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: 07-18-2024

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 0511 2539 BSS2500000001 1	**Procurement Folder:**	1458261
Document Name:	CONSULTANT FOR BSS TO REPLACE COMMISSIONER	**Reason for Modification:**	
Document Description:	CONSULTANT FOR BSS TO REPLACE COMMISSIONER		
Procurement Type:	Central Sole Source		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	**Effective Start Date:**	2024-07-22
Free on Board:	FOB Dest, Freight Prepaid	**Effective End Date:**	2025-01-21

VENDOR

Vendor Customer Code: VS0000046378
KR Strategies & Solutions, LLC
1855 Bridgepointe Cir #24

Vero Beach FL 32967
US
Vendor Contact Phone: 7326906444 **Extension:**

Discount Details:

	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

DEPARTMENT CONTACT

Requestor Name: Cynthia A Persily
Requestor Phone: (304) 558-0530
Requestor Email: cynthia.persily@wvhepc.edu

2025
FILE LOCATION

INVOICE TO

BUYER - 304-957-0209
HEALTH AND HUMAN RESOURCES
OFFICE OF THE SECRETARY
ONE DAVIS SQUARE, FIRST FLOOR, EAST
CHARLESTON WV 25301
US

SHIP TO

BUYER - 304-957-0209
HEALTH AND HUMAN RESOURCES
OFFICE OF THE SECRETARY
ONE DAVIS SQUARE, FIRST FLOOR, EAST
CHARLESTON WV 25301
US

7/23/24 GC

Total Order Amount: Open End

Purchasing Division's File Copy

CH 7/19/24

PURCHASING DIVISION AUTHORIZATION
DATE: Tarah 7/23/24
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: 7/25/24
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
DATE: 7-25-24
ELECTRONIC SIGNATURE ON FILE

Extended Description:

THE VENDOR, KR STRATEGIES & SOLUTIONS, LLC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH, BUREAU FOR SOCIAL SERVICES, INTO A CONTRACT TO PROVIDE CONSULTATION AND DIRECTION ON PLANNING, IMPLEMENTATION OF STRATEGIES TO MEET SHORT AND LONG TERMS GOALS AND OUTCOME EVALUATION FOR DOHS/BSS TO REPLACE COMMISSIONER PER THE TERMS AND CONDITIONS AND THE VENDOR'S QUOTE, INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	80101504				0.000000
	Service From	**Service To**		**Service Contract Amount**	
	2024-07-22	2025-01-21		125000.00	

Commodity Line Description: Consulting Fees
Strategic planning consultation services

Extended Description:
Consulting Fees $125,000.00

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	80101504				0.000000
	Service From	**Service To**		**Service Contract Amount**	
	2024-07-22	2025-01-21		0.00	

Commodity Line Description: Travel Expenses
Strategic planning consultation services

Extended Description:
Travel Expenses As available and approved by the Cabinet Secretary in accordance with the State of West Virginia's published travel policy governing state employee travel with the following modifications: (1.) Vendor travel will not be reimbursed unless vendor personnel are required to be present at a location more than 75 miles away from Agency's designated headquarters, more than 75 miles away from the vendor's closest place of business, and more than 75 miles from the primary residence of the vendor's closest employee performing the work. (2.) Vendor must calculate travel costs from the required location to the agency headquarters, the vendor's closest place of business, and the closest employee's residence. Mileage reimbursement totals for travel purposes will be based on the lowest mileage of the three calculations. (3.) Vendor will not be compensated for travel time.

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 six (6) months _____. 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 _____ 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 of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked 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.

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

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below 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 per occurrence.

☑ **Automobile Liability Insurance** in at least an amount of: $100,000 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.

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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 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.

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.

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) Kimberly Ricketts

(Address) 1855 Bridgepointe Cir #24 Vero Beach, FL 32967

(Phone Number) / (Fax Number) 732-690-6444 cell

(email address) Kimsricketts@gmail.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through *wv*OASIS, 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.

