

The UPS Store

7305 Hancock Village Dr.
Chesterfield, VA 23832
P. 804.739.9125
F. 804.739.9126
store4697@theupsstore.com
theupsstorelocal.com/4697

RECEIVED

2024 FEB 22 AM 11:26

WV PURCHASING
DIVISION

Fax

To Mark Atkins

From Bank of America
Charles T. Maguire

Company Dept of Admin, Purchasing

Phone number _____

Fax number West Virginia
304-588-3970

Fax number _____

Date 2/22/24

Total pages 12 including cover page

Job number proposal # SWC2400000004

Financing Services

Mark,

Printing Services

Mailbox Services

Notary Services

Freight Services

Packaging Services

Please see attached proposal
in response to RFO SWC2400000004.

I uploaded to Oasis as well but
was having trouble, so I am sending
this as backup.

Thank you
Chuck




2/21- uploaded version

February 21, 2024

Mark A. Atkins
Department of Administration
Purchasing Division
2019 Washington Street East
WV 25305

Dear Mr. Atkins,

Banc of America Public Capital Corp ("BAPCC") is pleased to submit to you the Master Lease proposal (the "Proposed Transaction") described in the attached Summary of Terms and Conditions (the "Term Sheet"). Please note: the language contained in this Proposal/Response to Request for Proposal supplements, rather than amends, the terms of the RFP, contract and the financing agreements.

Since we already have the master lease in place with the State, we are prepared to close quickly. We have compared the RFP's master lease with our existing master lease and provided comments on our Clarification to Documents attachment.

This letter and the Term Sheet (collectively, the "Proposal" or "Proposal Letter") include only a brief description of the principal terms of the Proposed Transaction, and are intended for discussion purposes only. This Proposal Letter is not intended to and does not create any binding legal obligation on the part of either party. THIS PROPOSAL LETTER IS NOT, AND IS NOT TO BE CONSTRUED AS, A COMMITMENT OR OFFER BY BAPCC OR ANY RELATED ENTITY TO ENTER INTO THE PROPOSED TRANSACTION. BAPCC will not be obligated to provide any financing until the satisfactory completion of its credit, legal and investment approval process. The terms and conditions of this Proposal Letter shall be superseded by and shall no longer be effective upon the execution and delivery of final legal documentation with respect to this Proposed Transaction.

This Proposal must be accepted on or before March 22, 2024, for BAPCC to proceed with its consideration of the Proposed Transaction. To accept this proposal, please sign the enclosed copy of this letter and return it, by no later than March 22, 2024, to:

Banc of America Public Capital Corp
1111 E. Main Street, 18th Floor
Richmond, VA 23832
P - 804-489-5044
F - 804-262-8344

"Bank of America" is the marketing name used by certain Global Banking and Global Markets businesses of Bank of America Corporation. Lending, leasing, equipment finance and other commercial banking activities, and trading in certain financial instruments are performed globally by banking affiliates of Bank of America Corporation, including Bank of America, N.A., Member FDIC. Banc of America Public Capital Corp, a wholly-owned subsidiary of Bank of America, National Association, is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended, with respect to any municipal financial product or issuance of municipal securities. The information provided in this document is not intended to be and should not be construed as "advice" with the meaning Section 15B of the Securities Exchange Act of 1934 and the municipal advisor rules of the SEC. © 2020 Bank of America Corporation. All rights reserved.

Page 2

We appreciate this opportunity to present Bank of America.

Very truly yours,

BANC OF AMERICA PUBLIC CAPITAL CORP

Charles T. Maguire

Charles T. Maguire
Senior Vice President

The undersigned, by its authorized representative below, accepts the above proposal, agrees to furnish BAPCC, its successors and assigns, any information relating to the business or financial condition of VPA or its affiliates, and authorizes BAPCC, Bank of America, N.A. and their affiliates to disclose to, discuss with and distribute such information (and any information they may already have) to any other affiliates or proposed assignees or successors of BAPCC.

State of West Virginia

By: _____

Title: _____

Date: _____

This proposal is submitted in response to your Request for Proposal for Financing under a Master Equipment Lease Agreement, dated February 12, 2024. The contents of this proposal and any subsequent discussions between us, including any and all information, recommendations, opinions, indicative pricing, quotations and analysis with respect to any municipal financial product or issuance of municipal securities, are provided to you in reliance upon the exemption provided for responses to requests for proposals or qualifications under the municipal advisor rules (the "Rules") of the Securities and Exchange Commission (240 CFR 15Ba1-1 et seq.).

