



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

State of West Virginia Contract

Order Date: 08-09-2021

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:	CCT 0511 2754 CSE2200000001 1	Procurement Folder:	920667
Document Name:	MDHS- Interstate Data Exchange Consortium (IDEC)	Reason for Modification:	
Document Description:	MDHS- Interstate Data Exchange Consortium (IDEC)		
Procurement Type:	Central Contract - Fixed Amt		
Buyer Name:	Crystal G Husted		
Telephone:	(304) 558-2402		
Email:	crystal.g.husted@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2021-07-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2024-06-30

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000009692 Mississippi Department of Human Services 200 S LAMAR ST JACKSON MS 39201-4013 US Vendor Contact Phone: 601-359-4756 Extension:	Requestor Name: Virginia G Hill Requestor Phone: (304) 558-3780 Requestor Email: virginia.g.hill@wv.gov																				
Discount Details:	22 FILE LOCATION _____																				
<table><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr><tr><td>#1</td><td>No</td><td>0.0000</td><td>30</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></table>			Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	30	#2	Not Entered			#3	Not Entered			#4	Not Entered		
		Discount Allowed	Discount Percentage	Discount Days																	
#1		No	0.0000	30																	
#2		Not Entered																			
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
FISCAL UNIT MANAGER 304-356-4715 HEALTH AND HUMAN RESOURCES CHILD SUPPORT ENFORCEMENT 350 CAPITOL ST, RM 147 CHARLESTON WV 25301-3703 US	FISCAL UNIT MANAGER 304-356-4715 HEALTH AND HUMAN RESOURCES CHILD SUPPORT ENFORCEMENT 350 CAPITOL ST, RM 147 CHARLESTON WV 25301-3703 US

Total Order Amount: \$102,431.88

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION

DATE:

ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE:

ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE:

ELECTRONIC SIGNATURE ON FILE

Extended Description:

THE VENDOR, MISSISSIPPI DEPARTMENT OF HUMAN RESOURCES (MDHS), AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, INTO A CONTRACT TO PROVIDE CONTINUED OPERATION OF INTERSTATE DATA EXCHANGE CONSORTIUM (IDEC) PER THE TERMS AND CONDITIONS AND VENDOR'S QUOTE DATED 06/15/2021, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43232306	36.00000	MO	2645.330000	\$95,231.88
Service From		Service To	Manufacturer	Model No	
2021-07-01		2024-06-30			

Commodity Line Description: Data base user interface and query software

Extended Description:

component charges

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	43232306	36.00000	MO	200.000000	\$7,200.00
Service From		Service To	Manufacturer	Model No	
2021-07-01		2024-06-30			

Commodity Line Description: Data base user interface and query software

Extended Description:

seat agency administrative charges

IDEC Additional Terms Agreement

Pursuant to this IDEC Additional Terms Agreement, the Mississippi Department of Human Services ("MDHS") and the State of West Virginia, Department of Health and Human Resources ("WVDHHR") agree that the contract necessary for continued use of the IDEC cooperative contract between MDSH and WVDHHR (the "Contract") shall be interpreted in the order of precedence listed below and be modified as indicated below.

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the contract document in this section. Any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. Order of Precedence Agreement (this document) – First Priority
- b. MDSH and WVDHHR Agreement (Attachment A) – Second Priority
- c. Federally Mandated Terms (Attachment B) – Third Priority

2. **Additional Terms.** The following additional terms are added to this agreement.

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

This document is executed by the parties on the date listed below each signature.

Mississippi Dept. of Human Services

By: Robert G. Anderson
DocuSigned by:
074E26DE44284BA
Print Name: Robert G. Anderson
Its: Executive Director

WV Dept. of Health and Human Services

By: Kimberly S. Jobe
Print Name: Kimberly S. Jobe
Its: Procurement Specialist, Senior

Date: 7/13/2021

Date: 07/14/21

Exhibit A - MDSH and WVDHHR Agreement

**CONTRACT BETWEEN
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES
AND
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
FOR
OPERATIONS OF THE INTERSTATE DATA EXCHANGE CONSORTIUM**

This Contract between the Mississippi Department of Human Services (MDHS), hereinafter referred to as "IDEC Seat Agency" and the West Virginia Department of Health and Human Resources, hereinafter referred to as the "IDEC Contracting Agency" is based on the following terms and conditions.

RECITALS

Whereas, the participating member states of IDEC desire to continue the operation of IDEC utilizing their funds and organizing said states in like manner to the organizational structure employed under the Memorandum of Understanding between the Public Welfare Agencies,

And, whereas the West Virginia contract is an "interagency agreement", not competitively bid that contemplates a subcontractor, it requires language referenced under "Article V, IDEC SEAT AGENCY RESPONSIBILITIES, The IDEC Seat Agency Agrees to Section N" in this contract.

