

# MANAGEMENT DIRECTIVE

## Commonwealth of Pennsylvania Governor's Office

<b>Subject:</b> Contractor Integrity Provisions for Commonwealth Contracts	<b>Number:</b> 215.8 Amended
<b>Date:</b>  January 14, 2015	<b>By Direction of:</b>  Charles B. Zogby, Secretary of the Budget  Sheri Phillips, Secretary of General Services
<b>Contact Agency:</b> Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services, Telephone 717-425-6538 Department of General Services, Bureau of Procurement, Telephone 717-787-5862	

**This directive contains revised provisions to be included in all commonwealth agency contracts to ensure that contractors doing business with the commonwealth maintain high standards of honesty and integrity. The revised provisions are found in Enclosure 1, Contractor Integrity Provisions. Marginal dots are excluded due to major changes.**

1. **PURPOSE.** To establish policy, responsibilities and procedures to ensure that those who contract with the commonwealth observe high standards of honesty and integrity and to ensure that contractors conduct themselves in a manner that fosters public confidence in the integrity of the commonwealth contracting and procurement processes.
2. **SCOPE.** This directive applies to all commonwealth agencies.
3. **OBJECTIVE.** To establish contractual obligations in commonwealth agency contracts that require those who contract with the commonwealth to observe high standards of honesty and integrity.
4. **DEFINITIONS.**
  - a. **Chief Counsel.** The chief counsel of a commonwealth agency.
  - b. **Commonwealth Agency.** An executive or independent agency as defined by the *Commonwealth Procurement Code, 62 Pa.C.S. Section 103.*

- c. **Contract.** A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction. For the purposes of this directive, the term contract also includes grants, leases, purchase orders, reimbursement agreements, no-cost contracts, and revenue generating contracts. The term does not include commonwealth agency purchase orders against existing contracts, memoranda of understanding, interagency agreements, or intergovernmental agreements with commonwealth agencies, state-affiliated entities, state-related institutions, or the federal government.
- d. **Contractor Integrity Provisions.** Contractual provisions that promote standards of honesty and integrity by which contractors and grantees must conduct themselves to foster public confidence when executing a commonwealth agency contract.
- e. **Waiver.** A written document including approval of General Counsel or designee and agency chief counsel justifying an exception to the policy requirement to include the contractor integrity provisions in a contract. The exception may include approved revisions to the contractor integrity provisions or complete removal of the provisions.

## 5. POLICY.

- a. Commonwealth agencies shall include Enclosure 1, Contractor Integrity Provisions, in all contracts.
- b. A waiver may only be granted by the agency chief counsel after written approval by the General Counsel or designee. The agency chief counsel shall prepare the written waiver, which shall be included with the contract.

## 6. RESPONSIBILITIES.

- a. Commonwealth agencies shall include Enclosure 1, Contractor Integrity Provisions, in all contracts unless a waiver is granted.
- b. Chief counsels shall ensure that Enclosure 1, Contractor Integrity Provisions, is included in all contracts unless a waiver is granted.
- c. Chief counsels shall prepare the written waiver, submit the request for waiver to the General Counsel or designee for review and approval, and include the approved written waiver with the contract.
- d. The General Counsel or designee shall provide written approval to chief counsel for approved waivers.
- e. The Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services, Contracts Division and comptrollers for independent agencies shall ensure that Enclosure 1, Contractor Integrity Provisions, is contained in all contracts or that a written waiver is attached.

## 7. PROCEDURES.

### a. Commonwealth Agency.

- (1) Includes Enclosure 1, Contractor Integrity Provisions, in all contracts, unless waived in accordance with this directive.
- (2) Seeks advice of chief counsel if a waiver is needed.

### b. Chief Counsel.

- (1) Ensures that Enclosure 1, Contractor Integrity Provisions, is included in all contracts unless a waiver is granted.
- (2) Determines if revisions to, or removal of, Enclosure 1, Contractor Integrity Provisions, are required in order to enter into a contract.
- (3) If revisions/removal are required, prepares a written waiver which includes the justification for the revisions/removal.
- (4) Submits the written waiver to the General Counsel or Deputy General Counsel designated by the General Counsel.

c. **General Counsel or Designee.** Provides written approval to chief counsel for approved waivers.

d. **Chief Counsel.** If a waiver is granted, includes the approved written waiver with the contract. If a waiver is not granted, includes Enclosure 1, Contractor Integrity Provisions.

e. **Commonwealth Agency.** If a waiver is granted, includes the waiver in the contract file.

f. **Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services, Contracts Division/Comptrollers for Independent Agencies.** In reviewing agency contracts, the Bureau of Payable Services Contracts Division and comptrollers for independent agencies verify that Enclosure 1, Contractor Integrity Provisions, is contained in all contracts or that a written waiver is attached.

**This directive replaces, in its entirety, *Management Directive 215.8*, amended June 17, 2010.**

### **Enclosure 1 – Contractor Integrity Provisions**

## CONTRACTOR INTEGRITY PROVISIONS

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

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

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

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

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

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

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

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

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.