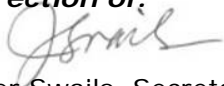



MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Contractor Responsibility Program	Number: 215.9 Amended
Date: November 18, 2019	By Direction of:  Jennifer Swails, Secretary of the Budget  Curt Topper, Secretary of General Services
Contact Agency: Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services, Telephone 717.787.6496 Department of General Services, Bureau of Procurement, Telephone 717.787.5733	

This directive establishes policy, responsibilities, and procedures for the operation of the Commonwealth Contractor Responsibility Program (CRP). This amendment includes minor changes resulting from the implementation of a new statewide Contractor Responsibility Program System (CRP System).

1. **PURPOSE.** To establish policy, responsibilities, and procedures for the operation of the Commonwealth CRP, pursuant to *Executive Order 1990-3, Contractor Responsibility Program* and *The Commonwealth Procurement Code (Procurement Code), 62 Pa.C.S. §§ 321(b) and 327(b)*.
2. **SCOPE.**
 - a. This directive applies to all departments, boards, commissions, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction. Agencies not under the Governor's jurisdiction are encouraged to follow this directive.
 - b. This directive applies to all Contracts, including renewals, extensions and assignments thereof, entered in to by the Commonwealth.
3. **OBJECTIVES.**
 - a. To ensure the Commonwealth contracts only with Responsible Contractors.
 - b. To provide standards and procedures for agency determinations of contractor responsibility.
 - c. To provide for the centralized collection and dissemination of information concerning non-responsible Contractors.

- d. To provide for the securing of information on contractor responsibility from the federal government.
- e. To provide for agency investigations of allegations of contractor non-responsibility.
- f. To provide for the confidentiality of the information contained in the CRP System and sanctions for the unauthorized use or disclosure of that information.
- g. To provide for the collection of liabilities through the offset process.

4. DEFINITIONS.

- a. **Affiliates.** Persons are Affiliates of each other if, directly or indirectly, either Controls or has the power or ability to Control the other, whether or not exercised, or a third person Controls or has the power or ability to Control both, whether or not exercised.
- b. **Commission of any State or Federal Offense.** A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction entered upon a plea of *nolo contendere* (no contest).
- c. **Contract.** A type of written agreement, regardless of what it may be called, for the procurement or disposal of supplies, services, or construction. The term Contract also includes grants, leases, and purchase orders, as well as purchases made with the Commonwealth Purchasing Card pursuant to *Management Directive 310.23, Commonwealth Purchasing Card Program*. The term also includes 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. **Contracting Officer.** A person authorized on behalf of the Commonwealth to enter into and administer Contracts and make official determinations with respect to Contracts.
- e. **Contractor.** Any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a Contract with the Commonwealth. The term Contractor includes a permittee, licensee, and any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth. The term Contractor also includes a Subcontractor as defined in section 4.

- f. **Contractor Responsibility Program System (CRP System).** An internet-based system used to collect and disseminate information regarding Contractor Obligations; Suspensions and Debarments by the Commonwealth, the federal government, and other government entities; and Contractor Performance Issues. The CRP System is comprised of two components:
- (1) A Web service whereby agency information technology (IT) systems communicate with the CRP System to perform CRP Checks. Results of the CRP Check are returned through automated processes via the agency IT system.
 - (2) A Web application whereby authorized users log in to the CRP System, perform CRP Checks manually, and view the results entirely within the CRP System.
- g. **Control.** The power, whether or not exercised, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise, or to make the day-to-day as well as major decisions in matters of policy, management, and operations. A determination of Control shall include, but shall not be limited to, the following factors:
- (1) Capital investment and all other financial, property, acquisition, contract negotiation, and legal matters.
 - (2) Officer-director-employee selection and comprehensive hiring, operating responsibility, cost-control matters, and income and dividend matters.
 - (3) Financial transactions.
 - (4) Rights of other shareholders or joint partners.
- h. **Criminal Charges.** To charge with a criminal offense by information or grand jury indictment or the issuance of an arrest warrant or other judicial process.
- i. **CRP Audit Identification (ID) Number.** The unique identification number assigned to each CRP Check performed in the CRP System.
- j. **CRP Check.** The act of searching the CRP System using a Contractor's name and taxpayer identification number (TIN) or Commonwealth issued supplier number to obtain the Contractor's current status with the Commonwealth. A CRP Check constitutes an agency's official inquiry of the CRP System and serves as the basis for making a determination of contractor responsibility.
- k. **CRP Check Certification Form.** A document by which an agency certifies that it has performed a CRP Check and determined a Contractor to be responsible in accordance with the policies in this directive. The form can be produced and stored in hard copy or electronic format.

