



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: 03-13-2023

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 1400 1400 AGR2300000004 1	Procurement Folder:	1180396
Document Name:	AERIAL APPLICATION OF BLACK FLY CONTROL	Reason for Modification:	
Document Description:	AERIAL APPLICATION OF BLACK FLY CONTROL		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2023-04-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2024-03-31

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000193014 HELICOPTER APPLICATORS INC 1670 YORK RD GETTYSBURG PA 17325 US Vendor Contact Phone: 999-999-9999 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: Cynthia D Fisher Requestor Phone: (304) 558-2221 Requestor Email: cfisher@wvda.us 23 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER 304-558-2221 AGRICULTURE DEPARTMENT OF ADMINISTRATIVE SERVICES 1900 KANAWHA BLVD E CHARLESTON WV 25305-0173 US	AUTHORIZED RECEIVER 304-558-2212 AGRICULTURE DEPARTMENT OF PLANT INDUSTRIES DIVISION 275 GUS R DOUGLAS LN, BLDG 6 CHARLESTON WV 25312 US

3-14-23 BAT

Total Order Amount:

Open End

Purchasing Division's File Copy

CA 3/13/23

PURCHASING DIVISION AUTHORIZATION
DATE: Tanya 3/14/2023
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: John S. Gray
ELECTRONIC SIGNATURE ON FILE

3/14/2023

ENTERED

ENCUMBRANCE CERTIFICATION
Beverly Toler
DATE: 3-15-2023
ELECTRONIC SIGNATURE ON FILE

Extended Description:

THE VENDOR, HELICOPTER APPLICATORS, INC., AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF AGRICULTURE, INTO AN OPEN-END CONTRACT FOR AERIAL APPLICATION OF BLACK FLY CONTROL PER THE TERMS AND CONDITIONS, SPECIFICATIONS, BID REQUIREMENTS, AND THE VENDOR'S BID DATED 02/22/2023, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	70151502			GL	0.000000
Service From		Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Aerial Application for Black Fly Control

Extended Description:

Pricing included on attached Exhibit A Pricing Page

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

☒ **Term Contract**

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

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to 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:

☐ the contract will continue for _____ years;

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

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

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

☐ **Other:** Contract Term specified in _____

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

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

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

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

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

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

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

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

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

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

☒ FAA Medical Certificate

☒ WV Pesticide Application Business License

☒ Commercial Pilot Certificates and Limitations for each Pilot

☐

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

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

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$500,000.00 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: \$10,000,000.00 per occurrence.

☐

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☐

☐

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

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

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

☐ _____ for _____.

☒ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised 11/1/2022

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

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

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

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

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

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

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

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

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 disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

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

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

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

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

(Printed Name and Title) Kirk A. Martin, Secretary/Treasurer

(Address) 1670 York Rd., Gettysburg, PA 17325

(Phone Number) / (Fax Number) 717-337-1370 / 717-337-1527

(Email address) Kmartin@helicopterapplicators.com

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

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

Helicopter Applicators, Inc.
(Company)

(Signature of Authorized Representative)

Kirk A. Martin, Secretary/Treasurer 2/22/23

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

717-337-1370 / 717-337-1527

(Phone Number) (Fax Number)

Kmartin@helicopterapplicators.com

(Email Address)

Aerial Application of Black Fly Control

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Dept. of Agriculture to establish an open-end contract for Aerial Application of Black Fly Control, biocide applications to the New, Greenbrier, and Bluestone Rivers.

It is the purpose and intent of this contract to provide specifications for the This contract is for the aerial application of *Bti* (*Bacillus thuringiensis israelensis*) to streams identified in need of treatment in southern West Virginia for the purpose of black fly control. This contract will provide the following: aircraft, *Bti*, application equipment, and other operational requirements necessary for a successful program, for securing properly certified and approved aircraft, dispersal systems, service facilities, qualified ground personnel, and FAA certified and qualified pilots familiar with proper aerial application of *Bti* to specified sites on the streams to be treated. Future waterways determined to need treatment will be added as identified. The vendor must provide the *Bti*, through direct purchase from the manufacturer, and all associated aspects of application, **including scouting trip(s) to determine hazards prior to the treatment season and to determine if aerial application is feasible for new areas.**

The West Virginia Department of Agriculture, Black Fly Control Program Coordinator will provide sites (Section 3.2), dates of application, and amounts of material to be applied. All other aspects of this program are to be included in the contract.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 “**Contract Item**” or “**Contract Items**” means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 “**Pricing Pages**” means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A and used to evaluate the Solicitation responses.
 - 2.3 “**Solicitation**” means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 2.4 “**Bti**” means the bacterium, *Bacillus thuringiensis israelensis*.
 - 2.5 “**FBO**” means Fixed-Base Operators.

Aerial Application of Black Fly Control

3. GENERAL REQUIREMENTS:

3.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.1.1 Successful vendor must have and provide documentation for at least two (2) experienced pilots with a minimum of:

3.1.1.1 One (1) season of black fly suppression.

3.2.1.2 Two (2) seasons of low-level agricultural spraying experience, within the last ten (10) years, available throughout the suppression season.

3.1.2 Any pilot-in-training must accompany an experienced pilot on four (4) full spray days as an observer prior to doing actual spraying, then may make *Bti* applications only with an experienced pilot on board until the listed minimum qualifications are met.

3.1.3 Successful vendor must provide the following information, required for at least two (2) experienced pilots:

3.1.3.1 Name

3.1.3.2 Commercial certificate numbers and limitations, if any.

3.1.3.3 Flight hours in command as specified.

3.1.3.4 Number of seasons of black fly experience.

3.1.3.5 FAA medical certificate.

3.1.3.6 Class and date of examination.

3.1.4 The above information will also be provided for pilots in training, once identified, prior to flight time. This information should be submitted with bid documents, but this information will be required prior to contract award.

