



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

State of West Virginia
Master Agreement

Order Date: 2016-06-15

CORRECT ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS
 ORDER SHOULD BE DIRECTED TO
 THE DEPARTMENT CONTACT.

Order Number: CMA 0212 0212 FUELTT14AA	Procurement Folder: 227128
Document Name: FUELTT14AA- Reissue of FUELTT14A	Reason for Modification:
Document Description: FUELTT14AA- Reissue of FUELTT14A	
Procurement Type: Statewide MA (Open End)	
Buyer Name: Jessica S Chambers	
Telephone: (304) 558-0246	
Email: jessica.s.chambers@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2016-07-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2017-03-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000203179 R T ROGERS OIL CO INC 300 GRACE ST HINTON WV 259512500 US Vendor Contact Phone: (999) 999-9999 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Jessica S Chambers Requestor Phone: (304) 558-0246 Requestor Email: jessica.s.chambers@wv.gov

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

Total Order Amount	Open End
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AGENCY COPY

<i>Jsc 6/15/16</i> PURCHASING DIVISION AUTHORIZATION SIGNED BY: <i>[Signature]</i> DATE: <i>6/16/2016</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: <i>Robert Hishie</i> DATE: <i>6/22/16</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: <i>Katrina DeFuria</i> DATE: <i>6/22/16</i> ELECTRONIC SIGNATURE ON FILE
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EARL RAY TOMBLIN
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25308-0130

MARY JANE FICKENS
ACTING CABINET SECRETARY
DAVID TINCHER
DIRECTOR

June 10, 2016

RT Rogers Oil Company, Inc.
Post Office Box 160
Hinton, WV 25951

*6-10-16
We can still honor
our bid submitted on
March 24 2014.
Greg Rogers
President*

Subject: FUELTT14A- Request to Honor Pricing

Dear Greg:

March 24, 2014, RT Rogers Oil Company Incorporated submitted a bid to the Purchasing Division for RFQ FUELTT14. Due to recent unforeseen circumstances, the current lowest successful bidder of this contract has notified us they will no longer be able to honor their contract and your company is the apparent next lowest successful bidder.

I have attached the pricing you provided for FUELTT14 for your convenience. Please notify me within three business days, in writing, if you can still honor your bid submitted on March 24, 2014, servicing District One, for the time period of July 1, 2016 through March 31, 2017.

Sincerely,

Jessica Chambers
Jessica Chambers, Senior Buyer
Purchasing Division

JSC/Attachments
Cc file

(304) 558-2306
1) 598-4115

WVPurchasing.gov

E.E.O./AFFIRMATIVE ACTION EMPLOYER

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order 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 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.

 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

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

 - 2.5 **"Purchase Order"** 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 successful bidder and Contract holder.

 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.

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

 - 2.8 **"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 7/1/2014

and extends for a period of _____ 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 must be submitted to the Purchasing Division Director 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. Renewal of this Contract is limited to two (2) successive one (1) year periods. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Reasonable Time Extension: At the sole discretion of the Purchasing Division Director, and with approval from the Attorney General's office (Attorney General approval is as to form only), this Contract may be extended for a reasonable time after the initial Contract term or after any renewal term as may be necessary to obtain a new contract or renew this Contract. Any reasonable time extension shall not exceed twelve (12) months. Vendor may avoid a reasonable time extension by providing the Purchasing Division Director with written notice of Vendor's desire to terminate this Contract 30 days prior to the expiration of the then current term. During any reasonable time extension period, the Vendor may terminate this Contract for any reason upon giving the Purchasing Division Director 30 days written notice. Automatic extension of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases, but Attorney General approval may be required.

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

One Time Purchase: The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall 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 Purchase Order 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. **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.

7. **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.

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

- BID BOND:** All Vendors shall furnish a 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 . The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.
- 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 issued and 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.

- 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.
- WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.
- INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:
- Commercial General Liability Insurance:**
or more.
 - Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.
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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 above.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, 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.

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-
-

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.

9. LITIGATION BOND: The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

10. ALTERNATES: Any model, brand, or specification listed herein 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.

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

requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

- 30. 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.
- 31. 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). **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.**
- 32. 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.
- 33. 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.
- 34. 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. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
- 35. 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.
- 36. 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.
- 37. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

38. [RESERVED]

39. 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>.

40. DISCLOSURE: Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

41. LICENSING: In accordance with West Virginia Code of State Rules §148-1-6.1.7, 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. 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.

42. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Purchase Order 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.

43. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid 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 RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid 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 on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid 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.

44. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

45. 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.

46. 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.

