



State of West Virginia
Agency Master Agreement

Order Date: 2025-05-23

CORRECT ORDER NUMBER MUST
APPEAR ON ALL PACKAGES,
INVOICES, AND SHIPPING PAPERS.
QUESTIONS CONCERNING THIS
ORDER SHOULD BE DIRECTED TO
THE DEPARTMENT CONTACT.

Order Number:	AMA 0506 2994 MCH2500000003 1	Procurement Folder:	1696728
Document Name:	Emergency Contract - WVBTT Early Intervention System	Reason for Modification:	
Document Description:	Emergency Contract - WVBTT Early Intervention System		
Procurement Type:	Agency Master Agreement		
Buyer Name:	Roberta A Wagner		
Telephone:	(304) 558-0437		
Email:	roberta.a.wagner@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2025-04-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-09-30

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code: 000000166458				Requestor Name: Christine L Basham	
GAINWELL TECHNOLOGIES LLC				Requestor Phone: (304) 356-4930	
225 EAST JOHN CARPENTER FREEWAY STE 500				Requestor Email: christine.l.basham@wv.gov	
IRVING		TX	75062		
US					
Vendor Contact Phone: 5718955066		Extension:			
Discount Details:					
	Discount Allowed	Discount Percentage	Discount Days		
#1	No	0.0000	0		
#2	No				
#3	No				
#4	No				

INVOICE TO	SHIP TO
PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH - MATERNAL & CHILD HEALTH 350 CAPITOL ST, RM 427 CHARLESTON WV 25301-3714 US	PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH/MCH - BIRTH TO THREE 350 CAPITOL ST, RM 427 CHARLESTON WV 25301-3714 US

Total Order Amount:

Open End

DEPARTMENT AUTHORIZED SIGNATURE

SIGNED BY : Theresa J Dorsey

DATE: 2025-05-23

ELECTRONIC SIGNATURE ON FILE

Extended Description:

Emergency Contract

The WV Birth to Three Central Finance Office (CFO) Contract will end on March 31, 2025. The RFP is in final review for release, but it has been determined that 60 days may not allow potential vendors and the evaluation team to complete all required activities prior to the end date of the current contract. WVBTT depends on the operation of the CFO system as the structure to review and process enrollment for 900 + professionals, authorize education services for eligible children, process practitioner claims and adjudicate payments to practitioners for the provision of services, and recover reimbursement from Medicaid and CHIP. The real time reporting functions within the system is critical for accurate federal reporting, quality assurance and monitoring, and the day to day operations for the electronic child records which support services for over 8,200 children and families annually.

ACT MCH25*002 is being reissued.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	93150000				\$0.00
Service From		Service To		Service Contract Amount	
2025-04-01		2025-09-30		0.00	

Commodity Line Description: Public Administration and Finance Services

Extended Description:

Public Administration and Finance Services

	Document Phase	Document Description	Page 3
MCH2500000003	Final	Emergency Contract - WVBTT Early Intervention System	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

CRFP 0506 MCH2000000001

Pricing Page

	04.01.2025 – 09.30.2025
Yearly Operating Costs Estimated 175,000 claim lines	(\$5.02/Paid Claim Line) Total \$878,500
Additional Services* \$92.01 (all inclusive hourly rate) x 2,000 hours (estimated)	\$184,020.00 (2,000 hrs x 92.01/hr)
Not to Exceed Cost	\$1,059,020.00

Pricing Assumptions

This section describes Gainwell's cost proposal assumptions. Gainwell is also including additional brief comments on the pricing for each line item, to assist WV Birth to Three in understanding the assumptions that generated the cost entries in the table.

Yearly Operating Costs

This line contains the rate per claim for the services specified in the SOW. The rate is all-inclusive except that, per RFP instructions, Gainwell proposes to pass through postage separately. The postage will be invoiced monthly at cost, with no "mark up."