- l. CRP Search.** The act of searching the CRP System using a Contractor's name, Commonwealth issued supplier number, TIN, or any combination of these data elements. A CRP Search does not constitute an official inquiry regarding contractor responsibility and a determination of contractor responsibility cannot be made using only the results of a CRP Search.
- m. CRP Oversight Committee.** This committee shall be comprised of one member from each of the following agencies, determined by the respective agency head: Office of General Counsel, Office of Inspector General, Office of the Budget, Department of General Services, Department of Revenue, Department of Labor and Industry, Department of Transportation, Department of State, and any other agency as directed by the Governor.
- n. Debarment.** Action taken by the head of the Purchasing Agency or designee, in consultation with the head of any Using Agency (or designee), to remove a Contractor from consideration for an award of any Commonwealth Contract for a specific period of time.
- o. Designated Senior Manager (DSM).** A senior-level agency employee selected by the agency head to carry out the agency's responsibilities under this directive.
- p. Liability.** For the purpose of this directive, a Liability exists when a Contractor is not current in the payment of any taxes, fines, penalties, surcharges, or other monetary amounts owed to the Commonwealth or any of its agencies.
- q. Obligation.** For the purpose of this directive, an Obligation exists when a Contractor owes any type of Liability or is not current with the filing of all tax returns or any other reporting Obligation to the Commonwealth.
- r. Performance Issue.** An instance of a Contractor's Unsatisfactory or Deficient Performance (as defined in section 4, item aa) under a Commonwealth Contract.
- s. Person.** Any individual, corporation, association, unincorporated association, company, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, joint venture, conservator, permittee, licensee, or other entity, including the Commonwealth of Pennsylvania, its state-affiliated entities, state-related institutions, political subdivisions, instrumentalities, and public authorities. As applied to a partnership, unincorporated association or other joint venture, the term shall include the partners and members thereof, and as applied to a corporation or association, the term shall include all officers, directors, and controlling employees.
- t. Purchasing Agency.** An agency authorized by the *Procurement Code* or by other law to enter into Contracts for itself or as the agent of another agency.

- u. **Responsible Contractor.** A person who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability, which will assure good faith performance.
 - v. **System for Award Management (SAM) System.** The list maintained and disseminated by the United States General Services Administration (GSA) containing information about persons prohibited from participating in specified federal procurement or non-procurement transactions or prohibited from being a participant in covered transactions, whether the person has been Suspended; Debarred; proposed for Debarment under 48 CFR part 9, subpart 9.4; or voluntarily excluded.
 - w. **Subcontractor.** Any person contracting to perform or supply part or all of a Commonwealth Contract. For the purpose of this directive, the term Subcontractor refers only to those Subcontractors required to be disclosed in a Contractor's bid or proposal under the terms of the solicitation, or for which the Contractor must obtain Commonwealth approval under the terms of the Contract or applicable law or regulation.
 - x. **Suspension.** A temporary disqualification of a Contractor from consideration for an award of any Commonwealth Contract for a period of up to three months if there is probable cause for Debarment.
 - y. **Tax Liability.** For purposes of this directive, a Tax Liability exists when a Contractor is not current in the payment of any federal, state, or local taxes, or is not current with the filing of all returns or reports for these taxes.
 - z. **Unbalanced Bid.** An offer by a vendor or Contractor which contains extremely low prices on items or types of work which are unimportant or infrequently ordered or performed and extremely high prices on items or items of work which are frequently ordered or performed, resulting in an effort to qualify as the low bidder while charging disproportionately high prices for certain items or types of work.
 - aa. **Unsatisfactory or Deficient Performance.** Failure to carry out or satisfactorily perform all requirements, including compliance with all plans, specifications, service level agreements, or terms and conditions of a Commonwealth Contract.
 - bb. **Using Agency.** An agency that utilizes any supplies, services, or construction procured under the *Procurement Code*.
5. **POLICY.**
- a. Agencies may enter into Contracts only with Responsible Contractors.
 - b. A determination of contractor responsibility must be made prior to any Contract award, renewal, extension, or assignment. Such determination must be made part of the Contract documentation in accordance with the responsibilities and procedures in this directive.