Now, therefore, the parties, in consideration of the mutual promises, covenants and stipulations set forth below, agree as follows:

**ARTICLE I
CONTRACT IMPLEMENTATION**

This Contract shall take effect as of July 1, 2021 or after all parties have signed, whichever is later, and shall, unless terminated sooner, continue in full force and effect through June 30, 2024. At the end of the initial term, this Agreement may, upon the written agreement of both parties, be renewed or extended for two (2) additional 12 (twelve) month period(s).

Signature to this contract also serves to bind the IDEC Contracting Agency. This contract is effective between the parties as of the effective date specified above; however, monthly charges for IDEC services which may have been provided on an interim basis prior to the effective date of the contract and any subsequent renewals or extensions, shall be reimbursed at the current Seat Agency cost rate, unless the parties have agreed otherwise in writing.

**ARTICLE II
DEFINITION OF TERMS**

The use of definitions in this section is for the purpose of clarification and does not serve to establish any obligation on any party.

As used in this contract the following terms shall have the following defined meanings:

1. Data Source: Any source of Parent Locate IDEC data that any State wishes to provide.
2. DHHS: The United States Department of Health and Human Services.
3. IDEC: Interstate Data Exchange Consortium. The Interstate Data Exchange Consortium is a consortium of states joined together for the common purpose of pooling individual state data resources into a real-time on-line system which provides a comprehensive search capability to locate absent parents under the Child Support Enforcement Program as well as providing a shared automated means of securing information from financial institutions resulting in the enforcement of child support orders.
4. IDEC Contracting Agencies: The Public Welfare Agencies of the states participating in the IDEC and who comprise the Child Support Enforcement Programs of those same states, and any additional states who join in this contract.
5. IDEC Contracting Agency: West Virginia Department of Health and Human Resources.
6. IDEC Contractor: The third party contractor who was awarded the Facilities and Operational Management Contract of IDEC by the IDEC Seat Agency through the established procurement process of the State of Mississippi.
7. IDEC Seat Agency: Mississippi Department of Human Services.
8. Financial Institution Data Match: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) makes it more important than ever that children and their custodial parents receive the child support to which they are entitled, as the Act places time limits on the receipt of welfare assistance. To assist in this effort, the child support enforcement requirements of PRWORA mandate that each State implement a quarterly matching of delinquent non-custodial parents to the accounts maintained at financial institutions. The Financial Institution Data Match Handbook establishes the Specifications to be used to conduct this matching.
9. Financial Institution Data Match (FIDM) Component: The component of IDEC that provides an automated process for data exchanges between the IDEC participating states and financial institutions in the participating states.
10. Parent Locate Component: The component of IDEC which is an automated system that provides data file information from participating states' state/federal employment files, motor vehicle files and justice/corrections files, food stamp client files and claims file as resource to locate absent parents owing child support.

11. Automated Enforcement of Interstate (AEI) Cases: The component of IDEC that provides an automated process for interstate action for IDEC states to request and respond to seize and freeze actions on accounts identified in the FIDM process.

ARTICLE III CONTRACTING AGENCY GENERAL RESPONSIBILITIES

The IDEC Contracting Agency agrees that it is responsible for and agrees that it will do the following:

- A. Designate two (2) staff members to IDEC to perform the duties of the IDEC System Coordinator and the IDEC Locate Lead Person;
- B. Maintain such records and documents, as required by the IDEC Policy Board and the Office of Child Support Enforcement, to account for IDEC use and corresponding charges, said records to be retained for at least a period of three (3) years;
- C. Assure that the data obtained from IDEC shall be used only for the purpose of locating Non-custodial parents or their assets, custodial parents and their children, and to permit only authorized personnel to access IDEC;
- D. Pay monthly charges for the use of IDEC, as outlined in Article IV and Article V;
- E. Cooperate with the IDEC Seat Agency in continuing IDEC operations in the state of West Virginia;
- F. Attend and participate in general conferences, workshop and training sessions involving IDEC participating states;
- G. Allow its executive head, or his/her designee, to serve as a member of the IDEC Policy Board; attend semi-annual IDEC Board Meetings, participate in Board conference calls, and attend related conferences; and
- H. Assume a proportional share of the costs paid for the operations of the Office of the IDEC Director.

ARTICLE IV CONTRACTING AGENCY RESPONSIBILITIES FOR THE FINANCIAL INSTITUTION DATA MATCH (FIDM) COMPONENT OF IDEC

The IDEC Contracting Agency agrees to:

- A. Provide files of obligors to the IDEC Contractor for the Financial Institution Data Match Component of IDEC on media as agreed upon using the format specified in the Federal OCSE Financial Data Match Specifications Handbook;

- B. Submit the files of obligors for the Financial Institution Data Match Component of IDEC so that they are received by the IDEC Contractor no later than the 10th day of each quarter;
- C. The IDEC Contracting Agency shall have security and confidentiality statements signed and on file for all staff having access to the FIDM Component data;
- D. Utilize the FIDM Component of IDEC to conduct searches for locating Title IV-D absent parents' assets; and
- E. Remit monthly payments for invoices for use of the FIDM Component of IDEC as shown on the attached Schedules B and C in Appendix A of this contract as follows:
 - 1. Annual FIDM-AEI Component Charges of \$37,551.00,
 - 2. Annual Seat Agency Administrative Charges of \$2,400,
 - 3. For a Total FIDM-AEI Annual Cost of \$39,951.00.

