



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

Request for Quotation

RFQ NUMBER
DEP13012

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
CHUCK BOWMAN 304-558-2157

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

BREAKAWAY, INC.
 1075 Old Turnpike Road
 Sutton, WV 26601
 Voice/Fax: 304-765-5317

SHIP TO

ENVIRONMENTAL PROTECTION
 DEPT. OF
 OFFICE OF SPECIAL RECLAMATION
 601 57TH STREET SE
 CHARLESTON, WV
 25304 304-926-0499

DATE PRINTED	TERMS OF SALE:	SHIP VIA	F.O.B.	FREIGHT TERMS
08/09/2006				

BID OPENING DATE: **08/31/2006** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		962-73		\$736,900.00
RECLAMATION: RESTORATION OF LAND & OTHER PROPERTIES OPEN-END CONTRACT SPECIAL RECLAMATION PROGRAM PROJECTS SOUTH WESTERN AREA CONTRACT TO FURNISH ALL LABOR, MATERIALS, EQUIPMENT, AND OTHER NECESSARY SERVICES SO AS TO RECLAIM IN AN EXPEDITIOUS MANNER SURFACE MINE SITES ABANDONED BY THE OPERATOR, AT LOCATIONS AS DETERMINED BY A REPRESENTATIVE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. SCOPE OF WORK WILL INCLUDE, BUT WILL NOT BE LIMITED TO, BACKFILLING, DRAINAGE CONTROL, MINE SEALING, AND REVEGETATION OF SITES LOCATED IN THE COAL PRODUCING COUNTIES OF SOUTH WESTERN WEST VIRGINIA. SPECIFICATIONS ATTACHED (XX) BONDS: THE SUCCESSFUL VENDOR SHALL BE REQUIRED TO FURNISH A PERFORMANCE AND LABOR/MATERIAL BOND IN THE AMOUNT OF \$50,000.00 PRIOR TO THE AWARD OF THE CONTRACT BONDS MAY BE PROVIDED IN THE FORM OF A CERTIFIED CHECK, IRREVOCABLE LETTER OF CREDIT, OR BOND FURNISHED BY A SOLVENT SURETY COMPANY AUTHORIZED TO DO BUSINESS IN TH STATE OF WEST VIRGINIA. EXHIBIT 3 LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Sonya Vincent</i>	TELEPHONE 304-765-5317	DATE 8/31/06
TITLE President	FEIN 13-4279911	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

SIGNED BID TO:

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



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Voice/Fax: 304-765-5317

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601 57TH STREET SE
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25304 304-926-0499

DATE PRINTED 08/09/2006	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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<p>UPON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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BREAKAWAY, INC.
 1075 Old Turnpike Road
 Sutton, WV 26601
 Voice/Fax: 304-795-5317

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<p>CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. 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.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN WORK DIRECTIVE AND NOTICE TO PROCEED TO THE VENDOR FOR COMMODITIES/SERVICES COVERED BY THIS CONTRACT. THE ORIGINAL WORK DIRECTIVE SHOULD BE ATTACHED TO THE INVOICE, AND THE SPENDING UNIT SHOULD RETAIN A COPY.</p> <p>REV. 3/88</p> <p>PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS</p> <p>1. EXCEPT WHEN AUTHORIZED BY THE DIRECTOR OF THE PURCHASING DIVISION PURSUANT TO SUBSECTION 2 BELOW, NO CONTRACTOR MAY USE OR SUPPLY STEEL PRODUCTS FOR A STATE CONTRACT PROJECT OTHER THAN THOSE STEEL PRODUCTS MADE IN THE UNITED STATES. AS USED USED I THIS CONTRACT,</p> <p>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, ROAD</p>						

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				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 OF SUCH OPERATIONS, FROM STEEL MADE BY THE OPEN HEARTH, BASIC OXYGEN, ELECTRIC FURNACE, BESSEMER OR OTHER STEEL MAKING PROCESS.		
				C. "UNITED STATES" MEANS THE UNITED STATES OF AMERICA AND INCLUDES ALL TERRITORY, CONTINENTAL OR INSULAR, SUBJECT TO THE JURISDICTION OF THE UNITED STATES.		
2.				THE DIRECTOR OF THE PURCHASING DEPARTMENT MAY, IN WRITING, AUTHORIZE THE USE OF FOREIGN STEEL PRODUCTS IF:		
				A. 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,		
				B. 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		