- c. Agencies may enter into Contracts or make purchases for \$5,000 or less, or for the aggregate amount of a series of Contracts or purchases in a fiscal year if the total amount is \$5,000 or less, without accessing the CRP System.
- d. A determination of contractor responsibility shall be made by the agency in its sole discretion. If the agency declares a Contractor to be non-responsible, the Contractor shall be ineligible for the Contract.
- e. The methods used by agencies to make a determination of contractor responsibility shall include, but shall not be limited to:
 - (1) Accessing the CRP System to ascertain the Contractor's current status;
 - (2) Collecting all available information that bears upon a responsibility determination; or
 - (3) Meeting with and discussing Performance Issues with the Contractor prior to awarding, renewing, or extending the Contract.
- f. Agency personnel authorized to access the CRP System shall do so only for official purposes related to and permitted by this program. Any unauthorized use of the CRP System, disclosure of the information contained in the CRP System, or any use of such information for other than official purposes is prohibited. Violation of these prohibitions will result in disciplinary action against the personnel involved.
- g. Each agency must have a DSM to coordinate and serve as the agency primary point of contact regarding operation of the CRP. Any changes to DSM contact information must be reported to the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management using the electronic role request functionality built into the CRP System.
- h. Current Suspension or Debarment of a person shall prohibit agencies from awarding, renewing, extending, amending or assigning any Contract to such person unless the Contracting Officer determines that there are compelling reasons and the head of the Purchasing Agency or designee approves the determination. Failure by an agency to enter into a Contract promptly shall not be considered a compelling reason for contracting with a Suspended or Debarred Contractor. Nothing in this directive shall preclude the Commonwealth from pursuing any rights, either criminal or civil, or as otherwise provided for in an existing Contract.
- i. Suspended or Debarred Contractors must be reported to the Department of General Services (DGS), Office of Chief Counsel and include Contractor name, address, and TIN; agency reporting the Suspension or Debarment; effective date; end date; and whether the Contractor is Suspended or Debarred. Individuals must be reported separately from any other type of corporation, partnership or other entity with whom the individual is associated. The list of Suspended or

Debarred Contractors shall be maintained and published by DGS and incorporated into the CRP System. Reporting Suspended or Debarred Contractors to DGS does not relieve agencies of any statutory requirements to report or publish Suspensions or Debarments.

- j.** In accordance with the *Single Audit Act Amendments of 1996*, whenever federal funds are used to fund any portion of a Contract, agencies must access SAM, the federal government's primary contractor and federal grant applicant database, to ascertain whether the Contractor is Suspended or Debarred by the federal government. A CRP Check performed in the CRP System includes access to SAM.
- k.** The Contractor must certify in writing that neither it nor its Subcontractors are under Suspension or Debarment by the Commonwealth, the federal government, or any governmental entity, instrumentality, or authority; or, if the Contractor cannot so certify, it must instead provide a written explanation of why such certification cannot be made. The Contractor must also certify that it has no Tax Liabilities or other Commonwealth Obligations; has filed a timely administrative or judicial appeal if such liabilities or Obligations exist; or is subject to a duly approved deferred payment plan if such liabilities exist.
- l.** The Contractor shall inform the contracting agency if, at any time during the term of the Contract, it becomes delinquent in the payment of Tax Liabilities or other Commonwealth Obligations, or if it or its Subcontractors are Suspended or Debarred by the Commonwealth, the federal government, or any other governmental entity, instrumentality, or authority.
- m.** The Contractor Responsibility Provisions (Enclosure 1, Contractor Responsibility Provisions) shall be attached to and made a part of every Contract unless a waiver is authorized by the Office of General Counsel.
- n.** Standard Contract terms and conditions shall be included for Contracts in excess of \$5,000.
- o.** The Offset Provision (Enclosure 2, Offset Provision) shall be included in all Contracts requiring the Commonwealth to make a payment. The Contractor agrees that the Commonwealth may offset the amount of any Liability of the Contractor or its Affiliates and subsidiaries that is owed to the Commonwealth against any payments due the Contractor under this or any other Contract with the Commonwealth.
- p.** Information regarding Contractor Obligations shall be provided to the PA Office of Administration, Office for Information Technology, Bureau of Integrated Enterprise System (IES) in accordance with responsibilities and procedures in this directive.
- q.** Obligations shall remain in the CRP System until fulfilled by the Contractor. Obligations shall be removed from the CRP System in accordance with the schedules determined by the CRP Oversight Committee and responsibilities and procedures in this directive.

