



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 1

## General Information

[Contact](#)[Default Values](#)[Discount](#)[Document Information](#)

Procurement Folder: 643743

Procurement Type: Central Master Agreement

Vendor ID: 00000117794



Legal Name: SHI INTERNATIONAL CORP

Alias/DBA:

Total Bid: \$1,410,594.00

Response Date: 11/12/2019



Response Time: 12:50

SO Doc Code: CRFQ

SO Dept: 0231

SO Doc ID: OOT200000002

Published Date: 11/6/19

Close Date: 11/12/19

Close Time: 13:30

Status: Closed

Solicitation Description: Addendum No. 01-Application Security Tool (OT20029)

Total of Header Attachments: 1

Total of All Attachments: 1



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

**State of West Virginia  
 Solicitation Response**

**Proc Folder :** 643743

**Solicitation Description :** Addendum No. 01-Application Security Tool (OT20029)

**Proc Type :** Central Master Agreement

Date issued	Solicitation Closes	Solicitation Response	Version
	2019-11-12 13:30:00	SR 0231 ESR11121900000002950	1

VENDOR
000000117794 SHI INTERNATIONAL CORP

**Solicitation Number:** CRFQ 0231 OOT2000000002

**Total Bid :** \$1,410,594.00      **Response Date:** 2019-11-12      **Response Time:** 12:50:02

**Comments:**

**FOR INFORMATION CONTACT THE BUYER**  
 Jessica S Chambers  
 (304) 558-0246  
 jessica.s.chambers@wv.gov

<b>Signature on File</b>	<b>FEIN #</b>	<b>DATE</b>
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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	Overall Total Bid Amount	1.00000	EA	\$1,410,594.000000	\$1,410,594.00

Comm Code	Manufacturer	Specification	Model #
43233200			

**Extended Description :** For complete details, see attached specifications.

**Comments:** SHI's response meet's all required specifications using the Veracode solution.





# SHI International Corp.

Response to

## West Virginia Office of Technology

REQUEST FOR QUOTE  
#0231 OOT2000000002

Application Security Tool

Presented by:

Summer Bailey  
Account Executive  
304-541-4288  
Summer\_Bailey@SHI.com

Due: 11/12/2019



11/12/2019

Jessica Chambers  
West Virginia Office of Technology  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

Dear Jessica Chambers,

Thank you for your interest in SHI and for the opportunity to participate in the West Virginia Office of Technology's Request for Quotation for **##0231 OOT200000002 Application Security Tool**. SHI values your business and we are committed to continuing the level of service and support that the West Virginia Office of Technology has come to know and expect from SHI.

SHI provides the highest level of customer support and service to all of our customers. Under our Quality Management System, the West Virginia Office of Technology is assured that our solution delivers the services that you need when you need them. We have a wide array of solutions to offer the West Virginia Office of Technology and we look forward to building a managed program that integrates your organizational requirements.

SHI has a proven record of success with customers of similar size and nature to the West Virginia Office of Technology. Leveraging our broad range of authorizations and manufacturer relationships, SHI is uniquely qualified to support all requirements contained in this RFP and offer a "one stop shop" for your IT Procurement. Our proposal provides a streamlined and efficient managed program which we expect will help the West Virginia Office of Technology to realize efficiencies and ultimately cost savings.

I appreciate the opportunity to participate in this evaluation. I encourage you to visit our headquarters in Somerset, New Jersey, where you can meet our management team. If you require additional information or have any questions regarding our proposal, please contact me at **304-541-4288** or via Email at **Summer\_Bailey@SHI.com**. Thank you in advance for your consideration and I look forward to hearing from you.

Sincerely,

Summer Bailey  
Account Executive  
SHI International Corp.



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

State of West Virginia  
 Request for Quotation  
 21 – Info Technology

Proc Folder: 643743

Doc Description: Addendum No. 01-Application Security Tool (OT20029)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2019-11-06	2019-11-12 13:30:00	CRFQ 0231 OOT2000000002	2

**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:

SHI International Corp.  
 290 Davidson Ave.  
 Somerset, NJ 08873  
 304-541-4288

**FOR INFORMATION CONTACT THE BUYER**

Jessica S Chambers  
 (304) 558-0246  
 jessica.s.chambers@wv.gov

Signature X  FEIN # 22-3009648 DATE 11/11/2019

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

**ADDITIONAL INFORMATION:**

Addendum

Addendum No.01 is being issued to the vendor community to address all technical questions received.

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The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end contract for an Application Security Tool. The WVOT requires a scalable licensing model, which will allow for the WVOT to add licenses as needed to evaluate agencies' applications for cybersecurity compliance per the terms and conditions and specifications as attached.

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Overall Total Bid Amount	1.00000	EA	\$1,410,594.00	\$1,410,594.00

Comm Code	Manufacturer	Specification	Model #
43233200	Veracode		See Attached SHI Quote.

**Extended Description :**

For complete details, see attached specifications.

