



## Pennsylvania Health Care Cost Containment Council

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December 12, 2024

Dear Sir/Madam:

You are invited to submit a proposal to conduct a financial audit of the books, records, and documents of the Pennsylvania Health Care Cost Containment Council for the fiscal year period 7/01/24 through 6/30/25 in accordance with the enclosed Request for Proposal. This would be a one fiscal year contract with the option to renew for two additional fiscal year periods.

All proposals (technical and cost) must be submitted in six hard copies to the Pennsylvania Health Care Cost Containment Council located in Suite 400, 225 Market Street, Harrisburg, PA 17101. In addition, an electronic copy of the technical proposal only should be sent to the Project Director at the email address listed below. Proposals must be received by the Council no later than 5:00 pm on February 5, 2025. Late proposals will not be considered, regardless of the reason.

A pre-proposal conference will be held at the Council Office on January 22, 2025, at 10:00 am. Potential bidders are invited to submit questions in writing by January 15, 2025, to Reneé Greenawalt, Project Director at [rgreenawalt@phc4.org](mailto:rgreenawalt@phc4.org).

Best regards,

Barry D. Buckingham  
Executive Director

BB/rlg

Enclosure

**REQUEST FOR PROPOSAL FOR  
FINANCIAL AUDIT SERVICES**

**Pennsylvania Health Care Cost Containment Council  
Suite 400 225 Market Street  
Harrisburg, PA 17101**

**December 2024**

**RFP # 2025-01**

# **Request For Proposal for Financial Audit Services**

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## Part I

### General Information for the Contractor

**I-1. Purpose.** This Request for Proposal (RFP) provides interested contractors with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Health Care Cost Containment Council for the purpose of satisfying a financial audit need. Specifically, the need is to acquire the services of an outside auditing firm, having significant governmental accounting and auditing experience at the state government or comparable level, to perform a financial audit of the books, records, and documents of the Pennsylvania Health Care Cost Containment Council for the fiscal year periods 7/1/24 through 6/30/25. This audit is to be conducted in accordance with generally accepted auditing standards set forth in the United States of America and *Government Auditing Standards*.

**I-2. Issuing office.** This RFP is issued for the Commonwealth by the Pennsylvania Health Care Cost Containment Council. Reneé Greenawalt is the Project Director within the Council and is the sole point of official contact in the Commonwealth for this RFP.

**I-3. Scope.** This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the services to be provided; requirements which must be met to be eligible for consideration; general evaluation criteria; and other requirements to be met by each proposal.

**I-4. Problem Statement.** Act 89 of 1986 created the Pennsylvania Health Care Cost Containment Council and directed the Council to exercise all powers necessary and appropriate to carry out its duties, including engaging professional consultants, as it deems necessary to the performance of its duties. Act 89, reauthorized in 1993 by Act 34, and reauthorized by Act 14 of 2003, and reauthorized by Act 3 of 2009, and reauthorized by Act 15 of 2020, provides that the Council may contract with a vendor to independently audit Council's financial books, records, and documents. The proposed audit would lead to the issuance of an auditor's report, management letters, and other applicable output, in accordance with generally accepted auditing standards set forth in the United States of America and *Government Auditing Standards*, issued by the Comptroller General of the United States, which will form an opinion of the Council's financial condition. It will identify strengths, weaknesses, and other required disclosures relative to the accounting and fiscal systems, organizations, programs, activities, and functions examined, together with recommendations for improvements, for the fiscal years identified above.

**I-5. Type of Contract.** It is proposed that, if a contract is entered into resulting from this RFP, it will be a fixed price contract. Negotiations may be undertaken with contractors whose proposals as to price and other factors show them to be qualified, responsible, and capable of performing the work. The contract will be issued for one year, with the option to renew the contract for two additional years.

**I-6. Rejection of Proposal.** The Council reserves the right to reject all proposals received as a result of this request, or to negotiate separately with competing contractors.

**I-7. Incurring Costs.** The Council is not liable for any costs incurred by contractors prior to the issuance of a contract.

**I-8. Pre-proposal Conference.** A Pre-proposal conference will be held on the date and at the place specified in the cover letter. The purpose of this conference is to clarify any points in the RFP, which may not have been clearly understood. Questions must be forwarded to the Project Director, Reneé Greenawalt, prior to the meeting to ensure that sufficient analysis can be made before an answer is supplied. The pre-proposal conference is for information only. Answers furnished during the conference will not be official until verified in writing by the Project Director.

**I-9. Amendment to the RFP.** If it becomes necessary to revise any part of this RFP, an amendment will be posted to the PHC4 website at [www.phc4.org](http://www.phc4.org).

**I-10. Response Date.** To be considered, proposals must arrive at the Council Office on or before the time and date specified in the cover letter. Contractors mailing proposals should allow sufficient mail delivery time to ensure timely receipt of the proposals.

