been determined; however, the number is not expected to exceed three.

It is the County’s expectation that upon successful conclusion of contract negotiations, that the selected administrator shall implement the transition work plan outlined in their response to this RFP for an effective date of June 1, 2017.

The County reserves the right to award in part, to reject any and all proposals in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interests of the County shall not be served.

4.4 Final Award Process

A shortlist of proposers may be determined. These short-listed proposers may be scheduled for a structured oral presentation or interview. Any such presentations shall be at no cost to the County. The County also reserves the right to visit the

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Section 4

proposer's facilities, offices and warehouses. The oral interview may be recorded or videotaped. At the end of the oral presentation/interview process, the evaluation of the respondents shall be completed. At this time the supplier(s) deemed most advantageous to the County shall be chosen.

5. TERMS OF CONTRACT

5.1 Period of Contract

The period of contract shall be June 1, 2017 through May 31, 2020 with two (2) one (1) year options to renew.

The County retains the right to terminate any resulting contract upon thirty (30) days written notice.

MINORITY AND WOMEN BUSINESS ENTERPRISE UTILIZATION AFFIRMATIVE ACTION REQUIREMENTS FOR BIDDERS AND PROPOSERS

1) **MBE (Minority Business Enterprise) and WBE (Women Business Enterprise) Goals**

The County has established, in connection with this contract, the specified goals in the Bid Form for the utilization of MBEs and WBEs. These goals remain in effect throughout the life of the contract.

2) **Policy**

It is the policy of the County that Minority and Women Business Enterprises as defined in this Document and the Allegheny County MBE Participation Plan shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with County funds under this contract.

3) **MBE and WBE Obligation**

Take necessary and reasonable steps to ensure that MBEs and WBEs have the maximum opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of County contracts.

4) **Failure to Comply With MBE and WBE Requirements**

Failure to carry out these requirements constitutes a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate. Failure to comply with MBE and WBE requirements will include but not be limited to failure to submit the Schedule of MBE and WBE Participation within the time requirements of these provisions for submission of required documents; failure to exert a reasonable good faith effort (as determined by the County for good faith efforts) to meet the established goals; failure to realize the MBE and WBE participation set forth in the approved Schedule of MBE and WBE Participation; or failure to submit the Schedule of MBE and WBE in every subcontract, so that such provisions will be binding upon each subcontractor, supplier, or service agency.

5) **Subcontracts**

Include the provisions of the above paragraphs in every subcontract, so that such provisions will be binding upon each subcontractor, supplier, or service agency.

6) **Definitions**

As used in this Document, the terms "Minority Business Enterprise," "Women Business Enterprise," "Minority," and "Owned and Controlled" are defined below:

- i) **"Minority Business Enterprise" or "MBE"** means a small business concern as defined in Small Business Act, 15 USC as amended:
 - (a) Which is at least 51 percent owned by the one or more minority individuals, or, in the case of any corporation at least 51 percent of the stock of which is owned by one or more minority individuals and:
 - (b) Whose management and daily business operations are controlled by one or more of the minority individuals who own it.
- ii) **"Women Business Enterprise" or "WBE"** means a small business concern as defined in Small Business Act, 15 USC as amended:
 - (a) Which is at least 51 percent owned by the one or more female individuals, or, in case of any corporation at least 51 percent of the stock of which is owned by one or more female individuals; and
 - (b) Whose management and daily business operations are controlled by one or more of the female individuals who own it.
- iii) **Minority** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or

Asian-Indian Americans and any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act as amended. For convenience, these individuals and groups are referred to as “disadvantaged.” The County may make a rebuttable presumption that individuals in the following groups are minorities and socially and economically disadvantaged (use the certification appeals mechanism of 49 CFR, Part 26 as amended with respect to individuals alleged not to be minorities and socially and economically disadvantaged):

- (a) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- (b) “Hispanic Americans,” includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (c) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (d) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.
- (e) “Asian-Indian Americans,” which includes persons whose origins are from India, Pakistan and Bangladesh.

iv) **"Owned and Controlled"** means a business:

- (a) Which is at least 51 percent owned by one or more minority or female persons, in case of a corporation, at least 51 percent of the stock of which is owned by one or more minority or female persons; and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

7) **Counting MBE and WBE Participation Towards MBE and WBE Goals**

The utilization of MBEs and WBEs is in addition to other equal opportunity requirements of the contract. Count MBE and WBE participation toward meeting MBE and WBE goals as follows:

- (a) If a firm is determined to be an eligible MBE or WBE, the total dollar value of the contract awarded to the MBE or WBE counts toward the applicable MBE or WBE goal EXCEPT per provisions of this paragraph.
- (b) Count toward the MBE and/or WBE goal(s) a portion of the total dollar value of a contract with a joint venture equal to the percentage of ownership and control of the MBE and/or WBE participant(s) in the joint venture.
- (c) Count the total dollar value of a contract with a business certified as both an MBE and WBE toward the WBE or the MBE goal but not to both. If a firm with such dual certification is employed, choose the goal to which the total contract value is to be applied.
- (d) Count toward the MBE or WBE goal only expenditures to MBEs or WBEs that perform a commercially useful function in the work of a contract. An MBE or WBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE or WBE is performing a commercially useful function, the County will evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- (e) **Suppliers:**

- (i) Count toward the MBE or WBE goal 60 percent of expenditures for materials and supplies required under the contract and obtained from an MBE or WBE regular dealer and count toward the MBE or WBE goal 100 percent of expenditures to an MBE or WBE manufacturer.
 - (ii) An MBE or WBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies to be purchased for the work.
 - (iii) An MBE or WBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
 - (iv) An MBE or WBE regular dealer is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. An MBE, WBE or DBE regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.
 - (v) MBE or WBE brokers and MBE or WBE packagers are not regarded as MBE or WBE manufacturers or MBE or WBE regular dealers within the meaning of these provisions.
- (f) Count toward the MBE or WBE goal the following expenditures to MBE or WBE firms that are not MBE or WBE manufacturers or MBE or WBE regular dealers:
- (i) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consulting or managerial services and assistance in the procurement of essential personnel and/or facilities.
 - (ii) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the MBE or WBE hauler, MBE or WBE trucker, or MBE or WBE delivery service is not also the MBE or WBE manufacturer of or an MBE or WBE regular dealer in the materials and supplies, provided that the fee is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (iii) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the County to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Any services to be performed by an MBE or WBE agency are required to be readily identifiable to the project.

