



The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at [wvOASIS.gov](http://wvOASIS.gov). As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at [WVPurchasing.gov](http://WVPurchasing.gov) with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header @ 1

List View

General Information | Contact | Default Values | Discount | Document Information | Clarification Request

Procurement Folder: 1193963

Procurement Type: Central Master Agreement

Vendor ID: 000000181563

Legal Name: GORDON FOOD SERVICE INC

Alias/DBA:

Total Bid: \$0.00

Response Date: 04/11/2023

Response Time: 9:51

Responded By User ID: GFSBIDS1

First Name: Brad

Last Name: King

Email: gfsallegHENYvalleybid@gfs.cr

Phone: 616-717-6985

SO Doc Code: CRFQ

SO Dept: 0613

SO Doc ID: VNF2300000009

Published Date: 3/31/23

Close Date: 4/12/23

Close Time: 13:30

Status: Closed

Solicitation Description: Prequalification for Food, Beverage, and Paper Goods.

Total of Header Attachments: 1

Total of All Attachments: 1



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

**State of West Virginia  
 Solicitation Response**

**Proc Folder:** 1193963  
**Solicitation Description:** Prequalification for Food, Beverage, and Paper Goods.  
**Proc Type:** Central Master Agreement

Solicitation Closes	Solicitation Response	Version
2023-04-12 13:30	SR 0613 ESR04112300000004988	1

**VENDOR**  
 000000181563  
 GORDON FOOD SERVICE INC

**Solicitation Number:** CRFQ 0613 VNF2300000009  
**Total Bid:** 0  
**Response Date:** 2023-04-11  
**Response Time:** 09:51:03  
**Comments:**

**FOR INFORMATION CONTACT THE BUYER**  
 David H Pauline  
 304-558-0067  
 david.h.pauline@wv.gov

**Vendor Signature X** **FEIN#** **DATE**

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Food, Beverage, and Paper Goods				0.00

Comm Code	Manufacturer	Specification	Model #
50000000			

**Commodity Line Comments:** Thank you for including us your prequalification for Food, Beverage, and Paper goods bid.

**Extended Description:**

Food, Beverage, and Paper Goods



To: State of West Virginia Department of Administration Purchasing Division

Thank you for including Gordon Food Service in your bid process. We appreciate the opportunity to bid on your food service needs. Attached you will find the *VNF2300000011* bid that is due by 4/12/2023. Gordon Food Service's submission is subject to the terms and clarifications contained in its Bid proposal, including the enclosed Supplemental Terms and Conditions for Bid Proposals.

Please note you can access our product catalog and nutritional information through our GFS Experience on-line ordering system via [www.gfs.com](http://www.gfs.com)

Thank you for your time and your business and if you have any questions or concerns, please feel free to contact me.

**SUPPLEMENTAL TERMS AND CONDITIONS  
FOR BID PROPOSALS**

1. **Applicability.** These supplemental terms and conditions (collectively, the “Terms”) are an integral part of Gordon Food Service, Inc.’s or any subsidiaries’ (“Gordon”) proposal (the “Bid Proposal”) provided in response to a request for proposal or similar document or request (the “RFP”) issued by a customer or a group purchasing organization or co-operative on behalf of itself and/or its members (each, a “Customer”). The Terms shall apply to all sales of goods and services (collectively, “Products”) supplied from time to time by Gordon to any Customer in connection with the RFP and Bid Proposal and any resulting contract or otherwise.

2. **Contract Terms.** By awarding the Bid to Gordon or ordering Products from Gordon, each Customer agrees that the terms of the resulting contract will be governed by and construed in accordance with the terms and clarifications included in Gordon’s Bid Proposal (including but not limited to these Terms), which will become part of the resulting contract (a “Contract”). The Contract will comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything to the contrary in the RFP or any purchase order or other document issued by any Customer, in the event of a conflict between or among the terms of the documents which comprise the Contract, the documents will control in the following order: the Bid Proposal, these Terms, and the RFP. Any purchase order or other document issued by any Customer containing any inconsistent or additional terms to the Contract is expressly rejected and does not serve to modify or amend these Terms or the Contract.

