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REPLACE SEVEN CLIMATE MASTER HVAC GEOTHERMAL UNITS

INSTRUCTIONS TO BIDDERS

1. **BID FORM:** All bids must be submitted on a Bid Proposal Form submitted with this bid package. Each bidder may separate this bid package to make copies thereof, but when submitted as a bid, **IT MUST BE STAPLED WITH ALL PAGES IN THEIR NUMERICAL PLACE.**
2. **SEALED BID:** Bids must be placed in a sealed envelope, the outside of which shall plainly contain the following note: "Bid: REPLACEMENT OF 7 HVAC INDOOR UNITS AT THE UNION COUNTY GOVERNMENT BUILDING".
3. **TIME AND PLACE FOR SUBMISSION OF BID:** Bids must be received in the Office of the County Chief Clerk, First Floor, Union County Government Center, 155 N 15th Street, Lewisburg PA, on or before the 23rd day of September at 4:00 p.m. prevailing time.
4. **TIME FOR OPENING OF BIDS:** Bids will be opened on the 24th day of September 2024 at 10:00 a.m. prevailing time, in Board Room, Union County Government Center, Board Room, 155 N. 15th Street, Lewisburg, Pennsylvania 17837.
5. **BIDDERS MUST COMPLY WITH THE FOLLOWING:** Instructions to Bidders, Specifications, General Conditions, Bid Form, Non-Collusion Affidavit, and bonding requirements.
6. **FREE ON BOARD (FOB):** All bids shall be based on all purchased items being delivered free on board (FOB).
7. **BID SECURITY:** Bids shall be accompanied by a cash, by a certified check, cashier's check, bank good faith check or other irrevocable letter of credit in the amount of ten (10) percent of the bid drawn upon a bank authorized to do business in the Commonwealth of Pennsylvania, or by a bond with corporate surety in the amount of ten (10) percent of the bid. The bid security of the successful bidder will be retained until such bidder has executed the Agreement, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the bid security will be returned. In the event the successful bidder fails to execute and deliver the Agreement and to furnish the required contract security within the number of days set forth in the bid specifications, the County may annul the Notice of Award and the bid security of the bidder will be forfeited. The bid security of the other bidders whom the County believes to have a reasonable chance of receiving the award may be retained by the County until the earlier of 7 days after the effective date of the Agreement or the day after the last day the bids remain subject to acceptance as set forth in the bid specifications, whereupon the bid security furnished by such bidders will be returned. Bid security of other bidders whom the County believes do not have a reasonable chance of receiving the award will be returned with 7 days after the bid opening.

INSTRUCTIONS TO BIDDERS
(continued)

8. **EQUALS:** Any reference to a particular product, either by trade name or by limited description, is solely for the purpose of more clearly indicating the minimum standard of quality desired. Such reference shall not be interpreted as limiting competition.

9. **RESERVATIONS:** The County reserves the right to reject any and all bids, to waive any technical defects and accept or reject any part of any bid, if in the judgment of the Board of Commissioners the best interest of the County will be served.

10. **INFORMATION REQUIRED FROM BIDDER:** In order to be considered a complete bid, the bidder must supply the following information:

a. **CONTACT PERSON:** Bidder must provide the name, address and telephone number of its person that is authorized by bidder to represent the bidder in discussing the bid submitted, and if the bid is awarded to the bidder to discuss resolution of any contract issues.

b. **BIDDER'S ENTITY:** Bidder must state whether it is a sole proprietorship, partnership, domestic corporation, foreign corporation and its principal place of business within Pennsylvania, telephone number and fax number.

11. **GIFT POLICY:** Union County officials have adopted a uniform gift policy applicable to all County officials and employees. This policy prohibits any official or employee from receiving a gift of any monetary value from any source doing or seeking to do business with the County or attempting to influence the judgment of an official or employee. Further, no gifts may be made for or on behalf of the County or any of its offices or departments, unless first presented to the Board of Commissioners for decline or acceptance at a public meeting. Bidders or proposers are advised that any violation of this policy may result in employee discipline, including termination. By tendering this submission, the bidder or proposer agrees to abstain from offering or giving anything of monetary value to any County official, employee or member of their immediate families.