8) Action Required by Bidder(s) or Proposer(s) Prior to Award

The apparent low bidder or selected proposer MEETING or EXCEEDING the MBE and WBE goals must provide the following to the Director by 4:00 P.M. of the seventh (7th) calendar day after notification:

- i) **Schedule of MBE and WBE Participation** The apparent low bidder or selected proposer must provide a list of M/W/DBE firms that they will work with to fulfill the MBE and WBE goals. The County reserves the right to contact any MBE/WBE firm(s) with regard to the authenticity of the documentation as stated on the Schedule of MBE/WBE Participation. Any evidence of fraudulent information submitted by the apparent low bidder or selected proposer with regard to the MBE/WBE participation is subject to disbarment from County work and/or possible legal action.

Any apparent low bidder or selected proposer NOT MEETING the goals established by the County must submit documentation that demonstrates their good faith efforts to meet the MBE and WBE contract goals.

- (1) You are expected to demonstrate good faith efforts by actively and aggressively seeking out MBE and WBE participation in the project to the maximum extent given all relevant circumstances. The following documentation represents the kinds of efforts that may be taken but are not deemed to be exclusive or exhaustive, and the County will consider other related factors and types of efforts that may be relevant:
 - (a) Documentation of efforts made to select portions of the work proposed to be performed by MBEs and WBEs in order to increase the likelihood of achieving the stated goal, including, where appropriate, but not limited to breaking down contracts into economically feasible units to facilitate MBE and WBE participation. Selection of portions of work shall equal or exceed the goals for MBE and WBE utilization specified in the contract.
 - (b) Written notification dated at least fifteen (15) calendar days prior to the opening of bids or proposals to individual MBEs and WBEs soliciting their participation in the contract as a subcontractor, regular dealer, manufacturer, consultant or service agency. Indicate in the notification the specific items or type of work involved.
 - (c) Written notification to minority, women and disadvantaged economic development assistance agencies and organizations that provide assistance in recruitment and placement of MBEs and WBEs of the type of work, supplies or services being considered by MBEs and WBEs on this contract. See Allegheny County's MBE/WBE Department website for partial listing.
 - (d) Documentation of efforts made to negotiate with MBEs and WBEs for specific items of work which should include the following:
 - (i) The names, addresses, telephone numbers and e-mails of MBEs and WBEs who were contacted, along with the dates of initial contact and whether initial solicitations of interest were followed up by contacting the MBEs and WBEs to determine with certainty whether the MBEs and WBEs were interested;
 - (ii) A description of the information provided to MBEs and WBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - (iii) A statement of why additional agreements with MBEs and WBEs were not reached;
 - (e) Documentation of contact with each MBE and WBE contacted but rejected and the reasons for the rejection.
 - (f) Documentation to certify the absence of any agreement between you and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders or proposers.
 - (g) Documentation of efforts made to aid any MBEs or WBEs that need assistance in obtaining required bonding, insurance, or lines of credit required by you.
 - (h) Documentation to certify that qualified MBEs and WBEs are not available, or not interested.
 - (i) Documentation to certify attendance at any meetings scheduled by the County or others to encourage better Contractor-MBE/WBE relationships, forthcoming MBE and WBE utilization opportunities, etc.
 - (j) Documentation to certify advertisement in general circulation media, trade association publications, disadvantaged-focus media of interest for MBEs and WBEs and area of interest.
 - (k) Documentation of efforts to effectively use the services of available disadvantaged community organizations; disadvantaged contractors' groups; local, state and federal disadvantaged business

assistance offices; and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

(2) Consider the following NOT valid justification for failure to meet the MBE and WBE contract goals:

- (a) Failure to contract with an MBE or WBE solely because the MBE or WBE was unable to provide performance and/or payment bonds.
 - (b) Rejection of reasonable MBE or WBE bid or proposal based on price alone.
 - (c) Equipment idled by contract with an MBE or WBE.
 - (d) Failure to contract with an MBE or WBE because the MBE or WBE will not agree to perform items of work at the unit price bid.
 - (e) Rejection of an MBE or WBE because of its union or non-union status.
 - (f) Failure to contract with an MBE or WBE because you normally would perform all or most of the work in the contract.
 - (g) Restricting efforts to mailing of letters.
- (3) When the documentation required above is not provided by the apparent low bidder or selected proposer on request within the time specified, the bid will be rejected and the next apparent low bidder or selected proposer will be notified by the Director to provide their Schedule of MBE and WBE Participation by 4:00 P.M. of the seventh (7th) calendar day after notification.

9) Action to be Taken by the County before Award

If the apparent low bidder or selected proposer meets the MBE and WBE contract goals and other contract requirements, the County will award to that bidder or proposer.