3. **Warranty.**

a. Gordon warrants to Customer that all Products (a) while in Gordon’s possession or control, will be handled, stored and transported by Gordon in compliance with all applicable laws, regulations and other legal requirements, and (b) will not, while in Gordon’s possession or control, become mislabeled or adulterated, due to the act or omission of Gordon or its employees or agents, so as not to comply with all applicable laws, regulations and other legal requirements. **GORDON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM, USAGE IN TRADE, OR BY COURSE OF DEALING.**

b. Gordon does not manufacture any of the Products. The availability of Products does not indicate an affiliation with or endorsement of any Product or manufacturer. Gordon will assign to Customer all of its rights against the manufacturers and suppliers of the Products under the warranties (if any) which Gordon receives, to the extent the rights are assignable. Gordon shall provide reasonable support to Customer in the pursuit of any such warranty claims, provided that there is no additional cost to Gordon.

4. **Indemnification.** Subject to these Terms and in full replacement of any provisions in the RFP or otherwise relating to indemnification, Gordon will indemnify and defend Customer against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses, including reasonable attorneys’ fees, that are sought by any third-party from Customer arising out of: (a) any negligent or more culpable act or omission of Gordon (including any reckless or willful misconduct) in connection with its performance of its obligations under the Contract; and (b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Gordon (including any reckless or willful misconduct). The foregoing obligation to indemnify and defend will not apply to the extent such claim or corresponding losses arise out of or result from the negligence or more culpable act or omission of Customer or its employees or agents. This Section sets forth the entire liability and obligation of Gordon and the sole and exclusive remedy for the indemnified party for any damages covered under this Section.

5. **Limitation of Liability.** In no event shall Gordon be liable under the Contract or otherwise, to Customer or any other person or entity for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, including, but not limited to, attorneys’ fees, lost profits or revenues or diminution in value, arising out of, relating to, or in connection with any breach of these Terms or the Contract, regardless of: (a) whether such damages were foreseeable, (b) whether or not Gordon was advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

6. **Excusable Delays.** Gordon shall not be liable for delays or failure to perform due, directly or indirectly, to: (a) causes beyond Gordon's reasonable control, (b) shortage of utility, facility, material or labor, delay in transportation, breakdown, including mechanical, electrical or other equipment failure, or (c) acts of God or nature, acts (including failure to act) of any governmental authority, wars (declared or undeclared), terrorist acts, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, disease, quarantine, pandemics, and epidemics). The parties acknowledge that, as of the date hereof, the parties are aware of, and have knowledge of the pandemic and global health crisis commonly known as COVID-19 ("COVID"). Despite their awareness or knowledge, the parties agree COVID and its effects could constitute events that could potentially excuse delay or non-performance under this Section. The parties also waive any argument that COVID and its effects cannot constitute such events due to the parties' awareness or knowledge of COVID and its effects or that COVID and its effects were allegedly foreseeable.

7. **Firm Adjustable Pricing.**

a. The prices of the Products included in the Bid Proposal are based on Product costs negotiated with vendors ("Product Cost") and other factors. Gordon negotiates Product Cost for extended periods of time in an effort to keep Product prices firm. However, extenuating circumstances may result in an unexpected price increase from the vendor or require Gordon to procure Product from an alternate source who may not honor the negotiated Product Cost. In addition, interruptions in the labor market and rapid inflation make it impossible for Gordon to tender a competitive mark-up on the Product Cost without significant risk of providing the Products at a loss due to future changes. Accordingly, and notwithstanding anything to the contrary in the RFP, Contract or otherwise, the Product prices contained in the Bid Proposal are offered conditionally on Gordon's ability to pass through increased costs or operational expenses as outlined in this Section. Commencing on the date that Gordon's Bid Proposal or renewal proposal, as applicable, is submitted, the price of the Products will be recalculated and set by Gordon according to (a) the prevailing Product Cost each August, October, January and March, plus (b) the difference between the applicable bid price of the Product less the original Product Cost (the "Fixed Fee") adjusted for inflation annually at the time of annual renewal of the Contract. The adjustment for inflation will be determined by the increase in the Consumer Price Index for All Urban Consumers (All-Items U.S. City Average (1982-1984=100)) published monthly by the Bureau of Labor and Statistics of the United States Department of Labor ("CPI-U"). At the time of the annual renewal of the Contract, the last published CPI-U rate will be compared to the published CPI-U rate for the same month in the prior year. The percent increase (if any) between the two rates will determine the percent increase to the Fixed Fee.

b. Customer may elect to purchase from Gordon other Products available from Gordon's that are not included in the RFP or Gordon's Bid Proposal ("Off-Bid Items"). If Customer requests, Gordon will make Off-Bid Items available for ordering on Customer's order guide. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, the price of Off-Bid Items will not be subject to the pricing offered in Gordon's Bid Proposal, but will instead have a separate price offered by Gordon on Customer's order guide that will be updated periodically by Gordon. Additional separate charges may apply to Off-Bid Items in connection with special orders.

