



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

State of West Virginia Master Agreement

Order Date: 11-17-2021

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:	CMA 0803 0066 DOT2200000045 1	Procurement Folder:	925233
Document Name:	BRIDGE EXPANSION JOINT REPAIR SYSTEM EMSEAL 6622C008	Reason for Modification:	
Document Description:	BRIDGE EXPANSION JOINT REPAIR SYSTEM EMSEAL 6622C008		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2021-12-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2022-11-30

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000159743 TOM BROWN INC 224 GEORGETOWN RD LAWRENCE PA 15055 US Vendor Contact Phone: 724-260-5958 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Martha A Gibson Requestor Phone: (304) 558-9495 Requestor Email: marty.a.gibson@wv.gov 22 FILE LOCATION
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

11-19-21
800

Total Order Amount:

Open End

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION
DATE: *Tara* 11/18/2021
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: *JD L. Jones*
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
DATE: *11/23/2021*
ELECTRONIC SIGNATURE ON FILE

11/22/2021

Extended Description:

The Vendor, Tom Brown Inc., agrees to enter with the West Virginia Department of Transportation (WVDOT), West Virginia Division of Highways (WVDOH), into an open-end contract to provide Bridge Expansion Joint Repair System - EMSEAL per the Specifications, Terms and Conditions, Bid Requirements, and the Vendor's bid dated 11/04/2021, incorporated herein by reference and made apart hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	30111902			EA	0.000000
	Service From	Service To			

Commodity Line Description: BRIDGE EXPANSION JOINT REPAIR PRODUCT SYSTEMS

Extended Description:

BRIDGE EXPANSION JOINT REPAIR PRODUCT SYSTEMS, Pricing Pages, Exhibit A

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on December 1, 2021 and the initial contract term extends until (1) One Year.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three(3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

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

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

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

☐ **Other:** See attached _____
Revised 07/01/2021

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.

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 of 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 Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **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.

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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 and must include the State as an additional insured 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 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: _____ per occurrence.

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

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

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

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

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

☒ State of WV must be listed as additional insured on Insurance Certificate.
Certificate holder should read as follows:

☒ State of WV
1900 Kanawha Blvd. E., Bldg.5
Charleston, WV 25305

☐

☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

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. [Reserved]

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

☐ _____ for _____.

☒ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) 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; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall 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. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

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

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

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

37. PURCHASING AFFIDAVIT: 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. Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

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

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

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

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

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

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

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

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

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

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

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

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

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

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.

Rett Watters Contract Manager
(Name, Title)
Rett Watters Contract Manager
(Printed Name and Title)
224 Georgetown Rd Lawrence, PA 15055
(Address)
(304) 374-5660 (412) 742-4666
(Phone Number) / (Fax Number)
rwatters@tombrowninc.com
(email 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 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.

Tomb Brown Inc.
(Company)

Rett Watters Contract Manager
(Authorized Signature) (Representative Name, Title)

Rett Watters Contract Manager
(Printed Name and Title of Authorized Representative)

11/4/2021
(Date)

(304) 374-5660 (412) 742-4666
(Phone Number) (Fax Number)

