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

Solicitation

NUMBER	PAGE
6614C031	1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
CRYSTAL RINK
304-558-2306

VENDOR
*112155317 570-459-5800
DEANGELO BROTHERS INC
100 N CONAHAN DR

HAZLETON PA 18201

SHIP TO
DIVISION OF HIGHWAYS
VARIOUS LOCALES AS INDICATED
BY ORDER

DATE PRINTED
03/05/2014

BID OPENING DATE: 04/02/2014 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		964-45		

LEASE OF EQUIPMENT WITH AND WITHOUT OPERATOR

REQUEST FOR QUOTATION
OPEN-END CONTRACT

THE WEST VIRGINIA STATE PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF HIGHWAYS, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH AN OPEN-END CONTRACT FOR EQUIPMENT LEASING/RENTAL FOR USE AT LOCATIONS THROUGHOUT THE STATE OF WEST VIRGINIA PER THE ATTACHED SPECIFICATIONS.

****** THIS IS THE END OF RFQ 6614C031 ****** TOTAL:

04/02/14 09:31:43AM
West Virginia Purchasing Division

SIGNATURE [signature] TELEPHONE 724/482-2800 DATE 03/31/2014

TITLE Branch Manager FEIN 23-2332783 ADDRESS CHANGES TO BE NOTED ABOVE

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

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

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

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

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

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

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

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

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

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

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

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

Question Submission Deadline:	March 19, 2014 at 5:00 PM EST
Submit Questions to:	Crystal Rink 2019 Washington Street, East Charleston, WV 25305 Fax: 304-558-4115 Email: crystal.g.rink@wv.gov

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

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

Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID
BUYER: _____
SOLICITATION NO.: _____
BID OPENING DATE: _____
BID OPENING TIME: _____
FAX NUMBER: _____

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus n/a convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: ☐ Technical
☐ Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the official Purchasing Division time clock.

Bid Opening Date and Time: April 2, 2014 at 1:30 PM EST

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

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

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

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 award

and extends for a period of 1 year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal 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 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 of 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:**
$1,000,000.00 or more.

☐ **Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.

☐

☐

☐

☐

☐

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.

☑ West Virginia Contractors License

☐

☐

☐

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

other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount n/a for n/a

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

13. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

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

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

16. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

17. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."

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

19. DELIVERY: All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.

20. INTEREST: Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

21. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's

failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

22. **SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

23. **TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

24. **CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.

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

26. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.

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

28. **COMPLIANCE**: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.

29. **PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage

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.

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

DBI Services
(Company)


(Authorized Signature)

David Tincha, Branch Manager
(Representative Name, Title)

570/459-5800 570/459-5500
(Phone Number) (Fax Number)

03/31/2014
(Date)

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: 6614C031

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

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

Addendum Numbers Received:
(Check the box next to each addendum received)

- [x] Addendum No. 1
- [ ] Addendum No. 2
- [ ] Addendum No. 3
- [ ] Addendum No. 4
- [ ] Addendum No. 5
- [ ] Addendum No. 6
- [ ] Addendum No. 7
- [ ] Addendum No. 8
- [ ] Addendum No. 9
- [ ] Addendum No. 10

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

DBI Services
Company

Authorized Signature

03/31/2014
Date

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

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

Solicitation

NUMBER	PAGE
6614C031	1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
CRYSTAL RINK
304-558-2402

RFQ COPY
TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO
DIVISION OF HIGHWAYS
VARIOUS LOCALES AS INDICATED
BY ORDER

DATE PRINTED
03/24/2014

BID OPENING DATE: 04/02/2014 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
				ADDENDUM NO. 01		
				THIS ADDENDUM HAS BEEN ISSUED TO MODIFY THE ORIGINAL SOLICITATION PER THE ATTACHED DOCUMENTATION.		
0001	1	EA		964-45		
				LEASE OF EQUIPMENT WITH AND WITHOUT OPERATOR		
				****** THIS IS THE END OF RFQ 6614C031 ****** TOTAL:		

SIGNATURE David Grinko
TELEPHONE 724/482-2800
DATE 03/31/2014
TITLE Branch Manager
FEIN 23-2332783
ADDRESS CHANGES TO BE NOTED ABOVE

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

SOLICITATION NUMBER: 6614C031
Addendum Number: 1

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

Applicable Addendum Category:

[ ] Modify bid opening date and time

[ ] Modify specifications of product or service being sought

[✓] Attachment of vendor questions and responses

[ ] Attachment of pre-bid sign-in sheet

[ ] Correction of error

[ ] Other

Description of Modification to Solicitation:

To provide the answers to vendor questions

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

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.

