

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of General Services

(2) I.D. Number (Governor's Office Use)

008-004

2004 SEP 24 10:57

REVIEW COMMISSION

IRRC Number: 2305

(3) Short Title

Instructions to Bidders

(4) PA Code Cite

4 Pa. Code Chapter 61

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary Benefield Seiverling
(717) 772-2749

Secondary Contact: Gary F. Ankabrandt
(717) 783-1982

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation sets forth the instructions which are given to bidders on Department of General Services construction projects.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

71 P.S. §§ 61 - 63, 66, 158, 188, 631, 631.1, and 638

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Repeal of the regulation will permit flexibility and allow the Department to customize bid conditions on an individual project basis.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Department of General Services, construction contractors, and the public will benefit by removing instructions to bidders from a regulatory context. The Department will be able to revise conditions to keep current and, ideally, to get the best deal for the Commonwealth.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effect except that interested parties will be required to obtain current instructions to bidders from the Department of General Services rather than refer to the Pa. Code. (However, the instructions to bidders which now appear in the Pa. Code are not current).

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Not applicable. The regulation will be repealed. Therefore, no compliance required.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A 30-day public comment period followed the publication of the proposed regulation at 32 Pa. B. 5277 (October 26, 2002). No comments were received.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings. The Department of General Services provides its instructions to bidders to all potential bidders for a construction project.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

No costs or savings.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There will be some savings in administrative time and expense. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its instructions to bidders. The estimated cost is \$18,000/yr. If the regulation is not repealed and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government	18,000	18,000	18,500	19,000	19,500	20,000
Total Savings	18,000	18,000	18,500	19,000	19,500	20,000
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

No costs associated with the repeal.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There will be some savings in administrative time and expense. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its instructions to bidders. The estimated cost is \$18,000/yr. If the regulation is not repealed and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None, the regulation must be repealed so a nonregulatory alternative can be followed.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

None.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not applicable.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

No competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Should be repealed immediately.

(31) Provide the schedule for continual review of the regulation.

Not applicable. Regulation to be repealed.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

**(Pursuant to Commonwealth Documents
Law)**

2305

2004 SEP 24 11:10:57

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved
as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved
Objections attached.

Copy below is hereby certified to be a true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF GENERAL SERVICES
(Agency)

LEGAL COUNSEL: Mary Kelly

DOCUMENT/FISCAL NOTE NO. 8-4

DATE OF ADOPTION: _____

BY: Don J. Gage

TITLE: DEPARTMENT OF GENERAL SERVICES
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as
to form and legality. Executive of
Independent Agencies

BY: [Signature]

9.15.04

Date of Approval

EXECUTIVE
(Deputy General Counsel)
(~~Chief Counsel, Independent~~
~~Agency~~)
(~~Strike inapplicable title~~)

Check if applicable. No Attorney
General approval or objection
within 30 days after submission.

**NOTICE OF FINAL RULEMAKING
DEPARTMENT OF GENERAL SERVICES
[4 Pa. Code Chapter 61]
Instruction to Bidders**

STATUTORY AUTHORITY

The Department of General Services (the "Department") acting under Sections 506, 2401.1 and 2408 of The Administrative Code of 1929 (71 P.S. §§186, 631.1 and 638), Executive Order 1996-1, "Regulatory, Review and Promulgation" and section 201 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §1201), deletes Chapter 61 (relating to instructions to bidders for construction contracts).

PURPOSE

Since the bid instructions for construction contracts are established by regulation, they do not allow for flexibility. The instructions to bidders tell the bidders how to prepare and submit their bids for construction projects. These provisions must be customized by the Department for individual projects. The Department has substantially modified these bid instructions in the years since 1975 without amending the regulations. Since the regulatory instructions are not the current Department instructions to bidders, this chapter is obsolete and is being deleted.