47. PURCHASING AFFIDAVIT: In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by and extends to 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"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

49. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire any 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.

50. 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.

51. 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.

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

52. 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:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- b. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

53. 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.

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of State Agencies and Political Subdivisions to establish an open-end contract for Truck Transport (T/T) of motor and heating fuels as defined below.
 2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below.
 - 2.1 “Contract Item” or “Contract Items” means the list of items identified in Section 3, Subsection 1 below.
 - 2.2 “Pricing Pages” means the schedule of prices, estimated order quantities, and totals attached hereto as Exhibit A and used to evaluate the RFQ.
 - 2.3 “RFQ” means the official RFQ published by the Purchasing Division and identified as FUELTT14.
 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 **UNLEADED GASOLINE**
 - 3.1.1.1 Shall comply with the most recent ASTM D 4814-07a or the most current edition of the State Specifications for Automotive Gasoline. The minimum anti-knock octane for Unleaded Gasoline is 87. E-10, Ethanol Blend (87 Octane minimum) shall be an acceptable substitute for unleaded gasoline. Whenever E-10 is delivered, it must be noted as E-10 Blended Fuel on the vendor’s invoice.
 - 3.1.2 **DIESEL FUEL OIL**
 - 3.1.2.1 Shall comply with ASTM D975-09 or the latest edition except the Minimum Cetane Rating shall be 40, maximum of .05 weight of sulfur, a maximum aromatic content of 35 volume percent, and free of visible evidence of blue dye 1.4 dialkylamine-anthraquinone. Only clear (white) low sulfur diesel fuel is acceptable. The cloud points are as follows:

TYPE II +10F
TYPE II Ultra Low Sulfur
- Diesel Fuel Oil shall be an ultra-low sulfur all-purpose diesel fuel oil intended for the use in all automotive type diesel engines under all normal conditions of service. Fuel shall be free from water, grit, acid, and fibrous or

other foreign matter likely to clog or injure pumps, nozzles, or valves.

A biobased fuel component not to exceed 5.0 percent is acceptable.

3.1.3 SPECIAL REQUIREMENTS

3.1.3.1 During the period of November 1 to February 28, agencies *may* require winterized diesel motor fuels. If required, the diesel fuel shall be blended with a permissible diesel additive to reduce operability parameters (cloud point, cold filter plug point) and to increase winter operability, maintaining state/federal mandated regulatory specifications for on-road diesel fuel.

Any after-market additive used shall be identified by brand or trade name and manufacturer's purchase/exchange. An additive, if used, shall be Environmental Protection Agency (EPA) approved, and compatible with the refiner's product. Additives which increase emissions of sulfur and other substances proven to damage the environment which are disallowed by EPA regulations will not be accepted.

3.1.4 HEATING FUEL OILS

3.1.4.1 These specifications cover the grades #1, #2, #4 and #5 fuel oils for various types of fuel burning equipment. Heating oil specifications must meet the specifications of ASTM Heating Oil D396-09 or the latest edition.

The fuel oils herein specified shall be hydrogen oils free from grit, acid and fibrous or other foreign matter likely to clog or injure the burner or valves. If required, the oil shall be strained by being drawn through filter or wire of 16 mesh to the inch (U.S. Standard sieve 16, ASTM 1, 190 microns). The clearance area through the strainers shall be at least twice the area of the suction pipe and strainers shall be in duplicate.

The various grades of fuel oil shall conform to the detailed requirements for Fuel Oils "National Bureau of Standards" CS-12-48, dated September 25, 1948, or the latest edition: It is the intent of these specifications that

failure to meet any requirements of a given grade does not automatically place an oil in the next grade unless in fact it meets all requirements of the lower grade.

The technical requirements of the National Bureau of Standards Commercial Standards CS-12-48 are identical in substance with tentative specifications for fuel oil, American Society of Testing Materials D396-48T latest edition.

Fuel oil not meeting specifications is unacceptable to any of the localities and must be removed from tank at vendor's expense. No additional product may be added to change the grade of the product.

3.2 VENDOR ELIGIBILITY:

Vendors must be an established refiner, distributor or dealer for a minimum of three (3) years and must provide to the Purchasing Division the locations of all facilities that will be delivering to any of the ten regions within West Virginia and a list of equipment available to perform all the requirements of the contract. It is preferred the required information be submitted with the bid. Failure to provide the required information at the request of the Purchasing Division shall result in disqualification of the bid.