2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

RFQ#6614C031 Addendum #1

To answer Vendor posed questions.

Question #1 We would not be providing any operators with the equipment being rented. We would only be able to provide the bare rental of the equipment without operators. Are we still required to obtain a License?

Response #1 Yes.

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish an open-end contract to provide equipment for lease/rental from individuals and organizations for use at locations throughout the State of WV by the WV Division of Highways. 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 WV Division of Highways' fleet capacity.

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

   2.1 **"Contract Item"** or **"Contract Items"** means the list of items identified for lease/rental in Section III, Subsection 3.2 below.

   2.2 **"Pricing Pages"** means the schedule of prices attached hereto as Exhibit A and Exhibit B, Schedules I and II, used to evaluate the RFQ.

   2.3 **"RFQ"** means the official request for quotation published by the Purchasing Division and identified as 6614C031.

   2.4 **"WVDOH"** used throughout this RFQ means the West Virginia Division of Highways.

   2.5 **"Lease/Rental"** or any version of this language used throughout this RFQ means an agreement wherein the WVDOH leases/rents the equipment set forth and described in Schedule I and II for periods of time not to exceed ninety days unless otherwise clearly specified in the Agency Release.

   2.6 **"Contractor", "Vendor" or "Equipment Owner"** used throughout this RFQ and in any cited sections of the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted 2010, as modified by all subsequent annual Supplemental Specifications, are interchangeable.

   2.7 **"Standard Specs"** used throughout this RFQ means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted 2010, as modified by all subsequent annual Supplemental Specifications.

3. GENERAL REQUIREMENTS:

3.1. Specifications: The following sections of the Standard Specs, 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 Standard Specs. Copies attached.

A complete hard copy of the Standard Specs may be obtained from:

West Virginia Division of Highways
Contract Administration
Building 5, Room 722
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
(Phone) 304-558-2885

A complete electronic copy of the Standard Specs may be obtained by sourcing:
http://www.transportation.wv.gov/highways/Contractadmin/specifications/2010StandSpec/Pages/default.aspx

3.2 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below as a lease/rental Contract Item on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.2.1 Exhibit B, Pricing Pages, Schedule I, Equipment Offered for Lease/Rental, Without Delivery/Without Operator

3.2.2 Exhibit B, Pricing Pages, Schedule II, Equipment Offered for Lease/Rental, Without Delivery/WITH Operator

3.2.3 Mobilization: Vendors shall deliver needed equipment at any given time, assembled and ready to operate to any location or locations designated by the WVDOH on an Agency Release. Bids for mobilization shall be bid per mile. Mobilization bid in any form other than cost per mile shall be grounds to disqualify the Vendor's bid. Vendor shall bid the cost of equipment delivery for the first mile and the cost for any additional miles after the first mile. Delivery/Mobilization fees shall be calculated and paid one-way only by the WVDOH from the Vendor's storage location to the WVDOH project site. When the Vendor has multiple projects or the equipment is traveling from WVDOH location or project to project, additional miles will only be paid from project to project or from the Vendor's storage location to the project, whichever is less mileage. The

WVDOH will provide the location for delivery of the leased/rented equipment to the Vendor on an Agency Release.

The WVDOH will calculate the in-state delivery route mileage from the equipment owner's location of the equipment to the WVDOH job site utilizing the WVDOH Straight Line Diagrams. These Diagrams for WV Primary Routes and WV Secondary Routes are available in each WVDOH's District Office and the Central Office located in Charleston, WV. The WVDOH will determine the route to be taken due to bridge and/or road restrictions.

Out-of-state delivery route mileage will be calculated by the WVDOH utilizing "Map Quest" or a similar source for routing from the equipment owner's location of the equipment to the WV State line at which time, the Straight Line Diagrams will be sourced to the WVDOH job site.

3.2.4 **Lease/Rental Period:** Quoted rates for leased/rented equipment, with operator or without operator, shall be for lease/rental days, weeks and months.

A lease/rental day is a day of agency possession of equipment during which it is not down for four hours or more during the normal work period. NOTE: Days on which a piece of equipment is down for normal maintenance or repair for four 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/rental.

A lease/rental week is seven lease/rented days, including Saturdays, Sundays and Holidays.

A lease/rental month is thirty lease/rented days, including Saturdays, Sundays and Holidays.

The date of official receipt of leased/rented equipment by the WVDOH shall be considered the first day of lease/rental. The day immediately preceding the date on which leased/rented equipment is officially returned to the owner shall be considered the last day of lease.

