



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

# Request for Quotation

RFQ NUMBER  
**668C0016**

PAGE  
**1**

ADDRESS CORRESPONDENCE TO ATTENTION OF:  
**MICHAEL AUSTIN**  
**304-558-2402**

PROPERTY

\*222112820      614-876-3000  
 TOOMBS TRUCK & EQUIPMENT CO IN  
 1800 WALCUTT ROAD  
 COLUMBUS OH 43228

SHIP TO

DIVISION OF HIGHWAYS  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
12/18/2007				

BID OPENING DATE: **01/09/2008**      BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		975-66		
<p>LEASE OF EQUIPMENT</p> <p>OPEN END CONTRACT</p> <p>NOTE: ALL BIDS ON SCHEDULE II WHICH REQUIRE EQUIPMENT "WITH OPERATOR", VENDORS SHOULD SUBMIT A COPY OF CONTRACTOR'S LICENSE WITH BID.</p> <p>TO ALLOW FOR LEASE OF EQUIPMENT BY THE DIVISION OF HIGHWAYS FROM INDIVIDUALS AND ORGANIZATIONS FOR PURPOSES AND LOCATIONS TO BE DETERMINED BY THE DIVISION PER THE ATTACHED SPECIFICATIONS.</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON ..... AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL</p>						

**RECEIVED**

2008 JAN -8 A 10:

PURCHASING DIVISION  
 STATE OF WY

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Joe Thompson</i>	TELEPHONE 614-876-3000	DATE 01/07/2008
TITLE Sales	FEIN 31-4445243	ADDRESS CHANGES TO BE NOTED ABOVE

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



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<p>WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Jean Thompson</i>	TELEPHONE <b>614-876-3000</b>	DATE <b>01/07/08</b>
TITLE <b>Sales</b>	FEIN <b>31-4445243</b>	ADDRESS CHANGES TO BE NOTED ABOVE

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<p><b>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</b></p> <p><b>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</b></p> <p><b>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</b></p> <p><b>EXHIBIT 10</b></p> <p style="text-align: right;"><b>REQUISITION NO.: .....</b></p> <p><b>ADDENDUM ACKNOWLEDGEMENT</b></p> <p><b>I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.</b></p> <p><b>ADDENDUM NO.'S:</b></p> <p><b>NO. 1 .....</b></p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE <i>Lee Thompson</i>	TELEPHONE 614-876-3000	DATE 01/07/08
TITLE Sales	FEIN 31-4445243	ADDRESS CHANGES TO BE NOTED ABOVE

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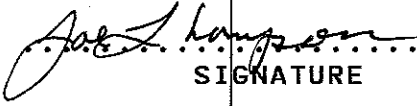
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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	NO. 2 .....					
	NO. 3 .....					
	NO. 4 .....					
	NO. 5 .....					
<p>I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF THE ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF BIDS.</p> <p>VENDOR MUST CLEARLY 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.</p> <p style="text-align: center;">             SIGNATURE  <b>Toombs Truck &amp; Equipment</b>            COMPANY            ...01/07/08.....            DATE         </p> <p>REV. 11/96</p> <p style="text-align: center;">VENDOR PREFERENCE CERTIFICATE</p> <p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE,</p>						

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<p><b>5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</b></p> <p><b>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</b></p> <p><input type="checkbox"/> BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p><input type="checkbox"/> BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p><input type="checkbox"/> BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p><b>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</b></p> <p><input type="checkbox"/> BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID</p>						

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<p>ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID;            OR            ( ) BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX &amp; REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p>						

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<p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: <u>Toombs Truck &amp; Equipment</u></p> <p>DATE: <u>01/07/2008</u></p> <p>SIGNED: <u>[Signature]</u></p> <p>TITLE: <u>Sales</u></p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION          PURCHASING DIVISION          BUILDING 15          2019 WASHINGTON STREET, EAST          CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF</p>						

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THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED: SEALED BID  BUYER:      33  RFQ. NO.:      668C0016  BID OPENING DATE:      01/09/2007  BID OPENING TIME:      1:30 PM   PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:  1-614-876-1135 ----- CONTACT PERSON (PLEASE PRINT CLEARLY):  JOE Thompson -----   ***** THIS IS THE END OF RFQ    668C0016 ***** TOTAL: _____						

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## SPECIFICATIONS

The following sections of the West Virginia Division of Highways Standard Specifications Roads and Bridges, adopted 2000, as modified by the January 1, 2003 Supplemental Specifications shall apply to the administration of this contract: Sections 101; 102.4; 102.5; 102.6, except the second sentence of the first paragraph is deleted; 102.7, except numerals IV and V are deleted; 102.12; 102.13; 107; 108.8; 108.9; 109; 110; and all other related sections of the Specifications.