Notice of proposed rulemaking was published at 32 Pa.B. 5277 (October 26, 2002). Publication was followed by a 30-day public comment period during which the Department did not receive any comments. The Senate State Government Committee, the House State Government Committee, and the Independent Regulatory Review Commission (IRRC) also had no comments.

FISCAL IMPACT

There will be some savings in administrative time and expense. The Department would incur significant time and expense if it were required to proceed with the regulatory process each time it wanted to revise its instructions to bidders. If Chapter 61 is not deleted and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process, the estimated administrative cost to the Department would be \$18,000 per year.

PAPERWORK REQUIREMENTS

The final-form rulemaking will impose no new or different paperwork requirements.

REGULATORY REVIEW

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on October 9, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the

Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)), the final-form rulemaking was approved by the House State Government Committee on _____, 2004, and by the Senate State Government Committee on _____, 2004. Under section 5.1(e) of the Regulatory Review Act, the IRRC met on _____, 2004, and approved the final-form rulemaking.

EFFECTIVE DATE

This final-form rulemaking is effective as of this publication in the *Pennsylvania Bulletin*.

ADDITIONAL INFORMATION

Individuals who need information about the final-form rulemaking should contact Mary Benefield Seiverling, Senior Counsel, Department of General Services, Office of Chief Counsel, 603 North Office Building, Harrisburg, PA 17125.

FINDINGS

The Department finds that:


- (1) Public notice of intention to promulgate administrative regulations amended by this order has been given under Section 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 and 7.2.
- (2) The final-form rulemaking adopted by this order is necessary and appropriate for the performance of the Department's duties under the Administrative Code of 1929.

ORDER

The Department, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department, 4 Pa. Code, are amended by deleting the text of Chapter 61 and inserting the headings as set forth in Annex A.
- (b) The Secretary shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.



Donald T. Cunningham, Jr.
Secretary

Fiscal Note: 8-3. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart C. CONSTRUCTION AND PROCUREMENT

ARTICLE II. CONSTRUCTION

CHAPTER 61. (Reserved)

(Editor's Note: The Department is deleting the text of Chapter 61, which appears in 4 Pa. Code pages 61-1--61-12, serial pages (235019)--(235030).)

§ 61.1--61.16. (Reserved).

ARTICLE II. CONSTRUCTION

Chap.		Sec.
61.	INSTRUCTIONS TO BIDDERS	61.1
62.	COMMITTEE ON CONSTRUCTION CONTRACT DOCUMENTS ..	62.1
63.	GENERAL CONDITIONS OF THE CONTRACT	63.1
64.	SELECTIONS COMMITTEE	64.1
65.	STATE ART COMMISSION	65.1
67.	EMERGENCY CONSTRUCTION REPAIRS	67.1

Authority

The provisions of this Article II issued under The Administrative Code of 1929 (71 P. S. §§ 61—63, 66, 158, 188, 631, 631.1, 631.2, 632, 633.1, 638, 641—643 and 645), unless otherwise noted.

Source

The provisions of this Article II adopted October 17, 1975, effective October 18, 1975, 5 Pa.B. 2753, unless otherwise noted.

CHAPTER 61. INSTRUCTIONS TO BIDDERS

Sec.	
61.1.	Work to be performed.
61.2.	Familiarity with proposed work.
61.3.	Interpretation.
61.4.	Proposal guaranty.
61.5.	Delivery of proposals.
61.6.	Withdrawal of proposals.
61.7.	Bid opening procedure.
61.8.	Rejection of proposals.
61.9.	Proof of bidder's responsibility.
61.10.	Unit prices.
61.11.	Collusive bids will be rejected.
61.12.	Award of contract.
61.13.	Execution of contract and contract bond.
61.14.	Failure to execute contract.
61.15.	Veteran's preference.
61.16.	Proof of surety's responsibility on contract bond.

§ 61.1. Work to be performed.