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

3.2.5 Maintenance of Lease/Rental Equipment:

3.2.6.1 Equipment leased/rented from Schedule I: At its own expense, the WVDOH shall provide only fuel, oil and other lubricants, which are necessary for the operation, maintenance and use, of the equipment leased/rented from Schedule I. The WVDOH 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. The WVDOH shall not be responsible for any such replacement or repair caused by any defect existing in such equipment at the time of delivery by the Vendor to the WVDOH or if the need for such replacement or repair resulted from normal usage. The WVDOH shall replace or repair any part of said equipment which shall become lost, stolen or damaged by reason of the failure of the WVDOH and its personnel to use ordinary care for the protection of such equipment.

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

3.2.6.1.2 Risk of Loss, Damage, Destruction or Theft: While in the possession or under the control of the WVDOH, due to or caused by the ordinary negligence of the WVDOH or its personnel or by the failure of the WVDOH or its personnel to exercise ordinary care for the protection of such equipment, the responsibility shall be borne by the WVDOH from and after the delivery of such equipment by the Vendor to the location designated by the Agency Release and its acceptance by the WVDOH according to Section 6.1.1. of these specifications and the terms and conditions hereinafter set forth. The WVDOH shall not be responsible for any such loss, damage, destruction or theft, partial or complete, caused by a defect in such equipment existing at the time of delivery thereof by the Vendor to the WVDOH.

The total or partial loss of use or possession of any said equipment shall not abate any payments required to be made by the WVDOH 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 WVDOH or its personnel.

The said 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 to exceed 75% of the market value of such equipment. If a claim is made by the Vendor against the WVDOH for the loss or damage to such equipment, the Commissioner of the WVDOH shall review such claim and if after review the Commissioner shall determine that a sum of money is due the Vendor and acceptable to the Vendor, issue a requisition to the Auditor of the State of WV for the payment of such agreed sum to the Vendor. Reference WV Code §17-3-4. See copy attached.
http://www.legis.state.wv.us/WVCODE/ChapterEntire.cfm?chap=17&art=3&section=4#03

In the event that, prior to the payment of any claim to the Vendor by the WVDOH, the Vendor shall receive any sum of money from any insurance company or from any person, firm or corporation, any such sum of money shall be deducted by the WVDOH from any claim to be paid by it to the Vendor. The same shall be with the Vendor. If the Vendor shall receive any sum of money from any insurance company or from any person, firm or corporation a sum of money after payment from the WVDOH has been received, the Vendor shall reimburse the WVDOH the amount received or such part received that equals the amount WVDOH has paid to the Vendor.

The Vendor may at its choice proceed to the WV Court of Claims as to any claim it may have against the WVDOH for such loss, damage, destruction or theft of said equipment.

3.2.6.2 Equipment leased/rented from Schedule II: Equipment leased/rented from Schedule II shall have fuel, oil and other lubricants supplied by the Vendor. Vendors shall be responsible for performance of regular, routine, preventive maintenance, according to Manufacturer recommendations of equipment and parts/supplies associated with regular, routine, preventive maintenance activities.

3.2.6.2.1 Risk of Loss, Damage, Destruction or Theft: The Vendor shall be responsible for maintenance of such equipment, for all loss to such equipment, destruction of or damage to such equipment and shall repair or replace any such equipment lost or

destroyed. "Down time" will be referred to as described in Section 3.2.6.1.1 of these specifications.

After the equipment is delivered to the WVDOH job site or WVDOH location by the Vendor, according to the Agency Release, the WVDOH shall then be responsible for any loss of such equipment or any part of the equipment during the time that the equipment is not in use or is not required to be attended by the Vendor's operators. The WVDOH shall be responsible for the security of such equipment as limited to ordinary care.

NOTE: Operators furnished by the Vendor per Schedule II, while under the direction of the WVDOH, shall remain the employees of and under the control of the Vendor and shall not be considered as agents of the Division of Highways.

4. CONTRACT AWARD:

4.1 Contract Award: The Contract is intended to provide Agencies with a lease/rental price on all Contract Items. A Contract shall be awarded to all responsible Vendors that provide the Contract Items for lease/rental which meet all required specifications of this contract.

4.2 Pricing Pages: Exhibit A, Counties Bid, should be completed and submitted with Exhibit B, Pricing Pages. Vendors should mark with an "X" or "√" whether their submitted pricing is for "Statewide" or particular "Counties". If Vendor fails to state which County or Counties he wishes to lease/rent equipment to the WVDOH, it will be assumed that the Vendor's bid is for Statewide.

