



The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at wvOASIS.gov. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at WVPurchasing.gov with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

Header

General Information

Contact

Default Values

Discount

Document Information

Procurement Folder: 738312

SO Doc Code: CRFQ

Procurement Type: Statewide MA (Open End)

SO Dept: 0212

Vendor ID: VS0000020538

SO Doc ID: SWC2000000004

Legal Name: PHENOM LLC

Published Date: 6/18/20

Alias/DBA: CRYSTAL JAMES

Close Date: 6/25/20

Total Bid: \$0.00

Close Time: 13:30

Response Date: 06/25/2020

Status: Closed

Response Time: 13:23

Solicitation Description: Addendum_1: SWC-TEMPORARY STAFFING SERVICES

Total of Header Attachments: 2

Total of All Attachments: 2



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

State of West Virginia
 Solicitation Response

Proc Folder : 738312

Solicitation Description : Addendum_1: SWC -TEMPORARY STAFFING SERVICES

Proc Type : Statewide MA (Open End)

Date issued	Solicitation Closes	Solicitation Response	Version
	2020-06-25 13:30:00	SR 0212 ESR06252000000007994	1

VENDOR

VS0000020538
 PHENOM LLC
 CRYSTAL JAMES

Solicitation Number: CRFQ 0212 SWC2000000004

Total Bid : \$0.00 Response Date: 2020-06-25 Response Time: 13:23:46

Comments: Phenom, LLC is an comprehensive management consulting and staffing firm. We are SBA EDWOSB/WOSB Certified and West Virginia SWaM Certified. Located in Charles Town, WV. Thank you for reviewing our bid!

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
 (304) 558-2307
 mark.a.atkins@wv.gov

Signature on File FEIN # DATE

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	TEMPORARY EMPLOYEE SERVICES	0.00000	JOB	\$0.000000	\$0.00

Comm Code	Manufacturer	Specification	Model #
80111600			

Extended Description : TEMPORARY EMPLOYEE SERVICES:
 Note: Vendor shall use Exhibit_A Pricing Page(s) for bid pricing.
 If vendor is submitting a bid online, Vendor should enter \$0.00 in the Oasis commodity line.

Comments: Exhibit A Attached



June 25, 2020

Mark A. Atkins
Department of Administration
Purchasing Division
2019 Washington St E
Charleston, WV 25305

Attention: Mark A. Atkins

Subject: RFQ Response for Statewide Contract – Temporary Staffing Services

Reference: CRFQ SWC2000000004 – Due June 25, 2020 a 1:30 PM

Dear Mr. Atkins,

Enclosed you will find Phenom, LLC's bid in response to CRFQ SWC2000000004.

Phenom, LLC (Phenom) is a minority-owned, SWaM certified, small business located in Charles Town, West Virginia. The firm focuses on solving and delivering phenomenal results in Human Resource Management, Program and Project Management, Administrative Management & Consulting, HVAC services, and IT- Computer Technical support.

Contained within our bid package are:

- Attachment A – Certifications and Addendums
 - Signed CRFQ Form
 - Designated Contact, Certification and Signature
 - Contract Manager Contact Information
 - HIPPA Business Associate Addendum
 - Disclosure of Interested Parties to Contracts
 - Purchasing Affidavit
 - Addendum Acknowledgment Form
- Exhibit A Pricing Pages _ Phenom LLC

Thank you for your consideration of Phenom, LLC's bid. All cost questions may be addressed to me at 202-739-1946.

Respectfully,

Crystal James

President & CEO, Phenom, LLC



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

State of West Virginia
 Request for Quotation
 34 - Service - Prof

Proc Folder: 738312

Doc Description: STATEWIDE CONTRACT -TEMPORARY STAFFING SERVICES

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2020-06-10	2020-06-25 13:30:00	CRFQ 0212 SWC2000000004	1

BID RECEIVING LOCATION

BID CLERK
 DEPARTMENT OF ADMINISTRATION
 PURCHASING DIVISION
 2019 WASHINGTON ST E
 CHARLESTON WV 25305
 US

VENDOR

Vendor Name, Address and Telephone Number:

phenom, LLC
 238 Northwinds DR.
 CHARLES TOWN, WV 25414

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
 (304) 558-2307
 mark.a.atkins@wv.gov