Gainwell will invoice based on the actual number of claim lines each month. Gainwell acknowledges that postage will be billed as a pass-through expense separately and has not included it in the per-line cost. The SSAE 18 SOC1 audit is included in the per-line cost.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH
BUREAU FOR PUBLIC HEALTH
Office of Maternal, Child and Family Health

Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary

Justin Davis
Interim Commissioner

MEMORANDUM

To: Sherri Young, DO, MBA, FAAFP, Cabinet Secretary
West Virginia Department of Health

Through: Justin Davis, Interim Commissioner
Bureau for Public Health

From: Teresa Marks, Interim Director
Office of Maternal, Child and Family Health
Bureau for Public Health

Date: January 31, 2025

RE: WV Birth to Three Program- Emergency Contract for the Integrated Central Finance Office (CFO)

The Office of Maternal, Child and Family Health; WV Birth to Three Program (WVBTT) is seeking approval of the request for an emergency contract to continue operations with Gainwell Technologies for the WV Birth to Three CFO while the Request for Proposal (RFP) process is completed.

Upon approval of the emergency contract, Gainwell Technologies will provide continued operations of the integrated CFO system which includes the following functions: child and family data system, payee and practitioner enrollment, claims processing, fund recovery, online service directory, and reporting at Agency desired frequency for meeting the General Supervision Requirements under Part C of the Individuals with Disabilities Education Act.

The estimated budget is \$960,000 for a six-month contract.

\$1,059,020

WVBTT depends on the operation of the CFO system as the structure to review and process enrollment for 900 + professionals, authorize education services for eligible children, process practitioner claims and adjudicate payments to practitioners for the provision of services, and recover reimbursement from Medicaid and CHIP. The real time reporting functions within the system is critical for accurate federal reporting, quality assurance and monitoring, and the day to day operations for the electronic child records which support services for over 8,200 children and families annually.

Thank you for your consideration of this request.



WV Birth to Three Central Finance Office

Statement of Work to ACT MCH25*002

I. Introduction

The lead agency for implementation of the State's early intervention system under Part C of the Individuals with Disabilities Education Improvement Act (IDEA) is the West Virginia Department of Health. WV Birth to Three is administered through the Bureau for Public Health, Office of Maternal, Child and Family Health within the Department in coordination with the WV Governor's Early Intervention Interagency Coordinating Council (ICC).

WV Birth to Three has statute, policy, and procedure in place across the statewide finance, data, training/technical assistance and monitoring systems to ensure general supervision requirements are met. WV Birth to Three utilizes a Central Finance Office (CFO) structure as a component of the general supervision system. The integrated data system provides an important infrastructure the early intervention system to support the implementation, monitoring, and evaluation of the system. The CFO maintains the servers which house the child/family data system, practitioner enrollment, adjudication of Payee claims and submission of WV Birth to Three's fund recovery. Integral to the CFO structure is the integrated data system comprised of WVBTT Online, an Online Claim system and the WVBTT Service Directory.

The WV Birth to Three system enrolls over 900 practitioners across all disciplines for the provision of service coordination and direct early intervention services. Practitioners enrolled must meet the entry level personnel qualifications, sign a CFO and Practitioner/Service Coordinator Agreement annually to verify understanding of their role for compliance with Part C and WV Birth to Three policies and procedures and attend required training. Practitioners can be sanctioned or disenrolled from the system for non-compliance with their agreement.

WV Birth to Three contracts with eight Regional Administrative Units (RAUs) with geographic areas of responsibility. All RAUs sign an agreement with the lead agency, with assurances to abide by all policies and procedures. The RAUs have child specific responsibilities that include accepting and facilitating referrals for all potentially eligible infants and toddlers in their region; establishing and maintaining the electronic child record; and preparing the family for and facilitating the initial evaluation/assessment process, initial eligibility determination and initial development of the Individualized Family Service Plan (IFSP). The RAUs also have interagency responsibilities that include child find; central directory of resources; collaboration with other community partners for effective implementation of the Part C system; and linking families to resources including maintaining a central directory of resources.

II. Objectives

Goal/Objective 1

The Vendor will provide and manage a System Point of Entry (SPOE) data system and software for the Agency as a means for tracking child and family data, initiating authorizations of needed early intervention services, and the ability to provide reporting of child data at local, regional, and state levels.