GENERAL CONDITIONS

Bid proposal shall be for the replacement of seven climate master HVAC geothermal units at the Union County Government Building.

1. Union County will not pay any sales taxes. The payment of sales taxes shall be the sole responsibility of the bidder.

2. No bid or contract may be assigned, sublet or transferred without the written consent of the Board of Commissioners of County.

3. The bidder hereby agrees to save harmless and fully indemnify the County, its officers, employees, and agents from all damages, costs or expenses that may be at any time imposed or claimed for infringement of any patent right of any persons, association, or corporation as a result of the use by County, its officers, agents, or employees of article(s) supplied under the bid. Bidder hereby agrees to save harmless and fully indemnify the County, its officers, employees and agents from all damages, cost or expenses that may be at any time claimed or imposed for wrongdoing or negligence of bidder's agents, employees, officers and subcontractors.

4. All blank spaces in this bid package must be filled in completely wherever indicated, either typed or written in ink.

5. Changes to any part of the proposal will be sufficient reason for rejection of the bid.

6. Bidders must sign and submit with the bid the attached Non-Collusion Affidavit.

7. The Board of Commissioners of County reserves the right to reject any and all bids, to waive any technical defects and to accept or reject any part of any bid, if in the judgment of the Board the best interest of the County will be served. Cash discounts will not be considered in making an award, but if cash discounts are offered by any bidder, the Board reserves the right to take advantage of such offers. Award may be refused to any bidder who, in the opinion of the Board of Commissioners, is not a responsible bidder, is in default of any bid proposal, purchase order, or contract with a municipality prior to the date of the bid proposal under consideration or whose performance under any prior proposal or contract was determined by County to be unsatisfactory. The bidder's performance on behalf of other entities (public or private) will be considered.

8. Bidders shall not insert in their proposals or in the instructions to bidders or specifications, any written statement which will have the effect of making any material change or changes in the same or in any contract between the parties covering the subject matter thereof. However, deviations or variations from the specifications shall be clearly and separately stated on the proposal form.

9. Failure to comply with any part of the proposal, instructions to bidders and/or specifications may result in disqualification of the bid and/or cancellation of the contract at the discretion of the County.

10. Adequate postage to cover mailing must be affixed in order to insure prompt delivery of proposal. The County will not be responsible nor will it accept proposals delivered late or with postage due.

11. Bid price must reflect the total and final cost to the County, including but not limited to permits, equipment, materials and warranties.

12. All questions pertaining to the General Specifications of this bid should be directed to Susan Greene at (570) 524-8634, questions pertaining to the Technical Specifications to Robert Sudduth at (570) 524-8789.

13. During the term of the agreement, Contractor shall provide and maintain with an insurance company licensed to do business in the State of Pennsylvania, general comprehensive liability insurance, including products and completed operations coverages and motor vehicle insurance sufficient to satisfy any and all claims arising under this contract. Such coverage shall be no less than \$1,000,000 per occurrence and \$3,000,000 aggregate and Workers' Compensation insurance as required by law, for any injury or damage arising out of the provisions of service pursuant to the terms of this agreement. The Contractor shall accept full responsibility for the payment of premiums for Worker' Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by law for employees who are performing services specified by this agreement. Contractor shall provide County with a certificate of insurance showing proof of coverage herein stated. Contractor shall immediately provide notice to the County of cancellation of insurance.

14. The successful bidder must comply with all applicable Federal, State, and local laws, rules and regulations.

15. The successful bidder shall comply with the provisions of the following Acts:

Act of Mach 23, 1978, (P.L. 6, No. 3) known as the "Steel Procurement Act."

Act of October 28, 1983 (P.L. 176, No. 45), known as the "Antibid-Rigging Act."

Act of December 20, 1967 (P.L. 869, No. 385), known as the "Public Works Contractors' Bond Law".

Act of August 15, 1961 (P.L. 987, No. 442), known as the "Pennsylvania Prevailing Wage Act".