**SCHEDULE OF EVENTS**

Line	Event	Event Date
1	Technical Question Deadline at 9:00 AM (EDT)	19-11-05





Pricing Proposal  
 Quotation #: 18036307  
 Created On: Nov-12-2019  
 Valid Until: Dec-11-2019

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## WV-STATE OF WEST VIRGINIA

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## Inside Account Manager

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### Jessica Chambers

Phone: (304) 558-0246  
 Fax:  
 Email: jessica.s.chambers@wv.gov

### Eric Franzysheh

290 Davidson Ave.  
 Somerset, NJ 08873  
 Phone: 888-744-4084  
 Fax:  
 Email: Eric\_Franzysheh@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Contract Service 1: Dynamic Scanning Requirements VERACODE - Part#: NPN-VERA-SCAN Contract Name: Open Market Contract #: Open Market	250	\$558.79	\$139,697.50
2 Optional Renewal Year 2 - Contract Service 1: Dynamic Scanning Requirements VERACODE - Part#: NPN-VERA-SCAN Contract Name: Open Market Contract #: Open Market	250	\$558.79	\$139,697.50
3 Optional Renewal Year 3 - Contract Service 1: Dynamic Scanning Requirements VERACODE - Part#: NPN-VERA-SCAN Contract Name: Open Market Contract #: Open Market	250	\$558.79	\$139,697.50
4 Optional Renewal Year 4 - Contract Service 1: Dynamic Scanning Requirements VERACODE - Part#: NPN-VERA-SCAN Contract Name: Open Market Contract #: Open Market	250	\$558.79	\$139,697.50
5 Contract Service 2: Static Scanning Requirements VERACODE - Part#: NPN-VERA-STATIC Contract Name: Open Market Contract #: Open Market	40	\$3,827.47	\$153,098.80
6 Optional Renewal Year 2 - Contract Service 2: Static Scanning Requirements VERACODE - Part#: NPN-VERA-STATIC Contract Name: Open Market Contract #: Open Market	40	\$3,827.47	\$153,098.80
7 Optional Renewal Year 3 - Contract Service 2: Static Scanning Requirements VERACODE - Part#: NPN-VERA-STATIC Contract Name: Open Market Contract #: Open Market	40	\$3,827.47	\$153,098.80
8 Optional Renewal Year 4 - Contract Service 2: Static Scanning Requirements VERACODE - Part#: NPN-VERA-STATIC Contract Name: Open Market	40	\$3,827.47	\$153,098.80

Contract #: Open Market

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9	Contract Service 3: Annual Subscription Support Services VERACODE - Part#: NPN-VERA-SUPP Contract Name: Open Market Contract #: Open Market	1	\$59,852.20	\$59,852.20
10	Optional Renewal Year 2 - Contract Service 3: Annual Subscription Support Services VERACODE - Part#: NPN-VERA-SUPP Contract Name: Open Market Contract #: Open Market	1	\$59,852.20	\$59,852.20
11	Optional Renewal Year 3 - Contract Service 3: Annual Subscription Support Services VERACODE - Part#: NPN-VERA-SUPP Contract Name: Open Market Contract #: Open Market	1	\$59,852.20	\$59,852.20
12	Optional Renewal Year 4 - Contract Service 3: Annual Subscription Support Services VERACODE - Part#: NPN-VERA-SUPP Contract Name: Open Market Contract #: Open Market	1	\$59,852.20	\$59,852.20
13	Contract Services #4: On-Boarding, Training, and Integration Services VERACODE - Part#: NPN-VERA-TRAIN Contract Name: Open Market Contract #: Open Market	1	\$0.00	\$0.00
			Total	\$1,410,594.00

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The products offered under this proposal are Open Market and resold in accordance with the terms and conditions at [SHI Online Customer Resale Terms and Conditions](#).

Veracode is the industry leader in application security testing. With 15 years of experience in the field of developing application security testing programs with some of the largest organizations in the world, their technology solutions are best in class. Veracode offers fully automated and integrated SaaS based solutions for Static and Dynamic Analysis. Accompanied by first class technical and program support organizations can be confident that their employees will be guided with implementation, provided education as well as being fully trained and informed of best practices around AppSec testing. The Veracode Analytics allows organizations to dive deep and track individualized and specific metrics tailored to their security policies and requirements.

Veracode meets all the requirements listed in section 3 and all sub sections underneath in relation to

1. Contract services 1: Dynamic Scanning Requirements. – section 3.1.2
  - a. Veracode Dynamic analysis
  - b. Veracode Discovery scans
2. Contract services 2: Static Scanning Requirements. – section 3.1.3
  - a. Veracode Static analysis
  - b. Veracode software composition analysis
  - c. Veracode greenlight
3. Contract services 3: Annual Subscription Support Services – section 3.1.4
  - a. Veracode Premium Support
  - b. Veracode ELearning

**SOLICITATION NUMBER:** CRFQ OOT2000000002

**Addendum Number:** No.01

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The purpose of this addendum is to modify the solicitation identified as (“Solicitation”) to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

**Description of Modification to Solicitation:**

Addendum issued to publish and distribute the attached documentation to the vendor community.