The Staff of the SEC's Office of Municipal Securities has issued guidance which provides that, in order for a request for proposals to be consistent with this exemption, it must (a) identify a particular objective, (b) be open for not more than a reasonable period of time (up to six months being generally considered as reasonable), and (c) involve a competitive process (such as by being provided to at least three reasonably competitive market participants) or by being publicly posted to your official website. In submitting this proposal, we have relied upon your compliance with this guidance.

In submitting this proposal, we are not undertaking to act as a "municipal advisor" to you or any other person within the meaning of the Rules. In connection with this proposal and the transactions described herein, we are not subject to, and we hereby disclaim, any fiduciary duty to you or to any other person. We understand that you will consult with and rely on the advice of your own municipal, financial, tax, legal and other advisors as and to the extent you deem necessary in connection with your evaluation of this proposal and the transactions described herein.

The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document and before taking any action with respect to this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

SUMMARY OF TERMS AND CONDITIONS

Date: February 21, 2024

Lessee: State of West Virginia – Purchasing Division of the Department of Administration

Lessor: Banc of America Public Capital Corp (“BAPCC”) or its designee/assignee (“Lessor”)

Equipment: Essential use assets as outlined in RFP

Structure: This Master Lease will be intended as a **NON BANK QUALIFIED** secured transaction; all tax benefits will remain with Lessee; all expenses, including (but not limited to) insurance, maintenance, and taxes, will be for the account of Lessee.

Term: 3, 4, 5 and 7 years.

Maximum Funding: Initial annual funding is expected to be up to \$12 million per section 1.1 of the Specifications section.
Based on the needs of the State, the \$12,000,000 in annual financing can be increased upon mutual agreement of the parties.

Index: Any funding will be based on the formula in the attached pricing page which will be good for one year from date of proposal, after which time it may be adjusted subject to the mutual agreement of both parties

Utilization: Lease approval is valid for one-year from commencement with optional one-year extensions at commencement anniversary subject to credit and pricing review. The extension will be mutually agreeable to Lessee and Lessor.

Governmental Entity Lease: The Base Rent installments are calculated on the assumptions, and Lessee will represent, that Lessee is a state or political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code (the “Code”), that this transaction will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code. Lessee shall provide Lessor with such evidence as Lessor may request to substantiate and maintain such tax status.
Lessee will indemnify Lessor only as to the actions or omissions of the Lessee, on an after-tax basis, against any loss of Federal income tax exemption of the interest portion of the rentals and against any penalties and interest imposed by the Internal Revenue Service on Lessor in connection therewith on a lump-sum basis.

Expenses: Lessee and Lessor will each be responsible for its own expenses incurred in connection with the preparation, negotiation and closing of the lease documentation. There are no other fees or costs associated with this transaction.

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Escrow**Account:**

Lessee may direct that proceeds be deposited, subject to compliance with applicable regulations under the Internal Revenue Code, including, but not limited to arbitrage regulations, the proceeds of the Lease in an escrow acceptable to Lessor, and disbursements made therefrom to pay for the Project upon the execution and delivery of an acceptance certificate (and related documents) by Lessee and approved by Lessor.

Documents:

Lease documents in form and substance satisfactory to Lessor and its local counsel must be executed and delivered. If Lessor requests, Lessee will also furnish duly executed landlord and mortgage waivers and supporting information. Lessee will also provide board resolutions, incumbency certificates and other documentation required by Lessor. Validity Opinion will be required on the Master Lease and each Appendix.

Please see additional comments on our Clarification to Documents attachment.

Non-Appropriation**Termination:**

Lessee affirms that funds are available for the current fiscal year and reasonably believes that sufficient funds can be obtained to make all rental payments during each subsequent fiscal year. Lessee will regularly budget for and otherwise use its best efforts to obtain funds for the continuation of the rentals in this transaction.

General**Disclaimer:**

Many of the terms and conditions contained in the RFP and its attachments are not applicable to a financing transaction such as is contemplated by the RFP and this proposal response. Consequently, the terms and conditions contained in the final lease agreement negotiated and executed by and between the parties shall govern the relationship. Unless a provision is expressly included in that final lease agreement or its related documentation, said provision will not apply.

Private**Placement:**

The proposed transaction is a private placement that will not require (i) any additional public ongoing disclosure requirements, (ii) any additional public offering document generation requirements, or (iii) any underwriting or related fees.

Market**Disruption:**

Notwithstanding anything contained herein to the contrary, in the event any material change shall occur in the financial markets after the date of this Proposal Letter, including but not limited to any governmental action or other event which materially adversely affects the extension of credit by banks, leasing companies or other lending institutions, the Lessor may modify the indicative pricing described above.