- i) To ensure that its MBE and WBE program benefits only firms owned and controlled by MBEs and WBEs, the County has established that eligibility of business enterprises as MBEs and WBEs or as joint ventures involving MBEs and WBEs will be based on the Small Business Act 15 USC as noted under its definitions.
- ii) By identifying an entity as an MBE or WBE, you represent to the County that to the best of your knowledge, information, and belief, that entity so identified is certified as a MBE or WBE.
- iii) The County will confirm your certification of MBEs and WBEs and reserves the right to make such an inquiry and require such substantiation as the County, in its discretion, deems appropriate to enable it to determine whether a given entity is an MBE or WBE or is eligible for certification as such. The apparent low bidder or selected proposer has the burden of proving that an entity identified is in fact certified as an MBE or WBE. If the MBE or WBE is in fact not certified or not eligible for certification, the apparent low bidder or selected proposer must prove that the error was made in good faith. The County may permit you, within ten (10) calendar days of notice of such an error, to identify new subcontractors, suppliers, or manufacturers which are in fact certified as MBEs or WBEs or which qualify for certification prior to award or prior to the MBE's or WBE's commencement of work.
- iv) If the apparent low bidder or selected proposer meets the other contract requirements but fails to meet the MBE and WBE contract goals, the County will review the apparent low bidder's or selected proposer's MBE and WBE data and its documentation of good faith efforts and diligent efforts to meet the MBE and WBE contract goals. If its efforts are deemed satisfactory, the Director will recommend award.
- v) If the County cannot accept the apparent low bidder's or selected proposer's documentation of good faith efforts, the bid will be considered non-responsive and the County will notify the bidder or proposer that its bid

is being rejected. The County will then notify the next apparent low bidder or selected proposer on the project to provide to the Director the information required by 4:00 P.M. of the seventh (7th) calendar day after notification. The bid or proposal and appropriate MBE and WBE data will be evaluated by the County. If the County, during the review of the bidder's or proposer's MBE and WBE data has questions, it will contact the bidder or proposer for clarification.

10) Action to be Taken by the County after Award

To ensure that your obligations regarding MBEs and WBEs are met, the County will review your MBE and WBE program and its implementation throughout the contract.

- i) **Sanctions:** Upon completion of the work, the County will review the actual MBE and WBE participation realized and make a determination regarding your compliance with these specifications:
- ii) In the event you are found to be in non-compliance, the County may impose sanctions that it deems appropriate.
- iii) The County may impose sanctions for unwarranted shortfalls in the approved goal.
- iv) Make appeals of sanctions imposed pursuant to the Certification Regulations.

11) Action Required after Award

If the County approves a Schedule of MBE and WBE Participation which is less than the MBE and WBE goals of the contract, continued efforts to increase MBE and WBE participation must be made.

- i) The bidder or proposer must ensure that the firms listed on the Schedule of MBE and WBE Participation do not commence work until they are approved.
- ii) If for any reason during the life of the contract it is necessary to replace an MBE or WBE that is unable to perform successfully, make a good faith effort to recontract that work with another MBE or WBE or subcontract other work items to MBE or WBE firms to make up the MBE or WBE shortfall. If the projected MBE or WBE participation on an approved Schedule of MBE and WBE Participation exceeds the goal amount for the contract without counting the amount committed to the defaulting MBE or WBE, then no contract shortfall exists and you need not replace the defaulting MBE or WBE. In compliance with the above adhere to the following procedure:
 - (a) Notify the County immediately in writing of the MBE's or WBE's inability to perform and intent to obtain a substitute MBE or WBE if an MBE or WBE contract shortfall exists.
 - (b) When you learn an MBE or WBE is unable to perform successfully and the original schedule of MBE and WBE Participation amount cannot be met, provide the County with a revised Schedule of MBE and WBE Participation (show total paid/due, if any, to defaulting MBE or WBE) and additional good faith efforts documentation by 4:00 P.M. of the seventh (7th) calendar day thereafter. The County will evaluate this documentation. The County will contact you if it has questions during its review of your good faith efforts documentation.
 - (c) During the seven (7) calendar day period plus an additional period for County processing of the revised schedule of MBE and WBE Participation, you may continue the defaulted work with your own workforce to maintain the scheduled progress of the work.
 - (d) If the County cannot accept your good faith efforts, or if you fail to comply with these provisions, it will constitute a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate.

- iii) When additional and/or extra work is necessary and the original contract amount exceeds \$150,000, the MBE and WBE contract goals apply to that additional and/or extra work each time the cumulative net dollar value of additional and/or extra work either exceeds \$100,000 or is greater than 10 percent of the original contract amount. Provide a revised Schedule of MBE and WBE Participation to the Director and comply with the following procedures:
 - (a) Contact qualified MBEs and WBEs and available MBE and WBE referral sources in an effort to contract the required percentage of the additional and/or extra work or subcontract other work items with MBEs and WBEs.
 - (b) Provide the Director with a revised Schedule of MBE and WBE Participation and good faith effort information by 4:00 P.M. of the seventh (7th) calendar day after notification that the additional and/or extra work is approved.
- iv) The County will evaluate your good faith efforts information. Again, the County will contact you if it has questions during its review of your good faith effort information.
- v) If the County cannot accept your good faith efforts, or if you fail to comply with these provisions, this will constitute a breach of contract that may result in termination of the contract, being barred from bidding on County contracts for up to three (3) years or such other remedy as the County deems appropriate.
- vi) Bring to the attention of the County, in writing, any situation in which regularly scheduled progress payments are not made to MBE and WBE subcontractors, suppliers, or service agencies.

12) Records and Reports

Keep such records as are necessary to determine compliance with your MBE and WBE obligations. Design these records to indicate:

- (1) The number of minority, women, disadvantaged and non-disadvantaged subcontractors, regular dealers, manufacturers, consultants, and service agencies and the type of work or materials or services performed on or incorporated into the project.
 - (2) The progress and efforts made in seeking out minority, women, and disadvantaged contractor organizations and individual minority, women, and disadvantaged contractors for work on the project to increase the MBE and WBE participation and/or to maintain MBE and WBE participation levels on the Schedule of MBE and WBE Participation anytime a subcontractor, supplier, or service contract is contemplated during the life of the contract. Do this, as a minimum, anytime a contract with a subcontractor, regular dealer, manufacturer, consultant, or service agency is contemplated during the life of this contract.
 - (3) Documentation of correspondence, contacts, telephone calls, etc., to obtain the services of MBEs and WBEs on the project.
- (a) Allegheny County uses an internet-based program that allows you to record payments to your subcontractors on contracts you have with the County. A link to the payment website will be sent to you via email along with your Prime Vendor ID Number. Simply update the County's information regarding the payments you have made to your subcontractors. The program is easy to access. You can update your records and it allows you to inform the County of your timely payments to your various sub vendors.
- (1) **Prime vendors will be required to report on the 10th of each month the MBE and WBE participation paid in the previous month.**
 - (2) On completion of each MBE's and WBE's work, paid invoices or certification attesting to actual amount paid each MBE and each WBE and an explanation of the difference between actual amount paid and award amount, if any, must be provided.