Vendor should complete Exhibit B, Pricing Pages by providing the Manufacturer's Name, Model/Serial #, Daily, Weekly and/or Monthly Rental Rate, without delivery, and the Equipment Delivery Fee for each item bid. Vendor may bid any or all items on Exhibit B, Pricing Pages. Failure to provide this information on the Pricing Pages for each item bid may result in disqualification of award to the Vendor for that particular item.

The Pricing Pages contain a list of the Contract Items. At this time, there is no estimated lease/rental volume available for any item. 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: crystal.g.rink@wv.gov.

5. ORDERING, INVOICING 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.

At the time of need, the WVDOH will compute the cost of leasing/renting the equipment plus the cost of delivery of said equipment to the WVDOH job site and award the Agency Release to the equipment owner who can furnish the needed equipment at the least overall cost. The WVDOH shall record the Vendor's equipment serial number on the Agency Release.

An example: Lease/Rental of an Aerial Bucket Truck for three days (with or without Operator) at $100.00/day with 10 mile delivery at $1.00/1st mile and $.50/each additional mile. To calculate lease/rental: $100.00/day x 3 days = $300.00 for lease/rental of the equipment only. To calculate mobilization: $1.00/1st mile plus $.50/each additional mile x 9 miles = $5.50 for mobilization of equipment only. Add $300.00 for equipment and $5.50 for mobilization for a total of $305.50 lease/rental for three days.

Proximity of equipment to the WVDOH job site shall be a factor in determination of each Agency Release. As explained in the preceding paragraphs, the Agency Release will be issued to the lowest bidder; however, it is understood between the WVDOH and all Vendors whose bids are accepted, in the event that the low bidder for any given job is unable to perform, the Agency Release will be cancelled and given to the next lowest bidder. In the event that no bidder can be found to perform the duties and obligations under this contract, then the Agency Release may be cancelled and the lease/rental for the needed equipment may be bid on the open market.

5.2 Invoicing:

5.2.1 Invoicing shall be at a minimum of no less than one lease/rental day. Equipment lease/rented for one lease/rental day shall equal four or more hours as described in Section 3.2.5 of this contract.

5.2.2 Equipment leased/rented for one lease/rental week shall be invoiced at the weekly lease/rental rate or the number of lease/rental days times the daily lease/rental rate, whichever is less.

5.2.3 Equipment leased/rented for more than one lease/rental week, but less than one lease/rental month shall be invoiced at the monthly lease/rental rate or the number of lease/rental weeks times the weekly lease/rental rate including any period less than a multiple of seven days, whichever is less.

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

5.2.5 An invoice submitted to the WVDOH shall include the following:

a) The beginning date and the date on which invoice period ends.
b) The number of lease/rental days in the invoicing period.
c) The number of equipment downtime days in the invoicing period.
d) The make, model and serial number of the leased equipment being invoiced as identified on the Vendor's contract.
e) The total owed to the Vendor and the method of calculation.

NOTE 1: The WVDOH will supply the equipment owner with the downtime days in any calendar month within ten days following the end of the calendar month or within two days following termination of a lease/rental, whichever is appropriate. The owner may obtain this information sooner by calling the WVDOH District that is leasing/renting the equipment.

NOTE 2: The period of need for leased/rented equipment as specified in the Agency Release is only an estimate of need and shall not be used for invoicing purposes. Payment shall only be made for actual leased/rented days.

5.3 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia. 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.

6. DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within 24 hours after orders are received. Vendor shall deliver emergency orders within an agreed upon acceptable timeframe by the Vendor and the WVDOH after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

6.1.1 Acceptance, Beginning of Lease/Rental Period: Upon delivery of each item of equipment by the Vendor to the location described in the Agency Release, the WVDOH shall test and inspect the equipment. If such item of equipment is found to be in good order, the WVDOH shall accept such item of equipment and 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 WVDOH on the date specified in such acknowledgement and the term of the Agency Release and this contract shall be deemed to begin on that date.

6.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

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

6.3 Delivery Payment/Risk of Loss: Standard order delivery or emergency delivery shall be as per Section 5.1 of these specifications. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount as directed in Section 3.2.4 of these specifications and is not permitted to charge the Agency separately for such delivery.

6.4 Return of Equipment: Upon the completion of the project, for which the equipment was leased/rented, the WVDOH will return the equipment, at its expense to the Vendor at the original location at which such equipment was delivered to the WVDOH. The equipment must be washed and clean upon return to the vendor.

6.5 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, such as the Vendor delivering a piece of equipment that was not bid

for lease/rent on this contract, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. 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 lease/rental price, at the Agency's discretion.