The work to be performed is described in the contract documents for the project which are on file and may be inspected during business hours at the office of the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120. Copies may be secured upon application to the Department or to the Professional by making a deposit in the amount stipulated in the "Notice to Contractors" for each set of plans, specifications, and proposal forms. This deposit will be refunded upon the receipt of a bona fide bid, or a list of bidders to whom prices were forwarded, and the return of the plans and specifications in

good order within 15 days after the opening of bids, otherwise the deposit will be forfeited. The first and second low bidders shall not be required to return the plans and specifications within the specified time but may return the plans and specifications within ten days after the award of contract. Additional sets or parts of sets may be purchased as provided in the "Notice to Contractors."

§ 61.2. Familiarity with proposed work.

It is the responsibility of the bidder, by careful personal examination of the site, to satisfy himself as to the nature and location of the work, the conformation of the ground, the soil and rock conditions, and the character, quality and quantity of the materials which will be required. The bidder shall examine carefully the proposed contract, the plans, specifications and all other documents and data pertaining to the project. The bidder shall not at any time after the execution of the contract, make any claims whatsoever alleging insufficient data or incorrectly assumed conditions, nor shall he claim any misunderstanding with regard to the nature, conditions or character of the work to be done under the contract.

§ 61.3. Interpretation.

(a) Every request for an interpretation shall be made in writing to the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120. No oral interpretation will be made to any bidder as to the meaning of the plans and specifications. Any inquiry for an interpretation received ten or more days prior to the date fixed for the opening of bids shall be given consideration by the Department. Every interpretation made to a bidder will be in the form of a bulletin in the drawings or specifications. It is the bidder's responsibility to request all bulletins issued upon which request the Department or the designated professional shall forward all information available to the bidder. All such bulletins shall become a part of the contract documents and all bidders shall be bound by the bulletins, whether or not received by the bidders.

(b) All bids must be submitted on forms prepared by the Department. Proposal forms are supplied in duplicate, one of which is to be submitted to the Department and the other is for the bidder's use. The blank spaces in the proposal form shall be filled in correctly, where indicated for each and every item for which description is given, and the bidder must state the prices, which should be typed or written in ink, in words and numbers, for which he proposes to do each part of the work contemplated, and the total amount for all the parts included in any or all of the combinations of the work. In case of discrepancy, the written words shall be considered as being the bid price.

(c) The bidder shall sign his proposal correctly. If the proposal is made by an individual, his complete post office address should be given in addition to his signature. If made by a firm or partnership, the complete post office address of each member of the firm or partnership must be given. If made by a corporation, the person signing the proposal shall be the President or Vice President and the

Secretary or Treasurer of the corporation; otherwise, the signing individual's certificate of authority to execute such papers shall accompany the proposal.

(d) If the bidder has been incorporated in some state other than this Commonwealth, bidder shall state whether the corporation is registered to do business in this Commonwealth. If bidder operated under an assumed or fictitious name, he shall state whether such name has been registered in this Commonwealth.

(e) No contract will be awarded to a bidder who is a foreign corporation or operating under a fictitious or assumed name unless he has complied or agreed to comply with the proper registration under the laws of this Commonwealth.

§ 61.4. Proposal guaranty.

The bid must be accompanied by a certified check, bank cashier's check, or bid bond on the form provided by the Department of General Services, payable to the Department of General Services in the amount specified in the proposal. All checks or bid bonds not forfeited under the terms of bidding except for the two lowest responsible bidders, shall be returned on or before the sixth day subsequent to the bid opening. The security of the two lowest responsible bidders, except where forfeiture of security is required, shall be returned upon the execution of all contract documents by the lowest responsible bidder. In the event the contract is not awarded by the Department, the proposal guaranty of the two lowest bidders will be returned on or about 45 days after the date of the bid opening, unless an extension is granted by the bidder.

§ 61.5. Delivery of proposals.