3.1.5 Contractor must provide documentation that all spray pilots meet or exceed all the following minimum requirements:

3.1.5.1 Total All Aircraft 500 Hours

3.1.5.2 Type of Aircraft to be Used in Contract 150 Hours

Aerial Application of Black Fly Control

3.1.5.3	Night	10 Hours
3.1.5.4	Typical Terrain	50 Hours
3.1.5.5	Weight Class to be Flown (light, medium, etc.)	100 Hours
3.1.5.6	Make and Model, Preceding 60 Days	10 Hours
3.1.5.7	Thirty (30) landings and take-offs at typical altitude and terrain, with loads comparable to an average spray load.	

3.1.6 Successful vendor shall designate one person to act as the *on-site* Applicator's Project Supervisor (APS) and supply WVDA with APS name and contact information. This person shall be familiar with the equipment being used, and with authority to act on all matters pertaining to the applicator's performance on the project. The Applicator's Project Supervisor should also be a West Virginia Certified Pesticide Applicator. If the APS is not the Certified Applicator, then the Vendor must have a card-carrying West Virginia certified applicator present in direct supervision of the application of pesticides in accordance with the West Virginia Pesticide Use and Application Act.

3.1.7 All aircraft under contract must be capable of working independently of any other aircraft, thus requiring ground support personnel for the aircraft. Successful vendor must supply trained and qualified ground support personnel to drive all necessary support vehicles, operate the equipment used to transfer and mix insecticides, and service each aircraft and associated pumps and spray apparatus. All personnel provided by the vendor must be able to communicate effectively in English. All personnel should have prior experience handling and mixing insecticides. All ground support personnel should be equipped and trained to take proper action in an emergency. These people should observe standard safety precautions in handling the insecticide solution and refueling the aircraft. The successful vendor is required to replace any ground support person who does not demonstrate the knowledge and capability of performing their duties.

3.2 Applications of VectoBac 12 AS or Equal

3.2.1 VectoBac 12 AS or Equal must be applied by helicopter to rivers at the rate of 11 ppm.

3.2.2 VectoBac 12 AS or Equal must be measured by meter to within tenths of a gallon.

3.2.3 Spray material is *Bacillus thuringiensis israelensis* (*Bti*).

3.2.4 The spray material (*Bti*) will be purchased *directly* and provided by the contractor. *Bti* formulations must meet a viscosity of 700 or less as measured by a Brookfield Viscometer at

Aerial Application of Black Fly Control

25 °C, 30 RPM using a Number 3 spindle. It will be the applicator's responsibility to ensure trouble-free operation with the material purchased. Any product presenting operational problems must be immediately replaced. Unless problems are encountered, all *Bti* must be of the same formulation.

3.2.5 *Bti* may be supplied in drums or bulk tanks. The material must be properly stored to ensure its effectiveness.

3.2.6 All *Bti* products used in this program must be new material manufactured after October 1 of the year preceding the current spray season (i.e., for the 2023 spray season, all *Bti* must be manufactured after Oct. 1, 2022). Documentation of this fact must be provided by the contractor.

3.2.7 The contractor assumes full responsibility for the handling, storage, security, and transportation of the product and for legal disposal of empty containers. ***The contractor is responsible for ensuring that adequate material is on hand for each application.***

3.2.8 The *Bti* will be applied undiluted where possible. Payments are based on the gallons of *Bti* concentrate sprayed. During low-water periods it may become necessary to dilute the *Bti* with water if properly dispensing small quantities becomes a problem. In such situations, the contractor will supply and transport the water used for mixing. The contractor must have a water source approved by the Department before it may be used. When material is diluted with water, payment will be based on gallons of concentrate (*Bti*) applied.

3.2.9 For application, the *Bti* will be sprayed directly into the water from an altitude of 10 to 15 feet above the surface of the water, where possible.

3.2.10 It is recognized that on the smaller streams with an extensive canopy this may not always be possible. The objective is to spray back and forth across the stream, applying equal swaths to produce a wide band of *Bti* drifting through that portion of the stream. It may be necessary to divide the stream into sections if the helicopter cannot carry enough insecticide to make the proper application across the full width. On the smaller streams the applications will have to be made by flying one or two diagonal passes across the stream or even by making a few short sprays passes parallel to the stream's direction of flow.

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- 3.2.11** The Program Coordinator or designee will specify the volume of material to be applied at each site for each application. The correct volume of *Bti* is dependent upon the flow rate of the stream on the date of application. Excessive flow rate at any site may cause postponement of the application until the water has receded to a lower level, or cancellation of application.
- 3.2.12** All spraying will be done during daylight hours. Spraying will begin no earlier than 30 minutes after sunrise and end no later than 30 minutes prior to sunset. Acceptable spray conditions (weather) are limited mainly by factors that would affect safe flying or cause deposition of material off target areas.
- 3.2.13** Insecticide volumes are estimated.
- 3.2.14** Prior to 2009, volumes were calculated using 50th percentile flows (half the time the flow is greater and half the time the flow is less) for the rivers to be treated. However, due to a strong flow gradient through Pocahontas and Greenbrier Counties, average Greenbrier River flow was determined by using 85 percent, 70 percent, and 55 percent of the flow at the Alderson gage, moving upstream. Flow is commonly 40 percent of the Alderson reading at the Buckeye gage, and presumably lower than that above Buckeye. Below Alderson, flow is typically greater, as indicated by the Hildale gage. Flows were checked only on the days when sprays were conducted. Historical flow data may be obtained from the USGS at <http://waterdata.usgs.gov/wv/nwis/rt>.
- 3.2.15** The actual volumes of *Bti* applied during the past fourteen (14) years of the Black Fly Program are shown on Table 3.3.15 at the end of Section 3.
- 3.2.16** Table 3.3.16 shows monthly application rates for 2022.
- 3.3** Successful vendor must have, or receive prior to application date, a Licensed Pesticide Application Business License from the West Virginia Department of Agriculture, pursuant to the provisions of the West Virginia Pesticide Use and Application Act. Licenses should be submitted with bid documents, but this information *will be required prior to contract award*.
- 3.4** Bids submitted by Fixed-Based Operators (FBO), or firms that are currently certified as commercial aircraft operators, with office, maintenance facilities, owned or leased aircraft,

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employees, qualified pilots, and mechanics, and that have tools, equipment, and spare parts for the make and type of aircraft specified in this proposal will be considered.