ARTICLE V IDEC SEAT AGENCY RESPONSIBILITIES

The IDEC Seat Agency Agrees to:

- A. Serve as the entity which contracts with the IDEC Contractor for IDEC Services on behalf of the IDEC member states;
- B. Obtain data processing programming expertise from the IDEC Contractor to produce extract programs to be used by the Contracting Agency. However, if the Contracting Agency would prefer in-house system staff to do the extract programming, the IDEC Contractor will provide data necessary for formatting the extract files and assist in any ways deemed appropriate by the Contracting Agency;
- C. Provide IDEC services to the IDEC Contracting Agency, directly or through the IDEC Contractor;
- D. Serve as the IDEC Seat Agency and allow its executive head to serve as the chairman of the IDEC Policy Board;
- E. Establish the Office of IDEC and to provide funds to retain the IDEC Director, provide clerical and technical support staff and indirect services in conjunction with the IDEC office;
- F. Be responsible for advising the Policy Board on financial and contractual matters and provide copies of financial reports;

- G. Have the IDEC Contractor provide a communications line from the IDEC data base facility to the IDEC Contracting Agency facility;
- H. Have the IDEC Contractor work with the IDEC Contracting Agency staff to establish the communications gateway or a remote access facility;
- I. Assure that audits of this contract will be conducted by MDHS' Division of Program Integrity, the Mississippi Office of the State Auditor, or an independent Certified Public Accountant, and as otherwise required by State and/or Federal requirements. This information will be provided to the IDEC Contracting Agency upon written request;
- J. Assume a proportional share of the total costs paid for the operation of the Office of the IDEC Director;
- K. Assume financial management responsibilities for the direct operations of IDEC or for contracting with IDEC Contractor costs to the West Virginia Department of Health and Human Resources, not to exceed the amounts shown in Schedules C, Column F of Appendix A, labeled "Total Annual/Monthly Charges", on the line labeled "ANNUAL", of the same Appendix. This amount shall not be increased, except as approved by a two-thirds majority vote of the members of the IDEC Policy Board;
- L. Provide the Contracting Agency with invoices which shall:
 - 1. Reflect discounts or credits as a result of new states joining IDEC;
- M. Bill monthly invoice charges to the IDEC Contracting Agency for the use of IDEC which are based on Schedules A, B, and C in Appendix A of this contract as follows:
 - 1. Annual FIDM-AEI Charges of \$31,743.96
 - 2. Annual IDEC Seat Agency Administrative Charges of \$2,400,
 - 3. For Total Annual Costs of \$34,143.96,
 - 4. For a 3-Year Total Cost of \$102,431.88.
- N. Represent that it has, or will have by the date services are delivered, under its control, the personal services, labor and equipment, machinery or other facilities to perform work required from it pursuant to this agreement."

ARTICLE VI REIMBURSEMENT

All IDEC Contracting Agencies agree to pay their monthly cost as outlined in Schedule C of Appendix A of this contract for the operation of the IDEC system by the 10th of the month following service. If payment is not received by the 10th of the following month, the

Contracting Agency will be notified. If payment is not received by the 30th day of that month, IDEC service may be terminated by action of the IDEC Policy Board.

IDEC Seat Agency will invoice the IDEC Contracting Agency for their monthly cost. IDEC Contracting Agency upon receipt of this contract agrees to pay for all services to date and will thereafter use its best efforts to make payment of uncontested invoices within thirty (30) days from receipt of each invoice.

ARTICLE VII TERMINATION

The parties of this contract agree to the following:

A. Termination for Lack of Funds

The parties hereto covenant and agree that their liabilities and responsibilities, one to another shall be contingent upon the availability of federal, state, and/or local funds for the funding of services and that this contract shall be terminated if such funding ceases to be available. Each state shall be the final authority as to the availability of its funds.

B. Termination for Breach of Contract

This Contract may be cancelled or terminated by either party at any time within the contract period whenever it is reasonably determined by such party that the other party has materially breached or otherwise materially failed to comply with its obligations under this contract or the Memorandum of Understanding between Public Welfare Agencies.

C. Notice of Termination by Contracting Agency

In the event of any termination of this contract by the Contracting Agency under this Article, notice shall be given in writing to the IDEC Seat Agency thirty (30) days in advance of the termination. Payment for services will be made up to the date of termination. Notice of termination shall be sent by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of the receipt.

D. Notice of Termination by IDEC Seat Agency

In the event of any termination of this contract by the IDEC Seat Agency under this Article, notice shall be given in writing to the Contracting Agency thirty (30) days in advance of the termination. Payment for services will be made up to the date of termination. Notice of termination shall be sent by certified mail, return receipt requested, and shall be effective thirty (30) days after the date of the receipt.

ARTICLE VIII APPEALS PROCEDURES

The IDEC Policy Board or its designee shall act as the administrative review body, except that the state seeking review shall not sit on the Policy Board during such review. The decisions established by the board shall be by majority vote of the administrative review body.