The terms "Contractor" and "Vendor" used in the above specifications of this contract are interchangeable. Contractor shall mean Vendor and Vendor shall mean Contractor.

Above noted specifications may be obtained from:

West Virginia Division of Highways  
Contract Administration Division  
1900 Kanawha Boulevard, East, Room A-729, Building Five  
Charleston, West Virginia 25305-0430

## BIDDING INSTRUCTIONS

Vendors shall not qualify bids. Any qualification of bids or any modification of the specifications or conditions governing the bids will be cause to reject bids.

Vendors are requested to type prices on bid schedule sheets. Bid schedules must not be altered. If bid schedules are altered in any way the bid may be disqualified.

Equipment owners may quote the cost to supply any or all of the equipment listed on the attached quotation sheets. For a quotation to be considered valid, the owner must provide the manufacturer's name and model number of the equipment offered for lease and the rental rate in dollars per day, dollars per week and dollars per month. Also, equipment owners shall quote the cost to deliver leased equipment to the location specified by the Division. This quotation shall be the cost to deliver the equipment the first road mile and the cost to deliver the equipment each additional road mile thereafter.

The quoted rates for leased equipment, with operator or without operator (i.e., \$/day, \$/week and \$/month), shall be for lease days, lease weeks and lease months as defined under the heading "DEFINITION OF LEASE PERIOD". Quotations which do not conform to all requirements of this specification will not be honored.

## LEASING INSTRUCTIONS

The operating unit wishing to lease a specific type of equipment will compute, for each applicable bid, the cost of renting the equipment during the estimated lease period plus the cost of delivering the equipment to the job site and award the Special Purchase Order for lease equipment to the equipment owner who can furnish the equipment to the Division at the least overall cost.

Equipment owners shall furnish the Division, the serial numbers of all equipment being leased. Said serial numbers shall be recorded on the Purchase Order Form, WV-39.

## DEFINITION OF LEASE PERIOD

The date of official receipt of leased equipment by the Division shall be considered the first day of lease.

The date immediately preceding the date on which leased equipment is officially returned to the owner shall be considered the last day of lease.

Days on which a piece of equipment is down for normal maintenance or repair for four (4) hours or more during the normal work period shall be considered a day of downtime and shall not be considered a day of equipment lease.

A lease day is a day of possession of equipment during which it is not down for four (4) hours or more during the normal work period.

A day or days used by the vendor solely for the purpose of travel to the site, set-up or breakdown of equipment shall not be considered as lease days.

A lease week is seven (7) lease days (includes Saturdays, Sundays and Holidays).

A lease month is thirty (30) lease days (includes Saturdays, Sundays and Holidays).

## INVOICING INSTRUCTIONS

The minimum period of lease shall be one (1) lease day.

Equipment leased for one (1) lease day or less shall be invoiced at the daily lease rate.

Equipment leased for one (1) lease week or less shall be invoiced at the weekly lease rate or the number of lease days times the daily lease rate, whichever is less.

Equipment leased for more than one (1) lease week but for less than one (1) lease month shall be invoiced at the monthly lease rate or the number of lease weeks times the weekly lease rate or the number of complete lease weeks plus an amount calculated by the above paragraph for any period less than a multiple of seven (7) days, whichever is less.

Equipment leased for one (1) lease month or more shall be invoiced at the monthly rate. In the event the lease period is not a multiple of thirty (30) lease days, then each day in excess of the multiple shall be evaluated as one-thirtieth (1/30) of a lease month.

An invoice for payment on leased equipment shall set forth the following:

1. The beginning date and the date on which the invoicing period ends.
2. The number of lease days in the invoicing period.
3. The number of equipment downtime days in the invoicing period and,
4. The make, model and serial number of the leased equipment being invoiced.

NOTE 1: The Division will supply the equipment owner with the downtime days in any calendar month within ten (10) days following the end of the calendar month or within ten (10) days following termination of lease, whichever is appropriate. The equipment owner may obtain this information sooner by calling the leasing organization.