- 3.5 Successful vendor must qualify under all Federal Aviation Regulations, and currently be certified for agricultural aircraft operations. Certificates should be submitted with bid documents, but this information will be required prior to contract award.
- 3.6 Compliance with experience requirements will be determined prior to contract award by the State through references provided by the Vendor with its bid or upon request, through knowledge or documentation of the Vendor's past projects, or some other method that the State determines to be acceptable. Vendor should provide a current résumé which includes information regarding the number of years of qualification, experience and training, and relevant professional education for each individual that will be assigned to this project. Vendor must provide any documentation requested by the State to assist in confirmation of compliance with this provision. References, documentation, or other information to confirm compliance with this experience requirement are preferred with the bid submission but may be requested after bid opening and prior to contract award.
- 3.7 **Area to be Treated:** *Bti* application will occur on West Virginia rivers identified as in need of treatment. Map 6-1 (Section 6) shows the state map with interstate highways marked. Map 6-2 (Section 6) shows the general river areas to be treated in Mercer, Summers, Greenbrier, and Pocahontas Counties. The State has received permission from the National Park Service to treat within the boundaries of the National Park system. Permission was not necessary from the USDA Forest Service regarding the Monongahela National Forest because the State owns the rivers, and no landing zones were designated on National Forest lands. The streams currently identified for treatment include the New River both above and below the Bluestone Dam, the Greenbrier River from Clover Lick to Hinton, and the lower twelve (12) miles of the Bluestone River. High water levels and funding limitations may reduce the area treated at certain time
- 3.8 There are currently 17 application sites on the New River, 109 on the Greenbrier River, and 13 on the Bluestone River, for a total of 139 sites. These sites include those locations within National Park and Monongahela National Forest boundaries. The topographic maps have the locations marked. The exact location and number of application sites may be shifted, added, or deleted based on the stream discharge rate and/or larval concentrations. These determinations will be made by Department personnel
 - 3.8.1 The implementation of the National Pollution Discharge Elimination System (NPDES) has the potential to affect the black fly suppression program. Please note that WVDA has little control over this process, but the General Permit has been issued for the 2019 season.

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3.9 Estimated Time Schedule -Vendor must be equipped and ready to initiate *Bti* application within ten (10) days of notice of award. The treatment period is expected to begin in March or April and to continue through mid-October. Each treatment station is expected to receive approximately 18-20 applications during the spray season. The exact dates of application cannot be provided in advance as they are extremely dependent upon water temperature, larval abundance, and stream discharge values. A five (5) day notice will be given to vendors prior to the initial application and forty-eight (48) hours' notice will be given prior to each following application. It is anticipated that there will be between 7 and 14 days between most applications. It may not be possible to treat all streams on the same day since treatment timing is a function of larval development and is affected by weather. When possible, however, the Program Coordinator or designee will try to schedule all applications the same day. Aircraft are free to be used for other vendor commitments between applications. Table 3.9 at the end of Section 3 shows a summary of the 2018 application program.

3.9.1 Equipment-Vendor will provide aircraft make and model, FAA registration number, spray system make, and tank capacity for each aircraft to be used. One category B ship is required during the high flow periods of high stream flow. During low flow periods other ships may be used but must be approved by the Department. The following table defines the helicopter categories that may be used for the program.

Minimum Average Spray Category	Horsepower	Loads (Gals.)	Examples
A	260	70	Bell 47C
			Hiller 12E
B	400	120	Bell 206B
			Bell/Soloy 47G-3B
			Hiller/Soloy 12E
			Hughes 500C

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- 3.9.2** Every aircraft furnished for this contract shall be properly licensed under regulations of the Federal Aviation Administration. All aircraft must be powered by turbine engines. Aircraft shall be clean inside and outside, and contractor must be able to document compliance with FAA directives and specifications and to any pertinent laws and regulations of the State of West Virginia. Helicopters with less than 260 horsepower are unacceptable.
- 3.9.3** Each aircraft engine shall be in first-class operating condition. Engine and airframe logs must be submitted at time of inspection. Each aircraft engine and airframe shall meet the following requirements:
 - 3.9.3.1** Each engine must have operated a minimum of fifty (50) flight hours.
 - 3.9.3.2** Fifteen (15) of these flight hours must have occurred in the two (2) months prior to the initiation of the spray project.
 - 3.9.3.3** No aircraft will be accepted for this project with engine or component time within 100 flight hours of the maximum time before overhaul (TBO) recommended by the manufacturer.
 - 3.9.3.4** All aircraft used in the project will have space for one (1) passenger in addition to the pilot in the event reconnaissance flights are needed.
- 3.9.4** In the event that any spray aircraft used in this contract becomes incapacitated and cannot return safely to full operation during any one application day, the vendor must provide a replacement craft of similar capabilities.
- 3.9.5** Safety regulations prescribed by the FAA, the State of West Virginia, the vendor, and the Department will be observed at all times. The pilot will ensure proper loading of the aircraft such that the tanker weight does not exceed the maximum gross weight specified by the manufacturer. A minimum of twenty (20) minutes reserve fuel

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supply in addition to the amount needed for the round trip is required. Windshields or bubble shall be kept clean.

- 3.9.6** The aircraft shall be equipped with a bullhorn or other public announcement system. This system will be used as necessary to warn people in or beside the river that the aircraft will be applying a pesticide.