Signature X

FEIN #

84-3024775

DATE

6/25/20

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

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. REVIEW DOCUMENTS THOROUGHLY: The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

2. MANDATORY TERMS: The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

3. PREBID MEETING: The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening

A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting

are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. VENDOR QUESTION DEADLINE: Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: June 16, 2020 due by 10:00am EDT

Submit Questions to: Mark Atkins, Senior Buyer
2019 Washington Street, East
Charleston, WV 25305
Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)
Email: Mark.A.Atkins@wv.gov

5. VERBAL COMMUNICATION: Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

6. BID SUBMISSION: All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:
Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the Purchasing Division.:

SEALED BID: Statewide Contract for Temporary Worker Services
BUYER: Mark Atkins, File #42
SOLICITATION NO.: CRFQ 0212 SWC2000000004
BID OPENING DATE: June 25, 2020
BID OPENING TIME: 1:30 pm EDT
FAX NUMBER: 304-558-3970

Revised 01/09/2020

The Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to an Expression or Interest or Request for Proposal is not permitted in wvOASIS.

For Request For Proposal (“RFP”) Responses Only: In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus ^{N/A} convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: (This only applies to CRFP)

Technical

Cost

7. BID OPENING: Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: June 25, 2020 at 1:30pm EDT

Bid Opening Location: Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

8. ADDENDUM ACKNOWLEDGEMENT: Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

9. BID FORMATTING: Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

10. ALTERNATE MODEL OR BRAND: Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the

equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

11. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. COMMUNICATION LIMITATIONS: In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

13. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

14. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

15. PREFERENCE: Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at:

<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

15A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or

minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

17. WAIVER OF MINOR IRREGULARITIES: The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

18. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

19. NON-RESPONSIBLE: The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.”

20. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b.”

21. 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.

22. INTERESTED PARTY DISCLOSURE: West Virginia Code § 6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. 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.

23. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

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

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

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

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

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

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

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

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

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

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

Term Contract

Initial Contract Term: This Contract becomes effective on upon award and extends for a period of one (1) year(s).

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

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

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

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

Fixed Period Contract with Renewals: This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

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

Other: See attached.

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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 are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

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

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

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

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

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

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

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

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

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

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

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

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

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

Vendor must maintain:

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

Automobile Liability Insurance in at least an amount of: _____ per occurrence.

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

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

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

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

Pollution Insurance in an amount of: _____ per occurrence.

Aircraft Liability in an amount of: _____ per occurrence.

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

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

10. [Reserved]

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

_____ for _____

Liquidated Damages Contained in the Specifications

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: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

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 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.

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 with regard to all matters of time and performance in this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

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

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

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

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts (“Other Government Entities”), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. 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.

40. 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.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. 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.

Revised 01/09/2020

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. 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. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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
- d. 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.

43. 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.

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

45. 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.

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.

Crystal James, President / CEO

(Name, Title)

Crystal James, President / CEO

(Printed Name and Title)

238 Northwinds DR. Charles Town WV 25414

(Address)

202-739-1946 | 1-888-920-9065

(Phone Number) / (Fax Number)

crystal.james@phenomllc.org

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Phenom, LLC

(Company)

Crystal James, President / CEO

(Authorized Signature) (Representative Name, Title)

Crystal James, President / CEO

(Printed Name and Title of Authorized Representative)

6/24/20

(Date)

202-739-1946 | 1-888-920-9065

(Phone Number) (Fax Number)

**Statewide Contract
CRFQ 0212 SWC200000004
TEMPORARY STAFFING SERVICES
(TEMP21)**

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids to establish a statewide open-end contract for 17 specific temporary job classifications commonly required by State Agencies. Agencies will utilize the contract for each job classification at time of need.

Job classification requirements for each position are included as **Attachment_1**.

This solicitation is intended to replace the expiring Statewide Contract for Temporary Workers (TEMP16) expiring 07/14/2020. The TEMP16 (16A thru 16G) contracts can be viewed on the Purchasing Division's Statewide Contracts page at:

<http://www.state.wv.us/admin/purchase/swc/TEMP.htm>

- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 "Contract Services" means 17 specific temporary job classifications commonly required by the West Virginia State Agencies as more fully described in these specifications.

2.2 "Pricing Page" means the pages, contained wvOASIS or attached hereto as **Exhibit_A**, upon which Vendor should list its proposed price for the Contract Services.