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AVAILABLE TO MEET CONTRACT REQUIREMENTS.						
3. A CONTRACTOR WHO USES STEEL PRODUCTS IN VIOLATION OF THIS SECTION MAY BE SUBJECT TO CIVIL PENALTIES PURSUANT TO W. VA. CODE SECTION 5A-3-56.						
REV. 10/01/01						
EXHIBIT 6						
<p>PRICE ADJUSTMENT PROVISION: THE STATE OF WEST VIRGINIA WILL CONSIDER BIDS THAT CONTAIN PROVISIONS FOR PRICE ADJUSTMENTS PRIOR TO THE ORIGINAL EXPIRATION OF THE CONTRACT, PROVIDED THAT SUCH PRICE ADJUSTMENT COVERS BOTH UPWARD AND DOWNWARD MOVEMENT OF THE COMMODITY PRICE, AND THAT ADJUSTMENT IS BASED ON THE "PASS THROUGH" INCREASE OR DECREASE OF RA MATERIALS AND/OR LABOR, WHICH MAKE UP ALL OR A SUBSTANTIAL PART OF A PRODUCT. ADJUSTMENTS ARE TO BE BASED UPON AN ACTUAL DOLLAR FIGURE, NOT A PERCENTAGE. ALL PRICE ADJUSTMENT REQUESTS MUST BE SUBSTANTIATED IN A MANNER ACCEPTABLE TO THE DIRECTOR PURCHASING, E.G. GOVERNMENTAL BENCH MARKS, GENERAL MARKET INCREASE, PUBLISHED PRICE LISTS. SUCH REQUESTS FOR AN INCREASE SHOULD BE RECEIVED IN WRITING BY THE DIRECTOR OF PURCHASING AT LEAST 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE INCREASE. ANY TIME THE VENDOR REQUESTS A PRICE ADJUSTMENT, THE PURCHASING DIVISION MAY EITHER ACCEPT THE PRICE ADJUSTMENT AND AMEND THE CONTRACT ACCORDINGLY OR REJECT THE ADJUSTMENT IN ITS ENTIRETY AND CANCEL THE CONTRACT.</p>						
PREFERRED TERMS: IT IS PREFERRED THAT THE PRICES ON THIS CONTRACT ARE						

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<p>FIRM FOR LIFE OF THE CONTRACT, AS INDICATED IN THE LIFE OF CONTRACT CLAUSE CONTAINED HEREIN, NOT TO EXCEED ONE (1) YEAR.</p> <p>IF THE VENDOR CANNOT GUARANTEE A FIRM PRICE FOR THE LIFE OF CONTRACT, HE MUST INDICATE ONE OF THE PARAGRAPHS LISTED BELOW. FAILURE TO QUALIFY THE PREFERRED TERMS WILL BIND THE VENDOR TO A FIRM PRICE FOR THE LIFE OF THE CONTRACT.</p> <p style="text-align: center;">NOTICE</p> <p>AN ORIGINAL, SIGNED BID MUST BE SUBMITTED TO:</p> <p style="padding-left: 40px;">DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID MUST CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPES OR THE BIDS MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: CB-23</p> <p>REQ. NO.: DEP13012</p> <p>BID OPENING DATE AND TIME: 08/31/2006 @ 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO</p>						

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<p>CONTACT YOU REGARDING YOUR BID: ----- Doug Vincent -----</p> <p>WAGE RATES: THE CONTRACTOR OR SUBCONTRACTOR SHALL PAY THE HIGHER OF THE U.S. DEPARTMENT OF LABOR MINIMUM WAGE RATES AS ESTABLISHED FOR SOUTH WESTERN COUNTIES, PURSUANT TO WEST VIRGINIA CODE 21-5-1, ET, SEQ.</p> <p>ARBITRATION: ANY REFERENCES MADE TO ARBITRATION OR INTEREST FOR PAYMENTS DUE (EXCEPT FOR ANY INTEREST REQUIRED BY STATE LAW) CONTAINED IN THIS CONTRACT OR IN ANY AMERICAN INSTITUTE OF ARCHITECTS DOCUMENTS PERTAINING TO THIS CONTRACT ARE HEREBY DELETED.</p> <p>WORKERS' COMPENSATION: VENDOR IS REQUIRED TO PROVIDE A CERTIFICATE FROM WORKERS' COMPENSATION IF SUCCESSFUL</p> <p>(XX) INSURANCE: SUCCESSFUL VENDOR SHALL FURNISH PROOF OF COMMERCIAL GENERAL LIABILITY INSURANCE PRIOR TO ISSUANCE OF CONTRACT. UNLESS OTHERWISE SPECIFIED IN THE BID DOCUMENTS, THE MINIMUM AMOUNT OF INSURANCE COVERAGE REQUIRED IS \$500,000.</p> <p>CONTRACTORS LICENSE</p> <p>WEST VIRGINIA STATE CODE 21-11-2 REQUIRES THAT ALL PERSONS DESIRING TO PERFORM CONTRACTING WORK IN THIS STATE MUST BE LICENSED. THE WEST VIRGINIA CONTRACTORS LICENSING BOARD IS EMPOWERED TO ISSUE THE CONTRACTORS LICENSE. APPLICATIONS FOR A CONTRACTORS LICENSE MAY BE MADE BY CONTACTING THE WEST VIRGINIA DIVISION OF LABOR CAPITOL COMPLEX, BUILDING 3, ROOM 319, CHARLESTON, WV 25305. TELEPHONE: (304) 558-7890.</p>						