1. The purpose of this addendum is to address all technical questions received.

No additional changes.

**Additional Documentation:** Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, 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.



# ATTACHMENT A

Technical Questions  
CRFQ OOT2000000002

1. For this RFQ can we submit pricing for a solution that has two OEMs on it? One for the Dynamic Scanning and another for the Static Scanning?

1. A: Yes, as long as the proposed Vendor solution(s) meet all mandatory requirements of the RFQ. The contract will be awarded to a single vendor; this will not be multiple award.

2. In the RFQ it states a requirement of having General Liability Insurance in at least an amount of 1,000,000.00 per occurrence– Would you like the documentation attached to the Bid response?

A: that documentation can be provided prior to award.

3. In the BID it lists general requirements for the product – Do we need to provide documentation on how we adhere to these general requirements or are we acknowledging that we can meet these requirements based on our action of responding to the bid? If documentation is needed please see next question.

A: Vendors' submission of bid is acknowledgement they meet all mandatory requirements of the RFQ .

4. The RFQ says "DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE". Most of our accompanying documents require an NDA in place . Assuming the award of the bid, would we be able to put an NDA in place that would override this clause?

A: Per the Instructions to Vendors submitting Bids – Item 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.

5. If awarded the bid will any documents provided afterward be shared publicly or would they be subject to confidentiality obligations?

A: All documents are public record and available for review upon request.

6. If awarded the bid are we able to negotiate any T's & C's ? IS WV open to potential negotiation after the award?

A: Vendor must take exception and note what items they object to when submitting their bid. The State will attempt to negotiate those objections that do not infringe upon West Virginia State Code and West Virginia Legislative Rule.

7. Assuming we win the award or once a vendor is chosen how will a purchase order be placed ? Is WV amenable to issuing a PO with contract award?

A: A purchase order will be placed with the successful vendor.

8. Are we able to add additional line items to the quote In order to meet complete technical requirements? If yes how should we present this?

A: This is a request for quotation. The bid will be awarded to the lowest responsible bidder that met all the mandatory requirements of the solicitation.

9. Will be able to ask follow up questions ?

A: The vendor can always ask questions, however, the agency is not obligated to address them after the technical question deadline.

10. Can we include a reseller after RFQ or must we submit response with the reseller?

A: See answer to #1

11. If award is given to a reseller does their agreement with WV supersede the T's and C's of this RFQ?

A: No.

12. If there are weather issues that may delay mail delivery, is a post stamp sufficient or must it need to have arrived?

A: We participate in a public bid opening. All responses must be received prior to bid opening at 1:30 PM (EST) in order to be considered.

13. Whether companies from Outside USA can apply for this?  
(like,from India or Canada).

A: Yes.

14. Whether we need to come over there for meetings?

A: Please see specifications for mandatory requirements of this solicitation.

15. Can we perform the tasks (related to RFP) outside USA?  
(like, from India or Canada)

A: Please see specifications for mandatory requirements of this solicitation.

16. Can we submit the proposals via email?

A: No.

17. Does the tool have to reside 100% in the cloud or would you prefer an on-prem solution?

A: WVOT is looking for a Software as a Service (SaaS) solutions.

18. How many Apps are to be scanned?

A: As defined in section 2.5. Dynamic means defined by URL for a one-year period, unlimited scans. A new list of URLs will be required each year, to include any additional licenses. For the first year, the WVOT estimates 200 applications/projects.

As defined in section 2.15 Static means defined by the agency for each project, unlimited scans. A new list of applications/projects will be required each year, to include any additional licenses. For the first year, the WVOT estimates 40 applications/projects

19. What are the sizes of the apps to be scanned in terms of lines of code?

A: Varies from a few hundred lines to hundreds of thousands lines of code

20. What is the frequency of the scans, how often?

A: On demand/unlimited scans

21. Which languages are you looking to scan in: SAST and DAST e.g.:

Java, J2SE, J2EE, C#, VB.NET, ASP, VB6, C/C++, PHP, Apex, Ruby, JavaScript, ES5, ES6, Typescript\*\*, Perl, Android (Java), Objective C, Swift, Python, Groovy, Scala, GO Language, Kotlin for Android

A: At a minimum as defined in section 3.1.3.8, Java, JavaScript, C#.Net, and ColdFusion must be included.

21. Would you please clarify section 3.1.2.1 are you asking for users or applications?

A: As defined in section 2.5. Dynamic means defined by URL for a one-year period, unlimited scans. A new list of URLs will be required each year, to include any additional licenses. For the first year, the WVOT estimates 200 applications/projects.

22. Would you please clarify section 3.1.3.1 are you asking for users or applications?

A: As defined in section 2.15 Static means defined by the agency for each project, unlimited scans. A new list of applications/projects will be required each year, to include any additional licenses. For the first year, the WVOT estimates 40 applications/projects

23. Would a response for IAST (Interactive Application Security Testing) be considered a replacement for DAST?

A: No, IAST cannot be a replacement for DAST. IAST can be used in addition to DAST. The method of DAST scanning is still needed.