SEC**Disclosure:**

Lessee acknowledges and agrees that, if, in connection with its efforts to comply with the requirements of SEC Rule 15c2-12(b)(5) of the Securities and Exchange Act of 1934, Lessee decides to file any documentation related to the proposed transaction to EMMA (the "Disclosed Documents"), such Disclosed Documents shall be filed with redactions that will be mutually agreed upon by the parties to ensure that there is no confidential information of Lessor included in the posted documents (i.e. account information, names of signatories).

The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the disclosures, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

USA Patriot Act

Compliance:

The Lessee acknowledges that pursuant to the requirements of the USA Patriot Act, as amended from time to time (including as amended by the USA Freedom Act of 2015) (the "Patriot Act"), the Lessor is required to obtain, verify and record information that identifies the Lessee, which information includes the name and address of the Lessee and other information that will allow the Lessor to identify the Lessee in accordance with the Patriot Act.

The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp. or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

CLARIFICATIONS/COMMENTS TO RFP MASTER LEASE

Electronic Signatures. This Agreement, any Schedule, and any other documents or instruments executed by either party in connection herewith and therewith (collectively the "Related Documents"), may be executed and delivered by facsimile signature or other electronic or digital means (including, without limitation, Adobe's Portable Document Format ("PDF")). Any such signature shall be of the same force and effect as an original signature, it being the express intent of the parties to create a valid and legally enforceable contract between them. The exchange and delivery of the Related Documents and the related signature pages via facsimile or as an attachment to electronic mail (including in PDF) shall constitute effective execution and delivery by the parties and may be used by the parties for all purposes. Notwithstanding the foregoing, at the request of either party, the parties hereto agree to exchange inked original replacement signature pages as soon thereafter as reasonably practicable.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS:

24. Israel Boycott Certification. BAPCC agrees to provide this certification, except to the extent such activities are permitted under federal law.

MASTER LEASE:

Section 9, Lease Payments – need to revise this language to include reference to average-life swaps, Secured Overnight Funding Rate ("SOFR"), source and timing of rates (Refinitiv, 8:30 a.m. eastern, each morning), zero floor and triggers for change for both publication source and SOFR cessation consistent with phrasing in currently negotiated MLPFA.

Section 12. Title to Leased Equipment – need to reference security interest in the escrow account and potential proceeds from collateral and escrow.

Section 21. Escrow – We requested the following three provisions that were included in the executed Escrow and Account Control agreement dated December 1, 2023 between the State and our energy services group be included in this Escrow and Account Control Agreement:

- (f) Unless the Escrow Agent is guilty of negligence or willful misconduct with regard to its duties hereunder, to the fullest extent permitted by law and subject to W. Va. Code § 5A-3-62, Lessee agrees to and does hereby release and indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Escrow Agent under this agreement; and in connection therewith, does to the extent permitted by law and, subject to W. Va. Code § 5A-3-62, indemnify the Escrow Agent against any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.
- (h) The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its negligent or willful misconduct.
- (i) Lessee shall reimburse the Escrow Agent for all reasonable costs and expenses, including those of the Escrow Agent's attorneys, agents and employees incurred for non-routine administration of the Escrow Account and the performance of the Escrow Agent's powers and duties hereunder in connection with any Event of Default under the Lease, any termination of the Lease due to an Event of Non-appropriation, or in connection with any dispute between Lessor and Lessee concerning the Escrow Account.

The transaction described in this document is an arm's length, commercial transaction between you and Banc of America Public Capital Corp, or one of its affiliates, ("BAPCC") in which: (i) BAPCC is acting solely as a principal (i.e., as a lender or lessor) and for its own interest; (ii) BAPCC is not acting as a municipal advisor or financial advisor to you; (iii) BAPCC has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether BAPCC or any of its affiliates has provided other services or is currently providing other services to you on other matters); (iv) the only obligations BAPCC has to you with respect to this transaction are set forth in the definitive transaction agreements between us; and (v) BAPCC is not recommending that you take an action with respect to the transaction described in this document, and before taking any action with respect to the this transaction, you should discuss the information contained herein with your own legal, accounting, tax, financial and other advisors, as you deem appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity.

