***Justification:***

62 Pa. C.S.A §515(a)(4)&(10) of the Pennsylvania Procurement Code provides that a “contract may be awarded for a supply, service or construction item without competition if the contracting officer first determines in writing that one of the following conditions exists: (4) it is clearly not feasible to award the contract for supplies or services on a competitive basis; or (10) the contract for supplies or services is in the best interest of the Commonwealth.”

The Federal Trade Commission (“FTC”) filed suit against multiple defendants in the spring of 2020 in a case titled Federal Trade Comm’n, et. al. v. American Future Systems, Inc., et al, Case No. 2:20-cv-02266, in the United States District Court for the Eastern District of Pennsylvania. The Commonwealth of Pennsylvania, Office of Attorney General (“OAG”) joined the FTC as a plaintiff in the lawsuit in January 2021. While the FTC initiated the case and took the lead in litigation, a Supreme Court decision has since held that the FTC cannot recover monetary damages. In contrast, Pennsylvania’s consumer protection law permits the recovery of restitution and civil penalties, millions of dollars of which are at issue in this case. Pennsylvania’s consumer protection law also includes a substantive prohibition not available to the FTC that is directly relevant to the case. Thus, Pennsylvania’s role in the litigation has become critical.

To date, the parties have used Veritext for court-reporting and transcription services, primarily because of the need for Vertitext’s proprietary Exhibitshare platform. Exhibitshare is an electronic exhibit-sharing platform through which exhibits are electronically uploaded and then marked and introduced in real time while permitting counsel, witnesses, and court reporters to have simultaneous access to the exhibits. This technology has been used for all depositions in this litigation, and there are currently over 250 cumulatively marked exhibits in Exhibitshare, including PDFs, Excel spreadsheets, and audio recordings.

The FTC has requested that the OAG cover the cost of the remaining six depositions to be taken in this litigation. Remote deposition protocols in this case are governed by a court order. While the order was entered during the height of the COVID pandemic, there are witnesses and attorneys in Philadelphia, Harrisburg, Ohio, New York, and Arizona. Thus, the use of remote depositions is necessary and cost-effective even post-pandemic. The current fact-discovery deadline is March 13, although limited extensions related to deposition scheduling may be sought. Given the limited time left in discovery, the parties prior use of Veritext’s proprietary Exhibitshare technology, and the court’s order governing remote deposition protocols, it would be nearly impossible for the OAG to procure another vendor in a timely manner while complying with the court’s Order as well as standard procurement requirements.

Pursuant to 62 Pa. C.S.A §515(a)(4)& (10), a competitive bid is not feasible under the circumstances. With discovery ending soon, a competitive bid would cause a significant delay in the completion of discovery, possibly thwart OAG’s efforts to depose individuals crucial to the case, and likely increase costs. The consequence of delaying litigation or not completing the depositions within the discovery period would harm Pennsylvania consumers. Therefore, the procurement of Veritext to provide deposition transcript services, together with access to and use of the Exhibitshare platform, provides: 1) a cost and time effective means of procuring services; 2) assurance that the selected Vendor is capable of performing the services required with depositions occurring imminently; and 3) compliance with the Court’s standing order governing remote depositions. In sum, the procurement is in the best interests of the Commonwealth to effectively and efficiently pursue litigation aimed at protecting Pennsylvania consumers.