- r. Performance Issues shall be entered into the CRP System at the discretion of authorized agency personnel, subject to the approval of the agency DSM or, for statewide Contracts, the approval of the agency DSM and DGS Bureau of Procurement.
- s. Performance Issues are entered into the CRP System with a “pending” status. Pending Performance Issues must be approved or deleted from the CRP System within 180 days from the entry date of the Performance Issue. Pending Performance Issues in excess of 180 days must be deleted. Each agency must review its Performance Issues at least semi-annually to ensure accuracy.
- t. Performance Issues shall remain in the CRP System in “approved” status until the Contractor corrects the issue, as determined by the agency that approved the Performance Issue. When such a determination is made, the status of the Performance Issue must be changed to “resolved” in the CRP System.
- u. Requests to waive any Contract provision regarding contractor responsibility, offset, Obligations, Suspensions, or Debarments must be supported by compelling reasons, in writing, approved by the agency head and the Office of General Counsel. Such written justification must be included with any Contract documentation.
- v. Certain payments, including but not limited to payments mandated by federal or state law, may be exempt from CRP Checks. The Secretary of the Budget has the authority to approve requests for exemption, unless the request pertains to an Office of the Budget Contract, in which case the Secretary of General Services has such authority. The CRP Oversight Committee must review any request for exemption and make recommendations for approval to the Secretary of the Budget or the Secretary of General Services, as appropriate.

6. RESPONSIBILITIES.

- a. **CRP Oversight Committee** shall:
 - (1) Monitor, maintain, and evaluate the CRP for efficiency, effectiveness, and use.
 - (2) Respond to concerns raised by the agencies regarding the CRP.
 - (3) Provide guidance to ensure that the underlying purpose of this directive is being carried out and propose any necessary revisions.
 - (4) Review requests to exempt certain payments from the provisions of this directive and make recommendations for approval to the Secretary of the Budget or the Secretary of General Services, as appropriate.
 - (5) Create and disseminate guidelines for the release of information contained within the CRP System.

- (6) Monitor instances of Unsatisfactory or Deficient Performance reported by agencies for Contracts including, but not limited to, statewide Contracts and ensure that appropriate action is taken by the agencies against those Contractors.
- (7) Coordinate technical support services for the CRP System, including requesting and approving changes to the CRP System.
- (8) Determine the schedules by which agencies provide information for inclusion in the CRP System.
- (9) Establish guidelines for agency determinations regarding federal Suspensions or Debarments that do not fall under the scope of section 5.j. of this directive.
- (10) Approve and authorize the creation of special reports from the CRP System to assist agencies in ensuring that they only Contract with Responsible Contractors.
- (11) Meet four times per year at a minimum.

b. Office of the Budget shall:

- (1) Participate in the management and maintenance of the CRP in coordination with DGS and other agencies as may be directed by the Governor.
- (2) Ensure that the offset provision is included in all Contracts or that a written waiver is attached.

c. Department of General Services shall:

- (1) Participate in the management and maintenance of the CRP in coordination with the Office of the Budget and other agencies as may be directed by the Governor.
- (2) Maintain a current list of Contractors Suspended or Debarred by the Commonwealth and disseminate such information to agencies and others upon request.
- (3) Develop and implement an ongoing training program for the CRP and the requirements of this directive.

d. Department of Revenue and the Department of Labor and Industry shall provide electronic files containing information regarding Obligations owed to the Commonwealth to be included in the CRP System. The schedule for providing such information shall be determined by the CRP Oversight Committee.