Act of November 26, 1978 (P.L. 1309, No. 317), known as the "Award and Execution of Public Contract Law".

Act of February 17, 1994 (P.L. 73, No. 7), known as the “Contractor and Subcontractor Payment Act”.

Act of January 23, 1974 (P.L. 9, No. 4), referred to as the Public Contract Bid Withdrawal Act.

Act of April 4, 1984 (P.L. 193, No. 40), known as the “Motor Vehicle Procurement Act”.

16. The bidder shall warrant that all materials and work shall conform to its published specifications and be free from all defects in material and workmanship for a period of at least one (1) year from the date of completion in addition to warranties set forth in the Technical Specifications herein.

17. Project shall be completed by no later than October 31, 2025 and as otherwise outlined in the Technical Specifications...

18. A mandatory pre-bid conference will be held on Tuesday, September 9, 2024, 9:00 a.m. in the lobby of the Union County Government Center, 155 N. 15th Street Lewisburg, Pennsylvania 17837. Bids received from bidders who do not attend the pre-bid conference will not be considered.

19. BY THE SUBMISSION OF A BID, EACH BIDDER ACCEPTS AND AGREES TO BE BOUND BY THE STANDARD SERVICE AGREEMENT FOR UNION COUNTY, PENNSYLVANIA and STANDARD CONTRACT TERMS AND CONDITIONS FOR SERVICES TO UNION COUNTY PENNSYLVANIA. A copy of each document is attached to this bid invitation and marked as Exhibit “A” and Exhibit “B” respectively. Under no circumstance will the County accept, agree to negotiate, or be bound by any modifications or revisions to the provisions of these documents. The standard SERVICE AGREEMENT FOR UNION COUNTY, PENNSYLVANIA shall be executed by the successful bidder.

20. The successful bidder shall provide County with a Performance Bond executed by a surety company authorized to do business in the Commonwealth and made payable to the County in the amount of one hundred percent (100%) of the bid within 7 day of Notice of Award.

21. The successful bidder shall provide County with a Payment Bond executed by a surety company authorized to do business in the Commonwealth and made payable to the County in the amount of one hundred percent (100%) of the bid within 14 days of Notice of Award.

22. The successful bidder shall return the fully executed contract, as prepared by the County, together with the required performance and payment bonds, within 14 days of Notice of Award.

TECHNICAL SPECIFICATIONS
REPLACEMENT OF 7 HVAC INDOOR UNITS

NEW HVAC INDOOR UNITS:

1. Climate Master water source high efficiency heat pump with built in BACnet card.
2. Connect to all existing ductwork connections.
3. Must be tied into our current automated system.
4. Removal but not disposal of all current units.
5. Current units have R22 refrigent that will need to be recaptured for future use. Capture for future use by the County until all units have been replaced and disposed of by the bidder at the end of the project.
6. All work will need to be scheduled with Facilities Director and some work will be after hours and weekends.
7. The successful bidder will install each of the seven (7) units over the course of a year and through October 31, 2025. The delivery and installation of each unit shall be performed at the direction of the Facilities Director.
8. The successful bidder shall hold all pricing for the seven (7) units and installation of the same through October 31, 2025. The successful bidder shall invoice the County on a per unit basis, as each is otherwise delivered and installed.
9. The successful bidder shall store all seven (7) units until each is requested for delivery and installation by the Facilities Director.
10. Successful bidder is responsible for cleaning and protecting of work area (units are above drop ceilings over work stations), cleanup of debris and packaging materials.
11. All work will be completed in a workman-like manner according to standard practices and all personnel shall conduct themselves in a responsible and courteous manner at all time.
12. Contractor is responsible for coordinating work schedule with Facilities Director.
13. Completely clean work area and remove all debris when job is completed.
14. All work will need to be scheduled with the facilities manager and work can only be completed during the hours approved by them.