- (b) Maintain records for a period of 3 (three) years following acceptance of final payment.
- (c) Make records available for inspection by the County.

Equal Employment Opportunity (EEO)

1) Specific Equal Employment Opportunity (EEO) Responsibilities

General - To effectively implement specific EEO requirements, the following provisions pursuant to Executive Order 11246 and the General Conditions will apply to the performance of the Contract. Include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

- i) **Equal Employment Opportunity Office** - Designate and make known to County contracting officers, an equal employment opportunity officer (EEO Officer) who shall have the responsibility for and be capable of effectively administering and promoting an active program of equal employment opportunity and who shall be assigned adequate authority and responsibility to do so.
- ii) **Dissemination of Policy** - Make members of staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, fully cognizant of, and fully involved in implementation of the equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. At a minimum take the following actions to ensure that the above agreement is met:
 - iii) Conduct periodic meetings of supervisory and personnel office employees before the start of work and not less often than once every six months thereafter to review and explain equal employment opportunity policy and its implementation. Insure that the EEO Officer or other knowledgeable company official conducts the meetings.
 - iv) Ensure that new supervisory or personnel office employees are thoroughly indoctrinated by the EEO Officer or other knowledgeable company official on your equal employment opportunity obligations within thirty (30) days following their reporting for duty.
 - v) Ensure that the EEO Officer or appropriate company official instructs personnel who are engaged in direct recruitment for the Contract in procedures for locating and hiring minority group employees.
 - vi) Take the following actions to insure that your equal employment opportunity policy is passed on to employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc:
 1. Place notices and posters setting forth equal employment opportunity policy in areas readily accessible to employees, applicants for employment and potential employees.
 2. Bring equal employment opportunity policy and procedures to implement policy to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
 - vii) **Recruitment** - When advertising for employees, include in advertisements for employees the notation: "An equal Opportunity Employer." Publish such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the Contract work force would normally be derived.
 - viii) Unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, identify, through the EEO Officer, sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred for employment consideration.

- ix) Observe the provisions of valid bargaining agreements providing for exclusive hiring of referrals to the extent that the system permits compliance with equal employment opportunity contract provisions (the U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended).
- x) Encourage present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to employees. Discuss information and procedures with regard to referring minority group applicants with employees.
- xi) **Personnel Action** - Establish and administer wages, working conditions, and employee benefits, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, without regard to race, color, religion, sex, or national origin. Adhere to the following procedures:
 - xii) Conduct periodic inspections of Contract sites to ensure that working conditions and employees facilities do not indicate discriminatory treatment of Contract site personnel.
 - xiii) Periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - xiv) Periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, include all affected persons in such corrective action.
 - xv) Promptly investigate all complaints of alleged discrimination in connection with obligations under the contract; attempt to resolve such complaints, and take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, take corrective action to include such other persons. Upon completion of each investigation, inform every complainant of his avenues of appeal.
- xvi) **Training and Promotion** - Assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- xvii) Consistent with work force requirements and as permissible under Federal and State regulations, make full use of training program, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a Provision for trainees is provided in the Supplementary Conditions, this subparagraph will be superseded.
- xviii) Advise employee and applicants for employment of available training programs and entrance requirements for each.
- xix) Periodically review the training and promotion potential of minority group and women employees and encourage eligible employees to apply for such training and promotion.
- xx) **Unions.** If reliant in whole or in part upon unions as a source of employees, use best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Take actions either directly or through a Contractor's association acting as agent to include:
 - xxi) Use of best efforts to develop, in cooperation with unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing

the skills of minority group employees and women so that they may qualify for higher paying employment.

- xxii) Use of best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- xxiii) Obtaining information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information, so certify to the County and set forth what efforts have been made to obtain such information.
- xxiv) In the event the union is unable to provide a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, fill, through independent recruitment efforts, the employment vacancies without regard to race, color, religion, sex or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.)
- xxv) In the event that union referral practices prevent your meeting the requirements of these Supplementary Conditions, immediately notify the County.
- xxvi) **Subcontracting.** Use best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Obtain lists of approved MBE & WBE firms from the County.
- xxvii) Use best efforts to ensure subcontractor compliance with these equal employment opportunity obligations.
- xxviii) **Records and Reports.** Keep records as are necessary to determine compliance with the equal employment opportunity obligations. Design the records to indicate:
- xxix) The number of minority and non-minority group members and women employed in each work classification on the Contract.
- xxx) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applies only to contractors who rely in whole or in part on unions as a source of their work force).
- xxxi) The progress and efforts being made in locating, hiring, training, qualifying and upgrading minority and female employees, and
- xxxii) The progress and efforts being made in securing the services of minority group subcontractor or subcontractors with meaningful minority and female representation among their employees.
- xxxiii) Retain records for a period of three years following completion of the contract work and make records available at reasonable times and places for inspection by authorized representatives of the County.
- xxxiv) Submit a report each month after the contract begins for the duration of the Contract, indicating the work hours, number of minority, women and non-minority group employees currently engaged in each work classification required by the contract work. Report this information on County Form MBE/WBE Status Report, in accordance with the instructions included thereon.

- xxxv) **E.E.O. Covered Area.** For the purpose set forth in these Supplementary Conditions and Executive Order 11246 the covered area for this Contract is as follows:
- xxxvi) For Contractors who are signatory to the Hometown Plan the covered area is Allegheny County, which is within the Economic Area of Pittsburgh, PA., as listed in Appendix C of Executive Order 11246, which is attached to these Specifications.
- xxxvii) For Contractors who are NOT signatory to the Hometown Plan the covered area is Allegheny County which is within the Economic Area of Pittsburgh, PA and shall be included under the Pittsburgh, PA 6.3 percent goal in Appendix B of Executive Order 11246.