REQUEST FOR QUOTATION
Bridge Expansion Joint Repair Systems, EMSEAL or Equal

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish a low bid contract to provide, on an open-end and continuing basis, the bridge expansion joint repair products system EMSEAL BEJS Joint System or Equal, for use in repair and maintenance to bridge expansion joints at locations throughout the State of West Virginia. The bid price for the contract Items shall include Delivery at the Vendor's expense. Contract Item(s) must meet or exceed the mandatory requirements as shown herein.
- 2. DEFINITIONS:** The terms used throughout this solicitation shall have the assigned meanings as indicated below. Additional definitions can be found in Section 2 of the General Terms and Conditions.
 - 2.1 "AASHTO"** - American Association of State Highway and Transportation Officials. Reference: www.transportation.org.
 - 2.2 "Attachment A" or "ATT A" or "Pricing Page(s),"** - the pages, contained in wvOASIS, and/or attached hereto upon which Vendor should list its proposed price for the Contract Services and which will be used to evaluate the solicitation responses.
 - 2.3 "Contract Item(s)" or "Materials" or "Items"-** the goods and/or services identified in Section 3.3 and referenced throughout this contract and its Attachments.
 - 2.4 "Contractor" or "Vendor"** - interchangeably used throughout this Solicitation and in any cited Sections of the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted latest Standard Specs edition, as amended, including any Supplementals and refers to 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.
 - 2.5 "Emergency Work"** - work which is required to be done without delay owing to circumstances for which the WVDOH could not have reasonably expected and has been designated as such by a representative of the WVDOH.
 - 2.6 "Failed Delivery" or "Delivery Order Failures"-** the Vendor's contract Item delivery or quality fails to comply with the Delivery Order and contract requirements.
 - 2.7 "F.O.B. Destination" or "Free-on-Board Destination"** - awarded Vendor or its designee bears the freight charges, owns the goods while in transit, and will deliver goods to the location specified on the Delivery Order via truck/other conveyance without any expense to the purchaser. The bid price for contract Items shall include delivery at the Vendors expense.

REQUEST FOR QUOTATION
Bridge Expansion Joint Repair Systems, EMSEAL or Equal

- 2.8 “Kick-out Termination”** - a unit to divert water off of the end of an expansion joint beyond the pier.
- 2.9 “Liquidated Damages”** - monetary compensation due from the Vendor in the event the Vendor’s performance falls short of contractual stipulation or breaches the contract. Delays in the delivery of goods and/or services or quality failures or corrections by the Vendor may result in the Agency assessing charges for such deficiencies per these contract Specifications, the Standard Specs Section 108.7, as amended, and calculated from the table posted at the WVDOH Contract Administration’s Specifications and Documents website, as amended:
<https://transportation.wv.gov/highways/contractadmin/specifications/Pages/LiquidDatedDamages.aspx>
- 2.10 “RH”** - Relative Humidity.
- 2.11 “Solicitation”** - official notice published by the West Virginia Purchasing Division, of an opportunity to bid on goods and/or services for the State of WV.
- 2.12 “Standard Specs”** - West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted latest edition.
- 2.13 “Unit of Measure” or “UOM”** – the physical unit of measurement for each contract Item.
- 2.14 “Universal-90° Termination”** - an angled unit, downturn installed, where a joint runs off of a bridge deck.
- 2.15 “Universal-90° Transition”** - an angled unit used to join materials and/or other units together.
- 2.16 “WVDOH” or “Agency”** - in these Specifications refers to the West Virginia Division of Highways.

3. GENERAL REQUIREMENTS:

- 3.1 Mandatory Items To Be Included With the Bid:** The Vendor should carefully read this entire solicitation invitation. The Vendor shall include as part of their bid response:
- Certification and Signature Page
 - Addendum Acknowledgement Form
 - Valid West Virginia Contractor’s License, if applicable
 - Contract Manager page

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Bridge Expansion Joint Repair Systems, EMSEAL or Equal

- Attachments included with this solicitation (ATT A excel spreadsheets)
- Purchasing Affidavit (properly notarized)
- Ethics/Disclosure Form (properly notarized) when provided with the solicitation
- Valid Certificate of Insurance, and,
- Any other required forms or supportive information as described herein.

Omitting any required forms or documentation as described throughout this contract will deem a bid non-responsive, either in part or whole and may result in disqualification of the bid.

- 3.2 Specifications:** The following Sections of the Standard Specs, as amended, shall apply to the administration of this contract: 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 401, as amended.