3.9.7 Aircraft Spray System

- 3.9.7.1** Tanks-Leakproof corrosion-resistant tanks with exterior filler openings are to be used. The location and size of tanks shall not impair air-worthiness by overloading or displacing the center of gravity beyond acceptable limits. Filler openings or necks should be large enough to prevent surging during filling. Tanks must be vented to the outside of the fuselage.

- 3.9.7.2** Emergency Dump System -Each aircraft must be equipped with an emergency jettisonable load dumping system or emergency non-leaking dump valves of adequate capacity and adequately vented to dump the load and so installed to prevent blowback into the fuselage. In no case shall the ratio between load in gallons carried to the area of dump valves in square inches be greater than 7.65 to 1. Exposed valve control linkage must be protected to prevent unintentional opening of the valve in any manner. The control lever must be substantially mounted in the cockpit within easy reach of the pilot when he/she is wearing a shoulder harness properly.

- 3.9.7.3** Pumping System-The pumping system must be securely attached and capable of maintaining the pressure required to insure the even distribution of the insecticide. All plumbing and pumps should be large enough to handle a minimum

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flow rate of 40 gallons/minute. All parts should be chemically resistant to the spray materials being used.

3.9.7.4 Pressure Gauge -An accurate spray pressure gauge should be located so that it can be easily read by the pilot.

3.9.7.5 Shutoff -To avoid contamination of areas not scheduled for treatment, the entire spray system must be leakproof and have a positive shutoff mechanism capable of eliminating dripping from the boom ports.

3.9.7.6 Clean System -All aircraft spray systems and tanks must be cleaned of all foreign material and flushed with water prior to the start of this spray operation. During the spray program it may be necessary to flush the spray system with water daily or when the operation is delayed because of bad weather, etc.

3.9.7.7 Strainer-An in-line strainer is not required, but if the vendor elects to use one it must be no finer than 50-mesh.

3.9.7.8 Spray Boom -Each aircraft shall be equipped with an approved standard wet boom system of the type commonly used for aerial application of liquids. The inside of the boom should be clean. The length of the boom between the last nozzle on each end must not extend beyond the tip of the main rotor.

3.9.7.9 Nozzles/Boom Ports -Nozzles are not required; the application will be made with open ports. The ports should be positioned to angle downward to reduce shearing during application. Each aircraft must be equipped with enough shut-offs, blanks, or plugs to reduce the number of operating ports down to one. The required application rate

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per minute may range from 40 gallons per minute to as low as 0.5 gallons per minute. It is understood that dilution must occur during low river flows.

3.9.7.10 Totalizer, Flow Meter/Spray Timer-The applicator must be able to accurately deliver the specified volume of material to each site. This may be accomplished by providing an accurate totalizer, or a combination flow meter and timer. Each aircraft utilizing a totalizer must have the appropriate calibration code for the *Bti* product being used. In addition, each aircraft must be equipped with a digital timer that is activated automatically when the spray switch is operated. The timer must be capable of an accurate measurement of the cumulative spray time in minutes and tenths of minutes or seconds. Hour meters are not acceptable. This will be a definite aid to the pilot in accurately splitting a load between two or more sites and to monitor flow rate during the actual application.

3.9.7.11 Calibration of Spray System -Daily calibration of spray equipment is required. Calibration must occur prior to the initial *Bti* application of the day.

3.9.8 Field Trucks -A truck equipped for transporting and dispensing insecticide and aircraft fuel is required. Truck and trailer combinations are acceptable when they meet all requirements of the West Virginia Department of Highways. Other arrangements may be determined to be acceptable but must have prior approval from the Department. The field trucks must be large enough to legally carry the volume of *Bti* needed for that treatment day. If the *Bti* is delivered in drums, then each truck must be equipped with a drum wrench and the necessary device for pumping from a drum into the bulk tank. One truck must be available with a hydraulic tailgate or other means of loading extra barrels if the day's *Bti* total exceeds the storage tank's capacity.

3.9.9 Insecticide Storage Tank -All tanks used to transport insecticides must be leak proof and corrosion-resistant. Filler openings and air vents must be adequate to prevent

Aerial Application of Black Fly Control

surging during filling. Tanks must be equipped with properly fitting covers or hatch plates and kept closed except when filling or circulating. This is done to reduce or prevent contamination by foreign material. Tanks must be thoroughly cleaned and free of rust, residues and particulate matter such as grit and sand. All tanks will be inspected before being permitted to be filled with insecticide or water. Tanks used for bulk storage of insecticide must have visual calibration markings or a dip stick calibrated at twenty-five (25) gallons or finer intervals for use as a double check to the meters. This tank must be equipped with a recirculation system designed to produce a swirling action which will mix and agitate the *Bti*. Inlet lines should direct the material parallel to the curved internal surface of the tank. Large internal tank baffles that restrict the agitation in any portion of the tank must be avoided. Additional mechanical agitation is also acceptable. The return line must be below the surface of the mixture in the tank. The tank must hold a minimum of 800 gallons.

3.9.10 Pumps -The pump used for circulation, mixing and loading must produce a sufficient flow rate to fill the aircraft it supplies in a maximum of three (3) minutes without producing high pressures. The pump used for drafting the undiluted insecticide from a thirty (30) gallon drum must be capable of repeatedly emptying a drum in less than three (3) minutes. A second pump, with sufficient flow rate to fill the aircraft it supplies in a maximum of three (3) minutes without producing high pressures, must be supplied to load any water that may be required for dilutions.

3.9.11 Meters -All meters must be calibrated and inspected by a certified¹ operator no more than 60 days prior to the start of the spraying. Copies of this certification shall be provided to the Program Coordinator prior to the beginning of each spray season for each meter used in the program. Meters must be capable of safely handling the flow rate necessary for loading the aircraft. Meters with lighted digital displays that are difficult to see in direct full sunlight are not acceptable. The meter shall be capable of accurately metering only liquid. The meter must be capable of discriminating liquid from air. The vendor is also responsible for all flight time needed for proper calibration of the aircraft and any needed recalibration check flights.