2.3 "Solicitation" or "Request for Quotation (RFQ)" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.4 "Temporary Employee" means an employee provided by a vendor awarded a contract under this Solicitation, to an agency of the State of West Virginia on a temporary basis.

2.5 "CNA" means Central Non-Profit Agency bidding on this solicitation and is awarded a contract.

2.6 "Withholding" means any fee, tax or other sum of money required to be withheld from an employee's paycheck by federal, state, county, or municipal governing bodies.

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

2.7 “Overhead Rate” means any fee, markup, or other sum of money that the vendor deems as cost associated with their ability to provide the services requested in the solicitation and is not part of the Worker Pay Rate or “Withholding Rate” listed in Section 2 Subsection 2.6 of these specifications.

3. QUALIFICATIONS: Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:

3.1. NOTE: If a Vendor awarded a contract subsequent to the RFQ observes any periods of shutdowns for more than a public holiday or a weekend, that information must be provided to the West Virginia State Agencies that they have provided temporary employees. An emergency telephone number must be supplied to permit the State Agencies a contact at the temporary agency during any overtime hours worked.

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 Payment:

4.1.1.1 Agencies shall pay Vendor for all temporary services in accordance with the rates established by the Contract as shown on the Pricing Pages. The only exceptions include overtime and holiday pay and authorized travel. The Vendors billing rate for each job classifications shall include all costs associated with facilitating the temporary employment (e.g. employee compensation/worker rate, withholding, and overhead), as well as any and all insurance, taxes and other costs associated with employment of the Temporary Employees.

4.1.2 Overtime and Holiday Pay:

4.1.2.1 Temporary Employees may work more than forty (40) hours in a week. Any Temporary Employee working in excess of forty (40) hours per week must obtain prior authorization from the agency.

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

4.1.2.1.1 Vendor shall bill and Agency shall pay 1.5 times the hourly billing rate contained on the Pricing Pages for all authorized work in excess of forty (40) hours per week.

4.1.2.2 Temporary Employees may work on days recognized as a holiday by the State of West Virginia. Vendor shall bill and Agency shall pay 1.5 times the hourly billing rate for any work performed on days recognized as a holiday by the State of West Virginia.

4.1.2.3 In any instance where the Agency is billed 1.5 times the hourly billing rate, Vendor must pay the Temporary employee 1.5 times the Temporary Employee's normal wage.

4.1.3 Fee Adjustment:

4.1.3.1 The State of West Virginia may consider a vendor's request to increase the hourly billing rate only if the federal or state minimum wage rate changes during the life of the contract and that rate change entitles the Temporary Employee to an increased salary. Any adjustment shall be based on the actual dollar value of the increase not a percentage. A request to increase the hourly billing rate by the Vendor may result in a change to the Vendor's priority level.

4.1.3.2 Any request for an increase should be submitted to the Purchasing Division thirty (30) calendar days prior to the effective date of the increase and the contract may be amended accordingly or cancelled and re-bid. No other increases will be considered.

4.1.4 Time Card:

4.1.4.1 The Vendors shall supply all Temporary employees with timecards. Hours worked shall be reviewed and approved on a daily or weekly basis by the State Agency's area supervisor or designee. Computer generated time keeping is acceptable as long as the time record is updated daily.

4.1.5 Conduct and Management:

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

4.1.5.1 The Vendors shall be responsible for the conduct and management of the Temporary employee provided through this Contract and the Temporary employee are and shall remain the employees of the contractor. The State of West Virginia shall in no way be considered a co-employer.

4.1.6 One-Week Notice of Temporary Employee Replacement

4.1.6.1 Vendors shall provide one-week notice, except in cases of a bona fide emergency, should Vendor be required to replace the existing Temporary Employee or provide a new Temporary Employee. The State Agency is not required to justify any request to replace a Temporary Employee, nor are the State Agencies required to give advance notice.

4.1.7 Smoke Free and Drug Free:

4.1.7.1 Vendors shall advise their employees that the State Agencies require a smoke free and drug free workplace. This Contract may require drug testing of the Vendor's employees for specific placements.

4.1.7.2 Please note that, if requested Vendors will be responsible to pay for drug testing.

4.1.8 Background Check/References:

4.1.8.1 State Agencies may request background checks and/or references for any Temporary Employee. State Agencies may request to interview the Temporary Employee prior to filling the positions to verify the individual has the qualification for the temporary assignment.