Exhibit B – Terms Mandated by Federal Circulars

**ARTICLE IX
COVENANTS AND CONDITIONS**

In addition to all other stipulations, covenants, and conditions contained herein, the parties to this Contract agree to the following covenants and conditions:

- A. Compliance with Civil Rights Act of 1964 Section 504 of the Rehabilitation Act of 1973
The IDEC Seat Agency hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973 and Title VI of the Civil Rights Acts of 1964 (PL 88-352) and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 CFR Parts 80 and 84) issued pursuant to those Titles in accordance with Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1978. Assurance of compliance is given in consideration of and for the purpose of obtaining payments in which Federal Financial Participation is involved.
- B. Employment of Personnel
In all hiring or employment made possible by or resulting from this Contract, the IDEC Seat Agency agrees that (1) there will not be discrimination against any employee or applicant for employment because of handicap, age, race, color, religion, sex, or national origin, and that (2) affirmative action shall be taken to insure that applicants are employed, and that employees are treated during employment without regard to their handicap, age, race, color, religion, sex or national origin. The IDEC Seat Agency further agrees to give public notice to employees and applicants setting forth the provisions of this clause.
- C. IDEC Services
No IDEC service under this contract shall be provided to anyone other than the IDEC Contracting Agencies.
- D. Compliance with Applicable Laws and Regulations
The IDEC Contracting Agency agrees to comply with all applicable federal and all states' laws and regulations in effect and as may be promulgated during the term of this contract in the provision of services and performance of its obligation under this contract.
- E. Integration and Amendment
As provided in Memorandum of Understanding among the IDEC States ("Memorandum of Understanding") Article 6, Additional Public Agencies, the IDEC Contracting Agency shall become a participant in IDEC, subject to the Memorandum of Understanding and IDEC By-Laws, upon execution of this Contract. The Memorandum of Understanding (Appendix B, Section 1) and IDEC By-Laws (Appendix B, Section 2) are attached hereto and incorporated herein by reference. This Contract with Appendix A and Appendix B shall be construed to be the complete integration of all understandings between the parties hereto. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation,

renewal, addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in a written contract executed and approved by both parties.

F. Conformity with Law

The provisions of this contract and performance hereunder are subject to all applicable laws, regulations, ordinances and codes of the federal, state, and local governments. All terms of the contract shall be construed in a manner consistent with the aforesaid law, regulations, ordinances and codes; and should it appear that any of the terms hereof are in conflict with any of the aforesaid laws, regulations, ordinances and codes, then the terms hereof which conflict therewith shall be ineffective to the extent of such conflict without invalidating the remaining provisions of this contract. Conflicting portions of this contract will be declared null and VOID with an amendment executed.

G. Non-Assignability

No assignment or transfer of this contract, or of any rights hereunder by the IDEC Contracting Agency shall be valid without the prior written consent of IDEC Policy Board.

H. Venue of Action and Place of Suit

The State of Mississippi acknowledges that the State of West Virginia is unable to expressly agree to be named as a Defendant in any state other than West Virginia per its state constitution. In the interest of furthering the parties' contractual relationship for the betterment of its citizens, the parties agree that the State of Mississippi is the IDEC Seat Agency and is the party with the most significant relationship to IDEC and the underlying transaction. The parties also understand that Mississippi intends to assert Mississippi law and venue in the State of Mississippi, Hinds County, with regard to disputes arising from this contract. Notwithstanding this intention, each party retains its right to assert any and all defenses to litigation if any shall occur.

I. Governing Law

The State of Mississippi acknowledges that the State of West Virginia is unable to expressly agree to be named as a Defendant in any state other than West Virginia per its state constitution. In the interest of furthering the parties' contractual relationship for the betterment of its citizens, the parties agree that the State of Mississippi is the IDEC Seat Agency and is the party with the most significant relationship to IDEC and the underlying transaction. The parties also understand that Mississippi intends to assert Mississippi law and venue in the State of Mississippi, Hinds County, with regard to disputes arising from this contract. Notwithstanding this intention, each party retains its right to assert any and all defenses to litigation if any shall occur.

J. Severability

Any provision of this contract prohibited by laws of the State of Mississippi or West Virginia or federal law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this contract, except for the provision regarding venue and choice of law.

K. Copyrights

If any copyright material is developed in the course of this contract, MDHS, the IDEC Contracting Agency and DHHS shall have a royalty free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work for IDEC purposes.

L. Political Activity

The funds, materials, property, or services provided directly or indirectly under this contract shall not be used for any political activity, or any activity to further the election or defeat of any candidate for public office or for any activity in violation of the Hatch Act.

M. Reporting of Fraudulent Activity

If at any time during the term of this Contract, the Contracting Agency becomes aware of or has reason to believe by whatever means that, under this or any other program administered by MDHS a recipient of or applicant for services, an employee of the Contracting Agency or MDHS, and/or Subcontracting Agency or its employees, have improperly or fraudulently applied for or received benefits, monies, or services pursuant to the Contract, the information shall be reported in confidence by the Contracting Agency directly to MDHS.