3.9.12 Storage Tank Strainers -An in-line strainer must be located prior to the intake of the meter. This strainer may be on either side of the pump. The strainer elements used to screen the insecticides must be 30 to 50-mesh size and fit properly in the strainer

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housing. Strainer elements of finer than 50-mesh such as 80- or 100-mesh are not permitted.

3.9.13 Radios -Communications between the ground and air are the responsibility of the vendor. The vendor must supply the necessary equipment to provide two-way radio contact between the helicopter and the ground support truck. All aircraft and field trucks must be provided with FCC and FAA approved ground-to-air radio communications. These radios must be in proper working order. The range of this radio equipment must be a minimum of ten miles. The pilot must be able to transmit and receive on-the-tower and ground-control frequencies used by the airports in the contract area. If it is not possible for the pilot to monitor both a control tower and the ground-support truck at the same time, the procedure to switch from one to the other must be simple and require only one hand.

3.9.14 Accessory Equipment-All accessory equipment, including any vehicles necessary for transporting the insecticide from storage or from one operational site to another, are the responsibility of the vendor. Accessory equipment supplied by the vendor is defined as any needed insecticide storage tanks, (equipped for agitation or recirculation), pumps, hoses, fire extinguishers, metering devices, and similar equipment necessary for mixing the insecticide and loading the spray aircraft, and any other services, equipment, and materials that may be needed.

3.10 Other Responsibilities-In addition to equipment and personnel, the vendor must meet the following obligations:

3.10.1 Loading Sites -The selection of a suitable helispot or airfield is the responsibility of the vendor. The Department recommends that the vendor find several loading sites carefully located to minimize ferry distance. Use of the site must not present problems from a legal aspect, and permission to use the site must be obtained by the vendor. The vendor will be responsible for any damage done to or within the vicinity of the work area that is a direct result of spraying operations. The vendor must locate and secure permission for all helispots or airfields prior to the start of the project. The State owns several areas located near the operational area and the program coordinator will cooperate with the vendor in securing permission to use these sites, if they are deemed acceptable by the vendor. The vendor or his representatives must

Aerial Application of Black Fly Control

notify the Program Coordinator of the loading sites to be used prior to any spraying operations.

3.10.1.1 During previous years, Pipestem Resort State Park has provided storage for *Bti*. This location has also been used as a loading site.

3.10.1.2 The vendor shall provide safe drinking water at all loading sites if no public drinking water source is available.

3.10.2 Maintenance -The vendor shall provide maintenance on the spray system, the aircraft, the mixing and pumping system, the trucks, and the storage tanks. Care should be taken to prevent leakage of spray material at all times. Routine maintenance is to be conducted at times that will not interfere with the spray operation. Only emergency repairs are to be performed during scheduled spray hours.

3.10.3 Security -If guard service for the helicopters and/or facilitating equipment is required or desired by the vendor, the vendor shall provide the necessary personnel. Care should be taken to ensure aircraft storage sites are not located in fog-prone areas which might delay the start of the daily spray program.

3.10.4 Aircraft Refueling -The vendor must provide enough aircraft fuel to supply the helicopter for the entire day, which must be available at each loading site. The fuel tank must be equipped with a pump to transfer the fuel through a hose and nozzle for refueling while the engine is running and/or the rotor spinning. Refueling from hand-held containers is permitted only in emergency situations and then only during a complete shutdown.

3.10.5 Non-Spraying Flights - Flights to and from the project area, as well as any needed reconnaissance flights over the spray areas, are provided by the vendor. The Program Coordinator or designee may be available to ride in the helicopter on a reconnaissance flight to help the pilot become familiar with the spray sites.

3.10.6 Pilot Responsibility -When in flight, the pilot is responsible at all times for the safety of the helicopter and personnel. The Department will not require flying in fog, dense smoke, or in any other adverse condition that a prudent pilot would consider unsafe. It is mutually understood and agreed that the successful vendor will not be required

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to land at any site which an expert pilot would consider unsafe. During the spraying, the pilot is permitted to take a short break between loads whenever desired. Recommended rest periods are found in the following paragraph. It is recommended that the same pilot/pilots work the same area *throughout* the contract for increased project efficiency and safety.

3.10.6.1 The pilot shall take all necessary precautions to prevent discharge of the *Bti* on people in or along the river. If there are people within the treatment site, the pilot shall employ any/all of the following tactics to prevent human contact with the pesticide:

- use a public announcement system to warn people of the intent to spray (content of the announcement will be provided by the Program Coordinator) and either allow river users time to move; or,
- move the spray transect slightly upstream or downstream based on anticipated drift; or,
- hover above the site until all boats/rafts have cleared the area; or,
- treat nearby sites and return to the site after the area has been cleared.

3.10.6.2 The pilot is responsible for the proper loading of the aircraft. Loading will be under his/her direction and will be inspected by him/her before takeoff. The tanker weight will not exceed the maximum gross weight specified by the manufacturer under standard category. The pilot shall compensate for altitude, temperature, landing site conditions, and any adverse flying conditions.

3.10.6.3 The pilot will assure that the aircraft windshields or bubble is kept clean.

3.10.7 Flight Duty/Ground Duty Limitations -Maximum flight time² is limited to seven (7) hours per day. This must be broken into two (2) segments separated by a rest period of at least thirty minutes that is restricted to meals and relaxation. Other jobs, such as driving a truck or conducting aircraft maintenance will not be counted as part

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of a rest period. Pilots and crew members are to have at least ten (10) consecutive hours off duty prior to the start of each application day.