NOTE 2: The period of need for leased equipment as specified in the State Contract Purchase Order (Form WV-39) is only an estimate of need and shall not be used for invoicing purposes.

## LEASE AGREEMENT

The West Virginia Division of Highways, through the Purchasing Division of the Department of Administration, hereby requests a proposal for the lease of certain highway equipment. Such equipment will be required for the completion of maintenance or construction projects or any other such condition as may result in equipment needs beyond fleet capacity. A twenty-four (24) hour notice will be given to all Vendors prior to the need of equipment by the District Engineer or his representative except when emergency situations require need upon demand.

Quotation may be submitted on any, or all, type and size equipment listed on Schedules I and II, attached hereto and made a part hereof. Vendors should display manufacturer's name(s), model number(s) and serial number(s) of those vehicles being bid. Quotations are requested "without operator" unless quotations are specifically requested "with operator" see Schedule II.

Quotations for mobilization shall be by the mile. Submission of mobilization quotes in any form other than mileage shall be grounds to disqualify the quotation. Delivery/Mobilization fees shall be paid one way only, by the West Virginia Division of Highways.

All Vendors must be duly registered to do business with the State of West Virginia having already submitted the Vendor's Registration Form WV-1 reflecting the Federal Employer's Identification Number (FEIN) or, in the case of an individual, the Social Security Number.

All reasonable bids made pursuant to this request will be accepted by the West Virginia Division of Highways. Award for equipment lease will be made, from time to time, as the need arises. Proximity of equipment as to job site shall be a factor in determination of each award. It is understood between the Division and all Vendors whose bids are accepted that, in the event the low bidder for any given job location is unable to perform, the award will be made to the next lowest bidder. In the event that no bidder can be found to perform his duties and obligations under the contract, then the Division of Highways, upon authorization of the Director of Purchasing, in writing, or by an oral authorization if an emergency exists, may lease said equipment on the open market.

**PAYMENT:** The Operating Unit leasing the equipment shall furnish a written order known as a State Contract Purchase Order (Form WV-39) to the proper Vendor for such equipment as needed. This order shall constitute confirmation to the Vendor and shall reveal all pertinent data such as model year, model number and serial number of such equipment being furnished.

LABOR RATES

All labor rates paid by the Vendor under this contract must be in compliance with, The West Virginia State Code Chapter 21, Article 5A: Wages for Construction of Public Improvements.

**THIS REQUEST FOR PROPOSAL, GENERAL TERMS, AND SCHEDULES I AND II, FORM THE PROPOSAL AND CONSTITUTE ONE INSTRUMENT, AND MUST BE READ IN ITS ENTIRETY.**

**GENERAL TERMS**

**I**

**DEFINITION OF "LEASE" AND  
DESIGNATION OF PARTIES**

"Lease" shall mean an agreement wherein the West Virginia Division of Highways leases the equipment set forth and described in Schedule 1, attached to and made a part hereof, for periods of time not to exceed ninety (90) days unless otherwise clearly specified in the State Contract Purchase Order, which said Order shall define the period of time of any particular lease of equipment.

As used herein, the word "Vendor" shall mean any person, firm or corporation leasing equipment to the West Virginia Division of Highways. The words "Division of Highways" or "Division" shall mean the West Virginia Division of Highways.

**II**

**DELIVERY/MOBILIZATION**

Any Vendor whose bid is accepted by Division shall deliver such equipment requested by Division at any given time, assembled and ready to operate, to any location or locations designated by Division. Delivery/Mobilization fees shall be paid one way only by the Division.

### III

#### **ACCEPTANCE: BEGINNING OF TERM**

Upon delivery of each item of equipment by the Vendor to the location described in the individual State Contract Purchase Order (SCO), the Division of Highways shall have an authorized representative to test and inspect the same and, if such item of equipment is found to be in good order, to accept such item of equipment and to acknowledge the same in whatever form reasonably required by the Vendor. Such item of equipment shall be deemed to have been delivered to and accepted by the Division of Highways on the date specified in such acknowledgment and the term of the agreement covering such item of equipment shall be deemed to begin on that date.

### IV

#### **PAYMENT IN ARREARS**

The Division of Highways is prohibited by Law from paying in advance for equipment, commodities or services. Therefore, all monthly payments made pursuant to the LEASE agreement shall be made in arrears, for the preceding month.