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<p>WEST VIRGINIA STATE CODE 21-11-11 REQUIRES ANY PROSPECTIVE BIDDER TO INCLUDE THE CONTRACTORS LICENSE NUMBER ON THEIR BID.</p> <p>BIDDER TO COMPLETE: CONTRACTORS NAME - Breakaway, Inc. CONTRACTORS LICENSE NO. - WV.037089.....</p> <p>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FURNISH A COPY OF THEIR CONTRACTORS LICENSE PRIOR TO ISSUANCE OF A PURCHASE ORDER/CONTRACT.</p> <p>APPLICABLE LAW</p> <p>THE WEST VIRGINIA STATE CODE, PURCHASING DIVISION RULE & REGULATIONS, PURCHASING DIVISION POLICY STATEMENTS, AND THE INFORMATION PROVIDED IN THE "REQUEST FOR QUOTATION" ISSUED BY THE PURCHASING DIVISION IS THE SOLE AUTHORITY GOVERNING THIS PROCUREMENT.</p> <p>ANY INFORMATION PROVIDED IN SPECIFICATION MANUALS, OR ANY OTHER SOURCE, VERBAL OR WRITTEN, WHICH CONTRADICTS OR ALTERS THE INFORMATION PROVIDED FROM THE SOURCES AS DESCRIBED IN THE ABOVE PARAGRAPH IS VOID AND OF NO EFFECT.</p> <p>FOR AGENCY USE ONLY: 3321/9194</p>						

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BUYER CB-23	009	REQ. OR PO NO. DEP 13012
SPENDING UNIT WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION/SPECIAL RECLAMATION		

WV-36 STATE OF WEST VIRGINIA
Rev. 02/97 PURCHASING CONTINUATION SHEET
VENDOR:

CONTRACT
FOR
DIVISION OF LAND RESTORATION/OFFICE OF SPECIAL RECLAMATION SITES
RECLAMATION/MAINTENANCE SERVICES
SOUTH WESTERN COUNTIES

ISSUING OFFICE

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION/OFFICE OF SPECIAL RECLAMATION
601 57th Street, SE
CHARLESTON, WEST VIRGINIA 25304
TELEPHONE 304-926-0499

Maximum Annual Expenditures
This contract shall not exceed \$500,000.00

Maximum Project Expenditures
This contract shall not exceed \$50,000.00 per project

WV-36 STATE OF WEST VIRGINIA
 Rev. 02/97 PURCHASING CONTINUATION SHEET
 VENDOR:

CONTRACTUAL INFORMATION & REQUIREMENTS

Article I - Statement of Work

The Contractor shall furnish all personnel, facilities, equipment, material, supplies, and services for all the scope of work required in this contract.

Article 2 - Location of Work-South Western Counties

The area of work shall include the South Western Counties of West Virginia. The counties listed below are the coal producing counties in the area of work and those in parenthesis represent where most of the work required in this contract is located.

- | | |
|------------|--------------|
| 1. Putnam | 6. (Kanawha) |
| 2. (Clay) | 7. (Logan) |
| 3. (Boone) | 8. Lincoln |
| 4. (Mingo) | 9. (Mason) |
| 5. Cabell | 10. (Wayne) |

Article 3 - Definitions

- A. The words "Owner", "The State", "DEP" or "Office of Special Reclamation" are used herein to refer to the West Virginia Department of Environmental Protection, Office of Special Reclamation.
- B. The word "offeror" refers to the person or company offering to furnish the services called for in this request for proposal.
- C. The word "Contract" is used to refer to the agreement or purchase order requested by the owner and accepted by the contractor together with all the provisions of this request for proposal and all parts of said agreement of purchase order.
- D. The word "Contractor" refers to the person or company contracting with State to furnish the "services" called for by the contract.
- E. The words "services" or "work" is used to mean and include all labor, supervision, materials, machinery, equipment, tools, supplies, and facilities called for in the work directives issued within the contract.
- F. The word "Director" is used to mean the Director of the Division of Land Restoration, Department of Environmental Protection, and shall be considered to be the State's authorized representative.