4.1.8.2 Please note that, if requested, Vendors will be responsible to pay for background check.

4.1.9 HIPAA Business Associate Addendum:

4.1.9.1 The HIPAA requirements are attached as **Exhibit_D**. This must be signed by the Vendors and returned prior to issuance of any Contract.

**Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)**

4.1.10 Ethics in Public Contracting:

4.1.10.1 By submitting a bid and awarded a contract, the Vendor certifies the temporary services contract is entered into without collusion or fraud and the Vendors has neither offered nor received any inducements from any individual(s), public or private, in the preparation and pricing of the services to be provided.

4.1.11 Immigration Reform and Control Act of 1986:

4.1.11.1 Vendors shall provide temporary workers which are in compliance with the Immigration Reform and Control Act of 1986 (or most current immigration laws).

4.1.12 Equal Employment Opportunity:

4.1.12.1 Vendors shall be an Equal Opportunity Employer and shall take all employment actions without regard to an individual's race, color, national origin, ancestry, sex, religion, age, physical handicap, disability or political affiliations.

4.1.13 Reports:

4.1.13.1 In addition to what is covered by the General Terms and Conditions on this solicitation, Quarterly reports required from the Vendors must contain:

- Identification of each Temporary Employee (complete name).
- Classification of each Temporary Employee.
- State Agencies where each Temporary Employee is working.
- Number of hours each Temporary Employee has worked (for each quarter, YTD, and since initially beginning work for any State Agency).
- The Hourly pay rate for each Temporary Employee.
- Total dollars paid to the Temporary Employee.

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

NOTE: These reports are mandatory; failure to adhere to this may result in the cancellation of the Contract. Such reports must be sent electronically (excel document) to each agency utilizing this Contract and to the buyer responsible for this Contract at the Purchasing Division. These reports will be provided in Excel format and sent via email on a quarterly basis to Mark.A.Atkins@wv.gov as follows:

<u>PERIOD END</u>	<u>REPORT DUE</u>
December 31	February 28
March 31	May 31
June 30	August 31
September 30	November 30

4.1.14 Exception labor Sources:

4.1.14.1 There are certain labor services available to the State Agencies outside of the temporary services contracts, and the issuance of the temporary service contracts shall not alter or interfere with the existing laws, policies, and/or procedures for the use of these exceptional labor sources. Some example of these sources include:

- Division of Personnel's temporary personnel registers.
- Other State Agencies.
- The CNA.
- Prison labor.
- Students from institutions of higher learning.
- Volunteers.

4.1.15 Agency Ordering Procedures:

4.1.15.1 When the Contract(s) are issued, the State Agencies will receive a spreadsheet to identify the lowest cost supplier for each classification, according to regions. In instances where the CNA bids on a Temporary Employee classification, the CNA may receive a priority contract even though it is not the lowest cost supplier for that classification.

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

4.1.15.2 If the CNA bids and is awarded a Contract, the CNA will have first priority for providing that Temporary Employee classification even if the CNA is not the lowest cost supplier and State Agencies shall first contact the CNA using TSCS Form (Temporary Services Contract Sheet) or TSCN Form (Temporary Services Change Notice) to fill a position in the Temporary Employee classification awarded to the CNA. CNA shall reply to the State Agency within forty-eight (48) hours. A reply from the CNA indicating an unwillingness or inability to supply a Temporary Employee shall operate as a waiver from the CNA and must be retained by the State Agency. When the CNA is unable to supply the Temporary Employee or does not respond to the Agency within forty-eight (48) hours, the awarded Vendor with the lowest hourly rate for that position in the region in question shall be contacted. If the Temporary Employee sent by the CNA is unable or unwilling to perform the job duties, the State Agency may request a waiver from the CNA and contact the next Vendor if a waiver is granted.

Delivery Orders in excess of \$25,000.00 shall require processing as Centralized Delivery Orders through the WV State Purchasing Division. Order of \$25,000.00 or under will be processed as Agency Delivery Orders. Signed, dated vendor quote shall be included with each Delivery Order (i.e., scanned and electronically attached in WVOasis).

