



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: 09-13-2024

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

|                              |  |                                 |            |
|------------------------------|--|---------------------------------|------------|
| <b>Order Number:</b>         | CMA 0313 0313 DEPSWTIRE03 1                              | <b>Procurement Folder:</b>      | 1514747    |
| <b>Document Name:</b>        | REAP-Tire Collection Events Southern & Western Districts | <b>Reason for Modification:</b> |            |
| <b>Document Description:</b> | REAP-Tire Collection Events Southern & Western Districts |                                 |            |
| <b>Procurement Type:</b>     | Central Master Agreement                                 |                                 |            |
| <b>Buyer Name:</b>           |  |                                 |            |
| <b>Telephone:</b>            |  |                                 |            |
| <b>Email:</b>                |  |                                 |            |
| <b>Shipping Method:</b>      | Best Way   | <b>Effective Start Date:</b>    | 2024-10-01 |
| <b>Free on Board:</b>        | FOB Dest, Freight Prepaid                                | <b>Effective End Date:</b>      | 2025-09-30 |

| VENDOR                             |   | DEPARTMENT CONTACT   |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
|------------------------------------|---|--|---------------------------|---------------------|------------------|---------------------|---------------|----|----|--------|---|----|----|--|--|----|----|--|--|----|----|--|--|
| <b>Vendor Customer Code:</b>       | 000000173712  | <b>Requestor Name:</b>   | Jessica S Chambers        |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| KESSLER EXCAVATING INC<br>PO BOX 9 |   | <b>Requestor Phone:</b>  | (304) 414-1140            |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| FENWICK WV 26202<br>US             |   | <b>Requestor Email:</b>  | jessica.s.chambers@wv.gov |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| <b>Vendor Contact Phone:</b>       | 999-999-9999 Extension:   | <div style="font-size: 48px; font-weight: bold;">2025</div> <div style="font-size: 24px; font-weight: bold;">FILE LOCATION _____</div> |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| <b>Discount Details:</b>           |   |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
|                                    | <table border="1" style="width: 100%; border-collapse: collapse;"> <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 |  |  |
|                                    | Discount Allowed  |  |                           | Discount Percentage | Discount Days    |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| #1                                 | No  |  |                           | 0.0000              | 0                |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| #2                                 | No  |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| #3                                 | No  |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
| #4                                 | No  |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
|                                    |   |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |
|                                    |   |  |                           |                     |                  |                     |               |    |    |        |   |    |    |  |  |    |    |  |  |    |    |  |  |

| INVOICE TO   | SHIP TO   |
|--|---|
| ENVIRONMENTAL PROTECTION<br>REAP OFFICE<br>601 57TH ST SE<br>CHARLESTON WV 25304<br>US | STATE OF WEST VIRGINIA<br>VARIOUS LOCATIONS AS INDICATED BY ORDER<br><br>No City WV 99999<br>US |

9-17-2466

Purchasing Division's File Copy

|                            |          |
|----------------------------|----------|
| <b>Total Order Amount:</b> | Open End |
|----------------------------|----------|

*JM 9.13.24*  
 PURCHASING DIVISION AUTHORIZATION  
 DATE: *Murt [Signature] - 9/17/2024*  
 ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM  
 DATE: *John S. Gray [Signature]*  
 ELECTRONIC SIGNATURE ON FILE  
*9/26/2024*

ENCUMBRANCE CERTIFICATION  
 DATE: *[Signature] 9-20-24*  
 ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

The vendor, Kessler Excavating Inc., agrees to enter into this contract with the agency, The West Virginia Department of Environmental Protection, Environmental Advocate's Office, Rehabilitation Environmental Action Plan for tire collection events in the Southern and Western Districts per the specifications, terms and conditions, Addendum #1 issued 8/8/2024, and the vendors submitted bid response dated 8/09/2024 all incorporated herein by reference and made a part hereof. This is a multi-award contract. The order of vendor selection will be based upon lowest price per region, and then availability.

| Line | Commodity Code      | Manufacturer      | Model No | Unit | Unit Price                     |
|------|---------------------|-------------------|----------|------|--------------------------------|
| 1    | 78142004            |                   |          | EA   | 200.000000                     |
|      | <b>Service From</b> | <b>Service To</b> |          |      | <b>Service Contract Amount</b> |
|      |                     |                   |          |      | 0.00                           |