15. Successful bidder is responsible for housekeeping, cleaning and protection of work area, cleanup of debris, and packaging materials, etc. The contractor shall also haul off-site all construction material and debris.
16. Keep in mind that Government Center is in full operation. All field personnel shall conduct themselves in a responsible and courteous manner at all times.
17. Contractor is responsible for keeping public areas, and walks clean from other debris resulting from contractor operations.
18. Provide and maintain scaffolding, ladders, platforms, hoisting, and lifts needed to properly perform work.
19. The contractor is required to provide full-time on-site supervision.
20. The HVAC contractor shall be responsible for all means and methods as they relate to safety and shall comply with all applicable local, state, and federal requirements that are safety-related. Safety shall be the responsibility of the contractor. All related personnel shall be instructed daily to be mindful of the full-time requirement to maintain a safe environment for the facility's occupants including staff, visitors, customers, and the occurrence of the general public on or near the site.

All 7 units are as follows:

Model #	Serial #
UNIT 1 M1 HS120HFZMLSGCSA	95K055161
UNIT 2 M2 GCH030BGC30CLSS	K10722503
UNIT 3 M3 GRH024BGC30CLSS	E12127257
UNIT 4 M5 HS042GSZSLSGCSB	77K044540
UNIT 5 M7 HS072HSZMLSCCSA	96K082703
UNIT 6 M10 HS019GSZSLSGCSA	97J043350
UNIT 7 M13 GCH060BGC30CLSS	F10257557

BID FORM

TO THE UNION COUNTY BOARD OF COMMISSIONERS:

I bid the following in response to the bid for the replacement of seven Climate Master HVAC Geothermal units at the Union County Government Building as specified in the specifications:

TOTAL: \$ _____

1. Name of Bidder _____

Address _____

Identify of Bidder (Sole Proprietor, Partnership*, Corporation) _____

EIN/SSN Number _____

Telephone Number _____

E-mail address _____

2. Signature of Bidder _____

Attest (If Corporation) _____

Corporate Seal _____

*If partnership, all partners and their addresses must be listed.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

I state that I am _____ of _____
(Title) (Entity Name)

and that I am authorized to make this affidavit on behalf of said entity.

I state that:

1. The price(s) and amount(s) of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.

2. Neither the price(s) nor the amount(s) of this bid, and neither the approximate price(s) nor approximate amount(s) of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.

3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.

4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

5. _____, its affiliates, subsidiaries, officers,
(Entity)
directors, and employees are not currently under the investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding of any public contract, except as follows:

_____.

NON-COLLUSION AFFIDAVIT

I state that _____ understands and
(Name of Firm)
acknowledges that the above representations are material and important, and will be relied on by County of Union in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from County of Union of the true facts relating to the submission of bids for this contract.

Name and Company Position

Sworn to me and subscribed
before me this _____ day
of _____ 2024.

ADHERENCE STATEMENT

It is understood, and agreed that all that precedes this statement is accepted. I affirm, on behalf of this company, corporation, agency, or entity that same are and will be adhered to:

Company

Authorized Signature and Title

Address of Company

Print Name and Title of Signer

City, State, Zip Code

EXHIBIT "A"

Service Agreement for Union County, Pennsylvania

(Sample)

Department:

Address for Service:

Contact:

_____ (herein, Contractor) agrees to provide services as more fully described on Exhibit "A," incorporated herein, to Union County (herein, County) for the compensation payable as set forth on Exhibit "B," incorporated herein, and upon the terms and conditions as set forth below.

1. Contract Documents. This contract shall consist of the Union County Standard Contract Terms and Conditions for Services and this Service Agreement. Where there is a conflict between the provisions of this Service Agreement and any of the other documents, this Service Agreement shall control. Where there is a conflict between the provisions of the Union County Standard Contract Terms and Conditions for Services and any of the other documents, the Union County Standard Contract Terms and Conditions for Services shall control.
2. TERM OF CONTRACT. The term of this contract shall _____ (the Effective Date) to _____.
3. DAYS AND TIMES OF SERVICE. Services shall be provided during County normal business hours on weekdays unless otherwise indicated.
4. STANDARD TERMS AND CONDITIONS. The Standard Contract Terms and Conditions for Services of Union County are attached hereto as Exhibit "C," and incorporated herein.
5. COVENANT OF GOOD WORKING ORDER. In addition to the warranties and covenants set forth in Exhibit "C," Contractor agrees to provide services covered under this agreement.
6. TERMINATION. The termination rights of the parties are set forth in Exhibit "C."
7. WARRANTIES. In addition to all other warranties imposed by law, Contractor shall be governed by the warranties set forth in Exhibit "C."
8. NO WAIVER. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or of any other provisions hereof and no waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged herewith.