24. What is the estimated time of implementation? 2019, Q1 2020, Q2 2020, other.

A: No later than end of Q1 2020

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.:** \_\_\_\_\_

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

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

**Addendum Numbers Received:**


(Check the box next to each addendum received)

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

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

SHI International Corp.

\_\_\_\_\_  
Company

  
\_\_\_\_\_  
Authorized Signature

11/11/2019

\_\_\_\_\_  
Date

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

**ADDITIONAL INFORMATION:**

The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end contract for an Application Security Tool. The WVOT requires a scalable licensing model, which will allow for the WVOT to add licenses as needed to evaluate agencies' applications for cybersecurity compliance per the terms and conditions and specifications as attached.

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Overall Total Bid Amount	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43233200			

**Extended Description :**

For complete details, see attached specifications.

**SCHEDULE OF EVENTS**

Line	Event	Event Date
1	Technical Question Deadline at 9:00 AM (EDT)	2019-11-05

## 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  
Revised 10/01/2019



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: November 5, 2019 at 9:00 AM (EDT)

Submit Questions to: Jessica Chambers

2019 Washington Street, East

Charleston, WV 25305

Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)

Email: [Jessica.S.Chambers@wv.gov](mailto:Jessica.S.Chambers@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:

BUYER: Jessica Chambers

SOLICITATION NO.: CRFQ OOT2000000002

BID OPENING DATE: 11/12/2019

BID OPENING TIME: 1:30 PM (EDT)

FAX NUMBER: (304)558-3970

Revised 10/01/2019

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 \_\_\_\_\_ 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: November 12, 2019 at 1:30 PM (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 should 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. 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 prior to Contract award, in a form acceptable to the Purchasing Division.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award 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](mailto: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 10/01/2019



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.


**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.

\_\_\_\_\_  
(Name, Title) Summer Bailey Account Executive  
\_\_\_\_\_  
(Printed Name and Title) 290 Davidson Ave. Somerset, NJ 08873  
\_\_\_\_\_  
(Address) 304-541-4288/ 888-764-8889  
\_\_\_\_\_  
(Phone Number) / (Fax Number) Summer\_Bailey@SHI.com  
\_\_\_\_\_  
(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.

SHI International Corp.

\_\_\_\_\_  
(Company)

  
\_\_\_\_\_  
(Authorized Signature) (Representative Name, Title)

Eigil Pantaleon Response Team Lead  
\_\_\_\_\_  
(Printed Name and Title of Authorized Representative)

11/11/2019  
\_\_\_\_\_  
(Date)

304-541-4288/ 888-764-8889  
\_\_\_\_\_  
(Phone Number) (Fax Number)

REQUEST FOR QUOTATION  
Open-End RFQ for Application Security Tool

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SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Office of Technology (WVOT) to establish an open-end contract for an Application Security Tool. The WVOT requires a scalable licensing model, which will allow for the WVOT to add licenses as needed to evaluate agencies' applications for cybersecurity compliance. To properly meet the State's current needs, the WVOT requires that the Vendor provide both static and dynamic license options. For context and meaning, the WVOT has defined "dynamic" and "static" in Section 2, Definitions.
  
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 **"Business Hours"** means Monday – Friday 8:00 AM through 5:00 PM EST excluding weekends and Federal and State holidays. State Holidays are as follows:
    - New Year's Day (January 1)
    - Martin Luther King Day (Third Monday in January)
    - President's Day (Third Monday in February)
    - Memorial Day (Last Monday in May)
    - West Virginia Day (June 20)
    - Independence Day (July 4)
    - Labor Day (First Monday in September)
    - Columbus Day (Second Monday in October)
    - Veterans Day (November 11)
    - Thanksgiving (Fourth Thursday in November)
    - Day After Thanksgiving (Fourth Friday in November)
    - Christmas Day (December 25)
  
  - 2.1 **"CERT"** means Cert Coordination Center.
  
  - 2.2 **"CLI"** means Command Line Interface.
  
  - 2.3 **"Contract Item"** or **"Contract Items"** means the list of items identified in Section 3.1 below and on the Pricing Pages.
  
  - 2.4 **"Deep Crawling"** means the ability of search engine bots, spider bots, or other bots to further crawl deeper within a website's structure by passing through every website's subpages or deep links.
  
  - 2.5 **"Dynamic"** means defined by URL for a one-year period, unlimited scans. A new list of URLs will be required each year, to include any additional licenses. For the first year, the WVOT estimates 200 applications/projects.