- e. **Department of Transportation** shall:
 - (1) Provide relevant information to the CRP System, in accordance with the provisions set forth in this directive concerning all Contractors, both prequalified and non-prequalified.
 - (2) Make use of information in the CRP System in the administration of its program for prequalification of bidders as well as in determinations of contractor responsibility where Contractors are not prequalified.
- f. **Office of Inspector General** shall assist agencies in investigating contractor responsibility and deficient performance and in recommending appropriate action.
- g. **PA Office of Administration** shall:
 - (1) Function as CRP System administrator, including providing technical support for the CRP System and ensuring only authorized users are able to access the CRP System.
 - (2) Provide technical support to DGS for maintenance of the Suspension or Debarment list.
 - (3) Ensure electronic files containing Obligation data from the Department of Revenue and the Department of Labor and Industry are incorporated into the appropriate SAP custom tables and copied to the appropriate file location for import to the CRP System according to the schedules established by the CRP Oversight Committee.
- h. **Agency Heads** shall:
 - (1) Ensure agency compliance with the CRP.
 - (2) Ensure that their respective agencies enter and update information in the CRP System, or provide the information necessary to update the CRP System, in accordance with the provisions set forth in this directive.
 - (3) Report questions and concerns regarding the CRP System or this directive to the agency DSM or the CRP Oversight Committee.
 - (4) Designate a senior-level agency employee as the DSM and one additional agency employee as the alternate DSM. Additional DSMs may be designated as deemed necessary for efficient contracting operations. Notify the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management of any changes to the agency's DSM or alternate DSM contact information.
 - (5) Ensure that all liabilities owed to the Commonwealth are collected to the extent practicable through the offset process.

- (6) Review all existing Contract formats to ensure the inclusion of the offset provision. If it is determined that the offset provision should not be included in certain Contracts, ensure the agency submits a request for waiver through the agency's Office of Chief Counsel for review and approval by the Office of General Counsel.

i. **Designated Senior Managers (DSM)** shall:

- (1) Serve as the agency primary point of contact regarding the operation of the CRP.
- (2) Approve or disapprove requests for access to the CRP System made by other employees within the agency. Determine if an employee's request for access is appropriate (*e.g.*, request for view-only access, request to enter Performance Issues).
- (3) Approve or disapprove entries in the CRP System for Performance Issues and Obligations owed to the agency (excluding Obligations to the Department of Revenue or Department of Labor and Industry, Bureau of Unemployment Compensation Benefits or State Workers' Insurance Fund). Ensure agency-approved Performance Issues regarding statewide Contracts are forwarded to DGS, Bureau of Procurement for final approval. Ensure that agency-approved Obligations are forwarded to the Office of the Budget, Office of Comptroller Operations in accordance with section 7.d. of this directive.
- (4) Ensure Performance Issues entered by the agency are reviewed for accuracy at least semi-annually. Ensure any Performance Issues that remain in pending status in excess of 180 days are deleted. Change the status of a Performance Issue from "approved" to "resolved" upon determination by the agency that the Contractor has corrected the identified issue.
- (5) Notify the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management when a Contractor fulfills its Obligations to the agency (excluding Obligations to the Department of Revenue or Department of Labor and Industry, Bureau of Unemployment Compensation Benefits or State Workers' Insurance Fund).

NOTE: This step is critical to ensure that payments to the Contractor are released timely once the Obligation has been fulfilled. If the agency fails to notify the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management that the Obligation has been fulfilled, payments to the Contractor could be blocked or delayed unnecessarily.

- (6) Ensure the agency provides a CRP Check certification form or CRP audit ID number to document the determination of contractor responsibility.

- (7) Report questions or concerns regarding the CRP or this directive to the CRP Oversight Committee.

7. PROCEDURES.

a. Agency Determination of Responsible Contractors.

- (1) Perform a CRP Check to obtain the Contractor's current status.
- (2) Determine, based on the results of the CRP Check, if the Contractor is responsible.

NOTE: User involvement at this step may vary depending on whether the agency uses the CRP System Web application or CRPS Web service to perform the CRP Check.

In determining a Contractor to be responsible, factors to be considered by the agency shall include, but shall not be limited to:

- (a) Current Suspension or Debarment by the Commonwealth, federal government, or any other state or governmental entity.
- (b) Obligations to the Commonwealth, including Tax Liabilities.
- (c) Capacity and ability to perform within the established time schedule and in accordance with the plans and specifications of the Contract.
- (d) Default, Unsatisfactory or Deficient Performance in past or current Commonwealth Contracts as determined by the Commonwealth in its sole discretion.
- (e) Financial stability and economic capability to perform all the Contract requirements.
- (f) Any other information, act or omission indicating lack of skill, ability, capacity, quality control, business integrity, or honesty that seriously and directly affects the present responsibility of the Contractor, including, but not limited to:
 - 1 Making false statements, providing misleading or incomplete information to the Commonwealth.
 - 2 Failing to provide information or cooperate with a Commonwealth agency or officials.
 - 3 Offering Unbalanced Bids.