8. **COVID-19 Protocols.** This Contract for supplies/products is not subject to (a) the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated as of September 9, 2021, including but not limited to any resulting administrative rulemaking, regulations, policies, or other guidance or publications (collectively, the "EO"), and (b) the requirements set forth in Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555 (Nov. 5, 2021) (the "CMS Rule" and, together with the EO, the "Vaccination Requirements"). Notwithstanding anything to the contrary in the RFP, Contract or otherwise, Gordon's Bid Proposal is expressly conditioned on the foregoing, and the Vaccination Requirements and any other requirement that Gordon vaccinate its employees are expressly rejected and do not serve to modify or amend these Terms or the Contract.

9. **Additional Charges.** The prices offered in Gordon's Bid Proposal are subject to certain additional charges not included in Gordon's Bid Proposal and the prices of the Products may include one or more additional charges if the Product is: (a) ordered in less than whole case quantities (to the extent available); (b) cross-docked

from a Gordon distribution center to the selling Gordon distribution center due to having weekly sales of less than 20 cases; or (c) ordered for expedited delivery and fulfilled by Gordon's affiliate, Gordon Food Service Store LLC.

10. **No Third-Party Beneficiaries; No Piggybacking.** These Terms do not and are not intended to confer any rights or remedies upon any person or entity other than Customer. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, to the maximum extent permitted by applicable law, in no event will GFS be obligated to extend the terms of the Contract to any third party (commonly referred to as piggybacking), including other school districts, administrative agencies, or other governmental instrumentalities.

11. **Minimum Delivery Amount.** Irrespective of the absence of any minimum order amount or any lesser minimum order amount specified in the RFP, Contract or otherwise, the minimum order amount to receive a delivery shall be \$750.00 per order.

12. **Diesel Fuel Surcharge.** Not included in the price of the Products is a surcharge for diesel fuel that may be applied if the average cost of diesel fuel exceeds \$4.000 per gallon. The surcharge will apply to each delivery and will apply notwithstanding anything to the contrary in the RFP, Contract or otherwise. The amount of the surcharge will be \$3.00 plus \$1.00 for each \$0.50 (or part of \$0.50) that the average cost of diesel fuel exceeds \$4.500 per gallon. The average cost of diesel fuel will be determined by the U.S. Average for Retail OnHighway Diesel Price per Gallon for the continental U.S. as published by the United States Energy Information Agency, or another similar index reasonably chosen by Gordon. The average will determine the surcharge for the entire month, effective on the first Monday of the month. The average will be calculated from the published weekly average over the previous month. Gordon's fiscal calendar will determine the monthly periods.

13. **Policies and Procedures.** Gordon recognizes that Customer may have certain policies and procedures that are attached to the RFP, incorporated by reference in the RFP, or which Customer may otherwise request be acknowledged and accepted by Gordon in some other form or instrument (collectively, the "Customer Policies"). Gordon agrees to comply with such Customer Policies, but only to the extent that (a) Gordon has affirmatively agreed to comply with in writing, (b) the Customer Policies are limited to employee conduct or appearance while on Customer's premises and have been adequately disclosed in writing to Gordon's employees in advance; (c) the Customer Policies are consistent with the provisions contained in Section 8 of these Terms; (d) the Customer Policies are consistent with the terms and conditions contained in the Contract; (e) the Customer Policies are not contrary to and do not conflict with Gordon's own policies and procedures; and (f) the Customer Policies do not require Gordon to incur any additional costs or expenses other than what is already contemplated in its Bid Proposal for the distribution of the Products. Gordon will not be bound by any amendments, updates, or changes to the Customer Policies, unless Gordon has separately agreed in writing to comply.