KR Strategies & Solutions, LLC
(Company)

Kimberly Ricketts
(Signature of Authorized Representative)

Kimberly Ricketts, Member, 7-11-2024
(Printed Name and Title of Authorized Representative) (Date)

732-690-6444
(Phone Number) (Fax Number)

Kimsricketts@gmail.com
(Email Address)

Statement of Work

WV Department of Human Services Point of Contact
Office of Shared Administration
Bryan Rosen, Purchasing Director

Vendor Point of Contact
Kim Ricketts
1855 Bridgepointe Circle #24
Vero Beach, FL 32967

Overview and Justification

The purpose of this agreement is to procure the services of Kim Ricketts to provide consultation and direction on planning, implementation of strategies to meet short- and long-term goals, and outcome evaluation in social services to the Cabinet Secretary of the Department of Human Services. This consultant provides direct support to the Bureau and Cabinet Secretary. The consultant will report directly to the Cabinet Secretary and be evaluated by the Cabinet Secretary. The project budget includes travel expenses for the Consultant as available and approved by the Cabinet Secretary, in addition to consulting fees not to exceed $125,000 over the term of the contract. Payment for services will be made in equal monthly installments.

The purpose, duties and responsibilities of the Bureau for Social Services include oversight of adult residential services, the centralized intake hotline, children's foster care services, and home and community-based resources and services. The Bureau promotes safety, permanency, and wellbeing of children and vulnerable adults, supporting individuals to succeed and strengthening families. The vision of the Bureau is that all West Virginians experience safe, stable, healthy lives and thrive in the care of a loving family and community.

Consultation of this nature is highly specialized. The consultant must have experience in social innovation, as well as executive level experience in government with a focus on children and families, behavioral health and organizational operations. The consultant must have proven ability to take charge, be a thought leader with the demonstrated ability to co-design and implement strategic initiatives that improve operations through strong fiscal management, team building and effective communication. Leadership must have been consistently recognized through successive appointments in highly visible executive roles.

Ms. Ricketts has 14 years of previous experience serving as a Senior Director for Child Welfare Leadership Development and Managing Director of Systems Improvement at Casey Family Programs, a national leader and the largest operating foundation in the US dedicated to safely reducing the need for foster care and improving safety, permanency and well-being for all children in the nation's child welfare system. Additionally, she served as Commissioner of the Department of Children and Families for the State of New Jersey, Chief Administrative Office for the NJ Office of the Attorney General, Department of

Law and Public Safety, Executive Director of the NJ Governor's Task Force on Mental Health, and Chief of Staff for the NJ Department of Community Affairs. Ms. Ricketts has been consistently praised for high levels of effective change development and management in the field.

Signed:

Cabinet Secretary
WV Department of Human Services

Vendor:

Kim Ricketts

Title 148. Department of Administration
State of West Virginia Travel Rules

Section 1. General

1.1 Scope – These Travel Rules govern travel by all State of West Virginia officers, board members, employees, consultants, contractors and anyone authorized to be reimbursed travel expenses by or on behalf of the State of West Virginia, and includes all in-state, out-of-state and international travel. An entity with authority pursuant to W. Va. Code §12-3-11 to promulgate rules concerning out-of-state travel is encouraged to utilize these Travel Rules and make exceptions when it determines the exceptions are in its best interests.

1.2 Authority – West Virginia Code §12-3-11.

1.3 Effective Date – July 1, 2019.

1.4 Definitions

For purposes of these Rules, the following terms are defined:

1.4.1 "Duty Station" is the city/town, county, and State in which the employee works. For most employees, this will be the location of the employee's work site.

1.4.2 "FMD" means the State of West Virginia Fleet Management Division.

1.4.3 "Ghost Account" means the State Travel Card Program.

1.4.4 "GSA" means the U.S. General Services Administration.

1.4.5. "Purchasing Card" means the payment account issued by the financial institution and administered by the State Auditor to make payment for transactions.

1.4.6 "Rules" means these Travel Rules.

1.4.7 "Spending Unit" means a department, agency, board or institution of state government for which an appropriation is requested, to which an appropriation is made by the West Virginia Legislature, or which files an expenditure schedule with the State Budget Office.

1.4.8 "Spending Unit Officer" means a person with authority to approve Travel Authorization and Travel Expense Account Settlement Forms.

1.4.9 "State" means the State of West Virginia and any Spending Unit.

1.4.10"Third Party Booking" means using an internet travel site such as Expedia, Travelocity, Orbitz, Kayak, Hotels.com and the like, where a Traveler may research and book travel reservations.

1.4.11 "TMO" means the State of West Virginia Travel Management Office.

1.4.12 "Travel Authorization" means the form/format approved by the TMO that is to be used for approving travel under these Rules whether in an electronic travel management solution or on paper.