N. Titles

All titles used are for the purpose of clarification and shall not be construed to infer a contractual construction of language.

O. Incorporation of Schedules/Appendices

All Schedules/Appendices referred to in this Contract are attached, are expressly made a part of, and are incorporated as if fully set forth.

P. Age Discrimination

In accordance with 45 CFR Parts 90 and 91, the Contracting Agency shall have no bias or age discrimination as to benefits and participation under the IDEC program.

Q. Americans With Disabilities Act (ADA)

The Contracting Agency must comply with all requirements of the Americans With Disabilities Act (ADA) as applicable.

R. Restrictions On Lobbying

In Accordance with 31 U.S.C. 1352, funds received through this contract may not be expended to pay any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. This restriction is applicable to all subcontractors.

S. Status Verification

IDEC Seat Agency certifies that it and all proposed subcontractors, whether known or unknown at the time this contract is executed or awarded, are in compliance with 25 O.S. §1313 and participate in the Status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employee Verification Program (E-Verify) available at www.dhs.gov/E-Verify.

ARTICLE X RESPONSIBILITY FOR CLAIMS

Each party shall be responsible for all claims, demands, liabilities, suits, damages, costs, and expenses of every kind, including court costs and attorney fees, arising out of this Agreement and caused by the party's own, principals, agents, and parties assume no liability for actions or omissions of each other's agents, representative, employees, contracting agencies, subcontractors, or providers.

In witness whereof, the Contracting Agencies, by their authorized agents, have executed this contract as of the date signed or/and date of beginning of IDEC services to that state agency.

MISSISSIPPI DEPARTMENT
OF HUMAN SERVICES
"MDHS"

BY: DocuSigned by: Robert G. Anderson
Robert G. Anderson, Executive Director
Mississippi Department of Human Services

DATE: 6/15/2021

WEST VIRGINIA
DEPARTMENT OF HEALTH
AND HUMAN RESOURCES
"Contracting Agency"

BY: Kimberly S. Jobe

DATE: 07/14/21

WITNESS: Virginia [Signature]

WITNESS: _____

APPENDIX A
BILLING SCHEDULES

COST DISTRIBUTION FOR IDEC SERVICES (INFORMATIX CONTRACT)

PARTICIPATING STATE:

WEST VIRGINIA

SCHEDULE A - CONTRACT CHARGES FOR THE PARENT LOCATE COMPONENT OF IDEC

	A Contractor Total Charges	B Seat Agency Administrative Charges	C Total IDEC Annual/Month Charges
CONTRACT CHARGES EFFECTIVE July 1, 2021-June 30, 2024 (5 Contracting Agencies participating in the Parent Locate Component of IDEC)			
ANNUAL	\$0.00	\$0.00	\$0.00
MONTHLY	\$0.00	\$0.00	\$0.00
Month	Contractor Monthly Charge	Seat Agency Administrative Charge	Total Monthly State Charges
July	\$0.00	\$0.00	\$0.00
August	\$0.00	\$0.00	\$0.00
September	\$0.00	\$0.00	\$0.00
October	\$0.00	\$0.00	\$0.00
November	\$0.00	\$0.00	\$0.00
December	\$0.00	\$0.00	\$0.00
January	\$0.00	\$0.00	\$0.00
February	\$0.00	\$0.00	\$0.00
March	\$0.00	\$0.00	\$0.00
April	\$0.00	\$0.00	\$0.00
May	\$0.00	\$0.00	\$0.00
June	\$0.00	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00	\$0.00

COST DISTRIBUTION FOR IDEC SERVICES (INFORMATIX CONTRACT)

PARTICIPATING STATE:

WEST VIRGINIA

SCHEDULE B - CONTRACT CHARGES FOR FIDM SERVICES:

	A Contractor FIDM Charge	B Seat Agency Administrative Charges (FIDM)	C TOTAL FIDM CHARGES
ANNUAL	\$31,743.96	\$2,400.00	\$34,143.96
MONTHLY	\$2,645.33	\$200.00	\$2,845.33

SCHEDULE C - MONTHLY COST FOR IDEC PARENT LOCATE AND FIDM SERVICES COMBINED:

	A Contractor Parent Locate Charges	B Contractor FIDM Charges	C Contractor Combined Charges	D Seat Agency Administrative Charges (PL)	E Seat Agency Administrative Charges (FIDM)	F Total Annual/Monthly Charges	J 3-Year Total Charges
CONTRACT CHARGES EFFECTIVE July 1, 2021-June 30, 2024							
ANNUAL	\$0.00	\$31,743.96	\$31,743.96	\$0.00	\$2,400.00	\$34,143.96	
MONTHLY	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
SUMMARY OF MONTHLY COSTS FOR IDEC PARENT LOCATE AND FIDM SERVICES COMBINED:							
Month	Contractor Parent Locate Charges	Contractor FIDM Charges	Contractor Combined Charges	Seat Agency Administrative Charges (PL)	Seat Agency Administrative Charges (FIDM)	Total Annual/Monthly Charges	Total 3-Year Charges
July	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
August	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
September	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
October	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
November	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
December	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
January	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
February	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
March	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
April	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
May	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
June	\$0.00	\$2,645.33	\$2,645.33	\$0.00	\$200.00	\$2,845.33	
TOTALS	\$0.00	\$31,743.96	\$31,743.96	\$0.00	\$2,400.00	\$34,143.96	\$102,431.88