14. **Substitutions; Cost Coverage.** If Gordon is required to provide a substitute for the original Product, Gordon will make commercially reasonable efforts to find a replacement Product that has generally comparable specifications and has a similar price. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, the price of a substitute Product may be higher or lower than the price of the original Product. Should Gordon not be able to provide the original Product or provide an acceptable substitute Product, Customer may purchase such Product from another source for the period of time that Gordon is unable to provide the Product or an acceptable substitute. Gordon shall not be responsible for any difference in price of any Product purchased from another source or any substitute Product, or be liable for any costs, expenses, or losses incurred by Customer as a result of Gordon's breach of the Contract or its inability to supply one or more Products, notwithstanding anything to the contrary in the RFP, Contract or otherwise. Gordon makes no representation or warranty that the prices offered by Gordon are better than or more favorable than the prices offered by Gordon to any other customer. If Gordon offers a better price to another customer, Gordon shall have no obligation to match such price for Customer or issue a credit or refund to Customer, or otherwise adjust the price for Customer, if the price paid by Customer on any Product is not as favorable, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

15. **Proprietary Inventory.** If Customer requests and Gordon agrees to bring into inventory any Product that is primarily purchased only by Customer at the servicing Gordon distribution center (each, a "Proprietary Product"), the entire inventory of such Product, as replenished from time to time by Gordon, must be purchased by Customer. In the event Customer ceases to purchase a Proprietary Product, Customer must purchase all remaining inventory of such Proprietary Product within 30 days of Gordon's written notice to Customer. If the inventory is not purchased within 30 days, Gordon may dispose of the inventory in any reasonable manner and

Customer agrees to pay Gordon the applicable bid price for each case of Proprietary Product comprising the inventory plus Gordon's costs and expenses to dispose of the inventory.

16. **Taxes.** With the exception of any tax applied against Gordon's income, Customer shall be solely liable and shall indemnify Gordon for any tax, levy or other governmental obligation due or arising related to the sale of Products by Gordon to Customer or otherwise arising pursuant to the Contract.

17. **Renewals.** Any renewal or extension of the Contract term must be mutually agreed to by Gordon and Customer in a written instrument signed by both parties, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

18. **Termination.** Gordon reserves the right to terminate the Contract for any or no reason by providing Customer ninety (90) days' written notice.

19. **Confidentiality.** Gordon shall have no confidentiality obligation to Customer for any information or documentation Gordon may obtain in the performance of its obligations under the Contract.

20. **Setoff.** Customer shall have no right of setoff against any sums due to Gordon under the Contract or otherwise.

21. **No Assignment.** Customer shall not assign its rights under the Contract without Gordon's prior written consent.



Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

State of West Virginia  
 Centralized Request for Quote

<b>Proc Folder:</b> 1193963			<b>Reason for Modification:</b>
<b>Doc Description:</b> Prequalification for Food, Beverage, and Paper Goods.			
<b>Proc Type:</b> Central Master Agreement			
<b>Date Issued</b>	<b>Solicitation Closes</b>	<b>Solicitation No</b>	<b>Version</b>
2023-03-24	2023-04-12 13:30	CRFQ 0613 VNF2300000009	1

**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

**Vendor Customer Code:**  
**Vendor Name :** Gordon Food Service  
**Address :** 1300  
**Street :** Gezon Parkway  
**City :** Wyoming  
**State :** MI **Country :** USA **Zip :** 49509  
**Principal Contact :** Jill Willhide  
**Vendor Contact Phone:** 304-488-1360 **Extension:**

**FOR INFORMATION CONTACT THE BUYER**  
 David H Pauline  
 304-558-0067  
 david.h.pauline@wv.gov

Vendor  
 Signature X  FEIN# 38-1249848 DATE 4-10-2023

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION**

The State of West Virginia Purchasing Division, is soliciting bids for the West Virginia Veterans Nursing Facility, to establish Pre-qualification of Vendors for Food, Beverage, and Paper Goods. at the WV Veterans Nursing Facility located at 1 Freedom's Way, Clarksburg, WV, per the attached documentation.

**INVOICE TO****SHIP TO**

DIVISION OF VETERANS  
AFFAIRS  
1 FREEDOMS WAY

VETERAN'S NURSING  
FACILITY  
1 FREEDOMS WAY

CLARKSBURG                      WV  
US

CLARKSBURG                      WV  
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Food, Beverage, and Paper Goods				

Comm Code	Manufacturer	Specification	Model #
50000000			

**Extended Description:**  
Food, Beverage, and Paper Goods

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Vendor Technical Questions Due By 11:00 am est.	2023-03-30

	Document Phase	Document Description	Page
VNF2300000009	Draft	Prequalification for Food, Beverage, and Paper Goods.	3

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

**2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

**4. VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted emails should have the solicitation number in the subject line.

Question Submission Deadline: March 30, 2023, at 11:00 am., est.