BUYER Cb-23	011	REQ. OR PO NO. DEP 13012
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WV-36 STATE OF WEST VIRGINIA
Rev. 02/97 PURCHASING CONTINUATION SHEET
VENDOR:

Article 4 - Ordering Procedure

- A. This is an open end quantity contract for the services specified in the statement of work and for the period set forth herein. Delivery or performance shall be made in accordance with the provisions of this contract.
- B. Work will be ordered by the Director or his representative, for the Office of Special Reclamation, West Virginia Department of Environmental Protection by issuance of a work directive, which shall include the name of the project site, permit number, and the cost estimate (quantity of work to be done). The contractor shall acknowledge receipt by signing, dating and forwarding back to the Director the cost estimate for the work requested. The cost estimate shall be in accordance with the unit prices provided in the response to this proposal. No work shall be performed until a notice to proceed has been issued by the State.

Article 5 - Delivery

- A. The contractor shall complete the specified reclamation/maintenance work in accordance to each work directive. The contractor shall give an invoice to the Department of Environmental Protection representative upon completion of each work directive.
- B. Inspections of each project will be made by the Director or his authorized representative as work is completed. A final inspection will be made when all work is completed. A warranty inspection will be conducted on each project during the warranty period. Consideration will be made during the warranty period for unforeseen and unanticipated conditions encountered.
- C. Acceptance criteria will be based on all work being completed as requested in the work directive.

Article 6 - General Conditions

- A. The contractor shall be responsible for paying and/or securing all taxes, permits, fees, insurance liability, compensations, and any other items necessary to render the owner free and harmless from all claims arising from services performed under this contract.
- B. The contractor shall take steps required to ensure equal opportunity for employment in accordance with policies promulgated by the Presidents Committee on Equal Opportunity.
- C. The State shall be responsible for obtaining all rights of entry for each project, if needed.
- D. The work and services to be performed under this contract shall be subject to continual monitoring and inspection by the State's authorized representative. Such inspection will, among other things, ensure technical compliance.
- E. In accomplishment of services to fulfill the requirements of the work directive, neither contractor nor his subcontractor shall create any adverse environmental effects and shall be responsible for compliance with all applicable local, state, and federal environmental and occupational health and safety regulations pertinent to the work.
- F. The contractor shall provide written work reports on any / all projects at the request of the Director or the Office of Special Reclamation (OSR) authorized representative. Work reports will provide information necessary to

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evaluate the overall project and may include (but not be limited to): type of equipment on site, equipment hourly use readings, man hours utilized, details of specific work performed at the site, specific problems encountered at the site, start and end times and date(s) of service. Report forms will be provided by OSR or approved for use by OSR prior to use and submittal. Work reports will be constructed to illustrate day-by-day activity on the project and provide all required criteria.

Article 7 - Costs and Payments

A. Payment to the contractor will be made on the following basis:

1. Unit Pricing

Item - As directed by the State in specific work directive.

Estimated Quantity - As agreed to prior to issuing a Notice to Proceed on the Work Directive. Payment is to be actual quantity used, not to exceed the estimated quantity approved in the work directive.

Unit Price - As provided by the Offeror in the proposal.

B. The contractor shall invoice on specified DEP forms to the department after completion of work specified in the work directive; final inspection has been made; and the work is accepted by the department. All invoices shall show the actual quantities used at the unit prices approved as provided by the Offeror in the proposal. Multiple invoices on projects in excess of \$25,000.00 will be accepted. Projects under \$25,000 must be invoiced only once, unless prior approval of the DEP is obtained.

Article 8 - Changes in the Contract

A. The State, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions, or other revisions. All such changes in the work shall be authorized by a change order. A change order signed by both the State and Offeror indicates their agreement to an adjustment to the contract. The cost or credit to the State resulting from a change in the work shall be determined in one or more of the following ways:

- 1) By mutual acceptance of a lump sum properly documented (itemized)
- 2) By unit prices (negotiated)

All equipment used must be in good operable condition and be readily available.