A hard copy of the current Standard Specs may be purchased at a cost of \$20.00 (\$15.00 for the latest book plus \$5.00 for the latest Supplemental) by completing the attached "Standard Specifications Order Form" and emailing it to DOHSpecifications@wv.gov or mailing it to the following address:

WVDOH Contract Administration
Building 5, Room 840
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

A free electronic copy of the Standard Specs may be obtained by sourcing:
https://transportation.wv.gov/highways/contractadmin/specifications/Documents/SpecBookOrderForm_20171128.pdf

- 3.3 Materials:** The following materials (the brand names of which it shall be noted may be found as registered with trademarks but the symbols for them have not been included as part of this solicitation), or approved equivalent or "Equal", are to be provided under this contract:

- 3.3.1 EMSEAL BEJS Expansion Joint System or Equal** is composed of the contract Items listed below as components making up the system. All Equal to components must be compatible with the current EMSEAL BEJS Expansion Joint Systems or Equal.

3.3.1.1 EMSEAL EMCRETE Polyurethane Nosing or Equal: This polyurethane nosing or Equal shall be a twocomponent fast curing polyurethane resin mixed with sand and chopped fiberglass that will cure to a durable, flexible, weather and high-impact resistant elastomeric concrete. The polyurethane nosing or Equal shall be sold by the kit unit which shall include part A** and part B***, a tert-Butyl acetate primer,

REQUEST FOR QUOTATION
Bridge Expansion Joint Repair Systems, EMSEAL or Equal

sand, and fiber. This polyurethane nosing material or Equal shall meet or exceed the following:

Cure: Shall cure at a minimum substrate temperature of 70°F and be able to accept traffic in one hour.

Mixed Polyurethane WITH Sand and Chopped Fiberglass:

Compressive Strength: 1500 psi min. ASTM D 695

Adhesion (primed concrete): 413 psi min. ASTM D 7234

Adhesion (primed steel): 492 psi min. ASTM D 7234

Adhesion (primed galv. steel): 417 psi min. ASTM D 7234

Tensile Strength: 20% min. 651 psi ASTM D 412

Hardness (Shore D): 57 ASTM D 2240

Hardness (Shore A): 98 ASTM D 2240

Viscosity @ 50 rpm (mixed resin) 1560cp ASTM D 4847

Impact Testing, *ball drop: No Failure ASTM D 3029-95 @ 69° F

No Failure ASTM D 3029-95 @ -4° F

***1 pound steel ball dropped onto 3/8-inch-thick x 2 3/4 inch dia.**

****Part A shall be a polymethylene polyphenyl polyisocyanates liquid**

*****Part B shall be an amine polyol mixture liquid**

3.3.1.2 EMSEAL BEJS Joint System or Equal shall be comprised of a pre-compressed, silicone-and-foam hybrid to be installed into field applied epoxy adhesive on joint faces with silicone bellows locked to the joint faces with a silicone sealant band. EMSEAL BEJS Joint System or Equal shall be supplied by the sized piece, roll, universal-90° termination, universal-90° transition, and kick-out termination AND at the specified width sizes identified on the Pricing Page. The EMSEAL BEJS Joint System or Equal shall meet or exceed the following:

Silicone

Color: Black

Percent Solids: 96 minimum

Specific Gravity: 1.26 – 1.34

Tests below conducted on sealant cured after 21 days at 77°F, 50% RH:

Elongation: 1400% min

Joint Modulus @ 50% Elongation: 7 psi

Joint Modulus @ 100% Elongation: 8 psi

Joint Modulus @ 150% Elongation: 9 psi

Adhesion to Concrete, min % Elongation: +600%

Adhesion to Asphalt, min % Elongation: +600%

Joint Movement: +100/-50 %, 10 Cycles

Weatherability: Unaffected by Climatic Extremes

Flexibility: Cured sealants stay rubbery from -50° to 300°F.

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Bridge Expansion Joint Repair Systems, EMSEAL or Equal

Foam

Base Material: Cellular, high density, polyurethane foam

Impregnation: Proprietary, modified, water-based, acrylic

Temp Service Range: High 185° F, Low -41° F ASTM C711

UV Resistance: No change @ 2000 hours ASTM G155-00A

Resistance to Aging: No change @ 2000 hours ASTM G155-00A

Bleeding: -40°F to 180°F No bleeding compressed min of claimed movement i.e., -50% of nominal size, heated simultaneously to 180°F 3 hours.