1.4.13 "Travel Expense Report" means the form/format approved by the TMO that is to be used for settling all travel related expenses incurred pursuant to these Rules, whether in an electronic travel management solution or on paper.

1.4.14 "Traveler" means a State of West Virginia officer, board member, employee, consultant, contractor and anyone authorized to be reimbursed travel expenses by or on behalf of the State.

1.4.15 "Travel Status" is defined as the authorized period of travel time away from the official workstation commencing with the time of departure and ending with the time of return.

Section 2. General Information

2.1 The State has an "accountable plan" for reimbursement of travel expenses and will only reimburse for actual expenses or in an amount deemed substantiated.

2.2 Authority to manage, approve, or disapprove travel and travel-related expense is delegated exclusively to the Spending Unit Officer of a Spending Unit. Authority may be revoked by the TMO.

2.3 Travel may be authorized only for official business and only if the Spending Unit has the financial resources to reimburse the Traveler for travel expenses.

2.4 Travel expenses will be reimbursed for legitimate and reasonable expenses considered necessary for the proper conduct of State business in accordance with these Rules.

2.5 The Spending Unit Officer may develop administrative policies and procedures for the Spending Unit, consistent with these Rules, to provide additional guidance to employees and others traveling on behalf of the Spending Unit.

2.6 A Traveler is considered in "travel status" when he or she is traveling on behalf of the State, which includes leaving his/her assigned official work location to perform duties at other locations.

2.7 Approval to travel out of West Virginia must be secured in advance by the Traveler from the Spending Unit providing reimbursement.

2.8 The responsibility to audit a Traveler's expense report lies with the Spending Unit. Approval of a Traveler's expense report by the Spending Unit means that the Travel Expense Report meets all criteria established by these Rules for reimbursement. The Spending Unit shall audit and submit an accurate Travel Expense Report for reimbursement to the State Auditor's Office within fifteen (15) days after completion of travel.

2.9 Travelers must use state contracts for travel services, or deal directly with the service vendor. Third Party Booking sites shall not be used.

2.10 Travelers are personally responsible for submitting all required, valid receipts for travel to his/her Purchasing Card Coordinator for expenses paid by a Purchasing Card.

Section 3. Reimbursement

3.1 Reimbursement of travel expenses incurred by consultants, contractors and non-employees will be in accordance with these Rules, unless otherwise specified in the purchase order or contract with the State.

3.2 Reimbursement of travel expenses paid from federal, state and private grants shall be governed by the terms and conditions of the grant if they differ from those contained in these Rules; otherwise, these Rules shall govern the reimbursement.

3.3 Travel reimbursement requests must be submitted in wvOasis and have all required receipts and forms attached before submitting to the Spending Unit.

3.4 Spending Units are responsible for auditing Travel Expense Reports. Approval of a Travel Expense Report is required by a Spending Unit Officer to certify the Report meets all criteria established by these Rules.

3.5 Itemized receipts are required for expenses claimed in excess of $75.00 unless otherwise specifically addressed in these Rules.

3.6. When a receipt is required, the receipt must be the valid, itemized receipt issued by the vendor or service provider documenting the transaction.

3.7 When an acceptable form of receipt is not available, a Traveler shall create, in paper or electronic form, an itemized list reflecting the goods or services purchased, vendor name, date of purchase and price. The physical or electronic signatures of the Traveler and the Spending Unit employee with signature authority for travel are required, along with whatever receipt or other documentation is available.

Section 4. Meals

4.1 Meal expense reimbursement is based on the temporary duty location and is not to exceed the maximum per diem established by the federal government. Alcohol and entertainment expenses are specifically excluded. Meal reimbursement is allowed when lodging is listed as "gratis" or "no charge."

4.2 Meal and incidental rates differ by travel location; incidentals are included in the meal per diem and are therefore not separately reimbursable. Examples of incidental expenses are fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants; transportation between places of lodging or business and places where meals are taken, if suitable meals cannot be obtained at the temporary duty site; and mailing cost associated with filing travel vouchers and payment of government charge card billings.

4.3 Meal expenses are reimbursable for travel requiring overnight lodging.

4.4 A Traveler may request a cash advance for meals and/or mileage by submitting a "Cash Advance Exception Request" to the Auditor's Office.

4.5 Current rates and an example of the per diem meal breakdown may be found at the TMO website at www.state.wv.us/admin/purchase/ travel.