**I-11. Submittal Letter.** Contractors must submit a cover letter, addressed to the Project Director, signed by an authorized principal or agent of the contractor, which provides an overview of the contractor's offer, as well as the name, title, telephone number, and email address of the person to whom the Council may direct questions concerning the proposal. The letter should also include a statement by the contractor accepting all terms and conditions in this RFP, signed by an officer or other individual with authority to negotiate and contractually bind the firm.

**I-12. Proposals.** To be considered, contractors must also submit a complete response to this RFP, using the format provided in Part II. Each proposal must be submitted in 6 copies to the Council office. No other distribution of proposals will be made by the contractor. Proposals must be signed by an official authorized to bind the contractor to its provisions. For this RFP, the proposal must remain valid for at least 90 days. Moreover, the contents of the proposal of the successful bidder will become contractual obligations if a contract is entered into.

**I-13. Economy of Preparation.** Proposals should be prepared simply and economically providing a straight-forward, concise description of the contractor's ability to meet the requirements of the RFP.

**I-14. Oral Presentation.** Contractors who submit proposals may be required to make an oral presentation of their proposal to the Council. Such presentations provide an opportunity for the contractor to clarify their proposal to ensure thorough mutual understanding.

**I-15. Prime Contractor Responsibilities.** The selected contractor will be required to assume responsibility for all services offered in the proposal whether produced by the contractor. Further, the Council will consider the selected contractor to be sole point of contact regarding contractual matters. The contractor must provide a statement of assurance that the firm will comply with all applicable Federal, State, and local laws and regulations in the performance of all contractual services.

**I-16. Disclosure of Proposal Contents.** Cost and price information provided in proposals will be held in confidence and will not be revealed or discussed with competitors. All other material submitted becomes the property of the Pennsylvania Health Care Cost Containment Council and may be returned only at the Council's option. Proposals submitted to the Council may be reviewed and evaluated by any person other

than competing bidders at the discretion of the Council. The Council has the right to use any or all ideas presented in any reply to the RFP. Selection or rejection of the proposals does not affect this right.

**I-17. The Pennsylvania Health Care Cost Containment Council's Standard General Terms and Conditions (SGT&C)** are attached to this RFP for the information of prospective bidders. Any agreement entered between the Council and the selected contractor shall contain these SGT&C.

**I-18. Debriefing Conferences.** Contractors whose proposals are not selected will be notified of the name of the selected contractor and will be given the opportunity to be debriefed. The Council will schedule the time and location of the debriefing.

**I-19. News Releases.** News releases pertaining to this project will not be made without prior approval of the Project Director and then only in coordination with the Council.

**I-20. Council Participation.** Council staff person, Sue Neidlinger, Director of Administration & Budget, is the assigned Project Manager to guide and monitor the services of the contractor. The Project Manager will provide consultation to the contractor, including review and approval of preliminary and draft products developed as part of the tasks described in Part IV.

**I-21. Observers and Oversight.** Although it is not the intent of the Council to monitor the daily progress and activities of the contractor, the Council does reserve the right to have a staff representative on-site during the performance of all audit work to observe activities being performed.

**I-22. Confidentiality.** The contractor will retain information relative to the Council's audit provided under this contract in strictest confidence. The contractor will not publish, reproduce or otherwise divulge any such related information, in whole or in part, in any manner or form, or authorize or permit others to do so, unless approved in writing by the Council. The contractor will take such reasonable measures as are necessary to restrict access to the information, while in his possession, to those employees on his staff and the Council's staff who must have access to the information on a "need-to-know" basis. The contractor will immediately notify the Council Project Manager if it is determined or suspected that a breach of this requirement has occurred.

**I-23. Termination of Contract.** The Council shall have the right to terminate the contract between the parties, in whole or in part, within 30 days from the date written notice is provided to the contractor of the Council's intent. Such notice may be provided at the discretion of the Council for any cause whatsoever, including, but not limited to availability of funds, change of priorities, goals and objectives, etc. If such an event should occur, the contractor will be paid for the services rendered to the date of termination and the Council will retain a copy of all working papers.

Further, the Council may immediately terminate the contract between the parties in whole or in part when, in the judgement of the Council, the audit services are unsatisfactory as to quality, completeness and accuracy, or the auditors have failed to abide in all respects by the conditions of the contract. If such an event should occur, the Council will withhold future payments to the contractor. The Council will retain a copy of all working papers.

#### **I-24. Retention of Audit Work Papers and Related Documents.**

- A copy of all audit work papers and reports must be retained at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the Council of the need to extend the retention period.
- A copy of all relevant audit work papers and other relevant documents generated, developed and prepared by the outside auditor during audits and other Council related accounting, audit and consultative services conducted and performed under this RFP shall also be retained in the custody of the Pennsylvania Health Care Cost Containment Council at the conclusion of the audit for each fiscal year period.
- Further, such audit work papers, and other related documents may be used by the Council for any authorized purpose it deems necessary, including the sharing of such audit work papers and documents with other independent auditors, successor auditors, and internal auditors performing audit or fiscal related services for the Council.