Compression Set: Materials recovers to +50% of nominal size in 24 hours of compression to -50% and heated simultaneously to 180° for 3 hours.

- 3.4 Bid Instructions:** The Pricing Pages are attached and available in Excel spreadsheet form. The Vendor should enter its name at the top of the Pricing Page. Vendor shall not modify the format of the Pricing Page nor change the Units of Measure. The Estimated Quantities are listed for bid evaluation purposes only. The Vendor's Pricing shall include Items/system components and delivery by Vendor F.O.B. to Destination of any job site located in the state of WV. At the time of need, the Agency will issue to the Vendor a completed Delivery Order including the delivery destination.

Vendors are encouraged to supply their pricing typed and in electronic spreadsheet form provided with this solicitation. The Vendor can request an electronic copy of the Excel spreadsheet Pricing Pages by sending an email request to the Buyer for this solicitation: John.W.Estep@wv.gov. The Vendor shall not email its bid to the WV Purchasing Division.

- 3.4.1 Pricing Pages – Attachment A (ATT A):** Vendor shall complete the ATT A and provide pricing per Item by the unit of measure (UOM) listed on the Pricing page for each and all components/contract Items within the System.

- 3.4.2 Extend Pricing and Total All Items:** The Vendor shall complete the ATT A and provide its individual Item cost and extended cost for all brand system component Items or Equal and per the WVDOH's unit of measure (UOM) listed on the Pricing Page by including:

- **Unit Cost of each System Item** – Individual component Unit Price per UOM.
- **Extended Cost of each Item** – Unit Price multiplied by the Estimated Quantity (example: Unit Cost \$5 x Estimated Quantity 8 = \$40 Extended Cost).
- **Grand Total of Extended Cost of all Items** – the SUM of all Items in the *Extended Cost* column. *The Agency shall use the "Grand Total" to determine the low bid.

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***NOTE:** If the Vendor's bid does not include its Pricing for all System components/Items, the extended pricing per Estimated Quantity, and the calculated Grand Total, the bid will be subject to disqualification.

3.4.3 Proposed Equals to Requested Items: If the Vendor is proposing an equivalent or "Equal" product as part of its bid, the Vendor SHALL provide the manufacturer's name, brand, part name, model, and product type on the Pricing Page and should attach with their bid packet any supporting/ justifying documentation containing product properties, composition, etc., for review by the WVDOH.

3.4.3.1 The WVDOH shall review any proposed Equal Item and determine Item equivalency, with approval being at the discretion of the WVDOH. The buyer may contact the Bidder if additional information is needed to verify equivalency. Thus, it is important that the Vendor provide the designated contact person and Contract Manager information, including email address and phone number, etc.

3.4.3.2 If no other manufacturer's name, brand, part name, model, product type is identified on the Pricing Page, the WVDOH will expect that the Vendor is providing the requested brand products.

4. SAFETY: Pandemic-Response Safety Protocols - In addition to the Vendor's established safety protocols and the WVDOH's established safety protocols outlined in the Standard Specs, as amended, the Vendor and the Vendor's staff or designee shall adhere to all WVDOH's pandemic-response protocols while present at the WVDOH location/jobsite. Vendors may obtain the WVDOH's pandemic-response protocols by contacting the WVDOH District Engineer.

5. CONTRACT AWARD:

5.1 Contract Award: A contract will be awarded to the responsible Vendor meeting the contract specifications and having the lowest Grand Total Cost per Pricing Page.

5.1.1 At the time of need, the Agency, at its own discretion will determine the System and Items needed per bridge project. The Agency will send the awarded Vendor a Delivery Order with the Agency's desired contract Items to be purchased and disclose the job site/delivery location.

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The estimated quantities listed on the Pricing Pages are used for bid evaluation purposes only. No future use of the contract or purchase of any individual Item is guaranteed or implied throughout the life of this contract.