**ALLEGHENY COUNTY DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PURCHASING AND SUPPLIES
ROOM 201 COUNTY OFFICE BUILDING**

GENERAL CONDITIONS AND INSTRUCTIONS TO SUPPLIERS

PREAMBLE - (Supplier: You are advised to review the instructions, general rules and conditions which follow as they apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the Division of Purchasing and Supplies, unless otherwise specified. Suppliers or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting proposals, failure to do so shall be at the supplier's own risk and relief cannot be secured on the plea of error.)

Subject to Commonwealth of Pennsylvania and local laws, policies, resolutions and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, proposals on all solicitations issued by the Division of Purchasing and Supplies shall bind suppliers to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

1) SIGNATURES –

The proposal shall be signed on page two (2) by an individual authorized to bind the company and execute contracts on its behalf.

2) NUMBER OF PROPOSALS – Supplier shall submit **one (1) original, four (4) photocopies and one (1) electronic copy on CD-ROM or FLASH DRIVE** (they shall be in the same envelope). Any price discrepancy shall result in Allegheny County accepting the lowest (or most advantageous) price.

3) PROPOSAL SUBMISSIONS – This proposal shall be completed, signed and submitted to the Allegheny County Division of Purchasing and Supplies. Copies needed for the supplier's records are the responsibility of the supplier. Each response must be in a separate sealed envelope with both the RFP number and opening date plainly visible on the envelope. Proposals must be received at the place, time and date specified. Suppliers are responsible to assure each proposal is properly marked and timely delivered. The County assumes no financial obligations for preparation and submittal of proposal. Supplier shall be solely responsible for understanding the specifications and requirements.

4) RECEIPT OF PROPOSALS –The Division of Purchasing and Supplies may receive proposals solicited as a result of RFP's issued by the Division of Purchasing and Supplies. No proposals shall be handled so as to permit disclosure of the identity of any supplier or the contents of any proposal to competing proposers during the process of negotiation. A register of proposals shall be prepared containing the name of each supplier, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

5) RFP ALTERATIONS –

a) Any alterations and/or deletions to the RFP form as received by Allegheny County may be grounds for rejection of the proposal, in whole or in part. In completing the RFP documents, supplier should not add, delete or vary any of the terms or conditions of any documents prepared by the County. If the supplier makes any substantial changes in any of the documents, the County may reject the proposal. If the supplier makes insubstantial changes, the County may, in its discretion, either reject the proposal or waive the discrepancy and, the changes shall be accepted only to the extent that they are consistent with the original RFP documents. Supplier warrants that all goods and services described by supplier in its proposal and all samples submitted by supplier to the County shall conform to the Specifications. The Chief Purchasing Officer may waive insubstantial errors in the proposal and specifications.

b) Supplier is permitted to scan RFP documents, in order to computer generate responses. Supplier shall not in any way change or alter any of the text of the document, however any necessary changes, revisions or clarifications, should be noted in parenthesis at the end of the text. If there are any discrepancies, the original County text shall prevail.

- 6) **ERRORS AND BULLETINS (AMENDMENTS)** - If any alleged errors are noted in the RFP specifications, supplier should immediately notify the County and, if confirmed, a bulletin shall be sent to all suppliers. A copy of all bulletins issued shall be submitted with the proposal documents to the County.
- 7) **CLARIFICATION** –The County reserves the right to request clarification of any proposal prior to award.
- 8) **PROPOSAL PRICES HELD** - Contracts shall be awarded within ninety (90) days of the proposal opening unless an extension is agreed to, in writing, between the Supplier and the County.
- 9) **ASSIGNMENT** - Supplier shall have no right or power to assign or delegate any rights or duties pursuant to a resulting contract without the prior written permission of the Chief Purchasing Officer. Any assignment or delegation so permitted shall be subject to all the terms, conditions and other provisions of a resulting contract, and supplier shall remain liable to the County with respect to each and every term, condition and other provision hereof to the same extent that supplier would have been obligated if no assignment or delegation had been made.
- 10) **QUALIFIED PROPOSALS** - All suppliers must be merchants dealing in the goods and services on which they propose, and must be qualified to advise as to their application and use. Suppliers warrant, and must be able, upon request, to demonstrate, that they possess the knowledge, experience, skill, capital, stock, charters, licenses, permits, patents and personnel necessary to satisfactorily perform the contract for which they submit proposals.
- 11) **SAMPLES**
- a) By submitting a proposal, the supplier agrees to deliver to the County, at the County’s request and at no cost to the County, samples of any or all items upon which the supplier bid. Said samples shall not be returned to the supplier. Inspection or testing by the County does not constitute a waiver of any claims or rights which the County otherwise would have with respect to the quality of goods or workmanship. County shall specify the quantity of samples. If supplier inadvertently provides an incorrect sample or otherwise wishes to exchange the submitted sample with a correct sample, the supplier shall provide a detailed written explanation to the County and have a legitimate reason for the exchange. The supplier shall have only one opportunity to perform such an exchange.
- b) County, at its sole discretion, shall have the right to arrange for testing of samples to determine whether they are within proposal specification. County shall indicate to supplier that it desires testing and advise which samples are to be tested and for what purpose. The following additional guidelines shall be followed:
- (1) Laboratory/testing facility used shall be pre-approved by County;
 - (2) Suppliers shall be solely and fully responsible for the expenses of testing regardless of whether or not the tested sample(s) meets specification;
 - (3) County and supplier shall immediately communicate upon County’s request for testing to determine which laboratory/testing facility shall be used, as well as the time frame in which tests are to be conducted and reported to County;
 - (4) The laboratory which tests the samples shall report its results directly to both County and supplier.
- 12) **UNIQUE PROPOSALS** - No supplier may submit more than one proposal for the same item, nor may he submit multiple proposals by or through the agency of any partner, employee or other person.
- 13) **PRE-PRINTED TERMS AND CONDITIONS** – Supplier’s pre-printed Terms and Conditions or restrictions commonly appearing on the reverse side of letters submitted with the proposal and/or supplier’s specifications material and contract documents shall be disregarded.
- 14) **NEW MATERIAL** - Unless otherwise provided in the Specifications, all goods to be supplied to the County shall be from new, unused, current stock.
- 15) **ESTIMATED QUANTITIES** - Unless otherwise provided in the RFP, any references in the RFP to quantities of goods or frequency of services to be provided to the County are estimates, and the County reserves the right to require the successful supplier to provide more or less than the estimated quantity or frequency, or to purchase none at all.