## Part II

### Information Required from The Contractor

Contractor proposals must be submitted in the format outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

**II-1. Statement to the Problem.** Contractors must state in succinct terms their understanding of the audit, and other consultative services related to GAAP accounting and reporting required.

**II-2. Management Summary.** Include a narrative description of the proposed effort and a list of audit services and products, and other consultative services related to GAAP accounting and reporting that will be delivered.

**II-3. Prior Experience.** The contractor shall include in the proposal demonstrations of its experience in conducting audits of GAAP financial statements and operations, and other related accounting, audit, and consultative services. Experience shown should relate to work performed collectively by all individuals who will be assigned to this project, as well as your firm's related experience in this area. Also, if it is intended to subcontract any portion of this agreement, provide the collective related work experience for the subcontractor(s) and all individuals of the subcontractor(s) staff(s) assigned to this project. Related work experience referred to should be completely identified and the name of the governmental entity specified.

Firms must provide the Council with a list of major and recent audits conducted and other related accounting, audit, and consultative services performed at the governmental level, with references. References should be for those client personnel who can provide an opinion as to the quality of services performed.

**II-4. Personnel.** Include the names of partners, principals and other professional staff personnel of a lead, supervisory or administrative nature who will be employed in the work. Provide the following information for each of these employees assigned to this engagement:

- GAAP and government related experience and responsibilities in prior engagements
- Education, credentials, and experience in governmental accounting, auditing, and related areas, specifically the number of continuing education requirements for yellow book audits
- Indicate the project director and key staff and how long each has been with your organization
- The licensure #, the state that issued the license and the date of issue for all parties assigned to the audit

**II-5. Work Plan.** Describe in narrative form your technical work plan for accomplishing the audit work. Indicate the number of hours allocated to each audit work. Use the task descriptions in Part IV of this



RFP as your point of departure. Modifications of the task descriptions are permitted; however, reasons for changes should be fully explained.

**II-6. Cost and Price Analysis.** A business proposal, which details all costs associated with the completion of the proposal work plan, shall be prepared. **THIS PORTION OF THE PROPOSAL MUST BE BOUND AND SEALED SEPARATELY FROM THE REMAINDER OF THE PROPOSAL.** The business proposal can be an all-inclusive cost or costs associated with the accomplishment of each phase of the audit. Use the appropriate items in the following format:

- A. **Direct Labor Costs.**
  - 1. Total estimated hours
  - 2. Rate per hour
  - 3. Total cost for labor
  
- B. **Labor Overhead.** Specify what is included and rate used.
  
- C. **Travel.** Itemize transportation and per diem costs separately.
  
- D. **Consultation Costs.** Itemize.
  
- E. **Subcontract Costs.** Itemize.
  
- F. **Cost of supplies and materials.** Itemize.
  
- G. **Other Direct Costs.** Itemize.
  
- H. **General Overhead Costs.** Specify what is included and rate used.
  
- I. **Fee or Profit.**
  
- J. **Total Cost.**
  
- K. **Regular hourly rate, if additional audit services are required.**

The business proposal shall list the names, telephone numbers and email addresses of the persons authorized to conduct negotiations.

## Part III

### Criteria For Selection

**III-1. Mandatory Criteria.** Proposals will only be considered from those proposers meeting each of the following criteria:

- A. Must be a certified public accountant (CPA) or a public accountant registered under Act Number 140, P.L. 318, May 26, 1947, entitled "The CPA Law," as amended by Act Number 286, P.L. 1280, December 8, 1976.
- B. Must have a record of quality work.
- C. Must submit the proposal to the Issuing Office on or before the date and time specified in the RFP cover letter.

**III-2. Technical Criteria.** Proposers who have met each of the criteria in III-1, Mandatory Criteria, will be evaluated on the following criteria:

- A. **Understanding of the Problem.** This refers to the contractor's understanding of the Council's needs that generated the RFP, of the Council's objectives for seeking the audit service covered by this RFP, and of the nature and scope of the work involved.
- B. **Contractor Qualifications.** This criterion includes the experience, expertise, and resources of the contractor to meet the terms of this RFP.
- C. **Qualifications of Professional Personnel.** This refers to the competence, experience, and expertise of the professional personnel who would be assigned to the work by the contractor. Qualifications of professional personnel will be measured by education, experience, and credentials, with particular reference to their experience on audits and other related accounting, audit and consultative services similar in nature to those described or implied in this RFP.
- D. **Soundness of Approach.** Emphasis here is on the methodology and techniques for conducting:
  - 1. Audit based on GAGAS
  - 2. Principles and standards applied
  - 3. Sequences and relationships of major steps; the methods of managing the engagement
  - 4. Reports and other documents to be submitted

Of equal importance is whether the technical approach is completely responsive to all written specifications and requirements contained in this RFP, and if it appears to meet the Council's objectives.