It is the responsibility of the bidder to submit his bid to the Department prior to the time of opening, regardless of the medium used. No bid shall be considered if it arrives after the time set for the bid opening. Each proposal should be submitted in a special envelope furnished by the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120. If forwarded by mail, the above mentioned envelope shall be addressed to the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120, preferably by registered mail. If forwarded otherwise than by mail, it shall be delivered at the office of the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120, prior to the time stated in the "Notice to Contractors."

§ 61.6. Withdrawal of proposals.

Bidders may withdraw any proposal after it has been received by the Department provided the bidder makes his request in writing. The request must be received prior to the time of the bid opening. Where the request for withdrawal is made by telegram, said withdrawal will not be effective until a confirmation letter is received by the Department. The letter confirming the withdrawal must be posted prior to the time of the bid opening, must be registered or certified and

must be executed by parties authorized to execute the contract bid proposal. At the bid opening the low bidder on one contract may withdraw his bid or bids on subsequent contracts before such subsequent bids are read, if and only if, the representative of the bidder at the bid opening has written authority executed by the persons who have executed the bid or bids to be withdrawn. Such written letter of authority shall be given to the representatives of the Department prior to the time of the reading of the subsequent bids.

§ 61.7. Bid opening procedure.

Sealed proposals on contract documents which were prepared by the professional named in the request for proposals, will be received by the Department of General Services at its office, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120, until the time stated in the "Notice to Contractors" at which time all proposals will be publicly opened, read, tabulated and the tabulation made public. All such proposals shall be enclosed in a sealed envelope and marked plainly on the outside with the contract number, bid opening date and time.

§ 61.8. Rejection of proposals.

(a) The right is reserved to the Department, in its discretion, to reject any or all bids or parts thereof. Proposals may be rejected if they show any omission, alterations of form, additions or deductions not called for, conditional or uninvited alternate bids, or irregularities of any kind, but the Department reserves the right to waive defects or irregularities on proposals.

(b) The Department in its sole discretion may reject as not being the bid of the lowest responsible bidder, the bid of any bidder who has failed to meet the requirements of this Chapter.

§ 61.9. Proof of bidder's responsibility.

(a) On request, or if specifically required by the terms of the proposal, bidders shall file an experience questionnaire and financial statement with the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120, on the form of the Department. The questionnaire and statement shall be certified to be true and correct by an affidavit sworn to or affirmed before a notary public, or other officer empowered to administer oaths or affirmation. Falsification of any information as requested may result in rejection of bid, forfeiture of bid bond or cancellation of the contract award.

(b) If required, bidder shall prove ownership of current assets over and above the current liabilities in amount equal to at least 20% of the bid price if the bid price is under \$2 million; \$400,000 plus 15% of all in excess of \$2 million if the bid price is over \$2 million and not exceeding \$3.5 million; \$625,000 plus 10% of all in excess of \$3.5 million if the bid price is over \$3.5 million and not exceeding \$6 million; \$875,000 plus 5% of all in excess of \$6 million if the bid price is over \$6 million. No asset will be considered current unless there is rea-

sonable expectation that it will be realized within a period of one year; nor will any liability be considered current that will not be liquidated within one year.

(c) In addition to the financial qualifications, the bidder may be required to prove to the satisfaction of the Department that he has successfully completed a contract for similar work in an amount of not less than 75 percent of the amount of the proposed contract.

(d) The foregoing will guide the Department in determining the responsibility of the bidder, but additional information may be requested by the Department whenever in its judgment such information is necessary to determine the responsibility of the bidder.

(e) In the event the bidder fails, refuses or neglects to submit any required information within the reasonable time stated in any request therefor or fails to qualify as a responsible bidder, his proposal guaranty shall be forfeited to the use of the Department, not as a penalty, but as liquidated damages.

§ 61.10. Unit prices.

Where the proposal is based on unit prices for estimated quantities, the unit prices control and not the totals or extensions.

§ 61.11. Collusive bids will be rejected.