4.6 Adjustments to Per Diem Rates

4.6.1 Exceptions may be granted to per diem rates in situations when authorized by the Spending Unit Officer. When expenses are approved in excess of per diem rates, itemized receipts are required for the meal and incidental expenses for the entire day.

4.6.2 On the first and last days of travel of an overnight trip when no meals are provided, the allowable reimbursement is based on 75% of the federal government's per diem rate for the specific city. Departure or arrival times are not considered. If a meal(s) is provided gratis or included within a registration fee of the business travel, the per diem rate must be reduced by the appropriate amount

4.6.3 A meal provided by a common carrier or as a *complimentary* meal provided by a hotel/motel does not reduce the maximum per diem rate.

4.7 Extraordinary Meal Expense Reimbursement

4.7.1 Meal expenses for single day travel are not reimbursable unless the Traveler is in travel status for more than 12 hours in a 24 hour period and reimbursement has been approved by the Spending Unit Officer. The maximum reimbursement is 75% of the GSA rate. Date and time of departure and return must be clearly noted on the Travel Expense Report.

4.7.2 Travelers providing Guardian Travel, e.g., transporting or accompanying clients, patients, students or others entrusted to a Spending Unit for its care, education or placement, may be reimbursed the cost of companion meals, not to exceed the maximum per diem. Receipts (or the student signature form) are required to be attached to the Travel Expense Report.

4.7.3 Travelers in undercover operations, law enforcement personnel and others in certain occasional overtime situations, at the direction and with the written approval of the Spending Unit Officer, may be reimbursed for their meal expenses. Spending Units must keep appropriate documentation on file.

Section 5. Transportation

5.1 Air Transportation

5.1.1 Commercial Airlines

5.1.1.1 Allowable reimbursement for commercial airline travel shall include the actual cost for the least expensive logical fare via the most direct route, or a reasonable alternative route if it results in a lower fare.

5.1.1.2 Travelers should make air travel bookings through the Statewide Contract for Travel Services.

5.1.1.3 Electronic tickets (E-tickets) are the industry standard and are issued automatically unless a paper ticket is specifically requested by the Traveler. Costs for obtaining paper tickets are not reimbursable. E-tickets are sufficient for traveling and reimbursement.

5.1.1.4 Airfare should be paid by a Purchasing Card or Ghost account.

5.1.1.5 Inappropriate Actions

5.1.1.5.1 Travelers may not deliberately cause increased costs or delays to obtain personal gratuities, such as denied boarding compensation, frequent flier points or mileage or other benefits. Conversion of airline tickets for personal benefit, such as downgrading tickets, returning unused tickets for cash, credit or personal airline tickets or other similar action is prohibited.

5.1.1.5.2 Travelers may not specify a particular airline to accumulate mileage or promotional plans such as frequent flyer programs if it results in a higher fare. Travelers may retain frequent flyer points properly accumulated.

5.1.1.5.3 If an increase in airfare is caused by the Traveler without legitimate excuse, the increased costs of the airfare are a personal expense of the Traveler and will not be reimbursed. If an increase in airfare is incurred through no fault of the Traveler and the Spending Unit Officer has approved the increase, the increased cost is reimbursable.

5.1.1.6 The travel agency should be notified immediately if airline tickets are unused or refundable for proper credit or refund.

5.1.2 Non-Commercial Aircraft Service

5.1.2.1 For any state-owned or private aircraft services to be used, Travelers are to contact the Aviation Division of the Department of Administration.

5.2 Ground Transportation

5.2.1 Generally

5.2.1.1 A Traveler may use a privately-owned, state-owned, or a commercial rental vehicle for ground transportation.

5.2.1.2 A Traveler must possess a valid operator's license to drive a vehicle while traveling on behalf of the State.

5.2.1.3 The Traveler is responsible for following all applicable laws and requirements while driving and for any fines and/or penalties resulting from citations, charges or warrants attributable to the operator. Such fines and/or penalties are not reimbursable expenses.

5.2.1.4 When a Traveler requests to drive his or her personal vehicle rather than fly for business, reimbursement shall be based on actual in-transit expenses (mileage and other costs incurred while in-transit, such as lodging, meals, parking, tolls, etc.), not to

exceed the least expensive logical commercial airline cost plus local transportation to and from the airport and parking (where required). A Traveler is not permitted to claim toll costs unless those costs were actually incurred and paid at the personal expense of the Traveler. If the Traveler's vehicle contains an EzPass transponder that has unlimited usage for a period of time, reimbursement for tolls that accept the EzPass transponder is prohibited.