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 per Region/District as identified in Section 7.5 and as shown on the Pricing Pages. Pricing will be based from the source/terminal fuel is pulled from. Vendor's terminal sources must be listed on the Pricing Pages for each Region/District quoted. The terminal sources identified by the vendor in the third column of the Pricing Pages for each Region/District are the only terminals from which product can be pulled for the awarded Region/District. If a natural disaster or other event causes successful vendor's quoted terminal source(s) to be unavailable, vendor must contact the Purchasing Division and request a waiver for a stated period of time. The bid prices for any one Region/District shall not be conditioned on the award of any other Region/District.

4.2 Pricing Pages: Vendor should complete the Pricing Pages by completing the vendor's quotes for all contract items per each Region/District the vendor can provide Truck Transport (T/T) delivery. Prices quoted for a Region/District shall be the delivered price to all locations within the Region/District. The vendor shall bid a firm fixed markup (percentages not acceptable) for business profit and expenses to supply the products via Truck Transport (T/T) delivery to the State Agencies and Political Subdivisions. The vendor shall add the quoted fixed markup bid to the hypothetical OPIS product prices listed on the Pricing Page and record the extended price (last column of Pricing Page) for each product and each Region/District the

vendor quotes. Vendor's terminal/rack sources for product must be listed on the Pricing Page for each Region/District quoted. Applicable taxes and fees (see Item 5.3 of these specifications) payable by the State, will not be included in vendor's quotes.

Vendors 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.

Notwithstanding the foregoing, the Purchasing Division may correct errors at its discretion. Vendor should type or electronically enter the information into the Pricing Pages to prevent errors in the evaluation. The Pricing Pages were created as a Microsoft Excel document and Vendor can request an electronic copy for bid purposes by sending an email request to the following address:

Frank.M.Whittaker@wv.gov

Bids are requested for ALL products for delivery to a region.

Vendors must indicate the minimum delivery quantity for two (2) locations within 20 miles proximity delivered via Truck Transport (T/T). Additionally, vendors shall bid a fixed up-charge fee (see Pricing Page) for Truck Transport (T/T) delivery to a maximum of four (4) locations within 30 miles proximity.

5. ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders by regular mail, facsimile, e-mail, or any other written forms 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. Any on-line ordering system must have the capability to restrict prices and available items to conform to the Catalog originally submitted with this RFQ. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

5.1.1 All West Virginia State Agencies utilizing this contract will place their own orders with the approved contract vendor for the specific Region/District. Orders shall be placed Monday through Friday. Pricing of orders will be based on the Weekly OPIS Average Rack Price as of the DAY OF ORDER. West Virginia State Agencies utilizing this contract must purchase an OPIS license allowing the agency access to OPIS Weekly Average Rack Prices. Please contact OPIS at: 888-301-2654.

The West Virginia Division of Highways, district organizations will establish one (1) point of contact and one (1) back-up individual for orders, per DOH district.

5.1.2 Vendor Acknowledgement Procedure: The vendors must e-mail State agencies and political subdivisions upon receipt of an order, showing order confirmation and providing tentative delivery information. **Receipt of the vendor’s acknowledgement showing the vendor’s scheduled delivery date/time is important, as this allows the agency to insure staff will be available for the scheduled delivery.**

5.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. Methods of acceptable payment must include the West Virginia Purchasing Card. Payment in advance is not permitted.

Payment shall be made based on the rack/terminal that the fuel order is pulled from. Vendors shall not pull fuel from racks/terminals other than those quoted on the Pricing Page, without the express approval of the Purchasing Division. If vendors bid multiple rack/terminal sources, the vendor’s invoice will be based on the lowest price, or the vendor shall provide proof of the rack/terminal the product is pulled from on the invoice.

5.3 Taxes: The State of West Virginia agencies are exempt from the Federal Excise Tax, and the State Consumers Sales Tax. State of West Virginia agencies are **not** exempt from the State Excise Tax. The current State Excise Tax amount paid by State agencies is \$0.205 per gallon. West Virginia State agencies currently pay a variable rate component of the Motor Fuel Excise Tax on motor fuel sold or used of \$0.152 per gallon. State agencies are also responsible for the Federal L.U.S.T. Fee, which is assessed at \$0.001 per gallon. **No other fuel taxes or fees shall be charged to state agencies.** Any Superfund Tax must be included in the bidder’s mark-up price. The State will not accept bids from bidders who cannot meet the conditions relating to taxes and fees.