Submit Questions to: David Pauline, Senior Buyer  
2019 Washington Street, East  
Charleston, WV 25305  
Fax: (304) 558-3970  
Email: david.h.pauline@wv.gov

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted on or before the date and time of the bid opening listed in section 7 below. Vendors can submit bids electronically through wvOASIS, in paper form delivered to the Purchasing Division at the address listed below either in person or by courier, or in facsimile form by faxing to the Purchasing Division at the number listed below. Notwithstanding the foregoing, the Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via email. Bids submitted in paper or facsimile form must contain a signature. Bids submitted in wvOASIS are deemed to be electronically signed.

Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason.

**For Request for Proposal ("RFP") Responses Only:** Submission of a response to a Request for Proposal is not permitted in wvOASIS. In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal prior to the bid opening date and time identified in Section 7 below, plus N/A convenience copies of each to the Purchasing Division at the address shown below. Additionally, the Vendor should clearly identify and segregate the cost proposal from the technical proposal in a separately sealed envelope.

**Bid Delivery Address and Fax Number:**

Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130  
Fax: 304-558-3970

A bid submitted in paper or facsimile form should contain the information listed below on the face of the submission envelope or fax cover sheet. Otherwise, the bid may be rejected by the Purchasing Division.

VENDOR NAME:

BUYER:

SOLICITATION NO.:

BID OPENING DATE:

BID OPENING TIME:

FAX NUMBER:

**7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by *wvOASIS* (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: April 12, 2023, at 1:30 pm., est.

Bid Opening Location: Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

**8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATE MODEL OR BRAND:** Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

**11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

**14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

**15. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: [www.state.wv.us/admin/purchase/vrc/Venpref.pdf](http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf).

**15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: [www.state.wv.us/admin/purchase/vrc/Venpref.pdf](http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf).

**16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37 and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

**17. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

**18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

**19. NON-RESPONSIBLE:** The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

**20. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

**21. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**22. WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.

**23. EMAIL NOTIFICATION OF AWARD:** The Purchasing Division will attempt to provide bidders with e-mail notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the Purchasing Division with a valid email address in the bid response. Bidders may also monitor *wvOASIS* or the Purchasing Division's website to determine when a contract has been awarded.

**24. ISRAEL BOYCOTT CERTIFICATION:** Vendor's act of submitting a bid in response to this solicitation shall be deemed a certification from bidder to the State that bidder is not currently engaged in, and will not for the duration of the contract, engage in a boycott of Israel. This certification is required by W. Va. Code § 5A-3-63.

## GENERAL TERMS AND CONDITIONS:

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

**Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of One (1) Year  
XXXXXXXXXXXX. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as N/A), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to Two (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

**Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

the contract will continue for \_\_\_\_\_ years;

the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

**One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

**Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

**Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

**Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

**Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

**Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

**One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

As specified in the Specifications for Prequalified Vendors

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.



**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

**Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

**Automobile Liability Insurance** in at least an amount of: \$100,000.00 per occurrence.

**Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

**Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

**Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

**Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

\_\_\_\_\_ for \_\_\_\_\_.

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

Revised 11/1/2022

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Stephanie Gibson

(Address) 4980 Gateway Blvd, Springfield OH 45502

(Phone Number) / (Fax Number) 937-525-7115

(Email address) Stephanie.Gibson@gfs.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

*By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.*

Gordon Food Service, Inc

(Company)

(Signature of Authorized Representative)

Bradley King, Bid Department Supervisor. 4/10/2023

(Printed Name and Title of Authorized Representative) (Date)

Phone: 616-717-6657 Fax: N/A

(Phone Number) (Fax Number)

Brad.King@gfs.com

(Email Address)

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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**PREQUALIFICATION AGREEMENT SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting this request for prequalification of vendors on behalf of the WV Veterans Nursing Facility located at 1 Freedom Way, Clarksburg, WV 26301.

The purpose of the Prequalification Agreement is to establish vendors from which the WVVNF can subsequently request bids for Food, Beverages, paper goods and supplies, and miscellaneous items as defined herein.

Once the Prequalified Vendors are established, WVVNF will only accept bids from them, and no other vendors' bids will be accepted.

There are no pricing pages with this solicitation. Requests for Bids will be sent after the Prequalified Vendors are established. See Sections 5 and 6 for additional details.