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- 2.6 “FedRAMP” means the Federal Risk and Authorization Management Program.
- 2.7 “FTI” means Federal Tax Information.
- 2.8 “HIPAA” means Health Insurance Portability and Accountability Act.
- 2.9 “OWASP Top 10” means Open Web Application Security Project Top 10.
- 2.10 “PCI” means Payment Card Industry.
- 2.11 “Pricing Pages” means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
- 2.12 “SaaS” means Software as a Service
- 2.13 “SANS 25” means the SANS Institute Top 25 most dangerous software errors.
- 2.14 “Solicitation” means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 2.15 “Static” means defined by the agency for each project, unlimited scans. A new list of applications/projects will be required each year, to include any additional licenses. For the first year, the WVOT estimates 40 applications/projects.

**3. GENERAL REQUIREMENTS:**

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

- 3.1.1 **Application Security Tool – Software as a Service**

- 3.1.1.1 The SAAS platform will follow security guidelines as advised through FedRAMP. The SAAS platform shall provide, upon request, three full security exhibits indicating how customer data is protected through industry accepted standard and encryption practices to protect customer data stored, transmitted or processed.

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- 3.1.1.2 The software shall provide true 3<sup>rd</sup> party code attestation including, but not limited to: Executive Summary, Detailed Reporting, Customized and full XML for internal data reporting. Reports shall be required to include flaw detection in MITRE's CWE format (i.e. OWASP top 10) and point to the vulnerability URL with request and response information. Flaw details shall also include remediation advice on fixing or mitigation this risk.
- 3.1.1.3 The software shall accurately provide direct details to identify direct dependent libraries and vulnerable methods to accurately describe the exposure and risk.
- 3.1.1.4 Software shall accurately identify both open source and 3<sup>rd</sup> party code dependencies for developers with CLI tools and with CI pipelines during build. Both systems of measurement shall document risk, with advice on mitigation, including but not limited to, compensating controls and updates.
- 3.1.1.5 The software shall provide a central policy management system that allows both Security Professionals and Development Management oversight and control. The outcome is to fail the CI build if security requirements are not met. The controlling integration shall perform a policy verification check to determine if the application is moved to production (passes policy) or is blocked (fails policy).
- 3.1.1.6 The software shall be customizable for security policies specifically focused for true 3<sup>rd</sup> code party attestation.
- 3.1.1.7 The software shall provide, at a minimum, the following metrics:
  - 3.1.1.7.1 In compliance vs. Out of compliance (portfolio)
  - 3.1.1.7.2 Top 10 CWE findings by app, by portfolio
  - 3.1.1.7.3 Number of/ Trending scans by month
  - 3.1.1.7.4 Flaw density per MB
  - 3.1.1.7.5 Open flaws with/without mitigation
  - 3.1.1.7.6 Flaws found vs flaws fixed
  - 3.1.1.7.7 Total number of flaws over a defined period of time
- 3.1.1.8 The software shall provide on-demand remediation resources through built in recommendations appended to the FLAW descriptions from security tests to assist developers with remediation.

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**Open-End RFQ for Application Security Tool**

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- 3.1.1.9 The software shall provide the ability to include and exclude specific URLs by editing the scope of the scan, to ensure full and complete application coverage where necessary.
  - 3.1.1.10 The software will contain full role-based access control covering all roles within an organization. Enforcing Security best practices for 'least-privileged' and separation of responsibilities. All such roles will be applied at the levels of the user, team and business units.
  - 3.1.1.11 The software shall allow for growth at scale without restriction on number of scans. Scans shall be allowed at the following levels:
    - 3.1.1.11.1 Full application: Policy attestation
    - 3.1.1.11.2 Developer Commit level (Sandbox)
    - 3.1.1.11.3 Pull request (Sandbox)
    - 3.1.1.11.4 CI Testing: Pipeline
    - 3.1.1.11.5 CI Testing: Complete application builds
  - 3.1.1.12 The software shall provide reporting and analytics capabilities to analyze and customize data points. All such reporting shall be in control of the Security Professional and Development Management, reporting to stakeholders within the organization. The same reports will also be available, but at a more granular code resource level, measured against standardized Security Policies for the development user, teams and business units.
  - 3.1.1.13 All reporting shall be able to be filtered through managed and customized Security Policies, including, but not limited to, OWASP Top 10, SANS 25, CERT, PCI, HIPAA, and FTI.
  - 3.1.1.14 Vendor must ensure that the testing engines remain fully up to date, at a minimum, on a monthly basis.
  - 3.1.1.15 If zero-day announcements occur, Vendor must provide updates within 24-48 hours and provide expert advise on how to address announced security vulnerability.
- 3.1.2 Contract Service 1: Dynamic Scanning Requirements**
- 3.1.2.1 The Vendor must provide an estimated quantity of 250 dynamic scanning licenses.