Activities

1. The vendor will provide a SPOE data system with the capability of a common intake function for all children referred to WV Birth to Three regardless of eligibility status including referral date, intake date, IFSP date, transition date, exit date, child outcome ratings, and date notification is provided to county school system.
2. The vendor will provide a SPOE data system with the capability to collect child and family demographics, referral sources including original and follow-up referrals, and initial and ongoing eligibility data specific to each child, including unique child identifier.
3. The vendor will provide a SPOE data system with the capability to collect demographic information for parent or legal guardian.
4. The vendor will provide a SPOE data system with the capability to collect initial and ongoing assessments and child eligibility categories in accordance with Agency procedures.
5. The vendor will provide a SPOE data system with the capability to collect records of each IFSP service for each child including dates, locations, durations, and service practitioners assigned to provide the service.
6. The vendor will provide a SPOE data system with the capability to collect family income and head of household.
7. The vendor will provide a SPOE data system with the capability of collecting private and public insurance coverage.
8. The vendor will provide a SPOE data system with the capability of a searchable history for every child's prior IFSP services, service types, and authorizations including dates, locations, and authorized practitioners for at least five years after child's third birthday.
9. The vendor will provide a SPOE data system with the ability to authorize services prior to the initial IFSP.
10. The vendor will provide a SPOE data system with the capability for calculations to determine date timelines in accordance with WV Birth to Three policies and late reasons when timelines are not met.
11. The vendor will provide a SPOE data system with the capability to store and maintain the WV Birth to Three Standard and additional information uploaded by Practitioners and Service Coordinators within designated folder types.
12. The vendor will provide a SPOE data system with the capability for authorized Practitioners, Service Coordinators and Agency Administrators to upload WV Birth to Three Standard Documentation and additional information into the electronic child record including but not limited to family assessment, evaluation/assessment reports, consents, and case notes.
13. The vendor will provide a SPOE data system with a document upload function to allow users to upload one to many documents at one time with the capability to read fields on WV Birth to Three Standard Documentation including Child State ID, date of birth, date, folder field, and title of form to automatically title the documents and place them into the correct child electronic record.
14. The vendor will provide a SPOE data system with restricted access to specific users' ability to download documents from the child library individually or by group download by folder type.
15. The vendor will provide a SPOE data system to provide practitioners, service coordinators, Agency Administrators, and RAU staff with restricted access to view child records by individuals with authorizations, in accordance with the Family Educational Rights and Privacy Act (FERPA) and IDEA.
16. The vendor will provide a SPOE data system with the capability to assign a unique identifier for each child that is maintained from entry to exit regardless of moves within or out of the system, including returns to the system.

17. The vendor will provide a SPOE data system with enhanced access to data and reporting functions at the Agency and local levels to support effective service delivery and management requirements.
18. The vendor will provide a SPOE data system with the capability for practitioners and service coordinators to run reports related to their caseloads.
19. The vendor will provide a SPOE data system with the ability for the state agency users to run access reports on users who have accessed electronic child records and users who have uploaded, downloaded, or deleted documents from the child library.

Performance Measures and Timelines

1. The Vendor will confirm the SPOE data system and software is available to Agency users daily during the duration of this contract.
2. The Vendor will confirm SPOE system users sign confidentiality agreements to access the SPOE data system and software.
3. The vendor will report to the State Agency users with access to the SPOE data system monthly.
4. The Vendor will report to the State Agency any interruptions in availability or use of the SPOE data system.
5. The Vendor will validate that the SPOE data system is not used in any manner other than what is authorized by the Department.

Goal/Objective 2

The Vendor will confirm timely and compliant processing of service authorizations.

Activities

1. The Vendor will provide the capability for service authorizations to be made available through a secure web-based application for each evaluation or assessment and/or IFSP service to respective Payees.
2. The Vendor will provide a means for electronic transfer of authorizations for services to Payees that submit electronic claims.
3. The Vendor will compute the value of service authorizations both in units and dollar amounts by using a rate table established by the Agency including the computed numbers of units but not the computed dollar amount on authorizations.

Performance Measures and Timelines

1. The Vendor will validate service authorizations are processed and provided to the respective Payee within two days of entry into the SPOE data system.
2. The Vendor will validate Payees are not paid more than the maximum rate or total calculated amount on authorization.
3. The vendor will validate authorizations for services are limited to enrolled RAU, Service Coordinators, and Service Practitioners.

Goal/Objective 3

The Vendor will process and render Payee service claims accurately and timely.