- 5.2 Contract Award Transition:** Upon the award of this contract, whether the effective date or the completed and encumbered date or an established date by the Agency, the WVDOT Operations Division will announce the effective date of use of this contract to the Districts and the Vendors. Upon the announced effective date of use, any Delivery Order issued toward the previously effective/prior contracts with work/delivery started shall remain in effect and shall not be cancelled until that Delivery Order is filled. Any Delivery Order issued with work/delivery not started shall be cancelled and reissued off the new contract. No Delivery Order from the previously effective contracts should be held open by the District or the Vendor longer than ten (10) working days after the notice of effective date of use of the new contracts.

This directive is issued to assist the Districts and the Vendors when fulfilling open Delivery Orders only. It is NOT issued to cause harm or to take contracts from one Vendor to give to another Vendor, but to establish a transition process from one contract into another contract.

- 5.3 Price Adjustments:** In the event of a significant price increase of component material or rental equipment utilized to perform or under this Contract, that is not the fault of the Vendor, the contract pricing, may be equitably adjusted by change order as more fully described below.

- 5.3.1** A change in price is considered significant if the price of the component material or rental equipment increases by 20% or more from the original bid amount.

- 5.3.2** Any request for a price increase under this clause must be supported by: price quotes for the component material or rental equipment for which a change is being sought; invoices showing amounts actually paid for the component materials or rental equipment; and any other evidence that supports the increase request.

- 5.3.3** The quotes provided to support the price increase request must be the quotes that Vendor actually relied on when submitting its bid and both the quote and the amount ultimately paid must have resulted from an arm's length transaction with an unrelated party.

- 5.3.4** Vendor must also show that the significant price increase would have been incurred if the owner had purchased the material or rental equipment directly from the supplier.

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- 5.3.5** Price adjustments will be granted or denied at the sole and absolute discretion of the State.
- 5.3.6** Price adjustments will only be considered annually at the contract expiration/renewal date. Vendor must submit price adjustment requests 60 days prior to the expiration/renewal date to be considered.
- 5.3.7** Vendor documentation for price adjustments shall be submitted to DOHOperationsProcurement@wv.gov for initial review.
- 5.3.8** Price adjustments shall be memorialized by a written Change Order, which must be reviewed and approved by the Purchasing Division, and as to form by the Attorney General's Office, in order to be effective. Adjusted pricing will not take effect until the effective date of such Change Order and cannot be retroactive.
- 6. DETERMINING LOW BID:** The ordering Agency's WVDOH District Engineer or their designee will determine the Items needed and issue a written Delivery Order to the awarded low bid Vendor.
- 7. ORDERING AND PAYMENT:**
- 7.1 Ordering:** Vendor shall accept orders through e-mail, wvOASIS, facsimile, regular mail, or any other written forms of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor can accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its online ordering system is properly secured prior to processing Agency orders online. Vendor shall maintain communication of its current e-mail addresses, phone numbers, fax numbers, location addresses, and all ordering/ billing/ payment addresses with WVDOH and in wvOASIS as changes become applicable.
- 7.1.1 Acknowledging Receipt of Agency Orders:** To acknowledge all Agency orders and ascertain Delivery Order acceptance, Vendor must respond to the ordering Agency - in writing - by either email or fax to all Agency Delivery Orders by no later than five (5) calendar days of the date of the Delivery Order, and by 4:00p.m. on the fifth calendar day. Failure to comply with this provision shall be considered Delivery Order refusal or failure, thus, making the failed Delivery Order or the remaining undelivered quantity subject to cancelation, at a minimum, (see the "Late or Failed Delivery," and "Vendor Default" Sections in these Specifications).

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Bridge Expansion Joint Repair Systems, EMSEAL or Equal

- 7.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. The State of West Virginia currently utilizes a Purchasing Card (P-Card) program, administered under contract by a banking institution, to process payment for goods and services through state designated credit cards. Under this Contract, Vendor must accept payment by electronic funds transfer and P-Card. Electronic Funds Transfer for payment is available through the WV State Auditor's Office. The Vendor may visit the WV State Auditor's website (www.wvsao.gov) for all necessary forms and instructions. Payment method for each Delivery Order may be dictated at WVDOH's discretion.