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- 3.1.2.2 The software shall automate dynamic scans through a scheduler. Notifications shall be automatically built into the platform SAAS service for scans started and completed. Manual (Penetration Tests) scans must perform recursive of OWASP Top 10, then human reasoning, business logic and fuzzing technologies leveraging industry standards by certified ethical hacking professionals.
- 3.1.2.3 The software shall have the ability to dynamically scan behind firewall applications through internal scan manager or through whitelist and/or proxy settings.
- 3.1.2.4 The solution shall be fully capable of deep crawling analysis of web application through login authentication via Auto-login, Forms-based through Selenium or Auto-login.
- 3.1.2.5 The solution shall be able to dynamically scan web applications built by off the shelf and custom applications.
- 3.1.2.6 Vendor must consult customer before engaging in support to ensure expectations.
- 3.1.2.7 The solution shall easily scale to scanning hundreds of applications with or without authentication, simultaneously. This must be accomplished via a centralized platform scheduler with a command and control user experience. Scans shall be invoked through the platform and/or through Internal Scan Management system for internal applications.
- 3.1.2.8 The solution shall maintain the flexibility necessary to meet the demands of both Operations and the Software Development Life Cycle (SDLC) by allowing the ability to perform monthly, quarterly, or yearly discovery scans of open web applications.
- 3.1.2.9 Vendor will include in their bid the cost of optional Annual renewals for years 2, 3, and 4. These optional Annual renewals will be initiated on Agency request authorized under the authority of the Purchasing division.

**3.1.3 Contract Service 2: Static Scanning Requirements**

- 3.1.3.1 The Vendor must provide an estimated quantity of 40 static scanning licenses.

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- 3.1.3.2** The software will provide additional Binary Static Analysis supported testing capabilities to augment dynamic testing performed by Security. Binary Static Code Analysis is used to find bugs and vulnerabilities in binary executables and third-party libraries delivered in binary form.
- 3.1.3.3** The software shall provide details to the line of code for developers to easily identify where flaws exist with enough details to fix.
- 3.1.3.4** The software shall include the testing of the application binaries built by the development team both in IDE as well as through CI pipelines using Azure DevOps. Prebuilt plugins and well as APIs shall be available.
- 3.1.3.5** The software shall disallow developers to tune the engine, therefore revoking true 3<sup>rd</sup> party attestation, from compliance standards. All tests performed shall run a full suite of tests including but not limited to OWASP Top 10, SANS25 and CERT Secure Coding Practices.
- 3.1.3.6** The software shall provide automated code review on first party code. The test shall analyze both binary and source, traversing the data and control flow of the application, accurately detecting external input and exchange of information down to source file, line number and accurate remediation advice.
- 3.1.3.7** The software shall provide static analysis using the 'shift-left' methodology, enabling best practices at the developer level.
- 3.1.3.8** The software will scan individual files (Java, JavaScript, C#/.Net, ColdFusion), within common developer IDEs such as Eclipse, IntelliJ, and Azure DevOps. The results of the file-based scans will provide remediation guidance to developers as a multi-purposed solution: One as a secure code review mechanism, and the second as a training tool for best secure coding practices in order to reinforce development secure coding techniques.
- 3.1.3.9** The software shall provide a method for developers to add comments and potential compensating controls against flaws marked as propositions. The proposed flaws will then be reviewed by an approver, identified as a Security Architect and/or Development Manager.

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**3.1.3.10** Vendor will include in their bid the cost of optional Annual renewals for years 2, 3, and 4. These optional Annual renewals will be initiated on Agency request authorized under the authority of the Purchasing division.

**3.1.4 Contract Service 3: Annual Subscription Support Services**

**3.1.4.1** The Vendor must provide annual subscription support services for all of the registered end-users.

**3.1.4.2** The Vendor must provide annual subscription support services that includes the following:

**3.1.4.2.1** Support by telephone, online, in-app, and email 24 hours a day, 7 days a week, 365 days a year for troubleshooting technical issues

**3.1.4.2.2** A response time of a minimum of one (1) day to request for technical support.

**3.1.4.2.3** Access to knowledgebase, technical documentation, and online support resources.

**3.1.4.2.4** Vendor will include in their bid the cost of optional Annual renewals for years 2, 3, and 4. These optional Annual renewals will be initiated on Agency request authorized under the authority of the Purchasing division.

**3.1.5 Contract Services 4: On-Boarding, Training, and Integration Services**

**3.1.5.1** The Vendor must provide on-boarding, training, and integration services for each end-user.

**3.1.5.1.1** The Vendor must provide on-boarding for a quantity of 35 end-users.

**3.1.5.1.1.1** On-boarding must include getting the end-user registered, setting up login information, and establishing user-environment, defining and implementing and validating necessary security policies.

**3.1.5.1.2** The Vendor must provide integration with Agency network and DevOps solutions.

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- 3.1.5.1.3 The Vendor must provide system training for a maximum quantity of eight (8) hours for a total of 35 end-users.
  - 3.1.5.1.3.1 The Vendor must provide training via remote access.
  - 3.1.5.1.3.2 The Agency will contact the winning Vendor via email or by phone to schedule the training sessions.
  - 3.1.5.1.3.3 All training material must be presented in English.
  - 3.1.5.1.3.4 Training with travel requirements of the end-user is not acceptable.