All materials must have approval from a DEP representative.

Labor for operating equipment and installing materials shall be incidental to each item.

Labor – The contractor shall pay the West Virginia State Department of Labor Wage Rates as established in the county in which the work is being performed. Code 21-5A-1 ET SEQ.

BREAKAWAY, INC.
 1075 Old Turnpike Road
 Sutton, WV 26601

Voice/Fax: 304-765-5317

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ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1.0	200 HRS	Crawler Dozer-Caterpillar D-8N or equiv. with 285 minimum flywheel horsepower, equipped with a U-Type Dozer Blade	\$ <u>110.00</u> PER HR	\$ <u>22,000.00</u>
2.0	200 HRS	Crawler Dozer-Caterpillar D6H or equiv. with 165 minimum flywheel horsepower, equipped with a straight or angle-type dozer blade	\$ <u>100.00</u> PER HR	\$ <u>20,000.00</u>
3.0	200 HRS	Crawler Dozer-John Deere 450D or equiv. with 67 minimum flywheel horsepower, equipped with a straight or angle-type dozer blade	\$ <u>70.00</u> PER HR	\$ <u>14,000.00</u>
4.0	100 HRS	Crawler Loader - Caterpillar 931C or equiv. - 67HP w/std 1.05 yd bucket	\$ <u>70.00</u> PER HR	\$ <u>7,000.00</u>
5.0	100 HRS	Backhoe Loader, Rubber-Tired-60 minimum flywheel horsepower loader bucket capacity-minimum 1 cubic yard; backhoe bucket size-minimum 6.0 cubic feet	\$ <u>70.00</u> PER HR	\$ <u>7,000.00</u>
6.0	200 HRS	Hydraulic Excavator-Backhoe, Caterpillar 225 or equiv. with 120 minimum flywheel horsepower, equipped with standard bucket	\$ <u>140.00</u> PER HR	\$ <u>28,000.00</u>
7.0	200 HRS	Hydraulic Excavator - Backhoe - Long Reach, John Deere 790 ELC or equiv. with 155 minimum flywheel horsepower, maximum reach at ground level 59 feet, equipped with standard bucket.	\$ <u>130.00</u> PER HR	\$ <u>26,000.00</u>
8.0	100 HRS	Wheel loader-Caterpillar 988B or equiv. with 375 minimum flywheel horsepower, 7 cubic yard minimum bucket	\$ <u>70.00</u> PER HR	\$ <u>7,000.00</u>
9.0	200 HRS	Truck, Off-Highway, Caterpillar 769 or equiv. 400 H.P. with minimum 35 ton capacity	\$ <u>100.00</u> PER HR	\$ <u>20,000.00</u>
10.0	100 HRS	Articulated Truck - Caterpillar D250E or equivalent with 260 minimum flywheel horsepower with minimum 25 ton capacity	\$ <u>90.00</u> PER HR	\$ <u>9,000.00</u>
11.0	200 HRS	Truck, Tandem Axle, Rear Dump, 8 to 10 cubic yard capacity, 35,000 GVW minimum, 210 flywheel horsepower	\$ <u>80.00</u> PER HR	\$ <u>16,000.00</u>
12.0	100 HRS	Tractor with low boy, licensed for 110,000 pounds. This item is intended for mobilization and demobilization of equipment. To include all permits and fees necessary for legal transportation of equipment. All other costs, including break-down and put-together costs of equipment, will be incidental to the other items - per hour. Hourly Rate will be paid one (1) time in and one (1) time out while the truck is loaded for each machine used on project. (Max. Bid \$200/hour)	\$ <u>200.00</u> PER HR	\$ <u>20,000.00</u>

