Part I Chapter 43
Contract Provisions

A. Termination Provisions. Contracts shall contain provisions allowing the Commonwealth to terminate the contract for unacceptable contractor performance, lack of an appropriation of funds and, where appropriate, for the Commonwealth's convenience.

B. Order of Precedence. For an order of precedence in the event of a conflict in the language in the contract, attachments, and items incorporated by reference, it is suggested the contract specify an order of precedence. The suggested order of precedence for contract interpretation is the contract, the contactor's proposal, and then the RFP.

C. Required Clauses.

1. All contracts shall include the following clauses:

a. The Nondiscrimination/Sexual Harassment Clause required by DGS.

b. Contractor integrity provisions (unless waived by the Office of General Counsel) required by Management Directive 215.8, Contractor Integrity Provisions for Commonwealth Contracts, Amended.

c. Offset provision (unless waived by the Office of General Counsel) required by Management Directive 215.9, Contractor Responsibility Program, Amended.

d. Contractor responsibility provisions (unless waived by the Office of General Counsel) required by Management Directive 215.9, Contractor Responsibility Program, Amended.

e. *Americans With Disabilities Act* provisions (unless waived by the Office of General Counsel) required by Management Directive 215.12, Provisions for Commonwealth Contracts Concerning the Americans with Disabilities Act, Amended to ensure compliance with Executive Order 2002-5, Disability-Related Policy, which establishes the Commonwealth's basic policy for implementing the ADA.

f. Contract provision for donation of excess prepared food (unless waived by the Office of General Counsel) when required by Management Directive 215.13, Contract Provision for Donation of Excess Prepared Food, Amended.

g. The clause requiring recycled content for certain supplies.

h. All IFBs for the lease of motor vehicles shall include a clause to cover the *Motor Vehicle Procurement Act (Act 1998-57, Section 3731)*.[1]

[1] 07-20-2012: Added entire subsection C.1.h.

i. When federal funds are involved, the IFB and contracts shall include any required federal aid conditions.[2] •

2. Bureau of Small Business Opportunities (BSBO) Requirements.[3] •

a. All contracts containing small diverse business participation must also include a provision requiring the contractor to meet and maintain those commitments made to small diverse businesses at the time of submittal or contract negotiation, unless a change in the commitment is approved by the contracting Commonwealth agency upon recommendation by the BSBO. All contracts containing small diverse business participation must include a provision requiring small diverse businesses to perform at least 50 percent of the subcontracted work.

b. All contracts must require that small diverse business utilization be reported to the awarding agency on a quarterly basis.

c. Commitments to small diverse businesses made at the time of bidding must be maintained throughout the term of the contract and, to the extent so provided in the commitment, through any renewal or extension of the contract. Any proposed change must be submitted to BSBO which will make a recommendation as to a course of action to the contracting officer.

d. If a contract is assigned to another contractor, the new contractor must maintain the commitments to small diverse businesses of the original contract.

3. Standard Clauses for Construction Contracts.

a. All IFBs, RFPs, and contracts involving construction shall include, but not be limited to, clauses to cover the following:

(1) *Steel Products Procurement Act, 73 P.S. § 1881 et seq.*

(2) *Trade Practices Act, 71 P.S. § 773.101 et seq.*

(3) *Pennsylvania Prevailing Wage Act, 43 P.S. § 165-1 et seq.*, if the estimated cost of the total project is in excess of $25,000.

(4) Executive Order 2004-6, Minority and Women-Owned Business Opportunities, Amended.

(5) Executive Order 2011-9, Small Business Procurement Initiative.[4] •

(6) Contract provisions prohibiting discrimination (*Act 57*).

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[2] 07-20-2012: Added entire subsection C.1.i.
[3] 07-20-2012: Entire subsection C.2. has been rewritten in correlation with Small Business Procurement Initiative and changes to the Bureau of Small Business Opportunities. No additional dot indicators will be used due to the number of changes.
[4] 07-20-2012: Added entire subsection C.3.a.(5).

(7) Security.

(8) Fifty percent performance security for contracts between $25,000 - $100,000.

(9) One hundred percent payment and performance bonds for contracts over $100,000.

(10) Separate contract requirements for electrical, plumbing and HVAC.

References:

1. Management Directive 215.8, Contractor Integrity Provisions for Commonwealth Contracts, Amended

2. Management Directive 215.9, Contractor Responsibility Program, Amended

3. Management Directive 215.12, Provisions Concerning the Americans with Disabilities Act, Amended

4. Executive Order 2002-5, Disability-Related Policy

5. Management Directive 215.13, Contract Provision for Donation of Excess Prepared Food, Amended

6. Executive Order 2004-6, Minority and Women-Owned Business Opportunities, Amended

7. Executive Order 2011-9, Small Business Procurement Initiative