4.1.15.3 A Vendor providing services for this Contract shall respond to any request for a Temporary Employee within forty-eight (48) hours of receiving the request unless the request is identified by the Agency as an emergency. When a Temporary Employee is required on an emergency basis, the State Agency may require an expedited response from the CNA or a Vendor providing the Temporary Employee under this Contract.

4.1.15.4 State Agencies must send a Delivery Order to the Vendor to initiate the procurement of temporary services. The Delivery Order shall contain a description of the services required, job location within the relevant region, job classification, hourly

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

billing rate and number of hours required, and start and end dates of the assignment. All Delivery Orders shall be completed by the ordering State Agency. Waivers from the CNA must be attached to all invoices processed through the West Virginia State Auditor's office.

4.1.15.5 At the discretion of each West Virginia State Agency, the form attached as **Exhibit_B Temporary Worker Request Form** may be required prior to accepting a Temporary Employee offered by any Vendor. If this form is used, it shall detail the job description, acceptable dress code, overtime requirements, and any other pertinent information the State Agency finds relevant. This will ensure that all Temporary Employees arriving at a West Virginia State Agency will have a full understanding of all that is required of them for the temporary position. If requested by the State Agency, this form must be signed by the Vendor and the Temporary Employee, indicating that both the worker and the Vendor understand and accept the restriction and requirements for the temporary position. The State Agency may also use this form to list any prohibited activities by the Temporary Employee (discussion of pay, cell phone use, internet privileges, tobacco use, etc.).

4.1.15.6 If CNA or any Vendor has indicated they can fill the position and the temporary worker does not report for the temporary position without a reasonably acceptable explanation (in the opinion of the West Virginia State Agency), the State Agency may then go to the next low bidder to fill the temporary position.

4.1.16 Absent Temporary Workers:

4.1.16.1 All Vendors (including CNA) must notify the West Virginia State Agency immediately upon learning that a Temporary Employee will be tardy or will be absent from work. The Vendor must instruct its employees that they must report absences to the Vendor and Vendor will communicate the absence to the State Agency. Failure to notify the State Agency of an absent employee is

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

grounds to move on to the next bidder to fill the position. Information for Temporary Employees supplied through the CNA should be reported to the CNA and the CNA will report the absence to the State Agency.

Note: It is strongly recommended to the Vendors that they check with each temporary worker one day prior to the beginning of the assignment to verify the start date. Vendors with a high percentage of “no shows” or a history of sending unacceptable temporary workers may be removed from the contract.

4.1.17 Removing a Temporary Worker:

4.1.17.1 Whenever a Temporary Employee is to be relieved of duties, the West Virginia State Agency shall notify the Vendor. Whenever this removal is due to behavior and/or other unacceptable problem, the Vendor shall assist the State Agency in retrieving the electronic pass card whenever one has been issued.

4.1.18 Solicitation for Temporary Employee’s:

4.1.18.1 Vendor shall not solicit work from the West Virginia State Agencies. When the need arises for a Temporary Employee, the State Agency shall make the necessary contact. Solicitation for work for temporary workers is strictly prohibited.

4.1.19 Hiring of Temporary Workers/Credit Applications:

4.1.19.1 There shall be no fee incurred by the State of West Virginia if an Agency decides to hire a Temporary Employee into a permanent position.

4.1.19.2 Vendor shall not require a credit application to be completed by any State Agency.

4.1.19.3 Vendor shall not request nor require any additional forms, policy statements, etc. to be signed by any State Agency.

4.1.19.4 No additional terms and conditions shall be requested or required by Vendors to any State Agency for any position filled through this contract.

**Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)**

4.1.20 Temporary Worker's Job Classifications (job description and requirements will be provided as Attachment_1).

- 4.1.20.1** Accounting Technician 2
- 4.1.20.2** Administrative Services Assistant 1
- 4.1.20.3** Administrative Services Assistant 2
- 4.1.20.4** Cook
- 4.1.20.5** Custodian
- 4.1.20.6** Data Entry Operator 2
- 4.1.20.7** Executive Secretary
- 4.1.20.8** Groundskeeper
- 4.1.20.9** Health Service Worker
- 4.1.20.10** Laboratory Assistant 3
- 4.1.20.11** Laborer
- 4.1.20.12** Mail Runner
- 4.1.20.13** Office Assistant 2
- 4.1.20.14** Office Assistant 3
- 4.1.20.15** Paralegal
- 4.1.20.16** Parking Attendant
- 4.1.20.17** Word Processor

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract award may be limited to the three (3) lowest bidders meeting the specifications in each job classification for each Region including the CNA. Under this scenario, it will be possible for a Vendor to be awarded a contract for only a portion of the temporary positions they bid on.