APPENDIX B

**MEMORANDUM OF UNDERSTANDING
AND
BY-LAWS**

APPENDIX B
SECTION 1

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE PARTICIPATING AGENCIES OF

**ALABAMA, ARKANSAS, DELAWARE, GEORGIA, KENTUCKY,
LOUISIANA, MISSISSIPPI, NEW MEXICO, NORTH CAROLINA,
OKLAHOMA, SOUTH CAROLINA,
SOUTH DAKOTA, TENNESSEE, VIRGINIA, AND
WEST VIRGINIA¹**

FOR THE OPERATION OF THE

INTERSTATE DATA EXCHANGE CONSORTIUM (IDEC)

1. PURPOSE

This memorandum sets forth the policies and procedures agreed to by the above mentioned public authorities with regard to the operations of the Interstate Data Exchange Consortium (IDEC) for the purpose of administering Title IV-D of the Social Security Act after the Federal grant, which funded IDEC, expired on December 31, 1988.

2. OBJECTIVES

- A. To establish a governing/organizational structure for IDEC.
- B. To establish procedures for IDEC operations consistent with Title IV-D of the Social Security Act.

3. IDEC GOVERNING/ORGANIZATIONAL STRUCTURE

A. IDEC POLICY BOARD

The IDEC Policy Board shall be the governing body and policy-making arm for IDEC. The policy board will be composed of the executive heads, or their designee, of the participating agencies and will be guided in its operation by a set of governing bylaws which establishes the authorities, responsibilities, rules, and conventions for Policy Board operation. The IDEC Director will be designated by the Child Support Director, of the IDEC Seat Agency as described below.

B. IDEC SEAT AGENCY

The IDEC Seat Agency will have administrative and management responsibilities for the operation of IDEC. The IDEC Director and supporting staff will be housed in the Seat Agency and administratively report to the Child Support Director, or his/her designee. The State of Mississippi will serve as the Seat Agency indefinitely. Should the Seat Agency resign its Seat Agency responsibility, the Policy Board may upon two-thirds majority vote of the members, elect a Seat Agency. The IDEC Policy Board may elect to change the Seat Agency at any time upon two-thirds majority vote of the members.

C. IDEC OFFICE

The IDEC Office shall be a component of the governing structure of IDEC with general operational responsibilities outlined in the governing bylaws. The IDEC Office will reside within the IDEC Seat Agency and will be managed by an IDEC Director who will be responsible for the day-to-day IDEC operations. The IDEC Director will be employed under the policy and procedures of the Seat Agency. The Seat Agency will pay the salary of the IDEC Director, provide clerical and technical support staff, and other indirect services required of IDEC. This is based on the agreement by the participating agencies to pay, on an equal basis, the cost of travel, supplies and equipment for the IDEC Office operations and to absorb equal pro-rata share of the total costs paid by the Seat Agency, as part of their IV-D administrative cost for purposes of calculating incentives. The budget for travel, supplies, equipment for the IDEC office operations will be approved by the IDEC Policy Board in the last half of the year preceding the affected year. An annual accounting of expenditures will be provided to each of the signatories.

D. STATE IDEC STAFF

Each IDEC participating agency will designate an IDEC coordinator for that agency for the purpose of coordinating day-to-day IDEC operations with the IDEC office. As with such matters, each agency will have sole responsibility for all matters pertaining to its staff including security and confidentiality agreements within the state for users and contract provisions for each state with IDEC. Each state will be responsible for monitoring the use of data obtained through IDEC data bank for any violations. Violations may be punishable in accordance with the laws of each state and may subject the violating state to termination in IDEC by action of the IDEC Policy Board.

E. POLICY BOARD GOVERNING BYLAWS

The Policy Board Governing Bylaws shall be the document which governs the operation of the Policy Board. This document should address formation, policy-making procedures, participation, and rules of order for the Policy Board.

4. INTERSTATE CONTRACTS AND AGREEMENTS

There will be contractual agreements between each IDEC participating/user agency and the IDEC Seat Agency for IDEC services. The contracts shall address the services to be provided by the IDEC Seat Agency and terms and conditions relating to performance and funding. The contracts shall also address the responsibilities of participating/user agencies relating to the sharing of data and the provision of data from source agencies. The contracts shall also address security and confidentiality provisions on the use of shared data.