9. GENERAL. This Service Agreement, its Exhibits and the documents described in Paragraph No. 1 supersede any previous written or oral agreements or understandings between the parties concerning the subject hereof and constitute the entire agreement between the parties. No amendments or additions to the terms and conditions of this Service Agreement shall be valid unless set forth in writing and signed by an authorized representative of each of the parties.

IN WITNESS WHEREOF, the parties have caused this Service Agreement to be executed this ____ day of ____, 2023.

ATTEST:

CONTRACTOR:

By:

By:

ATTEST:

UNION COUNTY:

By: Susan Greene, Chief Clerk/ Administrator

By: Preston Boop, Chairman

By: Jeff Reber, Vice-Chairman

By: Stacy Richard, Secretary

EXHIBIT "B"

STANDARD CONTRACT TERMS AND CONDITIONS FOR SERVICES TO UNION COUNTY, PENNSYLVANIA

1. **TERM OF CONTRACT.** The term of the Contract shall commence on the Effective Date, as defined below, and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the County after the Contract has been fully executed by the Contractor and by the County and all approvals required by County contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully executed Contract has been sent to the Contractor. The County shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the County shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No County employee has the authority to verbally direct the commencement of any work under this Contract. The County reserves the right upon notice to the Contractor to extend the term of the Contract for up to three 3 months upon the same terms and conditions. This will be utilized to prevent a lapse in Contract coverage and only for the time necessary up to three 3 months to enter into a new contract.
2. **INDEPENDENT CONTRACTOR.** In performing the services required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the County.
3. **COMPLIANCE WITH LAW.** The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.
4. **ENVIRONMENTAL PROVISIONS.** In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.
5. **COMPENSATION/EXPENSES.** The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the County. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.
6. **INVOICES.** The Contractor shall send an invoice itemized by line item to the address referenced in the Contract promptly after services are satisfactorily completed. The time for invoicing shall be governed by the Contract. The invoice should include only amounts due under the Contract. The County shall have the right to require the Contractor to submit a Work-In-Progress sheet that contains at a minimum the tasks performed, number of hours and hourly rate(s).
7. **PAYMENT.** The County shall put forth reasonable efforts to make payment by the required payment date. The required payment date is the date on which payment is due under the terms of the Contract. If a date on which payment is due is not specified in the Contract, the County shall make payment within 30 days of its receipt of a proper invoice. If the date for payment in an invoice is later than the date specified in the contract, the date in the invoice shall control. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The County reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post-payment testing or inspection discloses any defect or a failure to meet specifications. The Contractor agrees that the County may set off the amount of any other obligation of the Contractor or its subsidiaries to the County against any payments due the Contractor under any contract with the County.
8. **TAXES.** The County is exempt from all excise taxes imposed by the Internal Revenue Service. The County is also exempt from Pennsylvania state sales tax. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.
9. **WARRANTY.** The Contractor warrants that all services performed by the Contractor, its agents and subcontractors, shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all services are warranted for a period of one year following completion of performance by the Contractor and acceptance by the County. The Contractor shall correct any problem with the service.
10. **PATENT, COPYRIGHT AND TRADEMARK INDEMNITY.** The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: (a) the design of any product or legal process provided or used in the performance of the Contract which is covered by right duly authorized by state or federal law; or (b) any copyrighted matter in any report, document or other material provided to the County under the Contract. The Contractor shall defend any suit or proceeding brought against the County on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the County shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved the County may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the County at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the County harmless from all damages, costs and expenses, including attorney's fees, that the Contractor or the County may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor

shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the infringing product, and to pay the County any amounts paid by the County towards the purchase of the product, less straight line depreciation. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