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

5.2 Pricing Page: The West Virginia Purchasing Division has divided the State into four (4) geographical Regions (see **Exhibit_C**). The Vendor should provide billing information for each job classification for each Region they are bidding in the appropriate pricing page.

Vendor should complete the Pricing Pages (**Exhibit_A**) for each region (1 thru 4) they are interested in supplying temporary workers by providing an hourly rate paid to the Temporary Worker (Worker Pay rate), Withholding, and Overhead rates. Those three (3) items will be added to determine the **Total Rate** amount for each job classification in the region the Vendor is bidding. The **Total Rate** amount will be the rate used in the award evaluation and will be the rate charged to the agency utilizing the vendors contract for the temporary worker requested for each job classification.

Vendor should complete the Pricing Pages for each job classification they intend to provide temporary workers. Failure to complete the Pricing Page(s) in its entirety for each job classification in each Region bid by the vendor may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages to prevent errors in the evaluation. The pricing pages have been formatted to automatically calculate the Total Rate amount when the Temporary Worker (Worker Pay rate), Withholding, and Overhead rates are entered. Notwithstanding the foregoing, the Purchasing Division may correct errors as it deems appropriate.

- 6. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. This Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

- 7. PAYMENT:** Agency shall pay hourly rate as shown on the Pricing Pages **Total Rate** amount, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

- 8. TRAVEL:** Vendor will only be paid for Temporary Employee's travel in instances where the State Agency specifically provides written authorization for the Temporary Employee to travel. Vendor shall only bill for time that Temporary Employees are working at a designated temporary employment location or on approved travel. Vendor shall not bill for travel from the Temporary Employee's home to the designated temporary employment

Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)

location. The Vendor shall be reimbursed for a Temporary Employees travel expenses in accordance with the State of West Virginia travel regulations.

9. FACILITIES ACCESS: Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

- 9.1.** Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
- 9.2.** Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
- 9.3.** Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
- 9.4.** Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
- 9.5.** Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

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

- 10.1.1.** Failure to perform Contract Services in accordance with the requirements contained herein.
- 10.1.2.** Failure to comply with other specifications and requirements contained herein.
- 10.1.3.** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

**Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)**

10.1.4. Failure to remedy deficient performance upon request.

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

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1. Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

**Contract Manager: Crystal James
Telephone Number: 202-739-1946
Fax Number: 1-888-920-9065
Email Address: Crystal.James@Phenomllc.org**

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: State of West Virginia
WV Purchasing Division

Signature: _____

Title: _____

Date: _____

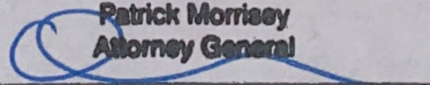
Name of Associate: Crystal James

Signature: Crystal James

Title: President / CEO

Date: 6/24/20

Form - WVBAA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jun 20 17
Patrick Morrisey
Attorney General
BY 

West Virginia Ethics Commission
Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: Phenom, LLC Address: 238 Northwinds DR.
Charles Town WV 25414
Name of Authorized Agent: Crystal James Address: SAME ↑
Contract Number: CRFQ 0212 SWC20*04 Contract Description: Temp21 - Temporary Staffing Services
Governmental agency awarding contract: WV Purchasing Division

Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (attach additional pages if necessary):

1. **Subcontractors or other entities performing work or service under the Contract**

Check here if none, otherwise list entity/individual names below.

2. **Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

Check here if none, otherwise list entity/individual names below.

Crystal James owns 100%

3. **Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

Check here if none, otherwise list entity/individual names below.

Signature: Crystal James Date Signed: 6/25/20

Notary Verification

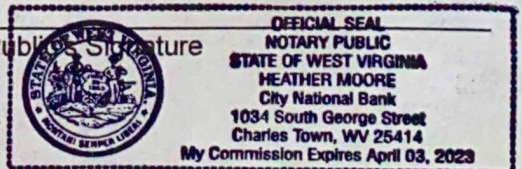
State of West Virginia, County of JEFFERSON:

I, Crystal James, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 25th day of June, 2020.