6.6 **Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. 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 of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

7.3 **Inspection of Equipment:** The Vendor shall have the right, during normal working hours, to the extent of the WVDOH's authority, to enter upon the premises where the said equipment is located for the purpose of inspecting or observing the use of the lease/rented equipment.

7.4 **Damage Beyond Control of the WVDOH:** The WVDOH shall not be liable for damage to or loss of any leased/rented equipment resulting from lightning, Acts of God, riots, strikes or other causes beyond the WVDOH's control.

7.5 **Insurance:** The WVDOH is insured by the Board of Risk and Insurance Management. Insurance coverage will be provided by that agency only for long term, over thirty consecutive days of equipment lease/rental. Insurance coverage for short term lease/rental of equipment will be the responsibility of the owner/Vendor. The WVDOH will, at its option, either replace or pay to the Vendor the fair market value of any of the said 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.

7.6 **Liens:** The WVDOH shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge and encumbrance or claim on or with respect to the lease/rented equipment, except with respect to the respective rights of the Vendor and the WVDOH.

7.7 **Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items leased/rented, quantities of items leased/rented and total dollar value of the items leased/rented. Vendor shall also provide reports, upon request, showing the items leased/rented during the term of this Contract, the quantity leased/rented for each of those items and the total value of lease/rental for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

7.8 **Contract Manager:** During its performance of this Contract, the 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: David Tincha
Telephone Number: 724/482-2800
Fax Number: 724/482-2820
Email Address: dtincha@dbiservices.com

Exhibit A, Counties Bid 6613C022

Vendor shall indicate the area which he wishes to lease/rent equipment to the WVDOH by placing an "X" or "√" beside the County, Counties or Statewide. If Vendor fails to indicate which County or Counties, it will be assumed that the Vendor's bid is for Statewide.

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

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
AERIAL BUCKET TRUCK Highway Rated TRK. MTD 50' Reach Min. 43.5' Radious 360 degrees Boom Rotation @ level position							
AERIAL PLATFORM TRUCK Highway Rated TRK. MTD 40' Reach Min. 360 degrees Boom Rotation @ level position							
AERIAL PLATFORM TRUCK Highway Rated TRK. MTD 55' Reach Min. 360 degrees Boom Rotation @ level position							
AERIAL PLATFORM TRUCK Elliott Model G50 or similar							
AERIAL PLATFORM TRUCK Elliott Model L55 or similar							
ARROW BOARDS 4' x 8' panel 15 lamp							
ASPHALT DISTRIBUTOR Trk. Mtd. w/spray bar							
ASPHALT RECYLING ATTACHMENT Endloader bucket - mounted, asphalt grinder/recycle attachment; 185 hp min. app. 8,500 lb. wt. capable of grinding and re-mixing up to 12" deep and up to 48" wide pavement and base.							
AUGER Trk. Mtd.							
BACKHOE Crawler Mech./Hyd. 0.75 Cyd. 24,000 lbs. - 28,000 lbs. Working Weight							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
BACKHOE Crawler Mech./Hyd. 0.75 Cyd. 29,000 lbs. - 35,800 lbs. Working Weight							
BACKHOE Crawler Mech./Hyd. 1.00 Cyd. 36,000 lbs. - 40,000 lbs. Working Weight							
Attachment: Grapple							
BACKHOE Crawler Mech./Hyd. 1.25 Cyd. 128 - 141 HP 42,700 lbs. - 45,900 lbs. Working Weight							
BACKHOE (HY-RAM) Crawler 2,000 ft./lbs. min. 24,400 lbs. - 35,800 lbs. Excavator Size							
BACKHOE (HY-RAM) Crawler 2,000 ft./lbs. min. 36,000 lbs. - 42,900 lbs. Excavator Size							
Attachment: Grapple							
BACKHOE (HY-RAM) Crawler 2,000 ft./lbs. min. 43,000 lbs. - 60,000 lbs. Excavator Size							
BACKHOE (HY-RAM) Crawler 2,000 ft./lbs. min. 61,000 lbs. - 80,000 lbs. Excavator Size							
HYRAM ATTCH ONLY 2,000 ft./lbs. min							
BACKHOE Crawler with a thumb							
BACKHOE LOADER Rubber Tired 55-85 DHP							
BACKHOE LOADER (HY-RAM) Mtd. Hyd. Breaker 55-85 DHP D							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
BACKHOE LOADER (HO-RAM) Mtd. Air Breaker 1,000 ft./lbs. min.							
BACKHOE LOADER TRACTOR - Compact Rubber Tired 20-30 HP max. height - 83"							
BASE WIDENER SP (Shoulder Stone)							
BRUSH CHIPPER - up to 49 hp Cutting size - 12" in diameter.							
BRUSH CHIPPER - from 50 hp to 85 hp Cutting size - 12" in diameter.							
BULLDOZER Crawler GD 65 -75 DHP D							
BULLDOZER Crawler GD 80 -90 DHP D							
BULLDOZER Crawler GD 100 -120 DHP D							
BULLDOZER Crawler GD 130 -140 DHP D							
BULLDOZER Crawler TC 150 - 250 EHP D							
BULLDOZER Crawler/Ripper TCP 181 - 250 EHP D							
BULLDOZER Crawler/Winch TCP 181 - 250 EHP D							
CHIP SPREADER SP							
COMPRESSOR 125 - 160 CFM Portwhl.							
COMPRESSOR 170 - 210 CFM Portwhl.							
COMPRESSOR 250 - 300 CFM Portwhl.							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
COMPRESSOR 350 - 375 CFM Portwhl.							
COMPRESSOR 600 CFM Portwhl.							
COMPRESSOR 700 - 800 CFM Portwhl.							
CONCRETE MIXER Trk. Mtd. 6.0 Cyd.							
CONCRETE SAW Full Depth CAP - 24" Blade							
CONCRETE SAW 12 1/2" Maximum Depth of Cut - 30" Blade							
CONCRETE SAW 15" Maximum Depth of Cut - 36" Blade							
CONCRETE VIBRATORY SCREED Air Powered - 36 ft. max.							
CONVEYER Port. Elev. W/Dumpster 2T min. @ 32 deg. Incline - 18" width 60' length - PTO Gas or Diesel Engine Self-Elev.							
CRACK SEALING MACHINE Trlr. Mtd. Dbl. Drum 100 -125 GLN. D							
CRANE 10 T Hyd. Trk. Mtd. min. 18' Bed							
CRANE 12 - 1/2 T Hyd. Trk. Mtd. min. 18' Bed							
CRANE 14 T Hyd. Trk. Mtd. min. 18' Bed							
CRANE 15 - 25 T Hyd. Rough Terrain							