11. **OWNERSHIP RIGHTS.** The County shall have unrestricted authority to reproduce, distribute and use any submitted Report, data or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the County as part of the performance of the Contract.
12. **ASSIGNMENT OF ANTITRUST CLAIMS.** The Contractor and the County recognize that in actual economic practice overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the County. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the County all right, title and interest in and to any claims the Contractor now has or may acquire under state or federal antitrust laws relating to the products and services which are the subject of this Contract.
13. **HOLD HARMLESS PROVISION.** The Contractor shall hold the County harmless from and indemnify the County against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the County, defend any and all actions brought against the County based upon any such claims or demands. Contractor's duty to indemnify and hold harmless shall extend to and include the County's attorneys' fees and costs in any proceeding brought by County to enforce the provisions of this Paragraph.
14. **AUDIT PROVISIONS.** The County shall have the right, at reasonable times and at a site designated by the County, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents and records that relate to costs or pricing data for the Contract for a period of three (3) years from the date of final payment. The Contractor shall give full and free access to all records to the County and or their authorized representatives.
15. **DEFAULT.**
 - A. The County may, subject to the provisions of Paragraph 16, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 17, Termination Provisions) the whole or any part of this Contract for any of the following reasons:
 - (1) Failure to begin work within the time specified in the Contract or as otherwise specified;
 - (2) Failure to perform the work with sufficient labor equipment or material to insure the completion of the specified work in accordance with the Contract terms;
 - (3) Unsatisfactory performance of the work;
 - (4) Failure or refusal to remove material or remove and replace any work rejected as defective or unsatisfactory;
 - (5) Discontinuance of work without approval;
 - (6) Failure to resume work which has been discontinued within a reasonable time after notice to do so;
 - (7) Insolvency or bankruptcy;
 - (8) Assignment made for the benefit of creditors;
 - (9) Failure or refusal within 10 days after written notice by the County to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - (10) Failure to protect, to repair or to make good any damage or injury to property; or
 - (11) Breach of any provision of this Contract.
 - B. In the event that the County terminates this Contract in whole or in part as provided in Subparagraph A above, the County may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated and the Contractor shall be liable to the County for any reasonable excess costs for such similar or identical services included within the terminated part of the Contract.
 - C. If the Contract is terminated as provided in Subparagraph A above, the County, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the County, in the manner and to the extent directed by the County, such partially completed work including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as has been terminated. Except as provided below, payment for completed work accepted by the County shall be at the Contract price. Except as provided below, payment for partially completed work including, where applicable, reports and working papers, delivered to and accepted by the County shall be in an amount agreed upon by the Contractor and the County. The County may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the County determines to be necessary to protect the County against loss.
 - D. The rights and remedies of the County provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
 - E. The County's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the County of its rights and remedies in regard to the event of default or any succeeding event of default.

16. **FORCE MAJEURE.** Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade and freight embargoes.

The Contractor shall notify the County orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed, and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such causes delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the County may reasonably request. After receipt of such notification the County may elect either to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the County by notice to the Contractor, may suspend all or a portion of the Contract.

17. **TERMINATION PROVISIONS.** The County has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- A. **Termination for Convenience.** The County shall have the right to terminate the Contract for its convenience and without any cause, at any time if the County determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- B. **Non-Appropriation.** The County's obligation to make payments during any County fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (county, state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the County shall have the right to terminate the Contract. The contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid for any appropriations available for that purpose.
- C. **Termination for Cause.** The County shall have the right to terminate the Contract for Contractor default under Paragraph 15, Default, upon written notice to Contractor. The County shall also have the right, upon written notice to the Contractor, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the County erred in terminating the Contract for cause, then, at the County's discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 17A.