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.
- 2.1 **“Contract Item”** means the list of items identified in Section 4 below.
- 2.2 **“Delegated Prequalification Bidding”** means the Agency will obtain bids from the Prequalified Vendor as needed.
- 2.3 **“Facility or Agency or WVVNF”** means the WV Veterans Nursing Facility located at 1 Freedom Way Clarksburg, WV 26301
- 2.4 **“Prequalified Vendors”** means vendors meeting all Vendor Qualifications and awarded a Prequalified Vendor Agreement.
- 2.5 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals used to evaluate the vendor's bid. NOTE: There are no pricing pages with this bid. They will be requested after Prequalified Vendors are established. Price requests will ONLY be sent to Prequalified Vendors.
- 2.6 **“Requests for Bids”** means the solicitation from the Facility identifying the nursing staff needed and requesting pricing from the Prequalified Vendors prior to or at such time of need.
- 2.7 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.8 **“Vendor or Bidder”** means the prospective Vendor. Contracts may only be awarded to Prequalified Vendors.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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**3. GENERAL REQUIREMENTS:**

- 3.1 Vendor Shall maintain a supply of and access to adequate inventories of complete product lines for their awarded lot(s) as identified and contained in these specifications for all product categories listed herein.
- 3.2 Vendor shall maintain a distribution network for processing and shipping orders to agency.
- 3.3 Vendor shall provide contract services in a timely and efficient manner.
- 3.4 Vendor shall provide timely communication and responses to all matters related to contract administration, issue resolution and actively work to resolve any identified problems to the satisfaction of facility management.
- 3.5 Vendors shall ensure all staff assigned to this contract are qualified and possess the appropriate training and certifications regarding food handling and any other necessary training as needed to complete the services contained within the contract.
- 3.6 Vendor must have a minimum of five (5) years of experience in food and beverage supply for government agencies/facilities.
- 3.7 Proof of experience may should be submitted with bid and must be provided upon request.
- 3.8 Vendor must comply with WV rules, regulations, terms and conditions as outlined in the attached General Terms and Conditions.
- 3.9 Vendor will be required to register with wvOASIS ([www.wvoasis.gov](http://www.wvoasis.gov)) and WV Secretary of State ([www.wvsos.gov](http://www.wvsos.gov)) prior to orders being place with Vendor.

**4. CONTRACT ITEMS: Contract Items** must meet or exceed the mandatory requirements listed below:

- 4.1. Vendor shall provide food options for frequently ordered special diets including:
  - Low fat
  - Low calorie
  - Diabetic
  - Mechanical
  - Vegetarian and vegan
  - Lactose free
  - Gluten free
  - Various calorie level and diabetic diets
  - Puree
  - Renal
  - Finger foods

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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- 4.2. All food items must be USDA Grade A or USDA Grade 1 to include:
- 4.2.1 **Meat:**
    - 4.2.1.1 Beef – USDA Hamburger grade 80/20
    - 4.2.1.2 Pork – USDA Number 1-chops
    - 4.2.1.3 Veal – USDA Select and Choice
    - 4.2.1.4 Lamb – USDA Prime and Choice
  - 4.2.2 **Poultry:** USDA Grade “A” is to be used for all graded fresh or frozen poultry and poultry products as a minimum specification.
  - 4.2.3 **Seafood:** If available, fresh fish and seafood are preferred. Frozen fish must be an IFG nationally distributed brand, packed under continuous inspection of the US Department of Interior.
  - 4.2.4 **Fresh Vegetables:** Fresh USDA or State Graded “A”. Only fresh seasonal vegetables, cleaned, chopped, and ready to serve will be accepted, unless otherwise specifically requested by the agency.
  - 4.2.5 **Dry Goods:** Grade “A” Fancy
  - 4.2.6 **Canned Goods:** Grade “A” Fancy
  - 4.2.7 **Breads and Cereal:** Must include whole grain and enriched options.
    - 4.2.7.1
  - 4.2.8 **Canned Fruits and Juices:** All canned products shall be USDA Grade “A”.
  - 4.2.9 **Frozen Fruits and Juices:** All frozen fruits and juices shall be USDA Grade “A”.
  - 4.2.10 **Soups:** All soups shall be a base, cream, granular, and shelf stable.
    - 2.1.1.1
  - 4.2.11 **Snacks:** All snacks shall be packaged for Single Serve and Shelf Stable
  - 4.2.12 **Fresh Fruit:** All fresh fruit shall be USDA Grade “A”.
  - 4.2.13 **Coffee/Tea:** All coffee must be packaged in a sealed can, container, bag, K-Cup, or individual serving packet.
  - 4.2.14 **Spices/Seasonings:** All spices and seasonings shall be USDA Grade “A” and packaged to be shelf stable.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
FOOD, BEVERAGE, AND PAPER GOODS