**4. CONTRACT AWARD:**

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

**Contract will be evaluated on all lines but only awarded on first year.**

Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

- 4.2 **Pricing Pages:** Vendor should complete the Exhibit A - Pricing Page by providing the unit cost for each contract item. The Vendor will then take the Overall Total Bid Amount and enter it into wvOASIS Pricing Section. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

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

Vendor should provide with their bid a copy of any and all Software Terms and Conditions or licenses that the State of West Virginia or the Agency will have to agree to or accept as a part of this solicitation. This information will be required before contract is issued.

Vendor should include a copy of any Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency will be required to agree to and accept as a part of this solicitation. This information will be required before contract is issued.

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Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: [Jessica.S.Chambers@wv.gov](mailto:Jessica.S.Chambers@wv.gov).

**5. ORDERING AND PAYMENT:**

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

**6. DELIVERY AND RETURN:**

- 6.1 Delivery Time:** Vendor shall deliver standard orders within [insert days permitted for delivery] working days after orders are received. Vendor shall deliver emergency orders within [insert days permitted for delivery] working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

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

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- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7. VENDOR DEFAULT:**

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

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

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

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

**8. MISCELLANEOUS:**

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- 8.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 8.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

<b>Contract Manager:</b>	Summer Bailey
<b>Telephone Number:</b>	304-541-4288
<b>Fax Number:</b>	888-764-8889
<b>Email Address:</b>	Summer_Bailey@SHI.com

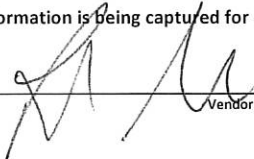


**EXHIBIT A – Pricing Page**  
**Application Security Tool (OT20029)**

Item #	Item Description	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
<b>Contract Service 1: Dynamic Scanning Requirements</b>					
3.1.2	Contract Service 1: Dynamic Scanning Requirements	EA	250	\$ 558.79	\$ 139,697.50
3.1.2	Optional Renewal Year 2 - Contract Service 1: Dynamic Scanning Requirements	EA	250	\$ 558.79	\$ 139,697.50
3.1.2	Optional Renewal Year 3 - Contract Service 1: Dynamic Scanning Requirements	EA	250	\$ 558.79	\$ 139,697.50
3.1.2	Optional Renewal Year 4 - Contract Service 1: Dynamic Scanning Requirements	EA	250	\$ 558.79	\$ 139,697.50
<b>Contract Service 2: Static Scanning Requirements</b>					
3.1.3	Contract Service 2: Static Scanning Requirements	EA	40	\$ 3,827.47	\$ 153,098.80
3.1.3	Optional Renewal Year 2 - Contract Service 2: Static Scanning Requirements	EA	40	\$ 3,827.47	\$ 153,098.80
3.1.3	Optional Renewal Year 3 - Contract Service 2: Static Scanning Requirements	EA	40	\$ 3,827.47	\$ 153,098.80
3.1.3	Optional Renewal Year 4 - Contract Service 2: Static Scanning Requirements	EA	40	\$ 3,827.47	\$ 153,098.80
<b>Contract Service 3: Annual Subscription Support Services</b>					
3.1.4	Contract Service 3: Annual Subscription Support Services	EA	1	\$ 59,852.20	\$ 59,852.20
3.1.4	Optional Renewal Year 2 - Contract Service 3: Annual Subscription Support Services	EA	1	\$ 59,852.20	\$ 59,852.20
3.1.3.3	Optional Renewal Year 3 - Contract Service 3: Annual Subscription Support Services	EA	1	\$ 59,852.20	\$ 59,852.20
3.1.3.4	Optional Renewal Year 4 - Contract Service 3: Annual Subscription Support Services	EA	1	\$ 59,852.20	\$ 59,852.20
<b>Contract Services 4: On-Boarding, Training, and Integration Services</b>					
3.1.5	Contract Services #4: On-Boarding, Training, and Integration Services	EA	1	\$ -	\$ -
<b>Overall Total Bid Amount</b>				\$	1,410,594.00

The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Please note: This information is being captured for auditing purposes

  
 \_\_\_\_\_  
 Vendor Signature:

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

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

**DEFINITIONS:**

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

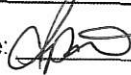
**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

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

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: SHI International Corp.

Authorized Signature:  Date: 11/12/2019

State of New Jersey

County of Somerset, to-wit:

Taken, subscribed, and sworn to before me this 12 day of November, 2019.

My Commission expires July 7, 2024, 20  .

AFFIX SEAL HERE

NOTARY PUBLIC





# West Virginia Ethics Commission



## Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1 million or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

*"Interested party"* or *"Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of *W. Va. Code* § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: [ethics@wv.gov](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*



West Virginia Ethics Commission  
**Disclosure of Interested Parties to Contracts**

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: SHI International Corp. Address: 290 Davidson Ave.  
Somerset, NJ 08873

Name of Authorized Agent: Eigil Pantaleon Address: 290 Davidson Ave. Somerset, NJ 08873

Contract Number: \_\_\_\_\_ Contract Description: \_\_\_\_\_

Governmental agency awarding contract: \_\_\_\_\_

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.
  