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ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
13.0	100 ACRES	*Seed mixture to be applied after seed bed preparation: <u>Vegetative Species</u> <u>Rate/Acre</u> Birdsfoot Trefoil ² @ 15 lbs/acre Redtop ⁴ @ 3 lbs/acre Ky 31 Fescue ⁵ @ 15 lbs/acre Wheat or Rye ⁴ @ 50lbs/acre Orchard Grass @ 15 lbs/acre Weeping Lovegrass ³ @ 2 lbs/acre Red Clover @ 10 lbs/acre Foxtail Millet ³ @ 12 lbs/acre	\$ 500.00 PER ACRE	\$ 50,000.00
14.0	100 ACRES	*Seed mixture for Vegetation Enhancement <u>Vegetative Species</u> ¹ <u>Rate/Acre</u> Birdsfoot Trefoil ² @5 lbs/acre Ky 31 Fescue ⁵ @5 lbs/acre Red Clover @5 lbs/acre	\$ 50.00 PER ACRE	\$ 5,000.00
15.0	100 ACRES	*Additional seed mixture for woodland post-mining land use projects. <u>Vegetative Species</u> ¹ <u>Rate/Acre</u> Black Locust ² @3 lbs/acre (REFERENCE FOR ITEM NUMBERS. 13.0, 14.0 & 15.0) 1. Seeding rate suggested is for pure live seed (pls) in pounds per acre. 2. Herbaceous legumes must be treated with the appropriate bacterium before seeding. 3. Spring mix 4. Fall mix 5. Certified endophyte free variety * Quality and quantity inspection required prior to installation.	\$ 5.00 PER ACRE	\$ 500.00
16.0	500 TONS	Agriculture Lime - 85% CaCO ₃ /Acre	\$ 500.00 PER TON	\$ 250,000.00
17.0	200 TONS	Fertilizer, 10-20-10	\$ 100.00 PER TON	\$ 20,000.00
18.0	200 TONS	Fertilizer, 18-46-0	\$ 100.00 PER TON	\$ 20,000.00
19.0	200 TONS	Mulch, Wood Fiber	\$ 100.00 PER TON	\$ 20,000.00
20.0	200 TONS	Mulch, hay or straw	\$ 100.00 PER TON	\$ 20,000.00
21.0	200 TONS	Stone, 2" limestone, delivered to site	\$ 25.00 PER TON	\$ 5,000.00
22.0	200 TONS	Stone, No. 57 limestone, delivered to site	\$ 25.00 PER TON	\$ 5,000.00

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ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
23.0	200 TONS	Stone, shot limestone, delivered to site	\$ <u>25.00</u> PER TON	\$ <u>5,000.00</u>
24.0	200 TONS	Crusher Run limestone	\$ <u>25.00</u> per ton	\$ <u>5,000.00</u>
25.0	200 TONS	6 inch Limestone	\$ <u>25.00</u> per ton	\$ <u>5,000.00</u>
26.0	100 LF	Pipe, 12" schedule 40 P.V.C.	\$ <u>15.00</u> PER LF	\$ <u>1,500.00</u>
27.0	10	Pipe, 12" 45° Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
28.0	10	Pipe, 12" 90° Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
29.0	10	Pipe, 12" Cap Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
30.0	10	Pipe, Tee, 12" Schedule 40 P.V.C.	\$ <u>75.00</u> EACH	\$ <u>750.00</u>
31.0	100 LF	Pipe, 6" Solid Schedule 40 Pipe	\$ <u>10.00</u> PER LF	\$ <u>1,000.00</u>
32.0	100 LF	Pipe, 6" Perforated Schedule 40 Pipe	\$ <u>12.50</u> PER LF	\$ <u>1,250.00</u>
33.0	100 LBS	Bentonite - Sealer	\$ <u>1.00</u> PER LB	\$ <u>100.00</u>
34.0	10	Pipe, 6" "T" Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
35.0	10	Pipe, 6" Screw on Cap Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
36.0	10	Pipe, 6" solid end cap Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
37.0	10	Pipe, 6" 45° Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
38.0	10	Pipe, 6" Connector Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>