E. **Available Facilities.** The audit will be conducted virtually.

F. **Cost.** This item will be weighted heavily; however, the proposal must first receive an acceptable technical score before cost is considered.

**III-3.** All proposals received from contractors will be reviewed and evaluated by a committee of qualified personnel selected by the Pennsylvania Health Care Cost Containment Council. This committee will recommend for selection the proposal, which most closely meets the requirements of the RFP and satisfies the Council's needs.

## **Part IV**

## Work Statement

### IV-1. Objectives

A. **General.** The Pennsylvania Health Care Cost Containment Council will engage an outside auditor to assist in the performance of an examination of the Council's financial books, records, and documents. The selected outside independent auditor will be responsible for conducting the audit in accordance with generally accepted auditing standards in the United States of America and *Government Auditing Standards*.

### B. Specific.

1. The selected outside auditor shall perform a financial audit of the Pennsylvania Health Care Cost Containment Council's books, records, and documents for the fiscal year periods 7/1/24 through 6/30/25.
2. Further, at the option of the Council, performance under the contract may be extended to cover the fiscal year periods from 7/1/25 through 6/30/26 and 7/1/26 through 6/30/27.
3. Additionally, the outside independent auditor will provide other related accounting, audit, and consultative services which permit the Council to continue to prepare its financial statements and other applicable components in accordance with generally accepted auditing standards in the United States of America Government Auditing Standards.

**IV-2. Nature and Scope of the Audits and Related Services.** The audits and related services will encompass financial examinations of the Council's books, records, and documents, in accordance with GAGAS. The other related services consist of other accounting, audit, and consultative services related to GAAP accounting and reporting, which will permit the Council to continue to prepare its financial statements in accordance with applicable practices, criteria, and standards of GAAP accounting and reporting.

### IV-3. Tasks.

The tasks will include, but not be limited to:

- A. Providing the Council with an engagement letter outlining timeframes, a list of schedules to be prepared by Council staff and any other items required of Council staff in preparation of the audit
- B. Reviewing and analyzing the Council's expenditures from July 1, 2024, through June 30, 2025
- C. Comparing these expenditures to the total appropriation allocated for these fiscal year periods.
- D. Determining the total funds available at the close of these fiscal year periods
- E. Obtaining an understanding of the Council's internal accounting controls as

required by Government Auditing Standards and determining whether these controls are designed to provide reasonable assurance that the Council is being managed in accordance with laws and regulations.

- F. Identifying material weaknesses because of the evaluation
- G. Reporting the findings to the Pennsylvania Health Care Cost Containment Council at a date agreed upon by both parties

**IV-4. Reports and Project Control.** The Council, through the Project Manager, will need to monitor closely the contractor's activities to ensure the necessary information is being reviewed and analyzed and can be used by the Council for publication and continuation of operation. The following documentation and reports may be required from the contractor:

- A. Monthly progress reports from the contractor covering activities performed, material problems encountered, and major recommendations for improving operations reviewed
- B. Copies of draft reports, letters, and related documents produced by the contractor, for a preliminary review prior to submitting the final report, letters, and documents as part of an exit conference
- C. A final auditor's report, signed by an authorized official (CPA) of the auditing firm, or the firm itself, certifying the integrity of the audit
- D. An original management letter from the contractor, and appropriate copies thereof, for the fiscal year periods audited, which identifies weaknesses of the fiscal and accounting systems audited, with recommendations for improvement, where necessary
- E. An original, and appropriate copies, of other reports from the contractor required under GAAP, GAGAS, this RFP, or those deemed necessary by the contractor

## **APPENDIX I**

### **TIMETABLE FOR COMPLETION OF THE AUDIT PROCESS**

<b>Council Approval to release RFP</b>	<b>November 7, 2024</b>
<b>Publication of RFP on www.phc4.org</b>	<b>December 12, 2024</b>
<b>Publication of RFP in 4 newspapers</b>	<b>December 12, 19, 2024 and January 2, 2025</b>
<b>Publication of RFP in PA Bulletin</b>	<b>January 4, 2025</b>
<b>Pre-Proposal Conference</b>	<b>January 22, 2025</b>
<b>Proposal Submission Deadline</b>	<b>February 5, 2025</b>
<b>Evaluation of Proposals</b>	<b>February 12-24, 2025</b>
<b>Council Awarding of Contract</b>	<b>March 6, 2025</b>

## APPENDIX II

### STANDARD GENERAL TERMS AND CONDITIONS

#### General Provisions.

Start Date. This contract is effective on the date which is stated to be the beginning of the term of the contract.