18. **CONTRACT CONTROVERSIES.**

- A. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the County for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum.
- B. The County shall review timely filed claims and issue a final determination in writing regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the County and the Contractor. The County shall send its written determination to the Contractor. If the County fails to issue a final determination within the 120-day period (unless extended by consent of the parties), the claim shall be deemed denied. The County's determination shall be its final order.
- C. Within fifteen 15 days of the mailing date of the determination denying a claim or within 135 days of filing a claim, if no extension is agreed to by the parties, whichever occurs first, the Contractor may file litigation, restricted to non-jury trial, in the Court of Common Pleas of Union County, which venue and jurisdiction shall be exclusive. No claim shall be filed after this time period has expired. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the County and the County shall compensate the Contractor pursuant to the terms of the Contract.

19. **ASSIGNABILITY AND SUBCONTRACTING.**

- A. Subject to the terms and conditions of this Paragraph 19, this Contract shall be binding upon the parties and their respective successors and assigns.
- B. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the County, which consent maybe withheld at the sole and absolute discretion of the County.
- C. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations or responsibilities hereunder without the prior written consent of the County, which consent may be withheld at the sole and absolute discretion of the County.

- D. Notwithstanding the foregoing, the Contractor may, without the consent of the County, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the County together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.
- E. For the purposes of this Contract, the term assign shall include, but shall not be limited to, the sale, gift, assignment, pledge or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- F. Any assignment consented to by the County shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations and responsibilities being assigned.
- G. A change of name by the Contractor following which the Contractor's federal identification number remains unchanged shall not be considered to be an assignment hereunder. The Contractor shall give the County written notice of any such change of name.

20. **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE.** During the term of the Contract, the Contractor agrees as follows:

- A. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the Contract on account of gender, race, creed or color.
- C. The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- D. The Contractor shall not discriminate by reason of gender, race, creed or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- E. The Contractor and each subcontractor shall furnish all necessary employment documents and records to, and permit access to, its books, records and accounts by the County for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination Sexual Harassment Clause. If the Contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the County.
- F. The Contractor shall include the provisions of this Nondiscrimination Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.
- G. The County may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension.

21. **CONTRACTOR INTEGRITY PROVISIONS.**

- A. For purposes of this Paragraph only, the words "confidential information," "consent," "contractor," "financial interest" and "gratuity" shall have the following definitions.
 - (1) Confidential information means information that is not public knowledge or available to the public on request, disclosure of which would give an unfair unethical or illegal advantage to another desiring to contract with the County.
 - (2) Consent means written permission signed by a duly authorized officer or employee of the County, provided that where the material facts have been disclosed in writing by prequalification, bid, proposal or contractual terms, the County shall be deemed to have consented by virtue of execution of this agreement.
 - (3) Contractor means the individual or entity that has entered into the Contract with the County, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - (4) Financial interest means
 - (a) Ownership of more than a five percent interest in any business or
 - (b) Holding a position as an officer, director, trustee, partner, employee, or the like or holding any position of management.