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ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
39.0	10	Pipe, 6" 90° Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
40.0	10	Pipe, 6" 22-1/2° Schedule 40	\$ <u>50.00</u> EACH	\$ <u>500.00</u>
41.0	200 TON	Stone, 2" sandstone, delivered to site	\$ <u>25.00</u> PER TON	\$ <u>5,000.00</u>
42.0	200 TON	Stone, Shot sandstone, delivered to site	\$ <u>25.00</u> PER TON	\$ <u>5,000.00</u>
43.0	100 HRS	Water Pump 6" Dia. gas a/o DSL powered with trailer mounting	\$ <u>50.00</u> PER HR	\$ <u>5,000.00</u>
44.0	100 HRS	Trash Pump 6" Dia. gas a/o DSL powered with trailer mounting	\$ <u>60.00</u> PER HR	\$ <u>6,000.00</u>
45.0	100 HRS	Trash /Sludge high head / high volume pump. 6" dia gas a/o DSL powered with trailer mounting. Godwin HL5M Dri-Prime type or equivalent	\$ <u>80.00</u> per hr	\$ <u>8,000.00</u>
46.0	100 HRS	Water Pump 4" Dia. gas a/o DSL powered	\$ <u>40.00</u> PER HR	\$ <u>4,000.00</u>
47.0	100 HRS	Water Pump 3" Dia. gas a/o DSL powered	\$ <u>30.00</u> PER HR	\$ <u>3,000.00</u>
48.0	100 HRS	Water Pump 2" Dia. gas a/o DSL powered	\$ <u>20.00</u> PER HR	\$ <u>2,000.00</u>
49.0	100 SQ. YDS	Engineering Fabric for subsurface drainage – in accordance with Section 715.11.4 "Engineering Fabric" of the West Virginia Division of Highways, Standard Specifications Roads and Bridges	\$ <u>5.00</u> PER SQ. YD	\$ <u>500.00</u>
50.0	100 sq yds	Smooth HPDE Geomembrane – poly-flex 60 mil. Minimum thickness or equivalent. Roll width may be site dependant	\$ <u>50.00</u> per sq yd	\$ <u>5,000.00</u>
51.0		Utility Relocation - At cost - No Bid Item	NO BID ITEM	NO BID ITEM
52.0	100 HRS	Laborer - To include basic hand tools i.e. shovel, chainsaw, drill, etc., and pump operator as needed with prior approval	\$ <u>50.00</u> PER HR	\$ <u>5,000.00</u>
53.0	5 EA	Wooden Weir – Installed per each (8' x 2' treated 2" lumber with 4" x 4" treated supports)	\$ <u>1,000.00</u> EACH	\$ <u>5,000.00</u>
54.0	10 EA	Wooden Fence – Installed per each (8' x 4' treated 2" lumber with 4" x 4" treated supports)	\$ <u>1,000.00</u> EACH	\$ <u>10,000.00</u>

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BUYER CB-23	117	REQ. OR PO NO. DEP 13012
SPENDING UNIT WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION/SPECIAL RECLAMATION		

ITEM NO.	QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
55.0	100 HRS	Truck with snow blade; minimum ¾ ton pickup with 8-foot wide snow blade	\$ <u>50.00</u> PER HR	\$ <u>5,000.00</u>
56.0	100 LF	Silt fence – Provide and install to manufacturer’s specifications, minimum 24” high to conform to requirements of Section 715.11.5 of the WVDOH Standard Specification	\$ <u>4.00</u> PER LF	\$ <u>400.00</u>
57.0	100 LF	HAYBALES (not to exceed a max \$5.0 per lf) Haybales will be provided on-site, installed and staked per standard OSR technical specifications.	\$ <u>5.00</u> per LF	\$ <u>500.00</u>
58.0	100 CY	Grout – Provide and install grout to consist of one part Portland cement and three parts sand mixed with water to produce workable consistency. Cement to meet requirements of Section 701.1 or 701.2 and sand to meet requirements of 702.1 or 702.2 of WVDOH Standard Specifications	\$ <u>150.00</u> PER CY	\$ <u>15,000.00</u>
59.0	100 CY	Concrete – Provide and install Class B concrete to meet applicable provisions of Section 601 of the WVDOH Standard Specifications	\$ <u>250.00</u> PER CY	\$ <u>25,000.00</u>
60.0	100 TON	Landfill disposal fee for trash and debris disposal. Transportation of items will be reimbursed under trucking bid item.	\$ <u>100.00</u> PER TON	\$ <u>10,000.00</u>
61.0	100 LF	Pipe, 6” solid flexible pipe	\$ <u>6.00</u> PER LF	\$ <u>600.00</u>
61.0	100 LF	Pipe, 12” solid flexible pipe	\$ <u>8.00</u> PER LF	\$ <u>800.00</u>
		TOTAL		\$ <u>736,900.00</u>

NOTE:

1. All items must be bid and bid in unit measure specified in the quantity column.
2. Quantities are for bidding purposes only.
3. All equipment identified by trade name is interchangeable with an equivalent approved by the Department of Environmental Protection.
4. The quantities are applied for bidding purposes only, actual quantities shall be based on work performed and may be more or less depending on the necessity for maintenance work.
5. All equipment used must be in good operable condition and be readily available.
6. All materials must have approval from a DEP representative.
7. Labor for operating equipment and installing materials shall be incidental to each item.
8. Labor - The contractor shall pay the West Virginia State Division of Labor Wage Rates as established in the county in which the work is being performed. Code 21-5A-1 ET SEQ.

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9. All pipe and fittings are delivered price.

10. A warranty period of one (1) year shall commence upon completion and payment of the revegetation item per work directive.