Heather Moore

Notary Public Signature



To be completed by State Agency:

Date Received by State Agency: _____

Date submitted to Ethics Commission: _____

Governmental agency submitting Disclosure: _____

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC2000000004

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

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

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

Phenom, LLC
Company
Captal James
Authorized Signature
06/24/20
Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

REGION 1:

NOTE: If you do not cover entire region, enter XX below the counties where you do supply temporaries.

REQUEST FOR QUOTATION

CRFQ SWC200000004

TEMP21

Temporary Staffing Services

EXHIBIT A

Hancock	Brooke	Ohio	Marshall	Wetzel	Monongalia	Marion	Harrison	Dodridge	Gilmer	Pleasants	Calhoun	Wirt	Wood	Tyler	Ritchie
						XX									
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*					
Accounting Technician 2				\$	11.40	\$	0.74	\$	1.71	\$ 13.85					
Administrative Services Assistant 1				\$	12.00	\$	0.78	\$	1.80	\$ 14.58					
Administrative Services Assistant 2				\$	12.25	\$	0.79	\$	1.84	\$ 14.88					
Cook				\$	-	\$	-	\$	-	\$ -					
Custodian				\$	-	\$	-	\$	-	\$ -					
Data Entry Operator2				\$	11.40	\$	0.74	\$	1.71	\$ 13.85					
Executive Secretary				\$	12.75	\$	0.83	\$	1.91	\$ 15.49					
Groundskeeper				\$	-	\$	-	\$	-	\$ -					
Health Service Worker				\$	-	\$	-	\$	-	\$ -					
Laboratroy Assistant 3				\$	-	\$	-	\$	-	\$ -					
Laborer				\$	-	\$	-	\$	-	\$ -					
Mail Runner				\$	-	\$	-	\$	-	\$ -					
Office Assistant 2				\$	12.00	\$	0.78	\$	1.80	\$ 14.58					
Office Assistant 3				\$	12.25	\$	0.79	\$	1.84	\$ 14.88					
Paralegal				\$	-	\$	-	\$	-	\$ -					
Parking Attendant				\$	-	\$	-	\$	-	\$ -					
Word Processor				\$	-	\$	-	\$	-	\$ -					

* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.

Vendor Name: _____
 Contact Person: _____
 Phone #: _____
 Fax #: _____
 Email: _____

Signature: _____ Date: _____

REGION 2:

NOTE: If you do not cover entire region, enter XX below the counties where you do supply temporaries.

REQUEST FOR QUOTATION

CRFQ SWC200000004

TEMP21

Temporary Staffing Services

EXHIBIT A

Mason	Cabell	Wayne	Mingo	Logan	Boone	Lincoln	Kanawha	Putnam	Roane	Jackson					
							XX								
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*					
Accounting Technician 2				\$	11.40	\$	0.74	\$	1.71	\$	13.85				
Administrative Services Assistant 1				\$	12.00	\$	0.78	\$	1.80	\$	14.58				
Administrative Services Assistant 2				\$	12.25	\$	0.79	\$	1.84	\$	14.88				
Cook				\$	-	\$	-	\$	-	\$	-				
Custodian				\$	-	\$	-	\$	-	\$	-				
Data Entry Operator2				\$	11.40	\$	0.74	\$	1.71	\$	13.85				
Executive Secretary				\$	12.75	\$	0.83	\$	1.91	\$	15.49				
Groundskeeper				\$	-	\$	-	\$	-	\$	-				
Health Service Worker				\$	-	\$	-	\$	-	\$	-				
Laboratroy Assistant 3				\$	-	\$	-	\$	-	\$	-				
Laborer				\$	-	\$	-	\$	-	\$	-				
Mail Runner				\$	-	\$	-	\$	-	\$	-				
Office Assistant 2				\$	12.00	\$	0.78	\$	1.80	\$	14.58				
Office Assistant 3				\$	12.25	\$	0.79	\$	1.84	\$	14.88				
Paralegal				\$	-	\$	-	\$	-	\$	-				
Parking Attendant				\$	-	\$	-	\$	-	\$	-				
Word Processor				\$	-	\$	-	\$	-	\$	-				

* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.