The proposals of any bidder or bidders who engage in collusive bidding shall be rejected. Any bidder who submits more than one proposal in such manner as to make it appear that the proposals submitted are on a competitive basis from different parties shall be considered a collusive bidder. The Department may reject the bid proposals of any collusive bidder upon bid openings of future projects. Nothing in this section shall prevent a bidder from superseding a bid proposal by a subsequent proposal delivered prior to bid opening which expressly revokes the previous bid.

§ 61.12. Award of contract.

The Department shall have the right to reject any or all proposals or any parts thereof or items therein. The Department shall have the right to waive technicalities for the best interests of the Department. If an award of contract is made, it will be made to the lowest responsible bidder within 49 days from the date of bid opening. This time may be extended by written consent of either of the two lowest responsible bidders. Award will be made by letter mailed to the contractor and shall be effective the date of the mailing. If the lowest bidder withdraws his bid, refuses award of contract or refuses to grant an extension of time to award contract, the Department shall have the right to award the contract to the next lowest responsible bidder or to reject all bids and rebid the contract.

§ 61.13. Execution of contract and contract bond.

The individual, firm or corporation to whom or to which the contract has been awarded, must, within 10 days after receipt of the documents, sign and return to the Department of General Services, Eighteenth and Herr Streets, Harrisburg, Pennsylvania 17120, the contract documents, and a contract bond, or bonds, on the form provided by the Department, in the penal sum equal to the amount of the awarded contract, for the faithful performance of the contract, and to cover the prompt payment in full for all materials furnished and labor supplied or performed and equipment actually rented, but not sold, and a bond in the penal sum of 10% of the contract amount, covering the correction of defective workmanship and material for one year after the completion and acceptance of the work, such bond or bonds to be executed by a surety company or companies qualified to do business in the Commonwealth. Failure or refusal of contractor to properly execute the contract documents or furnish said bonds shall be considered a refusal to accept the award or a default of contract at the Department's discretion.

§ 61.14. Failure to execute contract.

If the lowest responsible bidder to whom the contract is awarded fails to give bonds or execute the contract within the time specified, the amount of the proposal guaranty shall be paid to the Department as liquidated damages. In such case the Department, in its discretion, may award the contract to the next lowest responsible bidder, or reject all bids.

§ 61.15. Veteran's preference.

The Department strongly recommends that, all things being equal, contractors give preference in employment on projects of the Department to veterans of the Armed Services of the United States of America.

§ 61.16. Proof of surety's responsibility on contract bond.

(a) The surety company, which is designated by the lowest responsible bidder for the faithful performance of the contract and prompt payment of materials, equipment and labor, shall with its contract bond furnish the Department a certificate showing that the amount of the bond is within the limit of net retention, or evidence that appropriate reinsurance or other security has been obtained in conformance with section 661 of The Pennsylvania Insurance Company Law of 1921 (40 P. S. § 832).

(b) If the surety has entered into an agreement for reinsurance under section 661 of The Insurance Company Law of 1921 (40 P. S. § 832), the bond shall be supported by a duplicate original of the reinsurance agreement which shall contain a "direct liability to insured" clause enabling the Department to maintain an action against the company reinsured jointly with the reinsurer and, upon recovering judgment against such reinsured, to have recovery against such reinsurer,

for payment to the extent in which it is liable under such reinsurance and in discharge thereof.

STANDARD FORM OF AGREEMENT BETWEEN THE DEPARTMENT AND CONTRACTOR

THIS AGREEMENT, executed this _____ day of _____ 19____, A.D., by and between The Department of General Services, created by Act No. 45 of July 22, 1975, hereinafter called "Department" and _____ of _____ a corporation, incorporated under the laws of the State of _____ its successors and assigns, party of the second part, hereinafter called "Contractor."

OR

THIS AGREEMENT, executed this _____ day of _____ 19____, A.D., by and between The Department of General Services, created by Act No. 45 of July, 1975, hereinafter called "Department" and _____ of _____ his, her or their heirs, executors, administrators and assigns, party of the second part, hereinafter called "Contractor."