Limitations on Obligations of the Council. Notwithstanding any other provisions of this contract, the Council shall not be obligated to make payment for any services or activities in excess of those requested in the RFP.

Amendments. Both parties have the right to initiate amendments to this contract. Such amendments would become a part of this contract upon the signatures of both parties. Any amendments to the Contract shall be recommended by the Council's Project Manager for approval by the Executive Committee of the Council.

Actions After Termination. Upon termination, Contractor shall submit to the Project Manager outstanding invoices for allowable costs incurred prior to the date of termination in the form prescribed by the Project Manager. Such invoices shall be submitted promptly but in no event later than sixty (60) days from the effective date of termination. Any invoices for services performed after the effective date of termination shall not be payable in any event.

Entire Understanding. This contract constitutes the entire understanding of the parties regarding the subject matter hereof. No change, amendment, or alteration shall be effective unless signed by the parties hereto.

Notices. All notices, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or mailed by certified mail, postage prepaid:

PA Health Care Cost Containment Council  
225 Market Street, Suite 400  
Harrisburg, PA 17101

ATTN: Sue Neidlinger, Project Manager

or to such other address as either the Project Manager or the Contractor may designate by notice to the other.

Governing Law. The provisions of this contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Contract Construction. The following terms of contracting with the Council also will apply:

- a) **Claims Against the Council.** All claims against the Council respecting any matter pertaining to this contract may be filed by the Contractor with the Board of Claims (under the Act of May 20, 1937, P.L. 728, as amended by Act of October 5, 1978, P.L. 1004).

- b) **Limitations of the Council's Contract Obligation.** The obligations of the Council under the contract are limited and subject to the availability of funds appropriated by the General Assembly of the Commonwealth of Pennsylvania.
- c) **Subcontracts.** Except for those sub-contracts specifically authorized by this contract, Contractor shall not enter sub-contracts for any of the services contemplated under this contract without obtaining prior written approval from the Project Manager.
- d) **Interest of Members of the Council and Others.** No officer, member, or employee of the Council, Commonwealth, or General Assembly who exercises any functions or responsibilities under this contract, shall participate in any decision relating to this contract which affects their personal interest or the interest of any corporation, partnership, or association in which there is, directly or indirectly, interest; nor shall any such officer, member, or employee of the Council, Commonwealth, or General Assembly have any interest, direct or indirect, in this contract or the proceeds thereof.

Contractor's Conflict of Interest. The Contractor hereby assures to the Council that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further assures that in the performance of this contract, it will not knowingly employ any person having such interest. Contractor hereby certifies that no member of the board of the Contractor or any of its officers or Managers have such an adverse interest.

Independent Contractor. The Contractor shall perform its services under this contract as an independent contractor and shall provide public liability, property damage and worker's compensation insurance, insuring as they may appear, the interest of all parties to the contract against all claims which may arise out of the Contractor's operations under the terms of this contract. The Contractor shall accept full responsibility for the payment of premiums for worker's compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this contract.

Audits. If the general contract cost is \$100,000 or more within the one-year period immediately following the effective date of the contract, or \$100,000 or more within any successive one-year period thereafter, the Contractor shall secure the services of an independent Certified Public Accountant, an independent licensed public accountant, or the Commonwealth Auditor General to perform an audit of the Financial transactions and the units of service of the Contractor relating to this contract for each one-year period (or fraction thereof) that an audit is necessary. With the written consent of the Project Manager, the contractor may vary the audit period. The audit shall be in accordance with auditing standards contained in "Standards for Audit of Governmental Organizations, Programs, Activities and Functions", issued by the Comptroller General of the United States, latest revision as of the time of the audit. The minimum scope of all audits will be financial and compliance. Unless otherwise specified in writing by the Project Manager, the Contractor shall be responsible for obtaining the necessary audit. When the Contractor is responsible for obtaining the audit, the Contractor shall furnish the Project Manager with 3 copies of the audit report no later than 90 days after the termination of the contract. The report should be sent to the Council's offices in Harrisburg, PA.

Information. During the period of this contract, all information obtained by the Contractor through work on the study will be made available to the Project Manager immediately upon demand. If requested, the Contractor shall deliver to the Project Manager for use in audits, litigation, or management reviews, background material prepared



or obtained by the Contractor, incident to the performance of this contract. Background materials defined as original work papers, notes and drafts prepared by the Contractor to support the data and conclusions in final reports, and includes completed questionnaires, material in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings, and all data directly related to the services being rendered. It is agreed and understood that the computer programs developed by the Contractor or any sub-contractor without the use of funds under this contract shall remain the property of the Contractor or sub-contractor.