8. DELIVERY, LATE DELIVERY, AND RETURN:

- 8.1 Delivery Time:** Vendor shall complete standard orders within fifteen (15) business days from receipt of Delivery Order unless otherwise specified by the WVDOH on the Delivery Order. Vendor shall deliver emergency requests within an agreed upon timeframe established by the WVDOH and the Vendor.
- 8.1.1** Vendor shall fulfill all orders in accordance with the Agency's Delivery Order schedule and SHALL NOT HOLD ORDERS until a minimum delivery quantity is met.
- 8.1.2** The Agency reserves the right to arrange for pick-up of ordered Items at the Vendor's location if preferred by the Agency, such as in the instance of an emergency or convenience.
- 8.1.3** The Agency reserves the right to issue Emergency Delivery Orders as needs dictate. Emergency Delivery Orders shall be created and/or approved by the WVDOH District Engineer or his designee. The Agency shall prominently document "Emergency" on the Delivery Order. The Vendor shall rush process the Order and deliver the Items within five (5) working days of Order receipt by the Vendor, or as otherwise directed by the Agency on its Delivery Order. If the Emergency Delivery Order is completely received by the Agency within the Agency's specified Emergency delivery timeline, the WVDOH shall pay the Vendor 105% of the awarded contract Item price for the completed Emergency Delivery Order.
- 8.2 Late or Failed Delivery:** If the Vendor fails or anticipates delay or failure to deliver any portion of the ordered contract Items according to the Agency's date specified on its Delivery Order, Vendor shall provide to the ordering Agency -in writing- the reason for its failure or anticipated failure, no later than five (5) working days of the date of the Delivery Order, and by 4:00pm on the fifth day.

If, at its own discretion, the Agency deems the failed delivery as harmful to the

REQUEST FOR QUOTATION
Bridge Expansion Joint Repair Systems, EMSEAL or Equal

Agency, the Delivery Order shall be subject to cancellation by the Agency, and/or may lead to the Agency obtaining the Items from an alternate, economical party, such as the next low bid Vendor or from the open market. Failed Delivery Orders shall be subject to Liquidated Damages at the discretion of the Agency, (see below). The Agency reserves the right to apply an offset reduction to the Vendor's invoice, for the difference in cost from that Vendor's price and the alternative economical source's price, plus, including but not limited to, any additional transportation charges associated with said delivery, as needed to fulfill the cancelled Delivery Order.

Any Agency seeking to obtain contract Items from the open market under this provision must first obtain approval of the Purchasing Division.

8.2.1 Liquidated Damages: For Delivery Order Failures, the ordering Agency at its own discretion shall reserve the right to apply liquidated damages to the failed portion of any Delivery Order, to be calculated beginning on day one after the Agency's specified Delivery Order due date, per the terms of this contract, and the Standard Specs Section 108.7, as amended, and the rates in the table made available on the WVDOH Contract Administration's Specifications and Documents website, as amended:

<https://transportation.wv.gov/highways/contractadmin/specifications/Pages/LiquidDatedDamages.aspx>

When liquidated damages are applied, the Vendor shall hereby understand and agree that the Vendor will be responsible for the Liquidated Damages which shall be applied by the Agency in the form of an off-set reduction to the total amount of the Vendor's final invoice.

8.3 Delivery Payment/Risk of Loss: Standard order delivery shall be F.O.B. to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery.

8.4 Return of Unacceptable Items: At its own discretion, if the Agency deems the contract Items to be unacceptable for any reason, the contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either arrange for the return within five (5) business days of being notified Items are unacceptable or permit the Agency to arrange for the return and reimburse the Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable Items shall be F.O.B. from the Agency's location. At the Agency's discretion, the returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price within ten (10) calendar days of the date notified.