Article 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Notice to Bidders, the Instructions to Bidders, the Bid Proposal, the Contract Bond, the Conditions of the Contract (General, Special, Supplementary and other Conditions), the Drawings, the Specifications, all Bulletins, and Addenda issued prior to execution of this Agreement, and all Modifications thereto issued subsequent thereto, and all other documents enumerated or referred to in Article 6 of the Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

Article 2

THE WORK

The Contractor shall perform all the work required by the Contract Documents for the construction of _____

Article 3

PROFESSIONAL

The Professional for this Project is _____

Article 4

TIME OF COMMENCEMENT AND COMPLETION

The work to be performed under this Contract shall be commenced with all off site work required by the contract immediately after receipt of notice of award of contract and Contractor shall commence operations on site promptly after the initial job conference, and to complete the same to the satisfaction and approval, in every respect, of the Department, on or before _____ Contractor further agrees that time is of the essence of this contract, and that if he shall fail to complete the work within the time above specified or such extensions thereof as shall be granted as herein provided, the Contractor shall pay the Department, as liquidated damages and not as a penalty for such failure, the sum of _____ Dollars (\$ _____) per day for each and every (calendar) day thereafter until such work shall be completed and accepted; provided, however, that the Department, in its discretion, may extend the completion date of said contract for causes over which Contractor has no control and which in fact delay the completion of said work, and in such case Contractor shall become liable for said liquidated damages only from the date on which said extended period shall expire.

Unit prices contained in the bid proposal for additions to or deductions from estimated quantities have been _____

Article 5**CONTRACT SUM**

The Department shall pay the Contractor for the performance of the Work subject to additions and deductions by Change Order as provided in the Conditions of the Contract, in current funds, the contract sum of _____ Dollars (\$_____) payment to be made as set forth in the Conditions of the Contract, provided, however, that deductions from or additions to said sum to be paid will be made under the circumstances and upon the basis set forth in the Conditions of Contract.

Article 6**PROGRESS PAYMENTS**

Based upon Applications for Payment submitted to the Professional by the Contractor, the Department shall make progress payments on account of the contract sum to the Contractor as provided in the Conditions of the Contract.

Article 7**FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Department to the Contractor _____ days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, and a final Certificate for Payment has been issued as provided in the Conditions of the Contract.

Article 8**MISCELLANEOUS PROVISIONS**

8.1. Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

8.2. The Contract Documents, which constitute the entire agreement between the Department and the Contractor, are listed in Article 1 of the Agreement and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.3. Contractor covenants and agrees to remedy without cost to the Department, any defect which may develop within one year from the date of completion and acceptance of the work performed under this contract, provided said defects in the judgment of the Department, or its successors having jurisdiction in the premises, are caused by defective or inferior materials, equipment and workmanship and the bond hereto attached and made a part hereof shall provide a guarantee in the sum of ten percent of the total contract price of the work done for the correction and remedy of such defect.

8.4. The Contract Bond given by the Contractor conditioned upon the faithful performance of the Contract; the payment of labor, material, equipment rental and public utility service claims; and the correction of defective installation or non-conforming materials and equipment is attached hereto and made a part hereof; however, no third party shall acquire any rights against the Department under the Contract Documents.

8.5. The Contractor agrees to abide and be bound by the law of the Commonwealth relating to and regulating the hours and conditions of employment by Acts of Assembly in such case made and provided.

8.6. Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment or rendering public utility services in connection with performance of this contract shall have a right of action to recover the cost thereof from the contractor and the surety on the bond given to secure the payment for such labor, material, equipment or equipment rental and services rendered by public utility as though such person or corporation had been named as obligee in such bond; subject to the provisions of the Act of December 30, 1937, P. L. 869 (No. 385), (3 P. S. § 191 et seq.). It is hereby agreed that no third party rights arise against the Department for any reason under this section and Contractor hereby agrees to so inform all subcontractors in writing.