### V

#### **MAINTENANCE OF EQUIPMENT WHEN OPERATORS OF EQUIPMENT ARE FURNISHED BY THE DIVISION OF HIGHWAYS**

V1. The Division of Highways shall repair or replace any part of the leased equipment which shall be destroyed, damaged or made inoperative by reason of the ordinary negligence, abuse or improper operation by its personnel. Division shall not be responsible for any such replacement or repair caused by any defect existing in such equipment at the time of delivery of such equipment by the Vendor to the Division. Division shall replace or repair any part of said equipment which shall become lost, stolen or damaged by reason of the failure of said Division and its personnel to use ordinary care for the protection of such equipment.

V2. Down Time: All such equipment inoperable by reason of the necessity of replacement of parts or repair of damage for a period of time greater than one (1) hour shall be considered by Division as "down" and no payment shall be made by Division for the use of such equipment for such periods unless such "down time" is due to the negligence or lack of reasonable care by Division.

VI

**FUEL, OIL AND OTHER LUBRICANTS**

The Division of Highways shall, at its expense, provide only fuel, oil and other lubricants (which are necessary for the operation, maintenance and use) of that equipment leased without the vendor's operators. Equipment leased with the vendor's operators shall have fuel, oil and other lubricants supplied by the vendor. Vendors shall be responsible for performance of preventive maintenance of equipment and parts/supplies associated with preventive maintenance activities.

VII

**RISK OF LOSS, DAMAGE OR THEFT  
WHERE OPERATORS OF EQUIPMENT ARE  
FURNISHED BY DIVISION OF HIGHWAYS**

All loss, damage, or destruction of such leased equipment, partial or complete, or loss by reason of theft, to or of any of the subject equipment, while in the possession or under the control of the Division, due to or caused by the ordinary negligence of the Division or its personnel or by the failure of the Division or its personnel to exercise ordinary care for the protection of such equipment, shall be borne by the Division from and after the delivery of such equipment by the Vendor to a location designated by the Division and its acceptance by the Division, subject however, to the terms and conditions hereinafter set forth. Division shall not be responsible for any such loss, damage or destruction, partial or complete, caused by a defect in such equipment existing at the time of delivery thereof by Vendor to Division.

The total or partial loss of use or possession of any of said equipment resulting, as herein above set forth, shall not abate any payments required to be made by the Division to the Vendor if such loss of use or possession is caused by the ordinary negligence or the lack of ordinary care of such equipment by the Division or its personnel.

The subject equipment shall be deemed to be a total loss by reason of its disappearance or if it has sustained physical damage and the estimated cost of repairs is determined, as hereinafter provided, to exceed seventy-five percent (75%) of the market value of such equipment. If a claim is made by the Vendor against the Division for the loss or damage to such equipment, the Commissioner of the West Virginia Division of Highways shall, pursuant to the provisions of Section 4, Article 3, Chapter 17 of the Code of West Virginia 1931, as amended, review such claim and if, after such review, the said Commissioner shall determine that a sum of money is due the Vendor as a result of any such claim shall, if such determination or finding is acceptable to the Vendor, issue a requisition to the Auditor of the State of West Virginia for the payment of such agreed sum to the Vendor.

Nothing herein contained shall prevent the Vendor from proceeding in the West Virginia Court of Claims as to any claim he, she or it may have against the West Virginia Division of Highways for such loss, damage or destruction.

In the event that, prior to the payment of any claim to the Vendor by Division, the Vendor shall receive any sum of money from any insurance company or from any person, firm or corporation by reason of such loss, damage or theft, any such sum of money so paid to Vendor shall be deducted by Division from any claim to be paid by it to the Vendor. If the Vendor shall receive any sum of money from any insurance company, person, firm or corporation for such loss, damage or theft, subsequent to the payment to the Vendor by Division of a sum of money for a claim for such loss or damage the Vendor will pay to Division the amount so received or such part of said amount that equals the amount Division has paid to said Vendor.