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- 4.2.15 **Condiments:** All condiments, mustard, ketchup, mayonnaise, salad dressing, etc., shall be USDA Grade “A” and packaged in portion-controlled packets or sealed cups and be shelf stable. Paper Goods and Miscellaneous Items: Vendor shall provide disposal items such as paper and Styrofoam plates, cups, bowls, plastic utensils, napkins, plastic wrap, aluminum foil, and other miscellaneous items.
- 4.3. Vendor shall provide the brand names on all items available and provided. Packer label product is acceptable, but the correct brand or label must be stated in response to Requests for Bids
- 4.4. Vendor shall ensure that products have a minimum shelf life as follows:
- 4.4.1 Frozen Food – 3 Months
  - 4.4.2 Canned Food - 6 Months
  - 4.4.3 Staples and Box Mixes – 3 Months
- 4.5. Vendor shall make every effort to ensure that food products have expiration/shelf life or “best if used by” plainly marked.
- 4.6. Vendor must consistently provide all items identified within the contract. When a product is not available, the vendor shall immediately notify the Agency.
- 4.7. Miscellaneous:
- 4.7.1 No pork additives are acceptable in products that are not pork related. For example, Agencies will know that ham and bacon are obviously pork. Canned vegetables and other food items shall not contain pork unless specifically requested. No pork additives in gelatin or other foodstuffs shall be acceptable.
  - 4.7.2 MSG should be avoided. Bidders shall note any product they are bidding that contains MSG.
  - 4.7.3 If possible, products in glass containers should not be bid.
    - 4.7.3.1 There may be certain products that are available only in glass; but if the product is available in metal or plastic, bidders shall bid those items.
    - 4.7.3.2 Bidders must indicate if the container for the product they are bidding is glass.
- 4.8. Sizes: Vendor shall note both the size and the quantity as prices and as required for order (such as 24 cans/16 oz. each) of each product.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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- 4.9. Quality: All items should be USDA Grade “A” or USDA Grade 1 unless noted in the item specifications.
  - 4.9.1 All items bid should include the brand name the vendor intends to provide.
  - 4.9.2 Any item found not to be an acceptable quality shall result in a complete refund on all such products and shall promptly remove and replace any product Agency has received and determined to be unsatisfactory and/or not suitable for their facility.
  - 4.9.3 This removal and replacement shall be done in a timely manner. Agency will not pay for unsatisfactory items and if paid, Vendor shall reimburse Agency or provide a replacement product.
- 4.10. Quality Assurance: Vendor shall collaborate with the Agency to review and improve contract performance.
  - 4.10.1 Vendor shall provide a dedicated contact for the Agency to address concerns as they may arise.
  - 4.10.2 Vendor shall have the ability to track all products previously delivered and provide for immediate notification to the Agency of any known or identified recalled products.
  - 4.10.3 Vendor shall ensure that any recalled items must either be replaced, or a full credit is issued to the Agency’s account.
  - 4.10.4 Vendor shall ensure that all products must be able to be opened without difficulty and agrees that damaged, dented, or misshaped products that do not comply with the United State Food and Drug Administration (FDA) Food Code will not be considered acceptable.
  - 4.10.5 Additionally, no products will be accepted if the manufacture’s seal has been tampered with of broken.
  - 4.10.6 Vendor shall ensure that any shipments containing such defective merchandise must either be replaced, or credit issued to the Agency’s account.
- 4.11. Reports: Upon request, the Vendor shall provide to the Agency quarterly utilization reports containing at a minimum the following information.
  - 4.11.1 Ordering Entity
  - 4.11.2 Purchasing Order Number
  - 4.11.3 Description
  - 4.11.4 Quantity

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
FOOD, BEVERAGE, AND PAPER GOODS

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**5. VENDOR PREQUALIFICATION CONTRACT:**

- 5.1 **PREQUALIFIED VENDORS:** The purpose of this agreement is to establish a pool of Prequalified Vendors to provide the services listed in Section 4 “Mandatory Contract Items and Deliverables”.

**MULTIPLE AWARD:** All vendors responding to this “Request for Prequalification of Vendors” solicitation and meeting the qualifications in Section 3 “Vendor Qualifications” will be awarded a Vendor Prequalification Agreement.

The Vendor Prequalification Agreement will enable those vendors to submit responses to Requests for Bids.

**AGENCY WILL NOT ACCEPT RESPONSES TO REQUESTS FOR BIDS FROM ANY VENDOR THAT DOES NOT HAVE A VENDOR PREQUALIFICATION AGREEMENT.** Vendors cannot be added at a later date.