**Commodity Line Description:** 3.1.2 Trailer Dropped at Site (per event) Southern District

**Extended Description:**

3.1.2 Trailer Dropped at Site (per event) Southern District

| Line | Commodity Code      | Manufacturer      | Model No | Unit | Unit Price                     |
|------|---------------------|-------------------|----------|------|--------------------------------|
| 2    | 78142004            |                   |          | MILE | 30.000000                      |
|      | <b>Service From</b> | <b>Service To</b> |          |      | <b>Service Contract Amount</b> |
|      |                     |                   |          |      | 0.00                           |

**Commodity Line Description:** 3.1.4 Trailer Mileage to Disposal Southern District

**Extended Description:**

3.1.4 Trailer Mileage to Disposal Southern District

| Line | Commodity Code      | Manufacturer      | Model No | Unit  | Unit Price                     |
|------|---------------------|-------------------|----------|-------|--------------------------------|
| 4    | 76122405            |                   |          | HOURL | 5.000000                       |
|      | <b>Service From</b> | <b>Service To</b> |          |       | <b>Service Contract Amount</b> |
|      |                     |                   |          |       | 0.00                           |

**Commodity Line Description:** 3.1.3 & 3.1.4 Labor Per Hour for Employee Southern District

**Extended Description:**

3.1.3 & 3.1.4 Labor Per Hour for Employee Southern District

| Line | Commodity Code      | Manufacturer      | Model No | Unit | Unit Price                     |
|------|---------------------|-------------------|----------|------|--------------------------------|
| 5    | 78142004            |                   |          | MO   | 900.000000                     |
|      | <b>Service From</b> | <b>Service To</b> |          |      | <b>Service Contract Amount</b> |
|      |                     |                   |          |      | 0.00                           |

**Commodity Line Description:** 3.1.6 Trailer Rental Per Trailer Per Month Southern District

**Extended Description:**

3.1.6 Trailer Rental Per Trailer Per Month Southern District

## 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 (1) one 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 (3) three 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.

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

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

Vendor must maintain:

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

**Automobile Liability Insurance** in at least an amount of: 1,000,000.00 per occurrence.

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

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

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

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

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

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

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

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

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

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

Liquidated Damages Contained in the Specifications.

Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: CRFQ DEP 25\*02**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6  |
| <input type="checkbox"/> Addendum No. 2            | <input type="checkbox"/> Addendum No. 7  |
| <input type="checkbox"/> Addendum No. 3            | <input type="checkbox"/> Addendum No. 8  |
| <input type="checkbox"/> Addendum No. 4            | <input type="checkbox"/> Addendum No. 9  |
| <input type="checkbox"/> Addendum No. 5            | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Kessler Excavating, Inc  
Company

[Signature]  
Authorized Signature

8-8-24  
Date

**NOTE:** This addendum acknowledgment should be submitted with the bid to expedite document processing.  
Revised 6/8/2012



**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) John E Kessler President

(Address) PO Box 9, Fenwick WV 26202

(Phone Number) / (Fax Number) 304-846-6828 <sup>Fax</sup> 304-846-6828

(email address) Kesslerexcavating@gmail.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.*

Kessler Excavating, Inc  
(Company)

[Signature]  
(Signature of Authorized Representative)

John E Kessler, President 8-8-2024  
(Printed Name and Title of Authorized Representative) (Date)

304-846-6828 Fax 304-846-6828  
(Phone Number) (Fax Number)

Kesslerexcavating@gmail.com  
(Email Address)

**Tire Collection Events – REAP, PPOD  
Southern & Western**

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**SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Environmental Protection, Environmental Advocate’s Office, Rehabilitation Environmental Action Plan to establish an open-end contract for tire collection events in the Southern and Western Districts as identified in Attachment A. This contract may be awarded to multiple vendors if it is in the best interest of the Agency.