5.2.1.5 Travel between the place of residence and the official workstation is not reimbursable. A manager may deem that the point of travel may start from the employee's place of residence rather from the workstation when the miles from the place of residence to the destination would be less than the miles from the workstation to the destination.

5.2.2 Privately-Owned Vehicles

5.2.2.1 Privately-owned vehicles may be used for state travel with Spending Unit approval when Spending Unit owned or leased vehicles are unavailable. A privately-owned vehicle should not be used when reimbursement costs are expected to exceed $50.00 per day or mileage reimbursement is expected to cost more than the cost of commercial travel (air, rental car, etc.).

5.2.2.2 Mileage allowance for privately owned vehicles engaged in State business will be based on the GSA rate in effect at the time of the travel. The rate covers all operating costs such as fuel, maintenance, insurance, etc., and no additional reimbursement will be made for such expenses.

5.2.2.3 The mileage allowance will be based on the shortest practical route to and from the destination.

5.2.2.3.1 Travel for which mileage is claimed shall normally begin and end at the Traveler's official work location.

5.2.2.3.2 Travel commencing before or after the work day for which mileage is claimed shall begin from either the traveler's official work location or the Traveler's home, whichever is closer to the destination.

5.2.2.4 Receipts are not required for mileage reimbursement when using privately-owned vehicles.

5.2.2.5 Insurance

5.2.2.5.1 Owner's personal insurance will be <u>primary</u> for liability insurance coverage. Owner should contact their automobile insurer to discuss coverage available/required when using their own vehicle on State business.

5.2.2.5.2 The State's insurer, BRIM (Board of Risk & Insurance Management), will provide <u>excess</u> liability coverage for additional protection to the Traveler using their personal vehicle in the course of State business. Being excess, BRIM's coverage will only be available after the vehicle owner's coverage is

exhausted.

5.2.2.5.3 BRIM does not provide coverage that will pay for damage to a personal automobile regardless of the cause. Further, BRIM will not pay the owner's physical damage deductible.

5.2.3 State-Owned Vehicles

5.2.3.1 A Traveler desiring to use a state-owned vehicle should contact the Spending Unit Fleet Coordinator or the ~~FMO~~FMD. Please see the Legislative Rule for State-Owned Vehicles, 148 CSR 3.

5.2.3.2 Expenses, such as gasoline, parking and tolls, not chargeable to the vehicle's gas card are reimbursable upon the Traveler providing a valid itemized receipt for expenses exceeding $75.

5.2.4 Commercial Rental Vehicles

5.2.4.1 A commercial rental vehicle should only be used when a temporary need arises, a state vehicle is unavailable and the cost will be less than the reimbursement associated with a privately-owned vehicle. Only the Traveler renting the commercial rental vehicle is permitted to operate the vehicle. If state employees are traveling together it must be noted on the rental agreement if they will operate the vehicle.

5.2.4.2 The Purchasing Card or Ghost Account are the only acceptable methods of payment when renting a vehicle. Reimbursement for rentals made outside of the statewide car rental contract requires authorization from the TMO.

5.2.4.3 Travelers must use the State contract for car rental services, unless the State contracts for car rental services do not have:

a. a location in the specific area,
b. the type of vehicle needed, or
c. the vehicle for the duration needed.

~~All contracted rates are accessible through the E-Travel System.~~ If the State contract for car rental services is not used, then the Traveler must note the reason on the Travel Expense Report.

5.2.4.4 For travel of more than a few days in duration, weekly rental rates may be reimbursed if they result in a lower total cost than the daily rate.

5.2.4.5 Reimbursement for commercial rental vehicles will be made at actual cost for the daily rental charge for a mid-size or smaller vehicle, plus mileage fees and fuel costs.

5.2.4.6 Reimbursement may be made for a full-size vehicle if more than three (3) people are traveling together on business and for larger vehicles if a group of five (5) or more is traveling together.

5.2.4.7 Larger vehicles may be rented when situations warrant (i.e. negotiating

rough terrain, transporting large groups of people or equipment or other extenuating circumstances) as approved by the Spending Unit Officer.

5.2.4.8 Collision Damage Insurance (CDW)

5.2.4.8.1 The state contract(s) for car rental services may provide CDW insurance for some vehicles that are excluded by the Purchasing Card.