Vendor Name: _____
 Contact Person: _____
 Phone #: _____
 Fax #: _____
 Email: _____

Signature: _____ Date: _____

REGION 3:

NOTE: If you do not cover entire region, enter XX below the counties where you do supply temporaries.

REQUEST FOR QUOTATION

CRFQ SWC200000004

TEMP21

Temporary Staffing Services

EXHIBIT A

Lewis	Upshur	Randolph	Pendelton	Hardy	Grant	Hampshire	Mineral	Morgan	Berkeley	Jefferson	Tucker	Barbour	Taylor	Preston	
				XX	XX	XX	XX	XX	XX	XX					
Classification				Worker Pay Rate	Withholding Rate	Overhead Rate	Total Rate*								
Accounting Technician 2				\$ 11.40	\$ 0.74	\$ 1.71	\$ 13.85								
Administrative Services Assistant 1				\$ 12.00	\$ 0.78	\$ 1.80	\$ 14.58								
Administrative Services Assistant 2				\$ 12.25	\$ 0.79	\$ 1.84	\$ 14.88								
Cook				\$ -	\$ -	\$ -	\$ -								
Custodian				\$ -	\$ -	\$ -	\$ -								
Data Entry Operator2				\$ 11.40	\$ 0.74	\$ 1.71	\$ 13.85								
Executive Secretary				\$ 12.75	\$ 0.83	\$ 1.91	\$ 15.49								
Groundskeeper				\$ -	\$ -	\$ -	\$ -								
Health Service Worker				\$ -	\$ -	\$ -	\$ -								
Laboratroy Assistant 3				\$ -	\$ -	\$ -	\$ -								
Laborer				\$ -	\$ -	\$ -	\$ -								
Mail Runner				\$ -	\$ -	\$ -	\$ -								
Office Assistant 2				\$ 12.00	\$ 0.78	\$ 1.80	\$ 14.58								
Office Assistant 3				\$ 12.25	\$ 0.79	\$ 1.84	\$ 14.88								
Paralegal				\$ -	\$ -	\$ -	\$ -								
Parking Attendant				\$ -	\$ -	\$ -	\$ -								
Word Processor				\$ -	\$ -	\$ -	\$ -								

* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.

Vendor Name: _____
 Contact Person: _____
 Phone #: _____
 Fax #: _____
 Email: _____

Signature: _____ Date: _____

REGION 4:

NOTE: If you do not cover entire region, enter XX below the counties where you do supply temporaries.

REQUEST FOR QUOTATION

CRFQ SWC200000004

TEMP21

Temporary Staffing Services

EXHIBIT A

Braxton	Clay	Nicholas	Fayette	Raleigh	Wyoming	McDowell	Mercer	Summers	Greenbrier	Pocahontas	Webster	Monroe			
									XX						
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*					
Accounting Technician 2				\$	11.40	\$	0.74	\$	1.71	\$	13.85				
Administrative Services Assistant 1				\$	12.00	\$	0.78	\$	1.80	\$	14.58				
Administrative Services Assistant 2				\$	12.25	\$	0.79	\$	1.84	\$	14.88				
Cook				\$	-	\$	-	\$	-	\$	-				
Custodian				\$	-	\$	-	\$	-	\$	-				
Data Entry Operator2				\$	11.40	\$	0.74	\$	1.71	\$	13.85				
Executive Secretary				\$	12.75	\$	0.83	\$	1.91	\$	15.49				
Groundskeeper				\$	-	\$	-	\$	-	\$	-				
Health Service Worker				\$	-	\$	-	\$	-	\$	-				
Laboratroy Assistant 3				\$	-	\$	-	\$	-	\$	-				
Laborer				\$	-	\$	-	\$	-	\$	-				
Mail Runner				\$	-	\$	-	\$	-	\$	-				
Office Assistant 2				\$	12.00	\$	0.78	\$	1.80	\$	14.58				
Office Assistant 3				\$	12.25	\$	0.79	\$	1.84	\$	14.88				
Paralegal				\$	-	\$	-	\$	-	\$	-				
Parking Attendant				\$	-	\$	-	\$	-	\$	-				
Word Processor				\$	-	\$	-	\$	-	\$	-				

* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.

Vendor Name: _____

Contact Person: _____

Phone #: _____

Fax #: _____

Email: _____

Signature: _____

Date: _____