8.5 Return Due to Agency Error: Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge

REQUEST FOR QUOTATION
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a restocking fee if returned products are in a resalable condition as in unused and in the original packaging. Any restocking fee for Items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned Items.

9. VENDOR DEFAULT:

9.1 The following shall be considered a vendor default under this contract.

9.1.1 Failure to provide contract Items in accordance with the requirements contained herein.

9.1.2 Failure to comply with other specifications and requirements contained herein.

9.1.3 Failure to comply with any laws, rules, and ordinances applicable to the contract Services provided under this contract.

9.1.4 Failure to remedy deficient performance upon request.

9.2 The following remedies shall be available to Agency upon default.

9.2.1 Immediate cancellation of the contract.

9.2.2 Immediate cancellation of one or more Delivery Orders issued under this contract.

9.2.3 Any other remedies available in law or equity.

10. MISCELLANEOUS:

10.1 No Substitutions: The Vendor shall supply only contract Items submitted in response to this Solicitation unless a contract modification is approved in accordance with the provisions contained in this contract.

10.2 Vendor Supply: The Vendor must carry sufficient inventory of the contract Items being offered to fulfill its obligations under this contract. By signing its bid, the Vendor certifies that it can supply the contract Items contained in its bid response.

10.3 Reports: For Items purchased during the term of this contract, the Vendor shall provide the Agency with reports, in electronic spreadsheet format, of its purchased contract Items, total dollar value, quantities, shipments, and delivery information, with quarterly or annual summaries, or upon request. Failure to supply such reports may be grounds for cancellation of this contract.

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10.4 Contract Manager: During its performance of this contract, Vendor must designate and maintain a primary Contract Manager responsible for overseeing Vendor's responsibilities under this contract. The Contract Manager must be available during normal business hours to address any customer service or other issues related to this contract. Vendor shall provide and maintain the Agency with its current email addresses, billing/payment addresses, phone numbers, fax numbers, and any changes to the Contract Manager during the life of the contract. Vendor should list its Contract Manager and his or her contact information below.

Contract Manager: Reff Watters
Telephone Number: (304) 374-5660
Fax Number: (412) 742-4666
Email Address: rwatters@tanbrowning.com

Vendor shall inform the Agency in writing of any changes to the information provided above and/or changes to support personnel within ten (10) calendar days of such changes. Failure to comply may be grounds for cancellation of this contract.

ATTACHMENT A (ATT A) Bridge Expansion Joint Repair Systems - EMSEAL BEJS SYSTEM or Equal

Vendor shall provide its pricing in the "Unit Cost" for each Unit of Measure for all System components. Unit Cost shall include materials & delivery FOB destination. For each component line item, the Vendor shall multiply Unit Cost by Estimated Quantity (Est.QTY) and give the Extended Cost per each item.

Enter your company Name below:

Tom Brown Inc.