5.2.4.8.2 The Purchasing Card provides CDW coverage at no cost for rentals up to 31 days.

5.2.4.8.3 No other insurance or insurance-like product is reimbursable for rental vehicles used in the United States, unless required by law. Full coverage insurance is a reimbursable expense for any approved rental vehicle used outside the United States.

5.2.4.9 The Purchasing Card does not cover the rental of trucks, campers, off-road vehicles, trailers, motorized bikes, motorcycles and motorized scooters, antique cars, high value, special interest and exotic cars, or vans that seat more than eight (8) occupants.

5.2.4.10 A receipt or documentation is required for reimbursement of vehicle rental and mileage charges or fees.

5.2.4.11 Reimbursement may be made for actual fuel costs, supported by valid, itemized receipts.

5.2.4.12 Vehicles should be returned to the rental agency with a full tank of fuel. Unless rental location provides gas at a lower rate, documentation required.

5.3 Rail Service

5.3.1 Travelers shall make advance bookings for rail service through the Statewide Contract for Travel Services, using the least expensive logical fare via the most direct route or other reasonable route that results in a lower fare.

5.3.2 The cost of rail service should be paid by a Purchasing Card or Ghost account.

5.4 Other Ground Transportation

5.4.1 When courtesy transportation is provided by a hotel, motel, or other service facility, the Traveler is encouraged to use such service.

5.4.2 Travelers may be reimbursed for taxi, bus, and other forms of public transportation. Receipts are not required if under the limit authorized by the TMO, currently $75.

Section 6. <u>Lodging</u>

6.1 Lodging for a Traveler is reimbursable where the distance is more than fifty (50) miles

from his or her official work location or home, whichever is the shorter distance, and an overnight stay is required.

6.2 Travelers shall not book lodging through a Third Party Booking vendor. Third party vendors are unable to provide an itemized invoice or folio for reimbursement

6.3 The lodging facility location should be as convenient as possible to the location where business is being conducted.

6.4 Allowable reimbursement for lodging shall include the actual expense for overnight accommodations and all applicable taxes and surcharges. Employees are reimbursed for lodging up to the maximum per diem established by the federal government. Travelers may request reimbursement above the per diem, not to exceed 300 percent (300%) of the maximum per diem allowance. Request for reimbursement above the per diem allowance should be made in advance of travel. Reimbursement above per diem following travel may be granted subject to Spending Unit approval.

6.5 Sales tax is to be paid if the lodging facility is located outside the State of West Virginia. When using the Purchasing Card for travel, purchases made with this card for in-state travel are exempt from any form of taxation.

6.6 If more than one Traveler shares a room, one of the Travelers may claim the total charge at the rate charged for the number of persons in one room; each Traveler will need to be referenced on the other Travel Expense Account Settlement Forms. They may also request the total charge be split between them accordingly and each issued their own separate folio or receipt.

6.7 Receipts are required for lodging reimbursement. A valid, itemized invoice or folio shall be the official document utilized for reimbursement to the Traveler.

6.8 If an increase in the lodging charge is incurred due to the Travel being directed by a Spending Unit Officer to change travel plans or due to extenuating circumstances arising beyond the control of the Traveler, then the increase is reimbursable. Increased charges incurred due to the Traveler's failure to notify the lodging facility are the personal expense of the Traveler and are not reimbursable.

Section 7. <u>Registration Fees</u>

7.1 Registration fees and event-related materials for meetings, conferences, seminars, and/or workshops are reimbursable.

7.2 Receipts are required for reimbursement. The receipt or documentation provided by the event sponsor shall be sufficient for reimbursement.

7.3 Travelers are to adjust meal reimbursement (per diem) requests for meals included with the registration fee.

7.4 Traveler should verify acceptable payment methods with the event sponsor prior to attending. Registration fees should be charged on a Purchasing Card when possible.

7.5 If a cancellation charge is incurred, the charge is reimbursable if the Traveler is directed to change his/her travel plans, or if other extenuating circumstances beyond the Traveler's control arise. Charges incurred due to the failure of the Traveler to notify the event sponsor are considered a personal expense.

Section 8. Other Expenses

8.1 Travelers may incur miscellaneous business-related expenses for which reimbursement may be made, if appropriate. Receipts are required for any individual expenditure in excess of $75.00. The spending officer may require any or all receipts at their option as a means of cost control.