- (5) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.
- B. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of local, state or federal laws, regulations or other requirements that govern contracting with the County.
- C. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- D. The Contractor shall not, in connection with this or any other agreement with the County, directly or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any officer or employee of the County.
- E. The Contractor shall not, in connection with this or any other agreement with the County, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of, or at the direction or request of, any officer or employee of the County.
- F. Except with the consent of the County, neither the Contractor nor anyone in privity with him or her shall accept, or agree to accept from, or give, or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- G. Except with the consent of the County, the Contractor shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this project.
- H. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the County in writing.
- I. The Contractor acknowledges the following County Gift Policy. No County employee or official, any member of his immediate family or any business in which he has a principal interest, shall accept any gift, gratuity or favor from any source doing or seeking to do business with the County or attempting to influence the judgment of such employee or official. Except as otherwise prohibited by law, the foregoing shall not prohibit any office or department from accepting any gift, gratuity or favor of a fair market value (regardless of cost to the donor) of one hundred (\$100.00) dollars or less, provided the gift, gratuity or favor shall be physically retained in the office or department and made available for the use or enjoyment of all employees of the office or department, and provided further, only one such gift from the same donor may be accepted annually. Any offer to an office or department of a gift, gratuity or favor of a fair market value in excess of one hundred (\$100.00) dollars shall be referred to the Board of Commissioners which shall determine at a public meeting whether to accept or reject such gift, gratuity or favor on behalf of the County.
- J. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- K. For violation of any of the above provisions, the County may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder and debar and suspend the Contractor from doing business with the County. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the County may have under law, statute, regulation or otherwise.
22. **CONTRACTOR RESPONSIBILITY PROVISIONS.** The Contractor certifies, for itself and all its subcontractors, that as of the date of its execution of the Contract, that neither the Contractor nor any subcontractors nor any suppliers are under suspension or debarment by the County or any governmental entity, instrumentality or authority and, if the Contractor cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the County if, at any time during the term of the Contract, it or any of its subcontractors are suspended or debarred by the County, the state or federal governments, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment. The failure of the Contractor to notify the County of its suspension or debarment by the County, the state, any other state or the federal government shall constitute an event of default of the Contract with the County.
23. **AMERICANS WITH DISABILITIES ACT.** Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101, et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract, or from activities provided for under this Contract, on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title 11 of The Americans With Disabilities Act, which are applicable to all benefits, services, programs and activities provided by the County through contracts with outside contractors. The Contractor shall be responsible for and agrees to indemnify and hold harmless the County from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the County as a result of the Contractor's failure to comply with the provisions of this Paragraph.
24. **HAZARDOUS SUBSTANCES.** The Contractor shall provide information to the County about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 4 Pa. Code Section 301.1 et seq.

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

(1) Hazardous substances:

- (a) The chemical name or common name,
- (b) A hazard warning, and
- (c) The name, address and telephone number of the manufacturer.

(2) Hazardous mixtures:

- (a) The common name, but if none exists, then the trade name,
- (b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,
- (c) The chemical or common name of hazardous substances consisting 1 .0% or more of the mixture,
- (d) A hazard warning, and
- (e) The name, address and telephone number of the manufacturer.

(3) Single chemicals:

- (a) The chemical name or the common name,
- (b) A hazard warning, if appropriate, and
- (c) The name, address and telephone number of the manufacturer.

(4) Chemical Mixtures:

- (a) The common name, but if none exists, then the trade name,
- (b) A hazard warning, if appropriate,
- (c) The name, address and telephone number of the manufacturer, and
- (d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

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

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

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

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

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

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

25. **APPLICABLE LAW.** This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the sole and exclusive jurisdiction of the Court of Common Pleas of Union County and any Pennsylvania state appellate court, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personal jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.
26. **INTEGRATION.** The Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent representative, employee or officer of either the County or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.
27. **CHANGE ORDERS.** The County reserves the right to issue change orders at any time during the term of the Contract or any renewals or extensions thereof: (1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; (2) to make changes to the services within the scope of the Contract; (3) to notify the Contractor that the County is exercising any Contract renewal or extension option; or (4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change order shall be in writing signed by the County. The change order shall be effective as of the date appearing on the change order unless the change order specifies a later effective date. Such increases, decreases, changes or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required under any change order shall be handled through Paragraph 18. Contract Controversies.

For purposes of this Contract, "change order" is defined as a written order signed by the County directing the Contractor to make changes authorized under this clause.

28. **INSURANCE REQUIREMENTS.** During the term of the Contract and unless otherwise provided in the Contract, Contractor shall provide and maintain with an insurance company licensed to do business in the State of Pennsylvania, general comprehensive liability insurance, including products and completed operations coverages (if applicable) and motor vehicle insurance sufficient to satisfy any and all claims arising under this contract. Such coverage shall be no less than \$1,000,000 per occurrence and \$3,000,000 aggregate and Workers' Compensation insurance as required by law, for any injury or damage arising out of the provisions of service pursuant to the terms of this agreement. The Contractor shall accept full responsibility for the payment of premiums for Worker' Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by law for employees who are performing services specified by this agreement. Contractor shall immediately provide notice to the County of cancellation of insurance.