KIT shall be provided per the contract Specifications and ROLL shall equal 12LF reel.PCE shall equal 6.56 FT stick		If no Manufacturer Name/Brand/Part #/ Model/ Product Type is provided, WVDOH will expect Vendor's bid is requested brand.					
Item #	EMSEAL BEJS Joint System Items	Proposed Equal's Manufacturer's Name/Brand	Proposed Equal's Manufacturer's Part Number/Model/Product Type	UOM	Unit Cost	Est. QTY	Extended Cost
1-01	EMSEAL Emcrete Polyurethane Nosing or equal			KIT	149.00		
1-02	EMSEAL BEJS Joint System or equal 1/2"			Roll	138.41		
1-03	EMSEAL BEJS Joint System or equal 3/4"			Roll	154.39		
1-04	EMSEAL BEJS Joint System or equal 1"			Roll	165.93		
1-05	EMSEAL BEJS Joint System or equal 1-1/4"			Roll	179.25		
1-06	EMSEAL BEJS Joint System or equal 1-1/2"			PCE	146.30		
1-07	EMSEAL BEJS Joint System or equal 1-3/4"			PCE	159.60		
1-08	EMSEAL BEJS Joint System or equal 2"			PCE	171.10		
1-09	EMSEAL BEJS Joint System or equal 2-1/4"			PCE	188.98		
1-10	EMSEAL BEJS Joint System or equal 2-1/2"			PCE	210.34		
1-11	EMSEAL BEJS Joint System or equal 2-3/4"			PCE	234.61		
1-12	EMSEAL BEJS Joint System or equal 3"			PCE	243.47		
1-13	EMSEAL BEJS Joint System or equal 3-1/4"			PCE	271.70		
1-14	EMSEAL BEJS Joint System or equal 3-1/2"			PCE	304.06		
1-15	EMSEAL BEJS Joint System or equal 3-3/4"			PCE	310.78		
1-16	EMSEAL BEJS Joint System or equal 4"			PCE	320.10		
1-17	Universal-90 Termination 1/2"			EA	36.50		
1-18	Universal-90 Termination 3/4"			EA	39.62		
1-19	Universal-90 Termination 1"			EA	40.68		
1-20	Universal-90 Termination 1-1/4"			EA	48.58		
1-21	Universal-90 Termination 1-1/2"			EA	61.90		
1-22	Universal-90 Termination 1-3/4"			EA	65.98		
1-23	Universal-90 Termination 2"			EA	70.13		
1-24	Universal-90 Termination 2-1/4"			EA	77.78		
1-25	Universal-90 Termination 2-1/2"			EA	81.58		
1-26	Universal-90 Termination 2-3/4"			EA	96.88		
1-27	Universal-90 Termination 3"			EA	98.78		
1-28	Universal-90 Termination 3-1/4"			EA	100.72		
1-29	Universal-90 Termination 3-1/2"			EA	108.00		
1-30	Universal-90 Termination 3-3/4"			EA	115.60		
1-31	Universal-90 Termination 4"			EA	139.66		
1-32	Universal-90 Transition 1/2"			EA	36.50		
1-33	Universal-90 Transition 3/4"			EA	39.62		
1-34	Universal-90 Transition 1"			EA	40.68		
1-35	Universal-90 Transition 1-1/4"			EA	48.58		
1-36	Universal-90 Transition 1-1/2"			EA	61.90		
1-37	Universal-90 Transition 1-3/4"			EA	65.98		
1-38	Universal-90 Transition 2"			EA	70.13		
1-39	Universal-90 Transition 2-1/4"			EA	77.78		
1-40	Universal-90 Transition 2-1/2"			EA	81.58		
1-41	Universal-90 Transition 2-3/4"			EA	96.88		
1-42	Universal-90 Transition 3"			EA	98.78		
1-43	Universal-90 Transition 3-1/4"			EA	100.72		
1-44	Universal-90 Transition 3-1/2"			EA	108.00		
1-45	Universal-90 Transition 3-3/4"			EA	115.60		
1-46	Universal-90 Transition 4"			EA	139.66		
1-47	Kickout Termination 1/2"			EA	36.50		
1-48	Kickout Termination 3/4"			EA	39.62		
1-49	Kickout Termination 1"			EA	40.68		
1-50	Kickout Termination 1-1/4"			EA	48.58		
1-51	Kickout Termination 1-1/2"			EA	61.90		
1-52	Kickout Termination 1-3/4"			EA	65.98		
1-53	Kickout Termination 2"			EA	70.13		
1-54	Kickout Termination 2-1/4"			EA	77.78		
1-55	Kickout Termination 2-1/2"			EA	81.58		
1-56	Kickout Termination 2-3/4"			EA	96.88		
1-57	Kickout Termination 3"			EA	98.78		
1-58	Kickout Termination 3-1/4"			EA	100.72		
1-59	Kickout Termination 3-1/2"			EA	108.00		
1-60	Kickout Termination 3-3/4"			EA	115.60		
1-61	Kickout Termination 4"			EA	139.66		
					Total		