Prequalification Agreements are limited to a term of not more than three (3) years.

- 6. REQUESTS FOR BIDS:** All prequalified vendors will be sent requests for bids when services are needed. The requests for Bids will contain the following:

- 6.1 **Pricing Pages:** NOTE: There are no pricing pages with this bid. They will be requested after Prequalified Vendors are established. Responses to Requests for Bids will ONLY be accepted from Prequalified Vendors.
- 6.2 **Multiple Award:** This will be a progressive award contract with Multiple Vendors. Vendors may submit bids for (1) or (all) items on the Requests for Bids. The Agency usage will be prioritized by lowest bid. If Vendor A (lowest bid) cannot meet the needs, the Agency shall move to the next lowest bid (Vendor B) and so on.
- 6.3 **AGENCY WILL NOT ACCEPT RESPONSES TO REQUESTS FOR BIDS FROM ANY VENDOR THAT DOES NOT HAVE A VENDOR PREQUALIFICATION AGREEMENT.** Vendors cannot be added to a Vendor Prequalification Agreement at a later date.

- 7. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance in writing as outlined in the Requests for Bids. Vendor shall perform in accordance with the Vendor Prequalification Agreement, Requests for Bids, General Terms & Conditions and any contracts or purchase orders that may be issued by the Facility.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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**8. ORDERING AND PAYMENT:**

- 8.1 **Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, email, or any other written form of communication. Vendor may but is not required to accept on-line orders through a secure internet ordering portal/website. If Vendor can accept on-line orders, it should include in its response to Requests for Bids a brief description of how the Agency may utilize the on-line ordering system. Vendor shall ensure that its in-line ordering system is properly secured prior to processing Agency orders on-line.
- 8.2 **Invoicing and Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. Methods of acceptable payment must include the West Virginia Purchasing Card. Payment in advance is not permitted under this Contract. Payment Terms must be Net 30 at a minimum.

**9. DELIVERY AND RETURN:**

- 9.1 **Delivery Time and Place:** Vendor shall deliver standard orders within four (4) working days after orders are received.
- 9.1.1 Vendor shall ship all orders in accordance with the schedule agreed upon in the Requests for Bids. Vendor may not hold orders.
- 9.1.2 Vendor shall deliver emergency orders within one (1) working day after orders are received. The Agency will pay delivery charges on all emergency orders if Vendor invoices those delivery costs a separate charge.
- 9.1.3 Vendor may have a minimum delivery requirement; however, if Agency's order does not meet that minimum, Agency may place their order with another vendor with a lower minimum delivery requirement.
- 9.2 **Late Delivery:** The Agency must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to the Agency will be grounds for cancellation of the delayed order and/or obtaining the items ordered from a third party.
- 9.3 **Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as separate charges with the original freight bill attached to the invoice.
- 9.4 **Return of Unacceptable Items:** Items that Agency deems unacceptable shall be returned to Vendor and Vendor's expense and with no restocking charge.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
**FOOD, BEVERAGE, AND PAPER GOODS**

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Vendor shall either make arrangements for the return within ten (10) days of being notified those items are unacceptable. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit for the purchase price at the Agency's discretion.

- 9.5 **Return due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.
- 9.6 **No Substitutions:** Vendor shall not supply substitute items unless approved in writing by the Agency.

**10. VENDOR DEFAULT:**

- 10.1 The following shall be considered a vendor default under this Contract.
- 10.1.1 Failure to provide eligible items in accordance with the requirements contained herein.
  - 10.1.2 Failure to comply with other specifications and requirements contained herein.
  - 10.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
  - 10.1.4 Failure to remedy deficient performance upon request.
- 10.2 The following remedies shall be available to Agency upon default.
- 10.2.1 Immediate cancellation of the Contract.
  - 10.2.2 Immediate cancellation of one or more release orders issued under this Contract.
  - 10.2.3 Any other remedies available in law or equity.

REQUEST FOR PREQUALIFICATION OF VENDORS – CRFQ VNF23\*09  
FOOD, BEVERAGE, AND PAPER GOODS

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**11. CONTRACT MANAGER:**

- 11.1 During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issue related to this Contract. Vendor should list its Contract manager and his or her contact information.

Contract Manager: Stephanie Gibson

Telephone Number: 937-525-7115

Fax Number: N/A

Email Address: Stephanie.Gibson@gfc.com