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:  Date Signed: 11/11/2019

**Notary Verification**

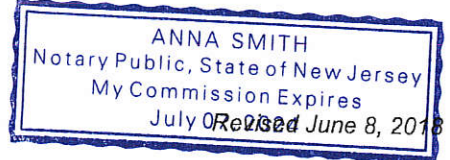
State of New Jersey, County of Somerset:

I, Eigil Pantaleon, 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 11 day of November, 2019.

  
Notary Public's Signature

**To be completed by State Agency:**  
Date Received by State Agency: \_\_\_\_\_  
Date submitted to Ethics Commission: \_\_\_\_\_  
Governmental agency submitting Disclosure: \_\_\_\_\_



## SHI Comments To Terms And Conditions for West Virginia

This proposal is based on mutually agreeable terms and conditions. If SHI is a potential candidate for award, we will be pleased to discuss the details of the terms and conditions for the contract. If SHI and You already have a contract in place that covers these offerings, we can use those to avoid conflicting documents and make the contracts turnaround time faster. SHI is a reseller and not OEM. SHI provides services as a reseller. Therefore, the terms and conditions have been modified below to reflect this relationship.

Ref.	Customer Terms and Conditions	SHI Redline	SHI Explanation
<b>General Terms and Conditions; 28. Warranty</b>	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.	The Vendor <del>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 shall forward the warranties to the State which are provided to Vendor from the software publisher ("Publisher") of the goods, and to the extent granted by the Publisher, the State shall be the beneficiary of the Publisher's warranties with respect to the goods. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, VENDOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES OR PRODUCTS. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY WARRANTY PROVIDED BY A PUBLISHER..</del>	SHI is not the OEM of the products, so we can only pass through the OEM's warranty.
<b>General Terms and Conditions; 30. Privacy, Security, and Confidentiality</b>	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 <a href="http://www.state.wv.us/admin/purchase/privacy/default.html">http://www.state.wv.us/admin/purchase/privacy/default.html</a> .	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. <del>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.</del>	If we agree to this, we'll need to add as an attachment and we would have some edits. In the interest of time we'd like to leave out as this is one order being placed for software.
<b>General Terms and Conditions; 36. Indemnification</b>	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	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, <del>person, or firm</del> 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	We will indemnify for a subcontractor we may use, but not any third party supplier.

## SHI Comments To Terms And Conditions for West Virginia

Ref.	Customer Terms and Conditions	SHI Redline	SHI Explanation
	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.	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.	
<b>Specifications: 6. Delivery and Return; 6.4 Return of Unacceptable Non-conforming Items</b>	If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expense. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.	If the Agency deems the Contract Items to be <del>unacceptable non-conforming</del> , the Contract Items shall be returned to Vendor at Vendor's expense <del>and with no restocking charge</del> <u>according to the Vendor's return policy at <a href="http://www.shi.com/returnpolicy">www.shi.com/returnpolicy</a> ("Vendor Return Policy")</u> . Vendor shall either make arrangements for the return within five (5) days of being notified that items are <del>unacceptable non-conforming, or permit the Agency to arrange for the return and reimburse Agency for delivery expense. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request.</del> All returns of <del>unacceptable non-conforming</del> items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.	All returns shall be subject to SHI's return policy at <a href="http://www.shi.com/returnpolicy">www.shi.com/returnpolicy</a> .
<b>Specifications: 6. Delivery and Return; 6.5 Return Due to Agency Error</b>	Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.	Items ordered in error by the Agency <del>will</del> <u>may</u> be returned for credit within 30 days of receipt <u>subject to the Vendor's Return Policy</u> , F.O.B. Vendor's location. <del>Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.</del>	All returns will be subject to SHI's return policy. We are subject to the OEM's policies regarding restocking fees so we must pass these policies on to you.
<b>ADD</b>		<b>LIMITATION OF LIABILITY:</b>  (i) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.  (ii) TO THE EXTENT PERMITTED BY LAW, EXCEPT IN THE CASE OF BREACH OF EACH VENDOR'S LIABILITY FOR PERSONAL INJURY/PROPERTY DAMAGE UNDER ARTICLE ENTITLED, "INDEMNIFICATION", VENDOR'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY THE STATE	If awarded, SHI requires a limitation of liability clause.

## SHI Comments To Terms And Conditions for West Virginia

Ref.	Customer Terms and Conditions	SHI Redline	SHI Explanation
		TO VENDOR UNDER THE PURCHASE ORDER WHICH GAVE CAUSE FOR SUCH LIABILITY.	
<b>ADD</b>		<p>Force Majeure:</p> <p>Neither party shall be liable to the other for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by the other party, or unusually severe weather affecting the Agency, the Vendor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. The party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. The Vendor shall notify the Agency promptly of any such delay and shall specify the effect on the product as soon as practical.</p>	If awarded, SHI requires a limitation of liability clause.