Article 9

CONTRACT COMPLIANCE REGULATIONS

INCLUDED IN AND MADE A PART OF THIS CONTRACT IS EXHIBIT "A", A CLAUSE PROHIBITING DISCRIMINATORY PRACTICES BY THE CONTRACTOR. ALSO INCLUDED IN AND MADE A PART OF THIS CONTRACT IS EXHIBIT "B", A COPY OF 16 PA. CODE CH. 49, HUMAN RELATIONS COMMISSION CHAPTER 49, CONTRACT COMPLIANCE REGULATIONS.

IN WITNESS WHEREOF, the Department of General Services has caused these presents to be executed and its departmental seal affixed thereto and the Contractor, if incorporated, has caused these presents to be executed in a like manner, or if not incorporated, has set his or their hand(s) and seal(s) the day and year above written.

COMMONWEALTH OF PENNSYLVANIA
Acting through the Department
of General Services

ATTEST: _____

BY _____ (SEAL)
(Secretary of General Services)

(Date)

WITNESS: _____

(Contractor-Individual) (SEAL)

WITNESS: _____

Contractor-Partnership (SEAL)

(SEAL)

(SEAL)

(SEAL)

(CORPORATE SEAL)

ATTEST: _____
Secretary

By _____
Contractor-Corporation
President
Approved as to legality and form of
execution this _____ day of
_____, 19____
Council for
Department of General Services

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned _____

as Principal and _____

(Surety Company)

(Address) _____

a corporation organized and existing under the laws of the State of _____ and authorized to transact business in Pennsylvania, as Surety, are held and firmly bound unto the Department of General Services as hereinafter set forth, in the full and just several sums of

(a) _____

Dollars (\$ _____),

for faithful performance of the contract as designated in Paragraph "A"; and

(b) _____

Dollars (\$ _____),

for payment for labor, material, equipment rental and public utility services as designated in Paragraph "B"; and

(c) _____

Dollars (\$ _____).

for maintenance as designated in Paragraph "C";

lawful money of the United States of America, to be paid to the Department of General Services, its successors or assigns, to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Scaled with our respective seals and dates this _____ day of _____ 19____

WHEREAS, the above bounden Principal has entered into a contract with the Department of General Services dated the _____ day of _____ 19____, for _____

upon certain terms and conditions in said contract more particularly mentioned; and

WHEREAS, it is one of the conditions of the award of the Department of General Services pursuant to which said contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That if the above bounden Principal as Contractor shall well and faithfully do and perform the things agreed by him to be done and performed according to the terms of said contract and General Conditions, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided, and which are hereby made part of this bond the same as though they were fully set forth herein, and shall indemnify and save harmless the Department of General Services and all of its officers, agents and employees from any expense incurred through the failure of said Contractor to complete the work as specified and for any damages growing out of the manner of performance of said contract by said Contractor or his Subcontractors, or his or their agents or servants including but not limited to patent, trade-mark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That if the above bounden Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of his Subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor entered into and become component parts of the work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. That, if the above bounden Principal shall remedy without cost to the Department of General Services any defects which may develop during a period of one year from the date of completion and acceptance of the work performed under said contract; provided, in the judgment of the Department of General Services or its successor having jurisdiction in the premises, such defects are caused by defective or inferior materials or workmanship, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect. The duties and responsibilities incurred by the Principal pursuant to said Maintenance Bond shall in no way qualify or limit any right of the Department of General Services arising pursuant to the terms and conditions of the Performance Bond or absolve the Principal of any duty, responsibility or obligations vested in the Department of General Services.

D. It is further agreed that any alterations which may be made in the terms of the contract or in the work to be done, or materials to be furnished, or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Department of General Services of any extension of time for the performance of the contract, or the reduction of the retained percentage as permitted by the contract, or any other forbearance on the part of either the Department of General Services or the Principal to the other, shall not in any way release the Principal and the Surety or Sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the Surety or Sureties of any such alterations, extension, or forbearance being hereby waived.