**Previous Solicitations:**

DEP2000000032 (Southern District) that opened on: 05/28/2020. Vendors may view previous solicitation responses on the West Virginia

Purchasing Bid Opening:

<http://www.state.wv.us/admin/purchase/Bids/FY2020/BO20200528.html>

DEP2000000030 (Western District) that opened on: 05/27/2020. Vendors may view previous solicitation responses on the West Virginia

Purchasing Bid Opening:

<http://www.state.wv.us/admin/purchase/Bids/FY2020/BO20200528.html>

**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(s)”** 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 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 “Tire Collection”** Tires collected by REAP at special events.
- 2.5 “Tire”** means passenger car or light truck tire.

**Tire Collection Events – REAP, PPOD  
Southern & Western**

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- 2.6** “**Trailer**” means 53-foot box trailer (630 inches x 102 inches x 110 inches)
- 2.7** “**Box Truck**” means 26-foot truck or truck/trailer combination with a minimum capacity of 1,600 cubic feet.
- 2.8** “**Crew**” means a group of workers to unload tires, load tires, and collect origin information for the tires. The number of workers needed to complete each project shall be agreed upon by the project manager and the vendor prior to the beginning of each project.
- 2.9** “**Labor Rate**” Is the cost per employee per hour, includes all time on-site and travel time to and from the vendor’s headquarters.
- 2.10** “**Approved Facility**” means facility approved to accept tires to be determined by the Project Manager where they will be recycled for beneficial reuse or disposed of.
- 2.11** “**SOUTHERN District**” Includes Boone, Fayette, Greenbrier, Logan, Mercer, McDowell, Mingo, Monroe, Nicholas, Raleigh, Summers and Wyoming Counties.
- 2.12** “**WESTERN District**” Includes Braxton, Clay, Calhoun, Cabell, Kanawha, Lincoln, Jackson, Mason, Putnam, Roane, Wayne, Wirt and Wood Counties.

**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** The vendor shall provide a crew, to perform all services including documentation of tire origin information, unloading of tires from vehicles owned by the public, loading and stacking of tires into vendor vehicles, and transporting tires to designated recycling/disposal facility. The required crew size will be determined by the REAP Project Manager and will be based on the estimated number of tires to be collected. This information will be included in the work directive and provided to the awarded vendor, one week prior to the tire collection event. The REAP Project Manager will issue a Work Directive 7 calendar days prior to services being

## **Tire Collection Events – REAP, PPOD Southern & Western**

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performed. If the lowest bid vendor is unable to provide the necessary services, the vendor will need to provide written justification explaining why they cannot within 24 hours and the next lowest bid vendor will be selected. If the low bid vendor does not respond within the 24-hour timeframe, the agency will document the vendor being unresponsive and move to the next lowest bid vendor. Vendor must bill total labor hours per laborer provided, to include travel to and from site.

- 3.1.2** When the vendor is responsible for supplying a trailer(s) for a collection, the vendor will invoice REAP PPOD for the trailer drop fee, labor to load the trailer(s), and mileage to transport the tires collected to the licensed disposal facility designated by the REAP PPOD Project Manager. The number of laborers will be at the discretion of the PPOD Project Manager. In the case that the trailer(s) are not filled, there will be no mileage payment for the empty trailer(s), however, the trailer drop fee will still apply.
- 3.1.3** When the vendor is responsible for supplying a box truck(s) for a collection, the vendor will invoice REAP PPOD the quoted daily box truck rate and the quoted price for labor to load the truck(s) only. The drivers' wages are to be included in the daily box truck rate. The number of laborers needed will be at the discretion of the PPOD Project Manager. No mileage payment will be made on collections using a box truck(s).
- 3.1.4** The vendor shall be responsible for transporting the tires to an approved facility determined by the REAP Project Manager, where they will be recycled for beneficial reuse or disposed of. The Vendor must bill total mileage from work site to the disposal site. The approved facility list will be maintained by REAP staff and the vendor will need to confirm the drop off location with the REAP Project Manager prior to delivery. The approved facility will be noted in the Work Directive.
- 3.1.5** The vendor shall have the capability to provide all necessary resources to complete a minimum of two concurrent events in the same district on the same day, in separate locations. Dates and locations will be determined by the REAP Project Manager. The vendor shall provide trailers located at designated secure sites within the district for special events and ongoing full-time tire collections. These sites will be designated by the REAP Project Manager. If the successful low bid vendor is unable to staff concurrent events

**Tire Collection Events – REAP, PPOD  
Southern & Western**

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as required, the agency reserves the right to move to the next lowest bid vendor.