5. OTHER CONTRACTS AND AGREEMENTS

The IDEC Seat Agency will execute other contracts or agreements as necessary to provide for host IDEC services to the participating agencies. These contracts will be submitted to the Policy Board for review and comment in accordance with procedures prescribed in the Bylaws. These contracts/agreements will be governed by the procurement processes and procurement code and regulations of the IDEC Seat Agency and Federal laws and regulations relative to procurement procedures and approvals necessary to effect matching Federal funding.

6. ADDITIONAL PUBLIC AGENCIES

It is agreed that public agencies providing Title IV-D services, other than those agencies previously mentioned, will become participating agencies in IDEC upon satisfactory compliance with terms and conditions, including financial responsibilities as promulgated by the IDEC Policy Board.

¹ Participating States listed in the heading of the Memorandum of Understanding will change as new states are added or existing states are deleted from the system.

APPENDIX B
SECTION 2
BY-LAWS

BY-LAWS
OF THE
IDEC POLICY BOARD

Article I
NAME

The name of this organization is the Interstate Data Exchange Consortium (IDEC) Policy Board.

Article II
OBJECTIVE

The IDEC Policy Board shall be the governing and policy-making body for the Interstate Data Exchange Consortium (IDEC), AS PRESCRIBED IN THE MEMORANDUM OF Understanding between the participating agencies. The IDEC Director, as defined in the memorandum of Understanding, shall be the chief administrative officer of the Policy Board.

Article III
MEMBERSHIP

- Section 1. Membership** – The IDEC Policy Board shall be composed of one representative from each of the participating agencies, which are signatories to the Memorandum of Understanding. Each agency participating with full membership in IDEC shall appoint one member to the Policy Board to represent that agency's participation and will be considered as a participating member. Any agency that has signed a Memorandum of Understanding but has elected to be a user of Data Match Partner services will be considered as Data Match Partner members, and as such, will not have a representative appointed to the Board.
- Section 2. Voting rights** – Each member of the IDEC Policy Board shall be entitled to one vote on each matter submitted to a vote of the members. Members participating in FIDM only or Parent Locate only will be allowed to vote only on issues that effect services for which these members are receiving. The IDEC Director will vote only in the event of a tie vote for simple majority or for matters requiring two-thirds vote.

- Section 3. Termination of Membership** – The IDEC Policy Board, by an affirmative vote of two-thirds of all of the members of the Policy Board, may terminate the membership of any participating user agency who becomes in default of the Memorandum of Understanding or in breach of the contract between the IDEC Seat Agency and the "Contracting Agency."
- Section 4. Resignation** – Any agency member of the IDEC Policy Board may resign by filing a written resignation with the Director, but such resignation shall not relieve the Policy Board agency member of the obligation of the contract between the IDEC Seat Agency and the "Contracting Agency" he/she represents.
- Section 5. Reinstatement** – Upon written request signed by the former IDEC Policy Board agency member and filed with the Director, the IDEC Policy Board may, by affirmative vote of two-thirds of the members of the Board, reinstate such former member to membership upon such terms as the IDEC Policy Board may deem appropriate.

Article IV **MEETING OF MEMBERS**

- Section 1. Meetings** – The IDEC Policy Board shall meet at least twice a year for the purpose of transacting IDEC business. The IDEC Policy Board will designate the meeting site and other particulars relative to the meetings of the IDEC Policy Board. Two-thirds of the membership shall constitute a quorum for purposes of holding an official meeting.
- Section 2. Special Meetings** – Special meetings of the IDEC Policy Board may be called by the IDEC Director or upon request of two-thirds of the membership.
- Section 3. Notice of Meetings** – Written notice of meetings requiring the attendance of board members shall state the place, day and hour of the meeting and shall be delivered to each member entitled to a vote at such meeting not less than thirty days before the date of such meeting. In case of a special meeting, or when required by these bylaws, the purpose or purposes for which the meeting is called shall be stated in the meeting notice.

Article V **COMMITTEES**

- Section 1. Committees** – The IDEC Policy Board, by resolution and a majority vote of the Policy Board members present at a scheduled IDEC

Policy Board meeting, may designate and appoint one or more committees, each of which shall consist of two or more Policy Board members. Membership to such committees shall be appointed by the Director. Such committees, to the extent provided in said resolution, shall not have the authority of the IDEC Policy Board to amend, alter, or repeal the by-laws, to elect, appoint or remove any member of such committee.

Section 2. Term of Office – Each member of a committee shall continue until his/her successor is appointed by the IDEC Policy Board or the committee is dissolved by the IDEC Policy Board.

Section 3. Committee Chairperson – Each committee shall decide upon a Committee Chairperson.

Section 4. Vacancies – Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Article VI **AMENDMENTS TO THE BYLAWS**

These bylaws may be altered, amended or repealed and new bylaws may be adopted by two-thirds majority vote of the IDEC Policy Board at any regular scheduled meeting.

Article VII **RULES OF ORDER**

The Rules of Order for the IDEC Policy Board will be in accordance with the ROBERT'S Rules of Order.