Activities

1. The Vendor will provide a method to receive claims from Payees via web-based application, electronic file layout, or a CMS1500 form.
2. The Vendor will provide CFO data entry upon receipt of electronic claims in HIPAA compliant format.
3. The vendor will provide the capability to pay claims with 60 days of service with a process override upon Agency approval.
4. The Vendor will validate claims against existing authorizations and check for duplicate submissions.
5. The vendor will prepare weekly Explanation of Payments reports for Payees
6. The vendor will prepare mail list to provide families with monthly Explanation of benefits.
7. The Vendor will implement a Help Desk technical assistance and support for enrollment and billing questions.
8. The vendor will have internal controls, policies, and procedures for the purpose of preventing, detecting, reviewing, and reporting potential fraud and abuse activities by local Payees.
9. The vendor will have internal controls, policies, and procedures for the purpose of internal testing of financial claims processing related to extreme variability in claims.
10. The vendor will have internal controls, policies, and procedures for the purpose of surveying enrolled practitioners and payees annually, and reporting results to Agency.
11. The vendor will have internal controls, policies, and procedures for the purpose of reporting detailed claims data to Agency.

Performance Measures and Timelines

1. The Vendor will perform CFO data entry upon receipt of electronic claims in HIPAA compliant format.
2. The Vendor will pay claims within 60 days of date of service with a process override upon Agency approval.
3. The Vendor will adjudicate claims from the rendering service Payee, prepare electronic file in a specified format, and submit to Agency by Thursday of each week for any claim received from local Payees by noon on Tuesday.
4. The Vendor will validate Payees receive weekly their Explanation of Payment for each weekly paid claims file prepared.
5. The vendor will validate families are mailed their Explanation of Benefits by the 15th each month.
6. The Vendor will report detailed claims data to the Agency weekly.
7. The vendor will validate the Helpdesk is made available via email and toll-free number during business hours of 8:00 am to 5:00 pm EST/EDT, Monday through Friday, 52

weeks of the year, excluding Federal and State holidays or as otherwise approved in advance by Agency.

Goal/Objective 4

The Vendor will have a centralized and standardized operational CFO process for preparing and submitting fund recovery claims on behalf of WV Birth to Three. Current fund recovery sources include Medicaid, WV CHIP, State Early Intervention line item, and Federal Part C funds.

Activities

1. The Vendor will prepare fund recovery claims based on the hierarchy established for funding sources, child/family eligibility, service definitions, National Provider Identification number, and Practitioner credential.
2. The Vendor will provide fund recovery software that uses a crosswalk to transform the multiple local WV Birth to Three service codes for each Part C service type to four designated Medicaid billing codes and billed in the specified Medicaid format. Each Medicaid code will have a specified billing charge that reflects the Agency's total cost and is therefore different from the amount paid to the local rendering service Payee.
3. The Vendor will interface with other systems within the Agency and other agencies as needed to confirm eligibility for various fund sources and/or services, including a 270/271 process.
4. The Vendor will provide a process for completing delayed submission of claims to Medicaid and WV CHIP due to receiving child eligibility information at a later date.
5. The Vendor will provide a process for resubmitting claims based on denials from Medicaid and/or WV CHIP.
6. The Vendor will assist the Agency with financial projections based on authorizations for the State fiscal year July 1 – June 30.

Performance Measures and Timelines

1. The Vendor will submit Medicaid fund recovery files in HIPAA compliant 837 format and retrieve remittance advices and 835 files as outlined by Medicaid, on a weekly basis.
2. The Vendor will validate completion of delayed submission of claims to Medicaid and WV CHIP due to receiving child eligibility information at a later date.
3. The Vendor will validate resubmission of claims based on denials from Medicaid and/or WV CHIP.

Goal/Objective 5

The Vendor will maintain a Practitioner/Payee Enrollment and Credentialing Process.

1. The Vendor will provide a single user or network application for the purpose of enrolling qualified Practitioners in accordance with WV Birth to Three personnel standards and procedures.

2. The Vendor will host a website for Practitioner, Service Coordinator, and Payee information including Billing Manual, enrollment forms, procedure codes and rate structures, and links to pertinent resources.
3. The Vendor will allow for a method to allow Practitioners, Service Coordinators and Payees the ability to update their own availability and descriptions sections in the Service Directory.
4. The Vendor will host a Service Directory that includes all Practitioners and Service Coordinators by specialty with search features to locate Practitioners and Service Coordinators by Payee, county, zip code, method of service delivery, and specialty discipline and training.
5. The Vendor will review of initial and annual enrollment applications from Practitioners, Service Coordinators, and Payees to validate that required paperwork is submitted, and to confirm documentation of proper licenses, certifications, liability insurance, email addresses, Social Security and National Provider Identification numbers, and training requirements as stipulated by Agency.
6. The Vendor will approve complete and accurate applications and enroll Practitioner, Service Coordinator, or Payees in the WV Birth to Three system with listing inserted into the Service Directory.
7. The Vendor will notify Practitioners that do not complete Agency required annual enrollment updates; implement disenrollment processes, and provide updates to Agency.
8. The Vendor will host and manage a statewide email broadcast system that allows WV Birth to Three staff to send messages to enrolled Practitioners, Service Coordinators and Payees.
9. The Vendor will provide a process for holding, stopping, and recouping provider payments based on sanctions imposed by Agency.