- a) Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively referred to as "the records"). Contractor agrees to maintain books, records, documents and other evidence in accordance with accounting procedures and practices which meet generally accepted accounting principles.
- b) Contractor agrees to make available at the Office of the Contractor at all reasonable times during the term of this contract and the period set forth in sub-paragraph (e) below, any of the records for inspection, audit or reproduction by any authorized representative of the Council.
- c) The Contractor shall preserve and make available his records for a period of six years from the date of final payment under this contract, and for such period, if any, as is required by applicable statute, by any other paragraph of this contract, or by paragraphs (1) or (2) below.
  - (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of six years from the date of any resulting final statement.
  - (2) Records which relate to litigation or the settlement of claims arising out of the performance of this contract, or costs and expenses of this contract as to which exception has been taken by the auditors, shall be retained by the Contractor until such litigation, claims, or exceptions have been disposed of.
- (d) Except for the records described in sub-paragraph (c) (2) above, the Contractor may, in fulfillment of his obligation to retain his records as required by this paragraph, substitute photographs, micro-photographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Council, with the concurrence of the auditors.
- (e) The provisions of this paragraph shall be applicable to and included in each sub-contract hereunder. The term "sub-contract" as used in this paragraph excludes purchase orders not exceeding \$1,000 and sub-contract or purchase orders for public utility services at rates established for uniform applicability to the public.
- (f) Contractor agrees to collect statistical data of a fiscal nature in order to provide an accounting of performance under this contract on a regular basis and to make fiscal statistical reports at times prescribed by, and on forms furnished by the Council.

Copyrights and Disclosure. Contractor relinquishes all copyrights and/or privileges to data developed under this contract. The Contractor shall not include in the data any copyrighted matter unless Contractor provides the Project Manager with written permission of the copyright owner.

- (a) The term "data" as used herein, includes but is not necessarily limited to written reports and analyses, diagrams, maps, system designs, computer programs, flow charts, punched card decks, magnetic tapes, drawings, studies, and work of any similar nature required to be performed under the contract. It does not include contractor's financial reports or other information incidental to Contract administration.
- (b) **Rights in Data.** Data submitted to and accepted by the Project Manager under this contract shall be the property of the Council, and it shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate. Such use shall be without any additional payment to or approval by the Contractor.
- (c) **Data Collection.** All data collected under the contract (computer tapes, programs and other software developed, and other documentation) will become the property of the Council at the close of the contract period.
- (d) **Forms Approval.** All forms, questionnaires, survey instruments, etc., developed under the contract shall be approved by the Project Manager.
- (e) **Litigation.** The Contractor shall at its expense defend any suit or proceeding brought against the Council on account of any alleged infringement by the Contractor of any copyright arising out of the performance of this contract, including any suit or proceeding relating to all work, services, materials, reports, studies, and computer programs provided by the Contractor; provided nevertheless, that the Project Manager shall provide prompt notification in writing of such suit or proceedings, together with full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. If principles of governmental or public law are involved, the Council may participate in the defense of any such action. The Contractor shall pay all damages and costs awarded therein against the Council. If information and assistance are furnished by the Council at 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 request. If any of the materials, reports, studies or computer programs provided by the Contractor are held to constitute infringement, and the use or publication thereof is enjoined in such suit or proceeding, the Contractor shall at its own expense and its option, either procure the right to publish or continue use of such infringing materials, reports, studies or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. If after a reasonable time and good faith effort, the Contractor is unable to comply with the requirements of the immediately preceding sentence, the Contractor shall return to the Council that portion of contract funds expended by the Contractor in relation to the infringing item. The obligations of the Contractor under this paragraph continue without time limit.
- (f) **Public Notices.** All notices, informational pamphlets, press releases, research reports and similar public notices prepared and released by the Contractor, shall include the statement

"This project is funded under a contract with the Pennsylvania Health Care Cost Containment Council. The Council specifically disclaims responsibility for any analyses, interpretations or conclusions." All printed material is subject to pre-approval by the Project Manager. "Printed material" includes but is not limited to letters, surveys, brochures, manuals, labels, newsletters, and artwork. All printed material must bear the Council's logo and the names and titles of the Chair and the Executive Director, unless otherwise authorized in writing by the Project Manager. All material produced for radio and television must also be approved by the Project Manager.

- (g) **Sensitive Information.** The Contractor shall not publish or otherwise disclose, except to the Project Manager or his designee and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by or about any person or establishment can be identified, except with the consent of such person or establishment.

Confidentiality. The Contractor shall comply with the Council's approved policy and procedures for data access and confidentiality of records.

Collection or Recording of Information. The Contractor shall submit to the Project Manager for approval prior to use, copies of any questionnaire and survey plan, including plans for structured interviews and consultations, for the collection of similar information from five or more individuals or organizational elements. The term "structured interview and consultation" is defined as an interview or consultation which follows a predesignated line of questioning that takes approximately the same form for all the respondents being interviewed or consulted.

Default and Termination.