3.10.8 Inspection -Department personnel may inspect the vendor's aircraft to determine if the equipment offered meets the Contract Specifications. If this action is deemed necessary, a qualified aircraft inspector will be provided by the Department. Performance tests, if necessary, will be conducted at a location mutually agreed upon between Department personnel and the vendor. The vendor shall assume all expenses incident to operation of the aircraft and the pilot's time during these tests. The Department may request this inspection be held thirty (30) days prior to scheduled start of spraying. WVDA personnel from the Regulatory and Environmental Affairs Division may also accompany the ground crew for the purpose of assuring compliance with pesticide application and safety regulations.

3.10.9 Field Expense -Costs incurred in the operation and maintenance of all the equipment on the project is the responsibility of the vendor. Expenses incurred by all contract personnel including arrangements for food, lodging and transportation are the responsibility of the vendor.

3.10.10 Experimental Spraying-The Department may request that the successful vendor conduct a small amount of experimental spraying. This will be done to gain knowledge of the dispersal of the *Bti* after application or to test the effectiveness of a new biocide product. (In the event that this is necessary, the vendor will be compensated for any such experimental work at the contractual rate.)

3.10.11 Person Flying as Navigator -In the event the vendor needs Department personnel to accompany the pilot on a flight to act as a navigator for site location or general reconnaissance, the vendor will guarantee a minimum of \$150,000.00 insurance coverage for the Department personnel.

3.10.12 Vendor's Location— The vendor's base of operations must be within a ten (10) hour drive of Greenbrier Valley Airport, Lewisburg, West Virginia.

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Table 3.9: 2022 Black Fly Control Program Summary:

Gallons of *Bti* Applied

Spray Date:		Upper New	Lower New	Bluestone	Greenbrier	Total
4/20/2022		108	150	18	460	736
5/5/2022		144	190	24	256	614
5/12/2022		144	178	24	357	703
6/2/2022		0	0	0	245	245
6/16/2022		0	0	0	413	413
7/7/2022		160	194	12	208	574
7/14/2022		69	120	30	270	489
7/26/2022		0	0	0	34	34
8/17/2022		93	204	24	352	673
8/30/2022		0	0	0	52	52
9/8/2022		0	30	24	375	429
9/20/2022		88	227	24	102	441
	TOTALS:	806	1293	180	3124	5403

NOTE: “Upper New” refers to the New River between the Virginia/West Virginia border and Bluestone Lake; “Lower New” refers to the New River between Bluestone Lake and I-64; “Bluestone” refers to the lower 12 miles of the Bluestone River; “Greenbrier” refers to the Greenbrier River from Cover Lick to the confluence with the New River at Hinton.

Table 3.3.15: Annual Spray Totals, WVDA Black Fly Control Program.

YEAR	Bti TOTAL (GAL.)
2005	7170.4
2006	9,130.25
2007	7,882.50
2008	7,491.70
2009*~	10,337.10
2010*	8,665.30
2011*	9,251.70

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2012*	8,337.90
2013*~	10,385.70
2014*	6,301.30
2015*^	5,523.50
2016*^	3,367.30
2017*^	4,516.30
2018*^	4,786.80
2019*^	4,505.30
2020*^	4,321.00
2021*^	4,658.00
2022*^	5,403.00

*Includes expanded area on the Greenbrier River. ~Indicates an unusually wet year with high river flows.

^Reflects budget cuts with early end to spray season and/or fewer treatments.

Table 3.3.16: Monthly spray summary, 2022 WVDA Black Fly Control Program.

Month	Total Gallons <i>Bti</i>	Number of Applications
April	736	1
May	1317	2
June	658	2
July	1097	3
August	725	2
September	870	2
Totals:	5403	12

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3.11 Obligations of the Department

3.11.1 The treatment operations will be administered by the Department of Agriculture, Plant Industries Division. The Program Coordinator or designee will work with the pilot and the ground crew, acting as a dispatcher and record keeper.

3.11.2 The Program Coordinator or designee will provide USGS 7.5 minute topographic maps with each treatment site marked and labeled. There will be no ground markers at treatment sites

3.11.3 Prior to initiation of this spray program, Department representatives will meet with the vendor to discuss details and procedures. The date, time and location of this conference and who should attend will be mutually agreed upon.

3.11.4 Department personnel are required to conduct themselves in a safe manner especially in the vicinity of the spray aircraft and support equipment.

3.12 Liquidated Damages- Accurate timing of application of the *Bti* is critical to the success of the program. For this reason, delays caused by the vendor could well destroy the effectiveness of this control program. The vendor shall not be liable for assessed damage costs if the failure to meet the terms of the contract arises out of causes beyond the control and with no fault or negligence of the vendor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the part of the vendor. The following items (but not limited to just these items) are considered failure to perform acts and subject to monetary compensation:

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- 3.13** Verbal notice will be given to the vendor five (5) days in advance of a time and location to have his equipment assembled for the start of the spray program. Following the first application, an advance notice of forty-eight (48) hours will be given to report for subsequent spraying operations. Failure to arrive on the day specified will be assessed against the amount due the vendor at the rate of \$1,500.00 per day. This same assessment applies if the aircraft is on site, but failure to have all the necessary ground support equipment or materials on site make it impossible to spray that day.
- 3.14** The vendor will be told in advance the starting time of the spray operation on each day. Vendor personnel should be at the work site prior to the specified start time and be set up to load the ship and begin application. Tardiness on any part of the crew which delays the departure of the first load when conditions are acceptable for spraying can be assessed against the amount due the vendor at the rate of three hundred (\$300.00) dollars per spray day.
- 3.15** The vendor must provide trucks for transporting the insecticide and will be held liable for any loss of the material between the receipt of delivery by the vendor and its proper dispersal from the aircraft spray system. The vendor will be liable for all aspects of cleanup and containment should an incident occur.
- 3.16** In cases where the vendor causes a delay as described in this Section, the incident will be detailed in writing by the Program Coordinator and submitted to the vendor's Project Supervisor. A copy will also be given to the vendor. All approved reports will be subject to the appropriate provisions and assessed costs shall be deducted before final payment is made to the vendor.
- 3.17 Subcontracts-**The vendor who is awarded this contract, when performing work under the terms and conditions of this contract, is solely responsible for the satisfactory completion of the work and shall not be allowed to subcontract any work or services under this contract to any other person, company, corporation, firm, organization, or agency
- 3.18 Maps-**
- 3.1.18.1** State Map (Table 6.1)
- 3.1.18.2** River Map (Table 6.2)

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Exhibit A Pricing Page

Estimated spray-season totals for 2023. Actual number of applications and gallons of Bti to be applied will vary based on agency needs. Payments are based on the gallons of concentrate sprayed (*Bti* only); no provisions for dilution water are included.