Performance Measures and Timelines

1. The Vendor will provide the Agency monthly reports to WV Birth to Three that include all new enrollments and disenrollments for previous month to assist Agency in meeting NPI and practitioner onboarding requirements.

Goal/Objective 6

The Vendor will provide Agency routine reports and special documentation upon request.

1. The Vendor will provide the Agency with requested data extracts that can be imported into Microsoft Access for routine reports such as: number of days from referral to IFSP; children who transition during a period including transition conference dates; procedure code utilization; timely services; children with active initial and annual IFSPs during a period; child count and place of service; and primary eligibility categories.
2. The Vendor will provide the Agency with ad hoc statistical and managements reports upon request.
3. The Vendor will maintain such records for a minimum of five years and make such records available to Agency personnel upon written requests by Agency.

Performance Measures and Timelines

1. The Vendor will validate access to all reports is based on level of security approved by Agency.
2. The Vendor will complete records requests within ten days after receipt of written request unless otherwise specified.

Goal/Objective 7

The Vendor will provide a CFO structure is designed to mitigate or eliminate weaknesses that could result in compromise of data in the creation, usage, transfer, or destruction of information.

1. The vendor should have in place a security and confidentiality plan that addresses Family Educational Rights and Privacy Act (FERPA) requirements.
2. The Vendor should have in place a security and confidentiality plan that addresses System access and logins.
3. The Vendor should have in place a security and confidentiality plan that addresses strong password functionality.
4. The Vendor should have in place a security and confidentiality plan that addresses Monitoring and reporting unauthorized access attempts.
5. The Vendor should have in place a security and confidentiality plan that addresses user account controls.
6. The Vendor should have in place a security and confidentiality plan that addresses no privileged user for database access.
7. The Vendor should have in place a security and confidentiality plan that addresses least privilege for connections.
8. The Vendor should have in place a security and confidentiality plan that addresses no SQL on web pages.
9. The Vendor should have in place a security and confidentiality plan that addresses cleanse data input.
10. The Vendor should have in place a security and confidentiality plan that addresses reference standards on How to Mitigate the Top 10 Dangerous Programming Errors.

Performance Measures and Timelines

1. The Vendor will validate the CFO structure is designed to mitigate or eliminate weaknesses that could result in compromise of data in the creation, usage, transfer, or destruction of information.

Goal/Objective 8

Upon expiration, termination, or cancellation of the contract, Vendor will validate an orderly transfer of responsibility and/or continuity of services required under the terms of the contract to Agency.

1. All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of state completion, which are prepared

- for or are a result of the services under the contract, will be and remain the property of the Agency.
2. The Agency, not the Vendor or subcontractor, will have full and complete ownership of all software computer programs and/or source codes developed, subject to any limitations set forth in any pre-existing software agreement.
 3. Software computer programs and/or source codes developed for the Agency, the work will be considered 'work for hire'. The Agency and State will grant the Vendor a perpetual, non-exclusive, worldwide, royalty-free license to re-license the work-for-hire to other governmental entities or agencies. To the extent that any such materials may not, by operation of the law, be a work made for hire in right, title, and interest in and to any such material, and the Agency will have the right to obtain and hold its own name and copyrights, registrations, and any other proprietary rights that may be available.
 4. Should the Vendor anticipate bringing pre-existing intellectual property to perform any of the services required under the contract into the project, the intellectual property must be identified in the bid proposal or identified in writing to the Agency within 10 days after the bid award.
 5. If the Vendor identifies such intellectual property in its bid proposal, then the property owned by the Vendor on the date of the contract, as well as any modifications or adaptations thereto, shall remain the property of the Vendor. Upon contract award, the Vendor shall grant the Agency a perpetual non-exclusive, royalty free license to use any of the Vendor's intellectual property delivered to the Agency for the purposes contemplated by the Contract.