- (a) The Council may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate upon such terms as said notice shall set forth, the whole or any part of this contract in any one of the following circumstances provided that in either of these circumstances the Contractor does not cure such failure within a period of ten days (or such longer period as the Project Manager may authorize in writing) after receipt of notice from the Project Manager specifying such failure:
- (1) If the Contractor fails to perform the services within the time specified herein or any extension thereof granted by the Project Manager; or
  - (2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger its terms.
- (b) In the event the Council terminates this contract in whole or in part as provided in paragraph (a) above, the Council may procure, upon such terms and in such manner as the Project Manager may deem appropriate, services similar to those so terminated and the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this paragraph.

- (c) Except with respect to defaults of sub-contractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth of Pennsylvania in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather; but the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a sub-contractor, and if such default arises out of causes beyond the control of both the Contractor and sub-contractor and without the fault or negligence of either of them, the Contractor shall not be liable unless the services to be furnished by the sub-contractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.
- (d) If the contract is terminated as provided in sub-paragraph (a) above, the Project Manager shall require the Contractor to transfer title and deliver to the Project Manager such partially completed reports or other documentation as the Contractor has produced under the contract. Payments for completed reports and other documentation delivered to and accepted by the Council shall be at the contract price. Payment for partially completed reports and other documentation delivered to and accepted by the Project Manager shall be in an amount agreed upon by the Contractor and the Project Manager. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the section of these General Terms and Conditions entitled "Contract Construction."
- (e) The rights and remedies of the Council 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.
- (f) The Council through the Project Manager may cancel this contract at any time by giving written notice to the Contractor. Should the Project Manager exercise its right under this clause, the Council will pay the Contractor for all work done by the Contractor under the contract until such time as the Project Manager sets forth in its written notice to the Contractor.

Assignability. The Contractor shall not assign the contract to any third party without prior written approval by the Project Manager.

Covenant Against Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee (excepting bona fide employees maintained by the Contractor for the purpose of securing business). For breach or violation of this warranty, the Council shall have the right to annul this contract without liability or, in its discretion, to deduct from the consideration otherwise due under the contract, or otherwise recover, the full amount of such commission, percentage brokerage, or contingent fee.

Council Held Harmless. The contractor agrees to indemnify, defend, and save harmless the Council and the Commonwealth, its officers, agents, and employees:

- (a) from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other persons, firms or corporations furnishing

or supplying work, services, materials or supplies in connection with the performance of this contract; and

- (b) from any and all claims, costs and expenses, for violation of proprietary rights or right of privacy, arising out of the publication, translation reproduction, delivery, performance, use or disposition of any data furnished under this contract or based on any libelous or other unlawful matter contained in such data, and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract; and
- (c) in addition to its obligation as stated in this paragraph, in order to further carry out its obligations under this paragraph, Contractor shall carry and substantiate appropriate insurance naming the Council as an additional insured.

Program Changes. The Project Manager may at any time, by written order, make changes in the statement of work, provided such changes are within the general scope of the statement of work and provided further that the total cost of this contract section is not exceeded. The Project Manager and the Contractor shall mutually determine whether the ordered changes can be accomplished within the total contract cost and the extent of change, if any, in delivery schedules required by the ordered changes.

Key Personnel. The Project Personnel specified in this contract are essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Project Manager reasonably in advance and shall submit justification including proposed substitutions, in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Project Manager.

Other Contractors. The Council may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Council employees and carefully fit its work to such additional work. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Council employees.

Environmental Protection. In carrying out this contract the contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

Equal Employment Opportunity.

- (a) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any person because of race, color, religious creed, ancestry, national origin, age or sex. Contractor shall take affirmative action to ensure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of the non-discrimination clause.

- (b) Contractor shall, in advertisement or requests for employment placed by it or in its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age or sex.
- (c) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- (d) It shall be no defense to finding of non-compliance with this non-discrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- (e) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this non-discrimination clause, Contractor shall then employ and fill vacancies through other non-discrimination employment procedures.
- (f) Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the non-discrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Council contracts, and other sanctions may be imposed and remedies invoked.
- (g) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information on reporting forms supplied by the contracting agency.
- (h) Contractor shall actively recruit minority sub-contractors or sub-contractors with substantial minority representation among their employees.
- (i) Contractor shall include the provisions of this non-discrimination clause in every sub-contract, so that such provisions will be binding upon each subcontractor.
- (j) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Equal Opportunity for the Handicapped.

- (a) The Contractor agrees to abide by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. 793 and 794, as amended) and implementing federal regulation. The Contractor assures that any benefits, services, or employment, available through the Contractor to the public by way of this contract's funds, shall not be denied handicapped persons who are otherwise qualified or eligible for the benefits, services or employment available as a result of this contract.
- (b) The Contractor will include the provisions of subparagraph (a) above in every sub-contract under this contract so that such provision binds each sub-contractor.