Article VIII **GENERAL**

The IDEC Policy Board is authorized to promulgate rules and regulations to be published in a Policy Manual, which governs the operations and management of the Interstate Data Exchange Consortium. A copy of the Policy Manual will be distributed to each member of the IDEC Policy Board. The IDEC Policy Board shall approve a fee structure for participating agencies. Any variance from this fee structure shall require approval by two-thirds vote of the members.

Provisions Required for Federally Funded Procurements

1. **Federal Funds:** This purchase is being funded in whole or in part with Federal Funds and is subject to the requirements established in 2 CFR § 200. Pursuant to 2 CFR § 200.317 the provisions of 2 CFR §§ 200.322 and 200.326 are expressly included in this solicitation below and incorporated into any contract resulting from this solicitation by reference.
2. **2 CFR §200.322 Procurement of recovered materials:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors 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.
3. **§200.326 Contract provisions:** Pursuant to the requirements contained in 2 CFR §§ 200.317 and 200.326, the following provisions are included any contract resulting from this solicitation, to the extent that the provisions are applicable.
 - (A) At a minimum, the administrative, contractual, or legal remedies contained in W. Va. CSR § 148-1-5 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract resulting from this solicitation in instances where contractors violate or breach contract terms for contracts for more than the simplified acquisition threshold currently set at \$150,000 (which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908).

West Virginia Code of State Rules § 148-1-5 states:

§ 148-1-5. Remedies.

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

5.2.a.1. The vendor agrees to the cancellation;

5.2.a.2. 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.a.3. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.a.4. The existence of an organizational conflict of interest is identified;

5.2.a.5. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

5.2.a.6. Violation of any federal, state, or local law, regulation, or ordinance.

5.2.b. 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.c. 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.d. 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.d.1. 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.d.2. 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.a. The Director may suspend, for a period not to exceed one (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.a.1. The vendor has exhibited a pattern of submitting bids and then requesting that its bid be withdrawn after bids have been publicly opened. For purposes of this provision, a pattern is two or more instances in any 12 month period.

5.4.a.2. The vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to, two or more instances of any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; and failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.a.3. 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.a.4. The vendor's actions have given rise to one or more of the grounds for debarment listed in section 5A-3-33d.

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

5.4.b.1. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.b.2. A notice of suspension must inform the vendor:

5.4.b.2.A. Of the grounds for the suspension;

5.4.b.2.B. Of the duration of the suspension;

5.4.b.2.C. Of the right to request a hearing contesting the suspension;

5.4.b.2.D. That a request for a hearing must be served on the Director no later than five (5) working days of the vendor's receipt of the notice of suspension;

5.4.b.2.E. That the vendor's failure to request a hearing no later than five (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.b.2.F. 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.b.3. A vendor's failure to serve a request for hearing on the Director no later than five (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.b.4. 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.b.5. Within five (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.b.6. The hearing will be recorded and an official record prepared. Within ten (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.c. A vendor may appeal a decision of the Director to the Secretary of Administration. The appeal must be in writing and served on the Secretary no later than five (5) working days of receipt of the Director's decision.

5.4.d. 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 ten (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.e. 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 West Virginia 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.a. Debarment proceedings shall be conducted in accordance with West Virginia 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.b. 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.c. 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.d. Pursuant to West Virginia Code section 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.e. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.6. Damages.

5.6.a. 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.b. 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.c. 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.

(B) At a minimum, the termination for cause and for convenience provisions contained in W. Va. CSR § 148-1-5.2 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract in excess of \$10,000 resulting from this solicitation.

West Virginia Code of State Rules § 148-1-5.2 states:

5.2. Contract Cancellation.

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

5.2.a.1. The vendor agrees to the cancellation;

5.2.a.2. 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.a.3. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.a.4. The existence of an organizational conflict of interest is identified;

5.2.a.5. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

5.2.a.6. Violation of any federal, state, or local law, regulation, or ordinance.

5.2.b. 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.c. 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.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include 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."

41 CFR § 60-1.3 defines "Federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Accordingly, to the extent that this contract meets the definition of a "federally assisted construction contract" under 41 CFR Part 60-1.3, the following clause is included:

41 CFR 60-1.4 - Equal opportunity clause. (b) *Federally assisted construction contracts.*

In accordance with the requirements of described above, and except as otherwise provided in the applicable regulations, the following language is hereby incorporated into any contract resulting from this solicitation involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may

request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(D) Davis-Bacon Act, as amended (40 U.S.C.3141-3148). Any construction contract resulting from this solicitation hereby requires 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 are required to 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. In addition, contractors are required to pay wages not less than once a week.

Any construction contract resulting from this solicitation hereby requires compliance 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"). The Act provides that each contractor or subrecipient 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.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, any contract resulting from this solicitation in excess of \$100,000 that involve the employment of mechanics or laborers hereby requires compliance 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, each contractor 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.

(F) Rights to Inventions Made Under a Contract or Agreement. 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.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended— Any contract resulting from this solicitation in excess of \$150,000 hereby requires compliance 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).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)— Any contract resulting from this solicitation will not be awarded to parties listed on the government wide Excluded Parties List System 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."

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)— Any contract resulting from this solicitation requires compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more 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.