- 4 Discrimination in violation of law or regulation in the conduct of business as a Contractor.
 - 5 The Commission of any State or Federal Offense or Criminal Charges.
 - 6 Investigation pending by a federal or state agency or under investigation by a federal or state agency within the past five years.
- (3) If the agency determines that a Contractor owes an Obligation, the agency shall provide the Contractor an opportunity to fulfill the Obligation within a reasonable time as determined by the applicable agency.

NOTE: When a Contractor fulfills an Obligation, the Obligation is removed from the electronic files that supply Obligation data to the CRP System in accordance with the schedule established by the CRP Oversight Committee. However, the Contractor may immediately provide the agency with a clearance certificate from the agency to which the Obligation has been made.

- (4) For Contracts in excess of \$5,000, the agency shall document the determination of contractor responsibility and attach such documentation to the Contract for the entire approval process.
- (a) If the agency uses the CRP System Web application to perform a CRP Check, the agency must attach the CRP Check certification form.
 - (b) If the agency uses the CRP System Web service to perform a CRP Check, the agency must provide the CRP Audit ID Number.

If the Contractor provides a clearance certificate, the agency shall attach the clearance certificate to the Contract for the entire approval process.

b. Performing a CRP Check Prior to Payment.

- (1) **Agencies Using SAP.** CRP Checks performed on invoices processed in SAP will be transparent to agencies. Agencies and the Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services shall process invoices according to established procedures for purchase order (PO) and non-PO invoice payments. Upon completion of invoice processing, IES will execute a series of automated programs to match Contractors being paid on invoices to the list of Contractors who owe Obligations to the Commonwealth.

(2) **Agencies Not Using SAP.** Agencies not using SAP for invoice processing must ensure that a CRP Check is performed on any Contractor receiving a payment in excess of \$5,000. This can be accomplished through the CRP System Web application or CRP System Web service.

c. **Recording Obligations Owed to the Department of Revenue and the Department of Labor and Industry.**

(1) **Action By: The Department of Revenue and the Department of Labor and Industry.** Provide to IES, on a schedule determined by the CRP Oversight Committee, electronic files containing information regarding Obligations owed.

(2) **Action By: PA Office of Administration, Office for Information Technology, Bureau of Integrated Enterprise System.** Load the data from the electronic files into the appropriate SAP custom table and copy the electronic files to the appropriate file location for automated update to the CRP System.

d. **Recording Obligations Owed to Agencies (Other Than the Department of Revenue and the Department of Labor and Industry).**

(1) **Action By: Agency to Which and Obligation is Owed.**

(a) Complete the Commonwealth Obligation Form, including approval from the agency DSM.

(b) Send the completed Commonwealth Obligation Form to the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management.

(2) **Action By: Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management.**

(a) Review the Commonwealth Obligation Form for completeness and accuracy.

1 If approved, enter the information into the obligation tracking spreadsheet.

2 If disapproved, contact the agency DSM to determine appropriate action.

(b) Upon completing any updates to the obligation tracking spreadsheet, save the file in the appropriate location for import to the CRP System.

(c) Update the appropriate SAP custom table.

e. **Removing Obligations Owed to the Department of Revenue or the Department of Labor and Industry.** An Obligation is removed from the CRP System when fulfilled by the Contractor, either through the Contractor's own actions or through offset action.

(1) Action By: The Department of Revenue or the Department of Labor and Industry.

(a) Determines the Obligation must be removed from the CRP System (including Obligations that have been fulfilled by the Contractor).

(b) Follows established procedures to update agency IT systems for Obligations that have been fulfilled.

(c) Provides to IES, on a schedule determined by the CRP Oversight Committee, electronic files containing information regarding Obligations owed.

(2) Action By: PA Office of Administration, Office for Information Technology, Bureau of Integrated Enterprise System. Load the data from the electronic files into the appropriate SAP custom table and copy the electronic files to the appropriate file location for automated update to the CRP System.

f. **Removing Obligations Owed to Agencies (Other Than the Department of Revenue or Department of Labor and Industry).**

(1) Action By: Agency to Which an Obligation is Owed.

(a) Determines the Obligation must be removed from the CRP System (including Obligations that have been fulfilled by the Contractor).