5.4 Verification of Product Pricing: Since the commodities listed on this contract are subject to weekly price changes, State Agencies utilizing the contract must be able to verify product pricing using the OPIS Weekly Average Price (as of day of order). The actual product price is computed as follows:

Average rack/terminal price from OPIS	+
State Excise Tax (motor fuels only)	+
Federal L.U.S.T. Fee	+
Vendor’s mark-up as quoted in contract	=
Price per Gallon, delivered	

5.5 Invoicing: Vendors are encouraged to utilize a paperless invoice process, submitting the following information via e-mail to the ordering locations:

Delivery ticket number(s) for fuel delivery, date and time of delivery and DOH or other ordering location.

Fuel types, total quantities, unit prices, applicable taxes, total prices, and the terminal source of supply for all deliveries.

Vendors shall process invoices within three (3) business days, maximum, of the delivery date.

NOTE: Under no circumstances will the State Agencies accept, or pay for quantities of fuel in excess of the quantity requested via the telephone or electronic order.

6. DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within three (3) working days after orders are received. The three (3) working day period shall commence the next business day after receipt of order. Vendor shall deliver emergency orders within 24 hours after order placement. Cost for a 24 hour Emergency Delivery shall be a fixed up-charge fee. Vendors should enter on the Pricing Page, the fixed up-charge fee for Emergency (24 hour) Delivery of product. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

Unless prior arrangements have been made, deliveries shall be made during normal work hours (7:30 am to 3:30 pm), Monday through Friday.

6.2 Delivery Tickets Required: Deliveries shall include a legible metered delivery ticket which has been processed through a meter certified and sealed by the State of West Virginia, Division of Weights and Measures, and stamped with quantities, location, time (a.m. / p.m.) date, driver and product. When bulk deliveries are made the driver shall stick the tank before and after product is delivered and enter the readings onto the delivery ticket.

Tanker trucks may make a delivery of a complete compartment and are permitted to substitute the allocation metered ticket from the loading point for the metered delivery ticket. West Virginia Code 47-1-11 adopts NCWM Hand Book 130 part "Uniform Engine Fuels...Regulation". Section 3 of that Regulation subparagraph 3.1.1 concerning documentation. A bill of Lading from the terminal source location is acceptable and shall contain quantities, location, time (a.m./p.m.) date, driver, and product.

The State Agency or Political Subdivision reserves the right to inspect bulkheads and to measure contents of tanks before, and the time of and/or after delivery. The State Agency or Political Subdivision measurements at the time of delivery shall prevail.

A copy of the delivery ticket, signed by both the driver and a person from the receiving facility, must be left at the location receiving the fuel. Delivery tickets must include the location where delivery was made, the product(s) delivered, the blended percentages, the number of gallons delivered, and the rack price or prices for blended fuels.

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- 6.3 Fuel Tank Requirements:** Vendors must have the capability to deliver to above ground storage tanks utilizing a remote fill system (catch can) on the tank. All Truck Transport (T/T) fuel deliveries to underground storage tanks shall be made using a vapor recovery nozzle. Truck Transport (T/T) deliveries to underground storage tanks without a properly equipped vapor nozzle will be denied by the state agency.
- 6.4 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.
- Failure to Make Deliveries:** A penalty fee of \$250 (reduction of invoice), can be imposed for failure to provide delivery of fuel within the three (3) working day period of order placement, unless such delay is attributable to terminal allocations. Vendors can submit documentation related to allocation issues to avoid the penalty.
- Vendors shall not be liable in damages for the delay of shipment or failure to deliver caused by fire, flood, Acts of God, Acts of Government, Act of an alien enemy, or by any other circumstance which in the opinion of the State Agency is beyond the control of the vendor. The State Agency may, purchase the needed products on the open market, until such time as products become available by the vendor/supplier.
- Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.
- 6.5 Emergency Declarations:** Should product become unavailable from a quoted terminal/rack location, in the event of a Declared Emergency (By the Governor), or other natural disaster, the vendor shall have the option to pull products from the next closest terminal/rack location. If that terminal/rack location was not quoted as a source of supply the vendor must seek a waiver (see Item 4.1) from the Purchasing Division prior to utilizing a non-quoted rack/terminal for State delivery. Upon approval by Purchasing Division, the State Agency shall reimburse the vendor the OPIS price for that terminal/rack location as well as the additional transport expenses associated with the deliveries as documented by the vendor.
- 6.6 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location.
- 6.7 Return of Unacceptable Items:** Delivery errors by the vendor's delivery personnel or agents/subcontractors shall be the responsibility of the vendor and must be corrected to the agency's satisfaction. 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 make arrangements for the return within two (2) days of being notified that items are unacceptable. 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.