CONTRACTUAL INFORMATION AND REQUIREMENTS

Article 9

LIFE OF THE CONTRACT - This contract becomes effective on August 1, 2006 and extends for a period of one (1) year or until such "reasonable time" thereafter as is necessary to obtain a new contract or renew the original contract. The "reasonable time" period shall not exceed twelve (12) months. During this "reasonable time" the vendor may terminate this contract for any reason upon giving the Director of Purchasing 30 days written notice.

Unless specific provisions are stipulated elsewhere in this contract document, the terms, conditions, and pricing set herein are firm for the life of the contract.

Article 10

RENEWAL - This contract may be renewed upon the mutual written consent of the Spending Unit and Vendor, submitted to the Director of Purchasing thirty (30) days prior to the expiration date. Such renewal shall be in accordance with the terms and conditions of the original contract and shall be limited to two (2) one (1) year periods.

Article 11

CANCELLATION - The Director of Purchasing reserves the right to cancel this contract immediately upon written notice to the vendor if the commodities and/or services supplied are of an inferior quality or do not conform to the specifications of the bid and contract herein.

Article 12

OPEN MARKET CLAUSE - The Director of Purchasing may authorize a Spending Unit to purchase on the open market, without the filing of a requisition or cost estimate, items specified on this contract for immediate delivery in emergencies due to unforeseen causes (including but not limited to delays in transportation or an unanticipated increase in the volume of work).

Article 13

QUANTITIES - Quantities listed in the requisition are approximations only, based on estimates supplied by the State Spending Unit. It is understood and agreed that the contract shall cover the quantities actually ordered for delivery during the term of contract, whether more or less than the quantities shown.

Article 14

ORDERING PROCEDURE - Spending Unit(s) shall issue a written Work Directive and Notice to Proceed to the Vendor for commodities/services covered by this contract. The original Work Directive should be attached to the invoice, and the Spending Unit should retain a copy.

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Article 15

DOMESTIC ALUMINUM, GLASS & STEEL IN PUBLIC WORKS PROJECTS - In accordance with West Virginia Code 5-19-1 et. seq. every contract for construction, reconstruction, alteration, repair, improvement or maintenance of public works, where the cost is more than \$50,000 and, in the case of steel only, where the cost of steel is more than \$50,000 or where more than 10,000 pounds of steel are required, the state will accept only aluminum, glass or steel products produced in the United States. In addition, items of machinery or equipment purchased for use at the site of public works shall be made of domestic aluminum, glass or steel, unless the cost of the project is less than \$50,000 or less than 10,000 pounds of steel are used in public works projects.

Foreign made aluminum, glass or steel products may be accepted only if the cost of domestic products is found to be unreasonable. Such cost is unreasonable if it is 20% or more higher than the bid price for foreign made products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus are", as defined by the United States Department of Labor, foreign products may be supplied only if domestic products are 30% or more higher in price than the foreign made products.

If, prior to the award of a contract under the above provisions, the spending officer of the Spending Unit determines that there exists a bid for like foreign aluminum, glass or steel that is reasonable and lower than the lowest bid for domestic products, the spending office may request, in writing, a reevaluation and reduction in the lowest bid for such domestic products. All vendors must indicate in their bid if they are supplying foreign aluminum, glass or steel.

Article 16

PRICE ADJUSTMENT PROVISION - The State of West Virginia will consider bids that contain provisions for price adjustments prior to the original expiration of the contract, provided that such price adjustment covers both upward and downward movement of the commodity price, and that adjustment is based on the "Pass through" increase or decrease of raw materials and/or labor, which make up all or a substantial part of a product. Adjustments are to be based upon an actual dollar figure, not a percentage. All price adjustment requests must be substantiated in a manner acceptable to the director of purchasing, e.g. governmental bench marks, general market increase, published price lists. Such requests for an increase should be received in writing by the director of purchasing at least 30 days in advance of the effective date of the increase. Any time the vendor requests a price adjustment, the purchasing division may either accept the price adjustment and amend the contract accordingly or reject the adjustment in its entirety and cancel the contract.

Preferred Terms:

It is preferred that the prices on this contract are firm for life of the contract, as indicated in the life of contract clause contained herein, not to exceed one (1) year.

Price revisions will be considered at the time of contract renewal only.

A F F I D A V I T

020

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions.

"Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION:

The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING:

The vendor must be licensed in accordance with any and all state requirements to do business with the state of West Virginia.

CONFIDENTIALITY:

The vendor agrees that he or she 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. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: _____

Breakaway Inc.

Authorized Signature: _____

*Sony Vincent*Date: 8/31/06