Exhibit B, Schedule I
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Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
CRANE 20 - 25 T Cable D Crawler							
CRANE 25 - 30 T Cable, Trk. Mtd. G							
CRANE 30 T Hyd.							
CRANE 35 T Hyd.							
CRANE 40 T Hyd.							
CRANE 50 T Hyd.							
CRANE 15 - 20 T Truck Mounted Boom							
CRANE 21 - 25 T Truck Mounted Boom							
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							
EQUIPMENT TRAILER 10,000 lbs or less 16ft - 18 ft length to attach to a pintle hitch Tilt style deck							
EQUIPMENT TRAILER 12,000 lbs - 14,000 lbs 16ft - 18 ft length to attach to a pintle hitch Tilt style deck							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
EQUIPMENT TRAILER 14,000 GVWR 16' + 2' dovetail, with 24" wide x 60" wide long stand-up ramps with support leg and stand-up bar, spring assisted							
EXCAVATOR - TELEBOOM Track Mtd. SP 0.5 Cyd. D							
EXCAVATOR - TELEBOOM Truck Mtd. SP 0.5 Cyd. D							
EXCAVATOR w/McMillen extreme duty earth auger or similar							
EXCAVATOR Mini-Hyd. Track Mtd. 2,600 lbs. max.							
EXCAVATOR Mini-Hyd. Track Mtd. 6,500 lbs. max.							
EXCAVATOR - 1/8 Cyd. 30 HP D Track Width 5' out-to-out							
EXCAVATOR - 1/5 Cyd. 44 HP D 11,000 lbs. Track Width 6' out-to-out							
EXCAVATOR - 1/4 Cyd. 55 HP D 14,000 lbs. Bucket Track Width 6' out - to - out							
EXCAVATOR ATTACHMENT Plate compactor for 15,000-20,000 lb excavator							
EXCAVATOR ATTACHMENT Hydraulic hammer for 15,000-20,000 lb excavator							
FLATBED TRUCK 1 Ton minimum with 22 ft. bed length minimum							
FORKLIFT TRUCK Rough Terrain, 5 - 10 K lb. lift cap.							
GRAPPLE ATTACHMENTS for Skid Steer Loaders 72" - 78" attachments							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
HAMMER (DELMAG) PILE-D. D8-22							
HIGH FLOW SKID STEER							
Attachment: Broom							
Attachment: Bucket							
Attachment: Broom Bucket							
Attachment: Auger of any diameter							
Attachment: 1' - 5' Milling Planer							
Attachment: Trencher of any width							
HYDRO-SEEDER							
HYDRO-SEEDER Trk. Mtd. 1,500 - 2,500 Gal.							
JOINT SEALER 3 Cylinder, Tandum Dual 2 Axle Vat Capacity - 200 gallons Tank - Double Boiler Type - opening 16"x24" Maximum Heat Input - Diesel 290,000 BTU Incl. Full Sweep Mixer with 2 horizontal paddles							
LIGHT TOWERS PORT. 4 - 1,000 w/bulbs							
MANLIFT SP 40 ft.							
MANLIFT SP 60 ft.							
MANLIFT SP 80 ft.							
MANLIFT SP 125 ft. minimum to 135 ft. maximum							
MESSAGE SIGN - PROGRAMMABLE							