Performance Measures and Timelines

1. The Vendor shall continue to provide any part or all of the services in accordance with the terms and conditions, requirements, and specifications of the contract for the period not to exceed 120 calendar days after the expiration, termination, or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
2. Subject to the terms of any existing contract, memorandum of understanding, or other written agreement to which the Agency or State is a party and which governs the ownership, title, or interest to any software programs or source code relevant to the pre-existing agreements, and will be delivered to Agency or its designee within 30 days' notice by the Agency.

Vendor Name: **Gainwell Technologies LLC**

By: Signed by: Mark Knickrehm

Printed Name: Mark Knickrehm

Title: President and Chief Executive Officer

Date: 3/28/2025

WV-96
1/1/2019

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): **WV DH OMC FH W**

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – 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 licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. 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.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. 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.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

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1/1/2019

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: WV/DoH/BPH/OMCFH

WVOSA Purchasing

Vendor: Gainwell Technologies LLC

By: *Christy Basham*

Roberta Wagner
ASMA
5123125

Signed by: *Mark Knickrehm*

Printed Name: Christy Basham

Printed Name: Mark Knickrehm

Title: Procurement Specialist Senior

Title: President and Chief Executive Officer

Date: 03/31/2025

3/28/2025
Date: _____

**GENERAL TERMS AND CONDITIONS:
(Agency Delegated Procurements Only)**

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Agency and approved as to form by the Attorney General's office, if required, 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 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.

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: This Contract becomes effective on _____ upon award _____ and the initial contract term extends until six (6) months.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be delivered to the Agency 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 _____ 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.

☐ **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 and Agency.

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 maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☐ **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 State Agency (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** See attached.

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 below must be provided to the Agency by the Vendor as specified below.

☐ **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.

☐☐☐☐

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 on each policy 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 or not 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: \$1,000,000.00 per occurrence.

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of:
\$1,000,000.00 per ^{claim.}~~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: \$3,000,000.00 per ~~occurrence~~ claim.

☐ **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. 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.

11. 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.

12. 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.

13. 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 licenses, subscriptions, or maintenance may be paid annually in advance.

14. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer or 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.)

15. 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.

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. 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.

18. CANCELLATION: The State 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 Agency 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.

19. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

20. 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.

20A. 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.

21. 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. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 and any other government agency or office that may be required to approve such assignments.

27. 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.

28. 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.

29. 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 www.state.wv.us/admin/purchase/privacy.

30. 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.

31. 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. 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.

32. ANTITRUST: In submitting a bid to, signing a contract with, or accepting an 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.

33. 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.

34. 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.

35. 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.

36. 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, that neither vendor nor any related party owe a debt as defined above and that neither 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.

37. 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.

38. 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.

39. 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.

40. 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 hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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
- d. 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.

41. 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.

42. 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.

43. 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.

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.

Giovanni Ferreri, Account General Manager

(Printed Name and Title)

15480 College Blvd, Lenexa, KS 66219

(Address)

Phone: 949-445-5963 Fax: 913-469-5814

(Phone Number) / (Fax Number)

john.ferreri@gainwelltechnologies.com

(E-mail address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation 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 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.

Gainwell Technologies LLC

(Company)

Signed by:

Mark Knickrehm

455868D64856646D

(Signature of Authorized Representative)

Mark Knickrehm, President and Chief Executive Officer

(Printed Name and Title of Authorized Representative)

3/28/2025

(Date)

(214) 453 - 3000

(Phone Number) (Fax Number)

Revised 8/24/2023

CRFP 0506 MCH2000000001

Pricing Page

	04.01.2025 – 09.30.2025
Yearly Operating Costs Estimated 175,000 claim lines	(\$5.02/Paid Claim Line) Total \$878,500
Additional Services* \$92.01 (all inclusive hourly rate) x 2,000 hours (estimated)	\$184,020.00 (2,000 hrs x 92.01/hr)
Not to Exceed Cost	\$1,059,020.00

Pricing Assumptions

This section describes Gainwell's cost proposal assumptions. Gainwell is also including additional brief comments on the pricing for each line item, to assist WV Birth to Three in understanding the assumptions that generated the cost entries in the table.