## VIII

### **MAINTENANCE AND RISK OF LOSS, DAMAGE OR THEFT OF EQUIPMENT WHEN OPERATORS OF EQUIPMENT ARE FURNISHED WITH EQUIPMENT BY VENDOR**

In the event operators are furnished by the Vendor to operate such equipment leased to the Division, the Vendor shall be responsible for maintenance of such equipment, for all loss to such equipment or destruction of or damage thereto, and shall repair all damage to such equipment and replace any such equipment lost or destroyed. Division may deduct that part of any rental to be paid to Vendor for the use of such



equipment for such period of time the equipment is not available for such use during the time of such repair or replacement due to such damage or loss or during the time involved in the replacement of any piece of equipment. Division shall be responsible for any loss of such equipment or any part thereof during the time that such equipment is not in use or is not required to be attended by Vendor's operators provided, however, that such equipment is delivered by the Vendor through its operators to a place designated by Division's employees or agents, in which case the Division shall be responsible for the security of such equipment, and, provided further, however, that Division's responsibility or liability for such security will be limited to ordinary care.

Such operators so furnished by the Vendor, while under the direction of Division, shall remain the employees of and under the control of the Vendor, and shall not be considered as agents of Division.

## **IX**

### **LIENS**

The Division of Highways shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the subject equipment, except with respect to the respective rights of the Vendor and Division of Highways as herein provided.

## **X**

### **ENJOYMENT OF EQUIPMENT**

The Vendor covenants to provide the Division of Highways during the term of the applicable agreement with quiet use and enjoyment of the subject equipment, and the Division of Highways shall, during the term peaceably and quietly have, hold, and enjoy the subject equipment, without suit, trouble or hindrance from the Vendor, except as expressly set forth in this agreement. Any assignee of the Vendor shall not interfere with such quiet use and enjoyment during the term of the agreement so long as the Division of Highways is not in default.

**XI**

**INSPECTION OF EQUIPMENT**

To the extent that the Division has the authority to grant or permit, the Vendor shall have the right, during work hours, to enter upon the premises where the subject equipment is located for the purpose of inspecting or observing the use of the leased equipment.

**XII**

**RETURN OF EQUIPMENT**

Upon the expiration of the term of this agreement, Division shall return the equipment leased hereunder, at its expense, to the Vendor at the original location at which such equipment was delivered to the Division of Highways. Equipment must be washed and clean, upon return to the vendor.

**XIII**

**DAMAGE BEYOND CONTROL OF LESSEE**

Division shall not be liable for damage to or loss of any leased equipment resulting from lightning, Acts of God, riots, strikes or other causes beyond Division's control.

**XIV**

**DEFAULT**

Upon default of any of the provisions or terms of this Agreement by either the Division or the Vendor the parties hereto shall have recourse to the remedies provided by the laws of the State of West Virginia and the United States of America.

**XV**

**INSURANCE**

The West Virginia Division of Highways is insured by the Board of Risk and Insurance Management. Insurance coverage will be provided by that agency only for long term, i.e., over thirty (30) consecutive days equipment lease. Insurance coverage for short term rental/lease equipment will be the responsibility of the owner/Vendor. The Division of Highways will, at its option, either replace or pay to Vendor the fair market value of any of the subject equipment or any part thereof, lost, destroyed or stolen by reason of the negligence of or lack of ordinary care on the part of its employees as herein-before provided in Section VII.

**XVI**

**INDEMNITY**

Article X, Section 6 of the Constitution of the State of West Virginia provides that “. . .the credit of the State shall not be granted nor shall the State ever assume or become responsible for the debts or liabilities of any person.” As a result, the Division of Highways, as Lessee, will assume only those liabilities permitted by law for all obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses of whatsoever kind and nature, without recourse to Vendor, or its assigns, arising out of the manufacture, use, condition, operation, removal and return of the subject equipment, regardless of where, how and by whom operated.

**XVII**

**NOTICES**

All notices to be given under the terms of this Agreement, or required by the laws governing the same, shall be in writing and mailed to the proper party or parties at his, her or its address set forth in the State Contract Purchase Order or at such address as any such party or parties may provide in writing to the other party or parties from time to time.

**XVIII**

**SUCCESSORS OR ASSIGNS**

The terms of this agreement will apply to all lessees, successors or assigns of the parties hereto.

**Note: Vendor should type Bid Schedule.**

Vendor shall indicate that area which he wishes to lease equipment to the Division of Highways by placing a check beside those Counties in said area. If Vendor fails to state which County or Counties he wishes to lease equipment to the Division of Highways, it will be assumed that Vendor's bid is for statewide.