Exhibit B, Schedule I
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
MILLING PLANER SKID STEER							
Attachment: Broom							
Attachment: Bucket							
Attachment: Broom Bucket							
Attachment: Auger of any diameter							
Attachment: 1' - 5' Milling Planer							
Attachment: Trencher of any width							
MORTAR MIXER 6 CF 5 HP G							
MOTOR GRADER 35,000-45,000 lbs. class							
PAVER - HOT MIX ASPHALT Rubber-tired Paver							
PAVER - HOT MIX ASPHALT Track Paver							
ROCKDRILL - SP Hyd. Excav./Boom Mtd. 3" Holes/20' deep min.							
ROCK HAMMER FOR EXCAVATOR 5000-7000 lbs. class							
ROCK WAGON 20 -30 T							
ROLLER 5 Ton with 2 steel drums							
ROLLER 10-15 Tons with 2 steel drums							
ROLLER 5 - 6 T PNEUTR TOW/Trk. Mtd.							
ROLLER 10 T PNEUTR							
ROLLER 7-15 T PNEUTR, Articulated							

Exhibit B, Schedule I
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Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
ROLLER SP PNEUTR - 10K GVW G							
ROLLER SP PNEUTR - 20K GVW G							
ROLLER - TRENCH VIB Dual Drum Approx. 10 HP Approx. Width 2.5 ft./length 8.3 ft.							
ROLLER - VIB SP 1 Drum 2XL 10 - 15 K GVW D							
ROLLER - VIB SP 1 Drum 2XL 10 - 20 K GVW D							
SCREENERS, Material Mobile - Diesel							
SHADOW TRUCK w/Attenuator min. 30,000 GVW							
SHOULDER MAINTAINER SP w/G (min. 67 HP) or w/D (min. 46 HP) asphalt or stone width 1' - 6' and 6" - 12" depth							
STABILIZER (BO-MAG) SP 250 HP min.							
STRAW / MULCH BLOWER Trk. Mtd.							
STREET SWEEPER SP 3.0 Cyd. (min.)							
STREET SWEEPER SP 8.0 Cyd. (min.)							
STREET SWEEPER Trlr. Type							
STREET SWEEPER - HYDROSTATIC Elgin Pelican III or similar							

Exhibit B, Schedule I
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Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
STREET SWEEPER - Towable Self-Propelled							
STREET SWEEPER - Truck-Mounted 4.0 C.Y. Minimum hopper capacity Water-spray system for dust control Side/curb brooms and rear/center broom 11,000 lbs up to 33,000 lbs							
TRACTOR BOOM MOWER 110 to 120 hp, class							
TRACTOR WITH BROOM ATTACHMENTS 90 HP							
TRACTOR MOWER With Side and Rear Flail Mower Attachments Included							
TRAILER 6 tons with ramps, minimum 18' length, 8.5' width							
TRAILER - LowBoy 35 - 50 ton - pony motor, self contained hydraulics							
TRAFFIC SIGNALS - PORT 2 Phase Operation D/E							
TRENCH PAVER (Base Widening Machine)							
UNDERBRIDGE PLATFORM Trailer Mtd., Hyd. SP Min. 20 ft. horizontal reach							
UNDERBRIDGE PLATFORM Trailer Mtd., Hyd. SP Min. 30 ft. horizontal reach							
UNDERBRIDGE PLATFORM Trailer Mtd., Hyd. SP Min. 40 ft. horizontal reach							
UNDERBRIDGE PLATFORM Trailer Mtd., Hyd. SP Min. 50 ft. horizontal reach							
UNDERBRIDGE PLATFORM Trailer Mtd., Hyd. SP Min. 60 ft. horizontal reach							