Yearly Operating Costs

This line contains the rate per claim for the services specified in the SOW. The rate is all-inclusive except that, per RFP instructions, Gainwell proposes to pass through postage separately. The postage will be invoiced monthly at cost, with no "mark up."

Gainwell will invoice based on the actual number of claim lines each month. Gainwell acknowledges that postage will be billed as a pass-through expense separately and has not included it in the per-line cost. The SSAE 18 SOC1 audit is included in the per-line cost.

FEDERAL FUNDS ADDENDUM
2 C.F.R. §§ 200.317 – 200.327

Purpose: This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

Instructions: Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: "REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)"

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

Changes to Specifications: Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

State Level: In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the "Instructions to Vendors Submitting Bids" to establish a contract for both standard state procurements and state federal funds procurements.

County Level: In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the "Instructions to Vendors Submitting Bids" omitted to establish a contract for County/Local federal funds procurement.

Award: If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

State Government Use Caution: State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

County/Local Government Use Caution: County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled "REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)" have been added.

FEDERAL FUNDS ADDENDUM

**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

**1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR
SURPLUS AREA FIRMS:**
(2 C.F.R. § 200.321)

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

2. DOMESTIC PREFERENCES:
(2 C.F.R. § 200.322)

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.
- c. Definitions: For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:
(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

4. TERMINATION FOR CAUSE AND CONVENIENCE:
(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

5. EQUAL EMPLOYMENT OPPORTUNITY:
(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, this contract includes the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

6. DAVIS-BACON WAGE RATES:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must:

- (a) pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

7. ANTI-KICKBACK ACT:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply with the Copeland Anti-KickBack Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State must report all suspected or reported violations to the Federal awarding agency.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.
(2 C.F.R. § 200.327 and Appendix II)

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

10. CLEAN AIR ACT
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. DEBARMENT AND SUSPENSION
(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12. BYRD ANTI-LOBBYING AMENDMENT
(2 C.F.R. § 200.327 and Appendix II)

Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. PROCUREMENT OF RECOVERED MATERIALS
(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.
(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia
Purchasing Division

By: Christy Basham

Printed Name: Christy Basham

Title: Procurement Specialist Senior

Date: 03/31/2025

Vendor Name: **Gainwell Technologies LLC**

Signed by:
By: Mark Knickrehm
1EE0BB058B560400

Printed Name: Mark Knickrehm

Title: President and Chief Executive Officer

Date: 3/28/2025

WVOSA Purchasing
Roberta Wegner
Asm 2
5/28/25

**EXHIBIT A To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

W. Va. CSR § 148-1-5

West Virginia Code of State Rules
Title 148. Department of Administration
Legislative Rule (Ser. 1)
Series I. Purchasing

W. Va. Code St. R. § 148-1-5
§ 148-1-5. Remedies.
Currentness

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.1. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. The Director may cancel a purchase or contract for any reason or no reason, upon providing

the vendor with 30 days' notice of the cancellation.

5.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.4. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

5.4.1. The Director may suspend, for a period not to exceed 1 year, the right of a vendor to bid on

procurements issued by the Purchasing Division or any state spending unit under its authority if:

5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.

5.4.1.b. The vendor has exhibited poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; or failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.1.c. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.

5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.

5.4.2. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:

5.4.2.a. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.2.b. A notice of suspension must inform the vendor:

5.4.2.b.1. Of the grounds for the suspension;

5.4.2.b.2. Of the duration of the suspension;

5.4.2.b.3. Of the right to request a hearing contesting the suspension;

5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;

5.4.2.b.5. That the vendor's failure to request a hearing no later than 5 working days of

the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.2.b.6. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 5 working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond.

5.4.2.d. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.2.e. Within 5 working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.3. A vendor may appeal a decision of the Director to the Secretary of the Department of Administration. The appeal must be in writing and served on the Secretary no later than 5 working days of receipt of the Director's decision.

5.4.4. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.5. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.2. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.3. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor, including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated.

5.5.4. Pursuant to W. Va. Code § 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.5. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party

status will be presumed to be a related party subject to debarment.

5.6. Damages.

5.6.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.3. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

Credits

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

End of Document

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**EXHIBIT B To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

Prevailing Wage Determination

- ☐ – Not Applicable Because Contract Not for Construction
- ☐ – Federal Prevailing Wage Determination on Next Page