Estimated Application
Season

Fixed Cost per
Gallon Applied

April-Sept 2023

\$ 96.22

Amount of Bti to be distributed per year varies due to water flow and larval development – there is no way to accurately predict this. The total contract amount to be paid out to the successful bidder is dependent on the actual gallons sprayed as well as the per gallon bid price. The actual amount sprayed may differ substantially from the estimates.

Cost is to be calculated on a price per gallon applied (material furnished by the applicator). The contract is open end.

A summary report for the 2022 Black Fly Control Program may be obtained by contacting the Black Fly Control Program Coordinator (See Section A.2). Site locations and estimated volumes may be altered during the program year, based on funding, water levels, and as needed to achieve the desired control. Volumes of *Bti* needed are calculated using the following formula to obtain an approximate 11 ppm concentration at a given treatment site:

$$\text{water flow (in ft.}^3\text{/ second)} / 200 = \text{Bti required (in gal.)}$$

For instance, the water flow at a given site is 4400 ft.³/ second:

$$4400 \text{ ft.}^3\text{/ second} / 200 = 22 \text{ gal. Bti}$$

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Estimated gallons *Bti* required to treat New River (from WV border to Sandstone), based on 2018.

Spray Season	Number of Sites (Avg.)	Avg. Flow (ft ³ /sec.)	Avg. <i>Bti</i> Volume (gal.) per site	Number of Applications	Total <i>Bti</i> (gal.)
Totals:	10	5080	25.4 gal.	9	2285

Estimated gallons *Bti* required to treat Greenbrier River (Clover Lick to Hinton), based on 2018*.

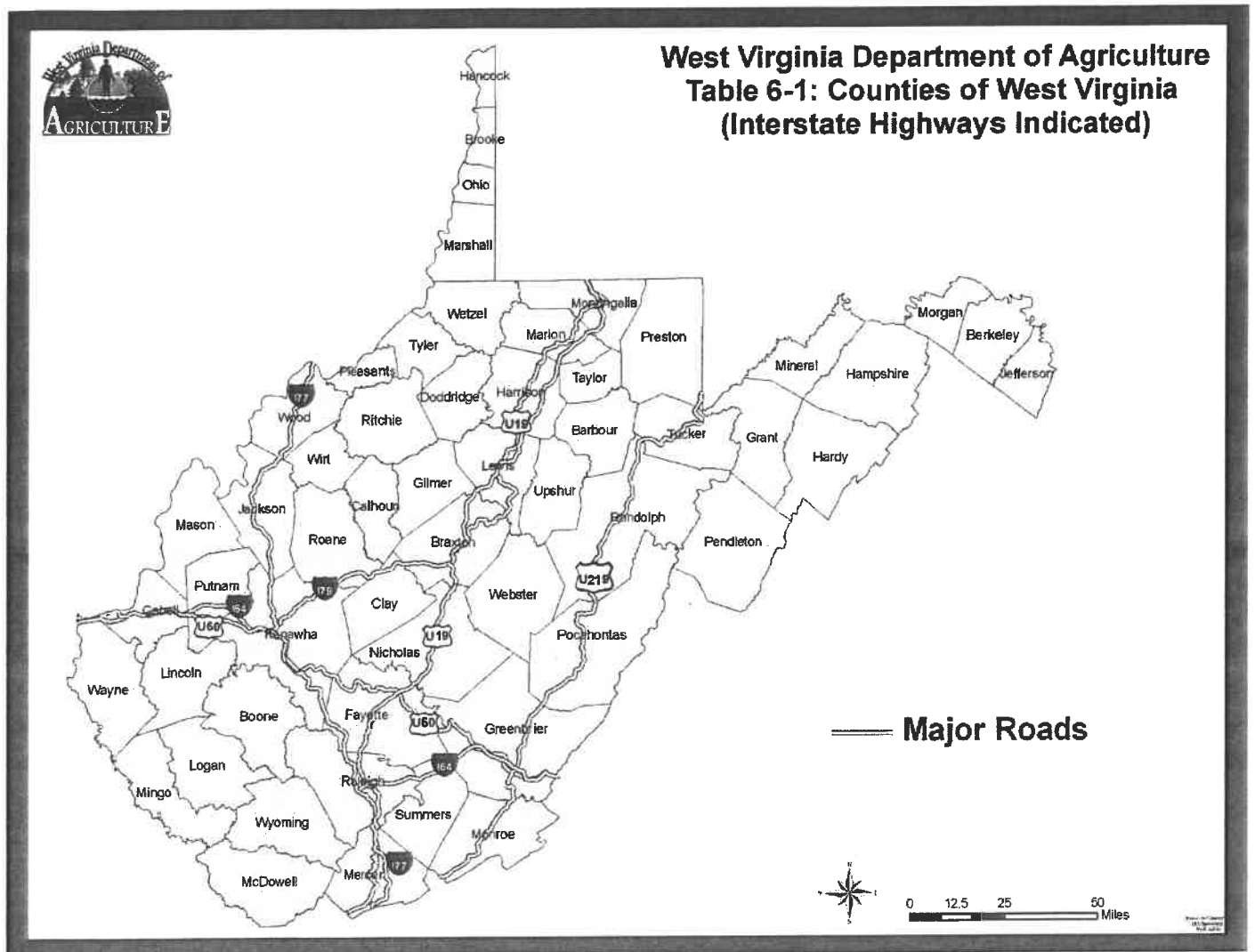
Spray Season	Number of Sites (Avg.)	Avg. Flow (ft ³ /sec.)	Avg. <i>Bti</i> Volume (gal.) per site	Number of Applications	Total <i>Bti</i> (gal.)
Totals:	66.3	800	4.0 gal.	9	2382