Statewide

- |                          |            |                          |            |                          |         |
|--------------------------|------------|--------------------------|------------|--------------------------|---------|
| <input type="checkbox"/> | Barbour    | <input type="checkbox"/> | Lincoln    | <input type="checkbox"/> | Ritchie |
| <input type="checkbox"/> | Berkeley   | <input type="checkbox"/> | Logan      | <input type="checkbox"/> | Roane   |
| <input type="checkbox"/> | Boone      | <input type="checkbox"/> | McDowell   | <input type="checkbox"/> | Summers |
| <input type="checkbox"/> | Braxton    | <input type="checkbox"/> | Marion     | <input type="checkbox"/> | Taylor  |
| <input type="checkbox"/> | Brooke     | <input type="checkbox"/> | Marshall   | <input type="checkbox"/> | Tucker  |
| <input type="checkbox"/> | Cabell     | <input type="checkbox"/> | Mason      | <input type="checkbox"/> | Tyler   |
| <input type="checkbox"/> | Calhoun    | <input type="checkbox"/> | Mercer     | <input type="checkbox"/> | Upshur  |
| <input type="checkbox"/> | Clay       | <input type="checkbox"/> | Mineral    | <input type="checkbox"/> | Wayne   |
| <input type="checkbox"/> | Doddridge  | <input type="checkbox"/> | Mingo      | <input type="checkbox"/> | Webster |
| <input type="checkbox"/> | Fayette    | <input type="checkbox"/> | Monongalia | <input type="checkbox"/> | Wetzel  |
| <input type="checkbox"/> | Gilmer     | <input type="checkbox"/> | Monroe     | <input type="checkbox"/> | Wirt    |
| <input type="checkbox"/> | Grant      | <input type="checkbox"/> | Morgan     | <input type="checkbox"/> | Wood    |
| <input type="checkbox"/> | Greenbrier | <input type="checkbox"/> | Nicholas   | <input type="checkbox"/> | Wyoming |
| <input type="checkbox"/> | Hampshire  | <input type="checkbox"/> | Ohio       |                          |         |
| <input type="checkbox"/> | Hancock    | <input type="checkbox"/> | Pendleton  |                          |         |
| <input type="checkbox"/> | Hardy      | <input type="checkbox"/> | Pleasants  |                          |         |
| <input type="checkbox"/> | Harrison   | <input type="checkbox"/> | Pocahontas |                          |         |
| <input type="checkbox"/> | Jackson    | <input type="checkbox"/> | Preston    |                          |         |
| <input type="checkbox"/> | Jefferson  | <input type="checkbox"/> | Putnam     |                          |         |
| <input type="checkbox"/> | Kanawha    | <input type="checkbox"/> | Raleigh    |                          |         |
| <input type="checkbox"/> | Lewis      | <input type="checkbox"/> | Randolph   |                          |         |

Schedule I

Vendor Should Type Bid Schedule

Equipment Description	Equipment Offered		Rental Rate of Equipment Without Delivery/Without Operator			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	\$ / Day	\$ / Week	\$ / Month	1st Mile	Add. Mi.
<b>AERIAL PLATFORM TRUCK</b> Highway Rated TRK. MTD 40' Reach Min. 360 degree Boom Rotation @ level position	SKYLIFT	M 35 E	300	950.00	2950.00	2.00	2.00
<b>AERIAL PLATFORM TRUCK</b> Highway Rated TRK. MTD 55' Reach Min. 360 degree Boom Rotation @ level position	ELLIOTT	ECE 40	300	950.00	2950.00	2.00	2.00
<b>AERIAL PLATFORM TRUCK</b> Elliott Model G50 or similar	ELLIOTT	ECL-3-55	300	950.00	2950.00	2.00	2.00
<b>AERIAL PLATFORM TRUCK</b> Elliott Model L55 or similar	ELLIOTT	G 50	300	950.00	2950.00	2.00	2.00
<b>AIR TRACK DRILL</b> w/800 CFM Air Comp.		L 55	400	1250.00	3900.00	2.00	2.00
<b>ARROW BOARDS</b> 4' x 8' panel 15 lamp							
<b>ASPHALT DISTRIBUTOR</b> Trk. Mtd. w/spray bar							
<b>ASPHALT RECYCLING ATTACHMENT</b> Endloader bucket - mounted, asphalt grinder/recycle attachment, 185 hp min. app. 6,300 lb. wt. capable of grinding and re-paving up to 12" deep and up to 48" wide pavement and base.							