- 3.1.6** Rent for long term staged trailer shall be charged per month (does not include trailers for single day events) and will be paid quarterly in arrears. The vendor must remove the trailers within 48 to 72 hours at the request of the REAP Project Manager.
- 3.1.7** Should the need for an additional trailer or box truck occur after the conclusion of the event, the REAP Project Manager shall issue an addendum to the work directive. The vendor shall provide the crew, trailers and/or box trucks to load any remaining tires within 24 hours, unless otherwise determined by the REAP Project Manager.
- 3.1.8** The vendor shall be responsible for the proper handling of the collected data and its transport to the WVDEP. The handling of the collected data shall be in accordance with the HIPPA rules (<https://privacy.wv.gov/HIPAA/Pages/default.aspx>), as the names, addresses, and driver's license numbers of participants are included in the data.
- 3.1.9** Dates and operating times of the events will be determined by the REAP Project Manager. The vendor shall ensure the required services are provided for the operating times. In the event there is a line at the time the event is scheduled to end, the contractor shall station someone at the end of the line and serve all in line at the time the event is scheduled to close.
- 3.1.10** The REAP Project Manager shall use historical data from previous events and determine the number of trailer/box trucks needed for the event. The vendor shall ensure that the requested number of trailers and/or box trucks and crew is at the designated location a minimum of 30 minutes prior to the scheduled start time of the event. The vendor shall provide additional trailers if needed at the location.
- 3.1.11** The vendor must be in compliance with WV Code 24A-2-5, which addresses Certificate of convenience and necessity.  
<http://www.wvlegislature.gov/WVCODE/ChapterEntire.cfm?chap=24a&art=2>

Proof of compliance should be submitted with the vendor's bid. Proof of compliance must be provided prior to awarding the contract. This documentation must be provided within five (5) calendar days upon request from the WV Purchasing Division.

**Tire Collection Events – REAP, PPOD  
Southern & Western**

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**3.1.12** All commercial drivers must have a commercial driver's license (CDL) and valid DOT physical. Proof of each may be requested prior to award or at any time during the life of the contract.

**3.1.13** Work and services to be performed under this contract shall be subject to continuous monitoring and inspection by the REAP Project Manager.

**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.

**4.2 Selection Method:** The contract may be awarded to multiple vendors if it is in the best interest of the State. The selection criteria will be based first on low bid. In the event the lowest bid vendor cannot provide the necessary services the agency will move to the next lowest bid vendor.

**4.3 Work Directives:** Work directives will be issued for individual or multiple sites or in accordance with the criteria set forth in this RFQ. All work is expected to be performed in an expeditious manner and must be completed within the timeframes set forth in the work directive.

**4.3 Pricing Pages:** Vendor should complete the Pricing Page by entering the unit price for each contract item defined on the Pricing Page. The Vendor does not have to bid on both districts in order to be considered.

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

Vendor should type or electronically enter the information into the Pricing Page through wvOASIS, if available, or as an electronic document. Vendor can download the electronic copy of the Pricing Pages from the wvOASIS Vendor Self-Service (VSS) website. If responding with a paper bid, Vendors should download and/or print

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the assembled CRFQ document (with the highest version number) from wvOASIS and insert their unit price and extended cost for each line item.

**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 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** Work will be ordered by WVDEP by issuance of a Work Directive which shall include the location of the project site, required equipment and crew, and the time frame during which the work must be completed.

**5.2.1** A Work Directive may contain work directives for more than one site

**5.2.2** The Vendor shall not begin work until a signed Notice to Proceed has been issued by the WVDEP.

**5.2.3** Vendor is hereby notified that Work Directives may be issued with expedited time frames which may require the Vendor to mobilize to the site within a 24-hour period after the work directive is approved by the DEP. Project costs should not exceed the amount of the Work Directive.

**5.2.4** Any changes pertaining to the Work Directive shall require written justification and approval from WVDEP, prior to additional work being performed.

**5.3 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. Payment to the Vendor will be made based on the items and unit prices established in the Contract and the quantities thereof outlined in the Work Directive.