(b) Updates agency records as necessary according to established procedures and completes the Commonwealth Obligation Form, including approval from the agency DSM.

(c) Sends the completed Commonwealth Obligation Form to the Office of the Budget, Office of Comptroller Operations, Bureau of Planning and Management.

(2) Action By: Office of the Budget Office of Comptroller Operations, Bureau of Planning and Management.

(a) Review the Commonwealth Obligation form for completeness and accuracy.

1 If approved, remove the Obligation from the obligation tracking spreadsheet.

2 If disapproved, contact the agency DSM to determine appropriate action.

(b) Upon completing any updates to the obligation tracking spreadsheet, save the file in the appropriate location for import to the CRP System.

(c) Update the appropriate SAP custom table.

g. Processing Offset Requests.

(1) Action By: Purchasing Agency.

(a) Determines that one of its Contractors owes a Liability to the Commonwealth.

(b) Immediately complete the contractor information section of the Offset Memorandum (Memorandum), and send the Memorandum to the agency to which the Liability is owed, informing that agency of the Liability and requesting that the agency validate the Liability and authorize the Purchasing Agency to seek an offset. The Purchasing Agency shall attach to the Memorandum a printout from the CPR System showing that there is a Liability.

(c) Send a copy of the Memorandum to the agency procurement or Contracting Officer.

(2) Action By: Agency to Which the Liability is Owed.

(a) Determine whether the Liability is still owed and, if so, authorize the Purchasing Agency to take offset action.

(b) If the Liability is still owed, the head of that agency, or his or her designee, shall complete the verification of Liability on the Memorandum, sign the Memorandum, and return it to the Purchasing Agency as authorization for offset consideration.

(3) Action By: Agency Head of the Purchasing Agency. Makes the final determination as to whether offset action, in full or in part, should be taken.

(a) In making this determination, the head of the Purchasing Agency, or his or her designee, may consider what effect, if any, the offset action may have on the agency's Contract and whether there are compelling reasons not to take offset action. Compelling reasons shall include, but shall not be limited to, that the Contractor's services are vital to the Commonwealth or that the failure to retain the Contractor's services would endanger the health and safety of the citizens of the Commonwealth or the wellbeing of the Commonwealth. The head of the

Purchasing Agency or his or her designee may also determine the reasonable partial amount to be offset from the Contract amount or the periodic or expected payments to be made under the Contract, subject to consent by the Contractor, in order to maintain the continued viability of the Contractor to perform the Contract.

- (b) Complete the determination of offset on the Memorandum and send the Memorandum to the Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services. If the head of the Purchasing Agency, or his or her designee, determines that there are compelling reasons not to take offset action, or to take partial offset action, he or she shall state in writing the compelling reasons and forward a copy of the Memorandum to the agency to which the Liability is owed. A copy of the Memorandum shall also be sent to the agency contracting or procurement officer.

(4) Action By: Office of the Budget, Office of Comptroller Operations, Bureau of Payable Services.

- (a) Upon receipt of the Contractor's invoice for payment and the approved Memorandum, offset the amount owed or specified to the Commonwealth against the amount due the Contractor and forward the balance, if any, to the Contractor. Credit the offset amount to the agency to which the Liability was owed and notify that agency of the amount.
- (b) Upon receipt of a Memorandum that includes compelling reasons not to take offset action, process the invoice according to established PO or non-PO invoice processing procedures.

NOTE: When an offset action results in a Liability being completely satisfied, the Liability will be removed from the electronic files that supply Obligation data to the CRP System in accordance with the schedule established by the CRP Oversight Committee. A Contractor's name may still appear in the electronic files if the Contractor owes other Liabilities or if the offset action satisfies only a portion of a Liability.

- h. **Obtaining Authorization to Use the CRP System.** Refer to the Contractor Responsibility Program System (CRP System) – Reference Manual (Intro Chapter) for instructions on obtaining a user role.

This directive replaces, in its entirety, *Management Directive 215.9* dated October 25, 2010.

Enclosure 1 - Contractor Responsibility Provisions

Enclosure 2 – Offset Provision

Contractor Responsibility Provisions

For the purpose of these provisions, the term Contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term Contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- 1.** The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
- 2.** The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- 3.** 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 Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 4.** The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- 5.** The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of 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. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- 6.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

Offset Provision

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