Such expenses and reimbursement may include, but are not limited to:

a. Baggage storage between appointments and between hotels and meeting places;

b. Tolls, garage, and parking fees - excluding valet parking for personal convenience.

c. Currency conversion;

d. Guides, interpreters, and visa fees; and

e. Laundry and dry cleaning when an employee is in travel status in excess of seven days without returning home

8.2 Valet charges will only be reimbursed where self-parking is not available or where self-parking costs more than valet parking.

8.3 Expenses for travel in foreign countries are to be reported in United States dollars. Expenditures in foreign currencies must be converted into United States dollars at the rate or rates at which the foreign currency was obtained. The rates of conversion and commissions must be shown on an attachment to the Travel Expense Report.

8.4 When a non-employee accompanies a Traveler on official business, the State shall in no way be responsible or liable for any expenses, actions or inaction of the non-employee whatsoever.

Section 9. Purchasing Card

9.1 Travelers must use the State of West Virginia Purchasing Card for approved business-related travel expenses whenever it is accepted. The Purchasing Card shall not be used for personal expenses.

9.2 Personal expenses, including food charges, shall not be charged to hotel folios when a Purchasing Card is used.

Section 10. Travel Forms

10.1 TMO approved format is to be used when seeking prior approval for reimbursement for travel expenses or submitting a request for reimbursement.

10.2 Any non-employee seeking approval or reimbursement for travel expenses must use a TMO approved form to submit the request according to these Rules. The form must contain the Traveler's original signature, preferably in blue ink.

10.2.1 Any invoice or receipt requiring original certification may be certified by the non-employee Traveler and the Spending Unit's chief financial officer or administrator, or as determined by the State Auditor in emergency situations.

Section 11. Restrictions, Exceptions or Waivers

11.1 Spending Unit Officers have the right to establish procedures that are more restrictive than any provision of these Rules.

11.2 Travel Expense Reports for which an exception, waiver or deviation from these Rules has been granted or made by a Spending Unit Officer shall be processed separately from those reports without exceptions, waivers or deviations. The need for specialized audit review may result in longer processing times.

Vendor may be reimbursed for travel in accordance with the State of west Virginia's published travel policy governing state employee travel with the following modifications: (1.) Vendor travel will not be reimbursed unless vendor personnel are required to be present at a location more than 75 miles away from Agency's designated headquarters, more than 75 miles away from the vendor's closest place of business, and more than 75 miles from the primary residence of the vendor's closest employee performing the work. (2.) Vendor must calculate travel costs from the required location to the agency headquarters, the vendor's closest place of business, and the closest employee's residence. Mileage reimbursement totals for travel purposes will be based on the lowest mileage of the three calculations. (3.) Vendor will not be compensated for travel time.

State of West Virginia	Vendor Name:
By: Cynthia A. Persily	By: Kimberly Ricketts
Printed Name: Cynthia A. Persily	Printed Name: Kimberly Ricketts
Title: Cabinet Secretary	Title: Manager
Date: 7/18/2024	Date: 7-9-2024

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/7/2019 2:23 PM

Office of West Virginia Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Administration TITLE-SERIES: 148-NA

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: State of West Virginia Travel Rules

CITE STATUTORY AUTHORITY: W. Va. Code Section 12-3-11

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2019

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mary J Pickens -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

FEDERAL FUNDS ADDENDUM

2 C.F.R. §§ 200.317 – 200.327

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

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

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

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

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

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

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

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

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

FEDERAL FUNDS ADDENDUM

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

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

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

   a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:

      (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
      (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
      (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
      (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
      (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
      (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

   b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

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

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

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

b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.

c. Definitions: For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Procure or obtain;
(2) Extend or renew a contract to procure or obtain; or
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

State of West Virginia

By: Cynthia A. Persily

Printed Name: Cynthia A. Persily

Title: Cabinet Secretary

Date: 7/18/2024

Vendor Name:

By: Kimberly Roberts

Printed Name: Kimberly Roberts

Title: Manager

Date: 7-8-2024

KR

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

W. Va. CSR § 148-1-5

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

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

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

5.2. Contract Cancellation.

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

5.2.1.a. The vendor agrees to the cancellation;

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

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

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

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

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

5.2.1.g. The contract was awarded in error.

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

the vendor with 30 days' notice of the cancellation.

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

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

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

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

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

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

5.4. Suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6. Damages.

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

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

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

Credits

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

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.
W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

End of Document

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

Prevailing Wage Determination

☑ – Not Applicable Because Contract Not for Construction

☐ – Federal Prevailing Wage Determination on Next Page