- 16) DELIVERY POINT** - Unless otherwise provided in the RFP, the goods and services to be delivered or provided shall be delivered to or provided at any place or places within Allegheny County, Pennsylvania which the County may designate. All deliveries are to be F.O.B. point of delivery.
- 17) DELIVERY TIME** - Unless otherwise provided in the RFP, the successful supplier shall provide all goods and services within thirty (30) days from the date of the County's request therefore.
- 18) FIRM, FIXED PRICING** - Unless otherwise provided in the RFP, all prices shall remain fixed throughout the term of the contract, and proposals containing escalation, discount, or other price adjustment provisions shall be rejected if such provisions are not consistent with a common standard against which all proposals may be judged. In arriving at the proposal price, the supplier shall take into consideration all discounts for cash and all other credits and allowances. Any discount or other uncalled for allowance quoted shall not be considered in making the award and may be the cause for the rejection of the proposal.
- 19) PROMPT PAYMENT DISCOUNT** –
- a) Unless otherwise specified in this solicitation, prompt payment discounts requiring payment in less than fifteen (15) days shall not be considered in evaluating a proposal for award. However, even though not considered in the evaluation, such discounts shall be taken if payment is to be made within the discount period.
 - b) In connection with any discount offered, time shall be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the supplier does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
 - c) For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check.
- 20) PRICE EXTENSION DISCREPANCIES** - In case of discrepancy between the prices listed by the supplier for separate items or single units, and the total price, the item or unit prices shall prevail.
- 21) CONFORMANCE TO RFP** - Supplier agrees and warrants that whenever the supplier, in its proposal, describes goods by trade name, catalog number, or "as per sample", the goods so described conform to the RFP. The unauthorized use of any patented articles is done entirely at the risk of the successful supplier.
- 22) AWARD CRITERIA AND BASIS FOR REJECTION** - Unless otherwise provided in the RFP, the County may award on an item by item basis, on a lump sum basis or on a combination of items basis, whichever is in the best interest of the County. The successful supplier shall be the lowest responsible, responsive supplier meeting specifications, with full consideration of cost, quality and performance. Such considerations may include, but not be limited to: superior product quality or functionality; demonstrated experience and whether the supplier can perform the contract or provide the service promptly or within the time specified without delay or interference; the quality of performance of previous contracts or services; the previous and existing compliance by the supplier with laws and ordinances relating to the contract or service; special skills; staff training and financial strength. The Chief Purchasing Officer reserves the right to award on a "multiple-criteria" or "best-value" basis.
- a) The County reserves the right to reject the proposal of any supplier who has previously failed to satisfactorily perform any obligations to the County or is otherwise deemed not to be a responsible supplier.
 - b) The County reserves the right to reject all proposals, if it determines that such rejection is in the best interest of the County.
- 23) PIGGYBACKING** - It is understood that the goods and services described in the RFP may be purchased by the County and any other municipal bodies as set forth in the RFP and supplier agrees to supply the goods and services to the municipal bodies on the same terms and conditions as if they were to be supplied to the County. To the extent that the municipal bodies purchase goods or services, then the municipal bodies, and not the County, shall be liable to the supplier.

- 24) SOLICITATION ONLY** – This RFP is a solicitation only and is not intended to be nor should it be construed to be an offer to enter into any contract or other agreement.
- 25) WORKMEN’S COMPENSATION ACT** - Supplier agrees, in any contract involving construction or doing any work involving construction or doing of any work involving the employment of labor, to accept the provisions of the Workmen's Compensation Act and any reenactments, supplements or amendments thereto and shall insure his liability there under or file with County a certificate of exemption of insurance from the Department of Labor and Industry of the Commonwealth.
- 26) FATAL PROPOSAL ERRORS** – The following errors shall be deemed fatal and render the proposal void:
- a) Failure to sign the proposal, or bond or both,
 - b) If the signatures are those of unauthorized persons, or
 - c) If there is no stated pricing.
- All other errors are waivable at the sole discretion of the County if such errors would not invalidate a fair and just competitive procedure free of favoritism and fraud and a common standard for all suppliers.
- 27) PERFORMANCE BONDS** - Whenever a performance bond is required, the supplier may meet the requirement by submitting an acceptable cashier's check, certified check, banker's check or an irrevocable letter of credit in the amount required. Whenever a performance bond is required, the successful supplier shall keep all provisions and requirements of the bond up-to-date throughout the term of the contract.
- 28) MBE AND WBE CONSIDERATIONS** - In accordance with Section 911.03 C. of the Allegheny County Administrative Code, the County wishes to contract with and asks that, unless otherwise prohibited in the RFP, its suppliers consider contracting with Minority Business Enterprises (MBE) and Women Business Enterprises (WBE). Suppliers may take necessary steps to ensure that MBEs and WBEs have an opportunity to compete for and perform contracts. Suppliers are encouraged to contact the Allegheny County Department of Minority, Women and Disadvantaged Business Enterprises at 412-350-4309 or review the web site at www.county.allegheny.pa.us/mwdbe/index.asp for assistance in identifying qualified MBE and WBE firms.
- 29) CONTRACT** - By submitting a proposal, the supplier warrants that if the County makes an award to the supplier, supplier shall, at the option of the County, enter into a written contract with the County. This contract shall consist of the terms and conditions set forth in the RFP, Bulletins (if applicable), RFP, and these Instructions to Suppliers. If no proposal bond or substitute is required and supplier fails or refuses to execute the required documents within thirty (30) days after award by County, supplier shall pay to the County the difference in the amount specified in supplier’s proposal and the amount County shall pay to fulfill the RFP.
- 30) INELIGIBLE SOURCE LIST** – In accordance with Section 3.7 of the Allegheny County Purchasing Manual, the Chief Purchasing Officer has established an Ineligible Source List. The following may be reasons to place a company on the Ineligible Source List:
- a) Any company who submits a proposal in bad faith,
 - b) Any company who shall fully or repeatedly breaches a contract with the County,
 - c) Any company who refuses to accept an award, or
 - d) Any supplier who has established a pattern or practice of unethical or immoral business practices.
- 31) STEEL PRODUCTS** - In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, approved March 3, 1978, if any steel products are to be used or supplied in the performance of the contract, only steel products produced in the United States of America, as defined therein, shall be used or supplied in the performance of the contract.
- 32) BRAND NAME OR EQUAL ITEMS** – Unless otherwise provided in the specifications, the name of a certain brand, make or manufacturer does not restrict suppliers to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability

for the purpose intended, shall be accepted.

- 33) "BUY AMERICAN" POLICY** – As required in Section 911.03 C. of the County Administrative Code, for the purchase or procurement of materials, supplies, furnishings, equipment or other personal property and non-professional services, the guideline to govern the County's "Buy American" policy is:
Purchases shall consist of raw materials mined or produced in the U.S., or manufactured items that are made in the U.S. from materials or items mined, produced or manufactured in the U.S.

Exceptions to the "Buy American" Policy are:

- a) If the items are not available in the U.S. in commercial quantities of good quality,
- b) If the cost of the domestic items is unreasonable, which shall be if the cost of the domestic items is greater than two percent more than the cost of comparable foreign items, unless for a particular purchase, two percent represents a nominal amount,
- c) If a purchase is worth a value of \$30,000 or less,
- d) If the Chief Purchasing Officer decides that it is in the County's best interest to waive the "Buy American" policy.

34) INDEMNIFICATION CLAUSE –

- a) Supplier agrees to protect, defend, indemnify and hold harmless the County, its Chief Executive, Manager, Director, Officers, agents, and employees from and against any and all liability, damages, claims, suits, liens and judgments of whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or for damage to the property of any person or persons, caused by or arising out of any activity undertaken pursuant to any agreement resulting from this solicitation. Supplier further agrees to protect, defend, indemnify and hold harmless the County from and against any claims or liability for compensation under the Workmen's Compensation Act arising out of injuries sustained by any employees of contractor or of any licensees, contractors or sub-contractors of contractor. Supplier's obligations to protect, defend, indemnify and hold harmless, as set forth in this Paragraph, shall include any and all attorneys' fees incurred by the County in enforcing and/or obtaining compliance with the provisions of this Paragraph.
- b) Supplier shall give to County prompt and timely notice of any claims made or suits initiated which in any way directly or indirectly, contingently or otherwise, affect or might affect the County, and each party shall have the right to compromise and defend the same to the extent of its own interest.

35) HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) RECIPROCAL ASSURANCES

Pursuant to Federal Regulations promulgated under the authority of the Health Insurance Portability and Accountability Act of 1996, *Standards for Privacy of Individually Identifiable Health Information*, 42 C.F.R., Parts 160 and 164, hereinafter "Regulations", the Parties understand and agree that based upon the duties and responsibilities entered into under this agreement, the definition of "Covered Entity" and "Business Associate" as defined in the above cited act may apply to either or both Parties.

If and when Personal Health Information is exchanged between the Parties and one party is acting as a Business Associate to a Covered Entity the following shall apply:

In furtherance and compliance with the above, the Parties agree as follows:

General Duty of Confidentiality Business Associate hereby agrees that it shall not divulge, disclose, or communicate in any manner any Protected Health Information to any third party without the prior written consent of Covered Entity and, where required, the client. Business Associate shall protect all such information and treat it as strictly confidential. Business Associate agrees to abide by the requirements of 42 C.F.R., Parts 160 and 164, *Standards for Privacy of Individually Identifiable Health Information*. Any violation of this paragraph shall be considered a material breach of this Agreement.

Use and Disclosure of Protected Health Information Business Associate is hereby permitted to use or disclose Protected Health Information for the proper management and administration of Business Associate's business, and/or to carry out

the legal responsibilities of the Business Associate. Proper management and administration of Business Associate's business does not include the use of Protected Health Information, or the identity of Kane's clients, for solicitation, marketing, fundraising, or other non-necessary purposes. Should Business Associate at any time disclose to a third party Protected Health Information for its proper management and administration, or to carry out its legal responsibilities, Business Associate agrees to obtain reasonable assurances from that third party of the following: (1) that the third party shall hold the disclosed Protected Health Information confidentially and only use or disclose the information as required by law or for the purpose for which it was properly disclosed to the third party; and (2) that the third party shall immediately report in writing to Business Associate any instances of a breach of confidentiality of which the third party is aware.

Appropriate Safeguards Business Associate agrees to maintain and use appropriate physical, technical, and administrative safeguards to prevent the use or disclosure of any Protected Health Information, including the identities of clients, other than as provided for by this Agreement. Such safeguards must be in place at all times for the protection of Protected Health Information that is maintained both in electronic and paper forms. Business Associate further agrees to maintain and use appropriate safeguards to prevent the improper disclosure of such information in the form of oral communications.

Agent and Subcontractors Business Associate hereby agree to ensure that any agent or subcontractor agrees to the same restrictions and conditions under this Agreement that apply to Business Associate with respect to such Protected Health Information.

Reporting of Improper Uses and/or Disclosures Business Associate agrees to immediately report to Covered Entity any use or disclosure of Covered Entity's Protected Health Information and/or the identity of Covered Entity's clients of which it becomes aware, which is not permitted pursuant to this Agreement or pursuant to the Regulations.