- 6.8 **Return Due to Agency Error:** Vendors may charge a \$250 fee for errors on the part of State Agencies which disallow delivery of ordered product.
- 6.9 **Spillage and Cleanup:** The vendor shall be responsible for all spillage, which may occur during transit and unloading operations. The vendor shall immediately report any spillage to the office that ordered the fuel and clean up the spillage according to applicable EPA and State guidelines and requirements. Failure to do so will initiate corrective action and back charge to the vendor of any incurred cost.

7. **MISCELLANEOUS:**

- 7.1 **No Substitutions:** Vendor shall supply only Contract Items submitted in response to the RFQ unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 7.2 **Vendor Supply:** Vendor must carry sufficient inventory and/or have access to 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.
- 7.3 **Product Quality:** Fuels supplied shall be free from contamination. State Agencies and Political Subdivision shall reserve the right to sample, inspect and test fuel quality, in accordance with Federal Specifications upon delivery, prior to unloading. Should test results show the fuel contains contamination, it will be rejected. Samples will be taken without prior notices.

Contamination is defined as any element, which enters pure refined gasoline or diesel fuel either naturally or by purposeful action, which is not a product of refined crude oil with the exception of winter additives, detergents, and identifying dyes.

The awarded vendor shall be responsible for the removal of the fuels from State Agency or Political Subdivision property within two (2) working days after requested to do so should laboratory test results show fuel contains any level of contaminants. The vendor shall also be responsible for all cleanup required to all State Agency or Political Subdivision property, storage facilities, and equipment as a result of noncompliance with specifications. Furthermore, the vendor shall be fully responsible for any and all costs incurred by the State Agency or Political Subdivision for any equipment sustaining damage, which is attributed to a contaminated fuel(s), which the vendor has delivered.

- 7.4 **Reports:** Vendor shall provide quarterly reports and summaries for the contract period to the WV Department of Transportation Finance & Administration Division. This report shall also be sent to the Purchasing Division, Attention: Frank.M.Whittaker@wv.gov. This report shall show the quantities and total cost of each product and the location (DOH District/non-DOH deliveries - separate reports) of delivery, and a total of each product for each quarter, for each contract award. Failure to supply such reports may be grounds for cancellation of this Contract.

7.5 **Delivery Regions/Districts:** The State has been divided geographically into ten Regions (which are the same as the ten DOH Districts) as follows:

Region I: Mason, Putnam, Kanawha, Clay and Boone counties.

Region II: Cabell, Wayne, Lincoln, Logan and Mingo counties.

Region III: Pleasants, Wood, Ritchie, Wirt, Calhoun, Roane, and Jackson counties.

Region IV: Doddridge, Harrison, Marion, Taylor, Monongalia, and Preston counties.

Region V: Grant, Hardy, Mineral, Hampshire, Morgan, Berkeley and Jefferson counties.

Region VI: Tyler, Wetzell, Marshall, Ohio, Brooke and Hancock counties.

Region VII: Gilmer, Barbour, Lewis, Braxton, Upshur and Webster counties.

Region VIII: Tucker, Randolph, Pendleton and Pocahontas counties.

Region IX: Nicholas, Fayette, Greenbrier, Summers and Monroe counties.

Region X: Raleigh, Wyoming, McDowell and Mercer counties.

7.6 **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: WAYNE BOSTIC
 Telephone Number: (304) 466-1733
 Fax Number: (304) 466-1735
 Email Address: wbostic@strgers.com

FUELTT14 VENDOR PRICING PAGE

VENDOR: R.T. ROGERS OIL CO., INC.

DISTRICT	FUEL TYPE	Terminal Location Fuel Is To Be Pulled From	Six Month's ESTIMATED NEEDS (gals.)	OPIS Hypothetical Terminal Cost	Fixed Firm Markup Per Gallon From OPIS	Extended

Quantities represent Other Agency Estimated Quantities

Number of gallons for T/T delivery: 8,500 Gasoline 7,500 Diesel

Do split deliveries between multiple locations? Yes No

Number Qty: T/T delivery for 2 locations within 20 mile proximity: 8,000 Gallons

Number Qty: T/T delivery for 4 locations within 30 mile proximity (upcharge): \$100.00 per location

Agency Delivery Fee (upcharge): \$500.00

Terminal Abbreviations:

Altoona, PA - APA Fairfax, VA - FVA
 Ashland, KY - AKY Marletta, OH - MOH
 Charleston, WV - CWV Pittsburgh, PA - PPA
 Roanoke, VA - RVA

Contact/Coordinator: Greg Rogers, President

Phone Number: (304) 466-1733

Number: (304) 466-1735

Date: *Greg Rogers* 3/24/14