X  
X  
X  
X

Schedule I

Vendor Should Type Bid Schedule

Equipment Description	Equipment Offered		Rental Rate of Equipment Without Delivery/Without Operator			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	\$ / Day	\$ / Week	\$ / Month	1st Mile	Add. Mi.
<b>AUGER</b> Trk. Mtd.	Pitman-Telelect, etc		400	1250.00	3900.00	2.00	2.00
<del><b>BACKHOE</b> Crawler Mech./Hyd. 0.75 Cyd. 24,000 lbs. - 28,000 lbs. Working Weight</del>							
<del><b>BACKHOE</b> Crawler Mech./Hyd. 0.75 Cyd. 29,000 lbs. - 35,800 lbs. Working Weight</del>							
<del><b>BACKHOE</b> Crawler Mech./Hyd. 1.00 Cyd. 36,000 lbs. - 40,000 lbs. Working Weight</del>							
<del><b>BACKHOE</b> Crawler Mech./Hyd. 1.25 Cyd. 128 - 141 HP 42,700 lbs. - 45,900 lbs. Working Weight</del>							
<del><b>BACKHOE (HY-RAM)</b> Crawler 2,000 ft./lbs. min. 24,400 lbs. - 35,800 lbs. Excavator Size</del>							
<del><b>BACKHOE (HY-RAM)</b> Crawler 2,000 ft./lbs. min. 36,000 lbs. - 42,900 lbs. Excavator Size</del>							
<del><b>BACKHOE (HY-RAM)</b> Crawler 2,000 ft./lbs. min. 43,000 lbs. - 60,000 lbs. Excavator Size</del>							

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Schedule I

Vendor Should Type Bid Schedule

Equipment Description	Equipment Offered		Rental Rate of Equipment Without Delivery/Without Operator			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	\$ / Day	\$ / Week	\$ / Month	1st Mile	Add. Mi.
<del>CRACK SEALING MACHINE Trk. Mtd. Dbl. Drum 100 - 125 GLN. D</del>							
<del>CRANE 10 T Hyd. Trk. Mtd. min. 18' Bed</del>	<del>ELLIOTT NATIONAL</del>	<del>SUBJECT TO CHANGES IN FLEET</del>	<del>400</del>	<del>1250.00</del>	<del>3900.00</del>	<del>2.00</del>	<del>2.00</del>
<del>CRANE 12 - 1/2 T Hyd. Trk. Mtd. min. 18' Bed</del>	<del>ELLIOTT</del>	<del>SUBJECT TO CHANGES IN FLEET</del>	<del>400</del>	<del>1250.00</del>	<del>3900.00</del>	<del>2.00</del>	<del>2.00</del>
<del>CRANE 14 T Hyd. Trk. Mtd. min. 18' Bed</del>	<del>ELLIOTT</del>	<del>SUBJECT TO CHANGES IN FLEET</del>	<del>400</del>	<del>1250.00</del>	<del>3900.00</del>	<del>2.00</del>	<del>2.00</del>
<del>CRANE 15 - 25 T Hyd. Rough Terrain</del>							
<del>CRANE 20 - 25 T Cable D Crawler</del>							
<del>CRANE 25 - 30 T Cable, Trk. Mtd. G</del>							
<del>CRANE 30 T Hyd.</del>							

X  
X  
X

Schedule I

Vendor Should Type Bid Schedule

Equipment Description	Equipment Offered		Rental Rate of Equipment Without Delivery/Without Operator			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	\$ / Day	\$ / Week	\$ / Month	1st Mile	Add. MI.
<del>CRANE, TELEBOOM 30 - 35 T SP</del>							
CRANE, TELEBOOM 30 - 35 T Trk. Mtd. D	ELLIOTT MANATRX	SUBJECT TO CHANGES IN FLEET	1200	3250.00	9800.00	3.00	3.00
CRANE 35 T Hyd.							
CRANE 40 T Hyd.							
CRANE 50 T Hyd.							
CULVERT CLEANER Trk. Mtd. min. 1,500 gal. tank 1400 PSI min.							
CULVERT CLEANER Trk. Mtd. 65 - 80 GPM 2,000 PSI min.							
DITCH WITCH							
EXCAVATOR - TELEBOOM Track Mtd. SP 0.5 Cyd. D							



STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-3-10a states:** No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate

**DEFINITIONS:**

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

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

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

**LICENSING:** Vendors 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 agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

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

Vendor's Name: Toombs Truck & Equipment Co

Authorized Signature: Joe Thompson Date: 01/07/08