Availability of Information Maintained by Contractor Business Associate hereby agrees to make available any of Covered Entity's Protected Health Information, immediately upon Covered Entity's request, for purposes of ensuring the right of access of clients to their own health information.

Amendments Business Associate shall make available to Covered Entity, upon request, any Protected Health Information for which Covered Entity has agreed to make and/or has made any amendments. In such cases, Business Associate agrees to incorporate all such amendments made by Covered Entity, to the information maintained by Business Associate.

Accounting Business Associate shall maintain appropriate records of all disclosures of Protected Health Information made to third parties in sufficient form to allow for an accounting of disclosures to properly be generated pursuant to the Regulations. Upon request of Covered Entity, such records shall be made available by Business Associate to Covered Entity for purposes of providing an accounting of disclosures pursuant to the Regulations.

Availability of Internal Practices, Books, and Records Business Associate hereby agrees to make all of its internal practices, books, and records relating to the use and disclosure of the Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the Department of Health & Human Services, or its agent, upon the request of either the Secretary of the Department of Health & Human Services or Covered Entity, for purposes of determining whether Covered Entity is complying with the above-referenced Regulations.

Maintenance of Protected Health Information Upon Termination of Agreement Upon the termination of this Agreement for any reason, Business Associate shall return to Covered Entity all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, retaining no copies of any such information. In the alternative, upon the termination of the Agreement, Business Associate, with the consent of Covered Entity, may choose to destroy all Protected Health Information, retaining no copies of such information, so long as a Certificate of Destruction, including the date of destruction, manner of destruction, and name, title and signature of the authorized agent of the Business Associate completing such destruction is immediately provided to Covered Entity. Such destruction must be performed in such a way that no readable or otherwise interpretable portion

of the information continues to exist. If Business Associate believes that such a return or destruction is not feasible for any reason, Business Associate must contact Covered Entity to discuss the reason that return or destruction is not feasible and the extension of the protection of the Agreement to this information with the limitation of further usage and disclosures.

Confidentiality Business Associate agrees that all information, records, and data collected in connection with this Agreement shall be protected from unauthorized disclosures. In addition, Business Associate agrees to guard the confidentiality of resident information. Access to all individually identifiable information relating to residents that is obtained by Business Associate shall be limited by Business Associate to persons or agencies that require the information in order to perform their duties in accordance with this contract, and to such others as may be authorized by Covered Entity in accordance with applicable law.

No other party shall be granted access to confidential information unless the party complies with the requirements of Federal and State laws and regulations pertaining to such access. Covered Entity shall have absolute authority to determine if and when any other party has properly obtained the right to have access to this confidential information. Nothing herein shall prohibit the disclosure of information in summary, statistical, or other form that does not identify particular individuals. Business Associate shall retain the right to use information for its Quality Improvement/Assurance and/or Utilization Management programs, subject to the requirements of this clause.

Business Associate agrees to take reasonable steps to ensure the physical security of data under its control, including, but not limited to: fire protection; protection against smoke and water damage; alarm systems; locked files; guards or other devices reasonably expected to prevent loss or unauthorized removal of manually held data; passwords, access logs, badges, or other methods reasonably expected to prevent loss or unauthorized access to electronically or mechanically held data; limited terminal access; limited access to input documents and output documents; and design provisions to limit use of resident names.

Business Associate agrees to inform each of its employees having any involvement with personal data or other confidential information, whether with regard to design, development, operation, or maintenance, of the laws and regulations relating to confidentiality.

Upon the termination of this Agreement, Business Associate may not use any such data or any material derived from the data for any purpose not permitted by law. Where so instructed by Covered Entity, Business Associate must destroy such data or material if permitted by law.

Termination of Agreement In the event of Business Associate's failure to conform to the requirements set forth in this Agreement, Covered Entity may immediately terminate this Agreement, notwithstanding provisions described elsewhere in this Agreement.

36) ANTI-SWEATSHOP PROVISIONS

By executing the proposal document, the Supplier certifies that nothing has come to its attention that would lead it to believe that any of the goods or products provided herein were made under sweatshop conditions, as defined by Part 9, § 5-903.02 as amended, of Article 903 of the County's Administrative Code (Ordinance Number 08-07-OR) If the County is presented with information that would lead the County to reasonably believe that the Supplier or its suppliers may be obtaining goods or products for sale, re-sale, lease or rental to the County that where made under sweatshop condition, upon request of the County, the Supplier shall disclose information, data and materials reflecting Supplier's practices as they pertain to the procurement and manufacturing of goods/products in compliance with the Anti-Sweatshop provisions of the County's Administrative Code.

37) EXAMINATION OF FINANCIAL RECORDS

Contractor/Supplier shall maintain books, program and financial records, documents and other evidence pertaining to costs and expenses related to this Agreement/Proposal in such detail as will properly reflect all costs of labor, materials,

equipment, supplies, services and other costs and expenses of whatever nature for which County funding has been provided under the provisions of this Agreement/Proposal. The Contractor/Supplier shall maintain such books, records, documents and other materials in accordance with Generally Accepted Accounting Principles, where applicable. The Contractor/Supplier shall provide access, during normal business hours, to such books, program and financial records, documents and other evidence upon request of the County Manager, the County Controller or their designees upon receipt of reasonable advance notice, either oral or written. Contractor/Supplier's books, records, program and financial records, documents and other evidence pertaining to services provided under this Agreement/Proposal shall be preserved and made available for a period of three (3) years following the termination of this Agreement/Proposal. The County Manager, the County Controller or their designees may audit, examine, review, photocopy, and/or make excerpts or transcripts of any of Contractor/Supplier's books, records, program and financial records, documents and other evidence. Any deficiencies noted in any audit reports or otherwise must be fully resolved by the Contractor/Supplier, to the County's sole satisfaction, within thirty (30) days after the Contractor/Supplier's receipt of written notice of such deficiencies. Failure of the Contractor/Supplier to comply with the provisions set forth in this paragraph may constitute a violation of this Agreement/Proposal and, at the County's sole discretion, may result in the County withholding future payments.

JD Revised 11/2007