*three treatments did not go as far as Clover Lick, due to lack of funding

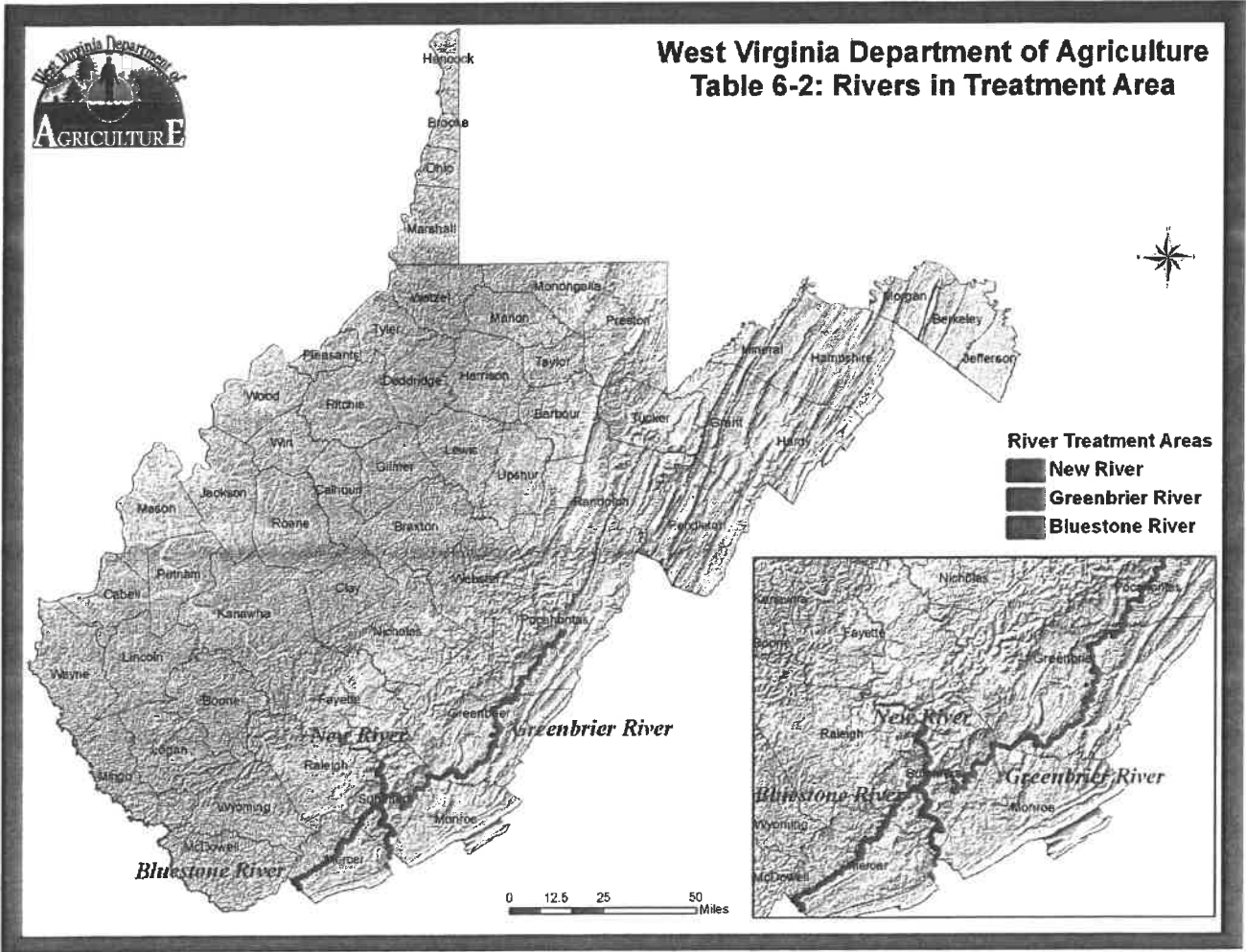
Estimated gallons *Bti* required to treat Bluestone River (lower 12 miles), based on 2018.

Spray Season	Number of Sites (Avg.)	Avg. Flow (ft ³ /sec.)	Avg. <i>Bti</i> Volume (gal.) per site	Number of Applications	Total <i>Bti</i> (gal.)
Totals:	11.1	240	1.2 gal.	9	119.8

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4. CONTRACT AWARD:

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

The total contract amount to be paid to the successful bidder is dependent on the actual gallons sprayed and the per gallon bid price. The actual amount sprayed may differ substantially from the estimates.

Vendors are advised that the actual flows encountered in the spray program may be considerably less than the estimate used to construct the current bid packages.

- 4.2 Pricing Pages:** The Pricing Pages requires the vendor to develop a price for **providing and applying** the pesticide on a **per gallon** basis. This price is then multiplied by the estimated gallons to be applied to produce a Total Bid Price.

Vendor should complete the Pricing Pages by multiplying gallons X cost per gallon applied = Extended Cost.

Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document.

5. ORDERING AND PAYMENT:

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response

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a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within five (5) working days after orders are received. Vendor shall deliver emergency orders within four (4) working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party. Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable or permit the Agency to arrange for the return and reimburse 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. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

6.5 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

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shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

7.1 The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

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

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.

8. MISCELLANEOUS:

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

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

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8.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

8.4 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 should list its Contract manager and his or her contact information below.

Contract Manager: Kirk A. Martin

Telephone Number: 717-337-1370

Fax Number: 717-337-1527

Email Address: Kmartin@helicopterapplicators.com