**5.3.1 Invoicing:** The Vendor shall submit an invoice within 30 days after the completion of work specified in the Work Directive. Invoices must be submitted for each individual project/work directive and must contain Project Name, Project Number, Work Directive, performance period (beginning and ending date work was performed). The Notice to Proceed date shall be the beginning of the performance period. All invoices shall show labor and other expenses incurred during for the project. All charges

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for tires must be accompanied by weight tickets or tares showing trailer or truck weights prior to unloading of tires and after tires are removed. Vendor must also submit proof of mileage to support invoiced mileage. WVDEP will reimburse all payments for tire disposal to the vendor provided that the invoices meet the requirements.

**5.3.2** Invoices must include weight tickets for all tires hauled to the approved facility. No payment(s) will be authorized for any work incurred as a result of any error on the part of the Vendor.

**5.3.3** Before any invoice is processed for payment, the work performed shall be verified by REAP's project manager overseeing the project.

**6 DELIVERY AND RETURN:**

**6.1 Delivery Time:** Vendor shall deliver standard orders within seven working days after orders are received. Vendor shall deliver emergency orders within one 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



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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 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:**

**Tire Collection Events –REAP,**

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- 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.
- 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:** John E Kessler

**Telephone Number:** 304-846-6828

**Fax Number:** 304-846-6828

**Email Address:** Kesslerexcavating@gmail.com



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

**State of West Virginia  
 Solicitation Response**

**Proc Folder:** 1467708  
**Solicitation Description:** REAP-Tire Collection Events Southern & Western Districts  
**Proc Type:** Central Master Agreement

| Solicitation Closes | Solicitation Response        | Version |
|---------------------|------------------------------|---------|
| 2024-08-13 13:30    | SR 0313 ESR08082400000000948 | 1       |

**VENDOR**  
 000000173712  
 KESSLER EXCAVATING INC

**Solicitation Number:** CRFQ 0313 DEP2500000002

**Total Bid:** **Response Date:** 2024-08-09 **Response Time:** 11:18:23

**Comments:**

**FOR INFORMATION CONTACT THE BUYER**  
 Joseph E Hager III  
 (304) 558-2306  
 joseph.e.hageriii@wv.gov

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

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

| Line | Comm Ln Desc   | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--|-----|------------|------------|-----------------------------|
| 1    | 3.1.2 Trailer Dropped at Site (per event)<br>Southern District |     | EA         | 200.000000 |                             |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 78142004  |              |               |         |

**Commodity Line Comments:**

**Extended Description:**

3.1.2 Trailer Dropped at Site (per event) Southern District

| Line | Comm Ln Desc   | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--|-----|------------|------------|-----------------------------|
| 2    | 3.1.4 Trailer Mileage to Disposal Southern<br>District |     | MILE       | 30.000000  |                             |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 78142004  |              |               |         |

**Commodity Line Comments:**

**Extended Description:**

3.1.4 Trailer Mileage to Disposal Southern District

| Line | Comm Ln Desc   | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--|-----|------------|------------|-----------------------------|
| 3    | 3.1.3 Box Truck Per Truck Per Day Southern<br>District |     | EA         | 0.000000   | 0.00                        |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 78142004  |              |               |         |

**Commodity Line Comments:**

**Extended Description:**

3.1.3 Box Truck Per Truck Per Day Southern District

| Line | Comm Ln Desc   | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--|-----|------------|------------|-----------------------------|
| 4    | 3.1.3 & 3.1.4 Labor Per Hour for Employee<br>Southern District |     | HOUR       | 5.000000   |                             |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 76122405  |              |               |         |

**Commodity Line Comments:**

**Extended Description:**

3.1.3 & 3.1.4 Labor Per Hour for Employee Southern District

| Line | Comm Ln Desc  | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|---|-----|------------|------------|-----------------------------|
| 5    | 3.1.6 Trailer Rental Per Trailer Per Month<br>Southern District |     | MO         | 900.000000 |                             |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 78142004  |              |               |         |

**Commodity Line Comments:**

**Extended Description:**

3.1.6 Trailer Rental Per Trailer Per Month Southern District

# Attachment A