EXHIBIT A PRICING PAGE

CRFQ SWC240000004

NO ALTERATIONS TO THIS SPREADSHEET WILL BE ACCPTED

VENDOR NAME: Bank of America Public Capital Corp

Vendor must ensure that all bid items in columns C, D and E even if that value is zero

Spreadsheet is set to perform calculations automatically, but vendor must ensure that spreadsheet accurately calculates desired interest rate in column F prior to bid submission.

| A | B | C | D | E | F | G | H |
|------------|-------------------|--|---|--|----------------------------------|---|-------------------------|
| Term (YRS) | Average Life Rate | Proposed Index Interest Rate (Express as decimal) (**See Note Below**) | Less Discount Premium to Convert Rate for Tax Exemption (Express as Percentage) | Plus Fixed Spread/Buse Points (Expressed as Percentage Point Increase) | Interest Rate (Percent Per Year) | Estimated Principal (for Evaluation Only) | Annual Interest Charges |
| 3 | 2 | 4.3499 | 0.7835 | 0.6782 | 4.0863 | \$2,679,118.52 | \$109,378.07 |
| 4 | 2 | 4.3499 | 0.7835 | 0.5433 | 3.9514 | \$16,672,670.00 | \$658,811.66 |
| 5 | 3 | 4.0679 | 0.7835 | 0.6765 | 3.8637 | \$733,291.00 | \$28,332.16 |
| 7 | 4 | 3.9226 | 0.7835 | 0.7727 | 3.8461 | \$1,780,846.00 | \$68,492.35 |

Total Annual Interest \$865,114.25

Bank of America Public Capital Corp Interest Index to be used with every bid item. Input provided to Bidder. Not Valid



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

State of West Virginia
Centralized Request for Quote
Financial

Proc Folder: 1372040
Doc Description: Financing Services

Reason for Modification:

Proc Type: Statewide MA (Open End)

| Date Issued | Solicitation Closes | Solicitation No | Version |
|-------------|---------------------|-------------------------|---------|
| 2024-02-07 | 2024-02-22 13:30 | CRFQ 0212 SWC2400000004 | 1 |

BID RECEIVING LOCATION

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

VENDOR

Vendor Customer Code:
Vendor Name: *Char Bank of America Public Capital Corp*
Address: *111 E. Main St, 10th fl*
Street:
City: *Richmond*
State: *VA* Country: Zip: *23219*
Principal Contact: *Charles T. McGuire*
Vendor Contact Phone: *804-763-8742* Extension:


FOR INFORMATION CONTACT THE BUYER

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

Vendor Signature X *[Signature]*

FEIN# *48-1173664* DATE *2-20-24*

All offers subject to all terms and conditions contained in this solicitation and bidder's proposal responses.

| | | |
|---|--|---|
|  | Department of Administration Purchasing Division 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130 | State of West Virginia Centralized Request for Quote Financial |
| | | |

| | |
|--|---|
| Proc Folder: 1372040 Doc Description: Financing Services Proc Type: Statewide MA (Open End) | Reason for Modification: ADDENDUM_1 |
|--|---|

| Date Issued | Solicitation Closes | Solicitation No | Version |
|-------------|---------------------|-------------------------|---------|
| 2024-02-12 | 2024-02-22 10:30 | CRFQ 0212 SWC2400000004 | 2 |

BID RECEIVING LOCATION

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

VENDOR

Vendor Customer Code:
 Vendor Name: *Bank of America Public Capital Corp*
 Address: *1111*
 Street: *E. Main St, 10th fl*
 City: *Richmond*
 State: *VA* Country: Zip: *23219*
 Principal Contact: *Charles T Maguire*
 Vendor Contact Phone: *804 763-8742* Extension:

FOR INFORMATION CONTACT THE BUYER
 Mark A Atkins
 (304) 558-2307
 mark.a.atkins@wv.gov

Vendor Signature X *Charles T Maguire* FEIN# *48-1173664* DATE *2/20/24*

All offers subject to all terms and conditions contained in this solicitation and BAPCC's proposal responses

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC2400000004

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

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

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

Banc of America Public Capital Corp
Company

[Signature]
Authorized Signature

2/20/24
Date

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

REQUEST FOR QUOTATION
CRFQ 0212 SWC2400000004

Financing Services for Equipment and other Capital
Financing needs for various State Agencies in the form of a Master Lease Purchase Finance
Agreement (MLPFA)

8. VENDOR DEFAULT:

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

- 8.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.
- 8.1.2. Failure to comply with other specifications and requirements contained herein.
- 8.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 8.1.4. Failure to remedy deficient performance upon request.

8.2. The following remedies shall be available to the Agency upon default.

- 8.2.1. Immediate cancellation of the Contract.
- 8.2.2. Immediate cancellation of one or more release orders issued under this Contract.
- 8.2.3. Any other remedies available in law or equity.

9. MISCELLANEOUS:

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

Contract Manager: Charles T. Maguire

Telephone Number: 804 763 8742

Fax Number: -

Email Address: charles.maguire@bofa.com