E. The Principal and Surety hereby jointly and severally agree with the obligee herein that every person, co-partnership, association or corporation who, whether as Subcontractor or as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the work as above provided and any public utility who has rendered services, in, or in connection with, the prosecution of such work,

61-11

Repeal Analysis Form

<p>(1) Agency</p> <p>Department of General Services</p>	<p>(2) I.D. Number (Governor's Office Use)</p> <p align="center">8-4</p>
<p>(3) Short title</p> <p>Instructions to Bidders</p>	
<p>(4) PA Code Cite</p> <p>4 Pa. Code Chapter 61</p>	<p>(5) (Reserved)</p>
<p>(6) Type (check one)</p> <p><input checked="" type="checkbox"/> Proposed</p> <p><input type="checkbox"/> Final</p>	<p>(7) Is a 120 Day Emergency Certification attached?</p> <p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<p>(8) Briefly explain in clear and nontechnical language the regulation:</p> <p>The regulation sets forth the instructions which are given to bidders on Department of General Services' construction projects. They instruct bidders how to prepare and submit their bids.</p>	
<p>(9) Briefly explain why this regulation is proposed for repeal:</p> <p>Bid instructions which are established by regulation do not allow for flexibility. These provisions must be customized by the Department for individual projects, as required. The Department has substantially modified these bid instructions in the years since 1975 without amending these regulations.</p>	
<p>(10) Please list the proposed schedule for repeal noting any public comment periods:</p> <p>Since the regulatory instructions are not the current Department of General Services' instructions to bidders, this regulation should be repealed immediately.</p>	
<p>(11) State any costs and/or savings associated with the repeal:</p> <p>There will be some savings in administrative time and expense. The Department of General Services would incur significant time and expense if it was required to proceed with the regulatory process each time that it wanted to revise its instructions to bidders. The estimated cost is \$18,000/yr. if the regulation is not repealed and the Department decides to change its instructions twice a year and it is required to pursue the regulatory process.</p>	



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
DEPARTMENT OF GENERAL SERVICES
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
PHONE: (717) 787-5599
FAX: (717) 787-9138

Robert Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

**Re: Repeal of Department of General Services Regulations
4 Pa. Code Chapter 61 (Instructions to Bidders)**

Dear Mr. Nyce:

Enclosed is a final-form regulation that will repeal regulations containing instructions to bidders. This regulation was published as proposed rulemaking at 32 Pa.B. 5277 on October 26, 2002.

The instructions to bidders tell the bidders how to prepare and submit their bids for construction projects. When the bid instructions for construction contracts are established by regulation, they do not allow for flexibility. These provisions must be customized by the Department for individual projects. The Department has substantially modified these bid instructions in the years since 1975 without amending the regulations. Since the regulatory instructions are not the current Department instructions to bidders, this chapter is obsolete and is being deleted.

This final-form regulation, which amends by deletion *Pennsylvania Code*, Title 4, Chapter 61 (Instructions to Bidders) is submitted for review pursuant to the Regulatory Review Act.

The Department of General Services will provide your Commission with any assistance required to facilitate a thorough review of this proposal.

Sincerely,

A handwritten signature in cursive script that reads "Mary Benefield Seiverling".

Mary Benefield Seiverling
Senior Counsel

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 8-004
 SUBJECT: Instructions to Bidders
 AGENCY: DEPARTMENT OF GENERAL SERVICES

#2305

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2004 SEP 24 11:09:57
 REGISTRY OF REGULATION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/24/04	<i>Thomas O'Connell</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
9/24/04	<i>Marianne Spurrini</i>	SENATE COMMITTEE ON STATE GOVERNMENT
9/24/04	<i>L. Sandee</i>	SENATE COMMITTEE ON STATE GOVERNMENT
9/24/04	<i>Marcia Ernst</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9/24/04	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)