#### Disposition of Equipment.

- (a) Contractor agrees to obtain all supplies and equipment for use in the performance of this contract at the lowest practicable cost and to purchase by means of a system of competitive bidding.
- (b) Title to all property furnished by the Council shall remain with the Council. Title to all personal property acquired by the Contractor, including purchase by lease-purchase agreement, for the cost of which the Contractor is to be reimbursed under this contract, shall vest in the purchased personal property which has remaining useful life shall become the property of the Council, or at the election of and with written approval of the Council, may be disposed of by the Contractor in accordance with the following provisions:
  - (1) If the Contractor wishes to retain any of such purchased property, both parties will arrange for an independent third-party appraisal of these property items and the Contractor will reimburse the Council for the value of the remaining life of the property on the basis of such appraisal. Unless otherwise agreed upon in writing by the Council, the Contractor shall be responsible for the cost of appraisal.
  - (2) With the prior written permission of the Project Manager, Contractor may sell the property and reimburse the Council for its appropriate share, providing the Council is notified ten days in advance of the date of the sale.
- (c) All property furnished by the Council or personal property acquired by the Contractor, including purchase by lease-purchase agreement, for which the Contractor is to be reimbursed under this contract shall be deemed Council property for the purpose of sub-sections (d), (e) and (f) of this section.
- (d) Contractor shall maintain and administer in accordance with sound business practices a program for the maintenance, repair, protection, preservation and insurance of Council property so as to assure its full availability and usefulness.

- (e) The Council property and any property purchased under this contract shall, unless otherwise provided herein, or approved in writing by the Project Manager, be used only for the performance of this contract.
- (f) In the event that Contractor is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the Council property, he shall use the proceeds to repair, renovate or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Council as directed by the Project Manager.
- (g) Should the Contractor purchase equipment pursuant to complete an Equipment Inventory Form and return it to the Council with the Contractor's invoice which seeks reimbursement for such equipment under the contract. The Council will provide the Contractor with a form when the contract provides for the purchase of equipment.

Laws and Regulations. This contract is subject to the provisions of all pertinent Federal, State and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service and other limitations on the purchase of the services established in this contract are subject to modification by amendments to Federal, State and local laws and regulations without further notice to the Contractor.

Invoice Procedure.

- (a) The Contractor shall invoice the Council in the month following the month in which the work was performed or the services rendered. The state fiscal year is July 1 - June 30. When a contract does not cross state fiscal years, the Contractor shall submit a final invoice within 60 days after termination of the contract. When a contract crosses state fiscal years, the Contractor shall submit a final invoice for each state fiscal year within 60 days after the end of each fiscal year during the course of the contract and a final invoice within 60 days after termination of the contract for services rendered within each respective fiscal year. The Council will not honor nor be liable for invoices not submitted in compliance with these requirements with the only exception being an invoice for a required audit when the Council has agreed to such exception in writing within the 60-day period. Invoices shall be directed to the Project Manager in lieu of other written instructions from the Council.
- (b) The Contractor may reallocate funds between budget categories up to 10% of the amount budgeted for the account to which the funds are to be transferred. Reallocation of funds between budget categories exceeding 10% require prior written approval by the Project Manager. The Contractor may reallocate only once in each half of the Contract period.
- (c) The Contractor shall, upon request, furnish the Council receipts of itemized bills for all expenditures incurred in the performance of the project and billed in a particular billing period (month). The expenditures must be substantiated by certified copies of payroll vouchers, travel vouchers, storeroom requisitions, etc.

Payments.



- (a) The Council, will reimburse the Contractor on a monthly basis for acceptable work. Expenditures listed on these bills may not exceed the agreed budgeted amounts. Monthly payment ceilings may be established by the Council and will be designated in the contract.
- (b) Invoices will be submitted in accordance with the Council's invoice format. Invoices shall be paid actual expenditures incurred until a total of 80% of the total contract cost has been paid. Any remaining monies due the Contractor shall be paid upon receipt of an invoice after the Project Manager has determined that all work and services required under this contract have been performed or delivered in a manner acceptable to the Project Manager.
- (c) The Contractor agrees that any funds that may be received as a result of this contract are to be expended solely for the purposes set forth in the contract and that the contract may be cancelled, in whole or in part, by the Council in the event that the funds are not so utilized. Upon notice by the Council that the Contractor has improperly spent contract funds, the Contractor will return to the Council the amount of the improper expenditure within 60 days of said notice.

Performance Bond. Prior to the award of any contract, the Council may require the Contractor to furnish a performance bond at one hundred percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract. Such bond shall be solely for the protection of the Council. The performance bond shall become binding upon the award of the contract to the contractor. In the event the Council requires the Contractor to furnish a Performance Bond, the cost therein shall be added to the contract price.

Penalties. The Council may assess a monetary penalty on the Contractor for the non-timely performance of obligations required under the terms of the contract. Such penalty provisions must be contained in the contract between the Council and the Contractor.