Exhibit B, Schedule I
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Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *Without Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
UNDERBRIDGE PLATFORM Truck Mtd., Hyd. Min. 23 ft. horizontal reach (driver to be included)							
VACUUM/SPRAY UNIT Trk. Mtd. min. 1,000 gal. tank min. 60 gpm 4 ft. teleboom w/swivel/rotating hose reel							
VACUUM/STREET SWEEPER Self-Propelled, 4 Cyd., Gas, 5 ft wide path							
VAN - BOX 21,000 or greater							
VIBRATORY ROLLER with Water 4 - 5 ton Steel Double Drum							
VIBRATORY ROLLER with Water 8 - 10 ton Steel Double Drum							
WATER PUMPS - 3" w/SUCTION & DISCHARGE HOSES							
WATER PUMPS - 4" w/SUCTION & DISCHARGE HOSES							
WATER PUMPS - 6" w/SUCTION & DISCHARGE HOSES							
WATER PUMPS - 12" w/SUCTION & DISCHARGE HOSES							
WORK PLATFORM SP SL 25' High Platform 1,500# CAP							
WORK PLATFORM SP SL 35' High Platform 1,500# CAP							

Exhibit B, Schedule II
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *With Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
BACKHOE - Crawler- HY- RAM 24,000 lbs. - 35,800 lbs.							
BACKHOE - Crawler- HY- RAM 36,000 lbs. - 42,900 lbs.							
BACKHOE - Crawler- HY- RAM 43,000 lbs. - 60,000 lbs.							
BACKHOE - Crawler 1.25 Cyd. 128 - 141 HP 42,700 lbs. - 45,900 lbs.							
CONCRETE PUMP Trailer Mounted with Hoses without Boom							
CONCRETE PUMP Truck Mounted with Hoses and Boom up to 30 meters							
CONCRETE PUMP Truck Mounted with Hoses and Boom over 30 meters							
CRANE 15 - 25 Ton Hyd. Rough Terrain							
CRANE 30 Ton Hyd. Truck Mounted D							
CRANE 35 Ton Hyd. Truck Mounted D							
CRANE 40 Ton Hyd. Truck Mounted D							
CRANE 50 Ton Hyd. Truck Mounted D							
CRANE 60 Ton Hyd. Truck Mounted D							
CRANE 75 Ton Hyd. Truck Mounted D							

Exhibit B, Schedule II
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *With Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
CRANE 90 Ton Hyd. Truck Mounted D							
CRANE 100 Ton Hyd. Truck Mounted D							
CRANE 110 Ton Hyd. Truck Mounted D							
CRANE 120 Ton Hyd. Truck Mounted D							
CRANE 150 Ton Hyd. Truck Mounted D							
CRANE 165 Ton Hyd. Truck Mounted D							
CRANE 175 Ton Hyd. Truck Mounted D							
CRANE 225 Ton Hyd. Truck Mounted D							
CRANE 300 Ton Hyd. Truck Mounted D							
CRANE 500 Ton Hyd. Truck Mounted D							
CRANE - Teleboom SP 30 Ton							
CRANE - Teleboom SP 35 Ton							
CRANE - Teleboom SP 50 Ton							
CULVERT CLEANER Jetter and Vaccuum Truck	Vactor	2100	3,150.00	22,050.00	94,500.00	500.00	4.02
MANLIFT SP 125 ft. minimum to 135 ft. maximum							
Radio Remote Controlled Track Loader 20 HP Minimum and 44" Max Overall Height							

Exhibit B, Schedule II
RFQ#6614C031

Vendor Should Type Pricing Page Schedule

Equipment Description	Equipment Offered for Lease/Rental		Lease/Rental Rate of Equipment Without Delivery/ *With Operator*			Equipment Delivery Fee	
	Manufacturer's Name	Model/Serial #	$ /Day	$ /Week	$ /Month	1st Mile	Add. Mi.
STREET SWEEPER - Truck-Mounted 4.0 C.Y. Minimum hopper capacity Water-spray system for dust control Side/curb brooms and rear/center broom 11,000 lbs up to 33,000 lbs	Stewart Amos	S-4	1,815.00	12,705.00	54,450.00	500.00	4.02
UNDERBRIDGE INSPECTION UNIT Small Bucket Type 30 ft. min. to 32 ft. max. horizontal reach (including operator AND driver)							
UNDERBRIDGE INSPECTION UNIT Small Bucket Type 33 ft. min. to 40 ft. max. horizontal reach (including operator AND driver)							
UNDERBRIDGE INSPECTION UNIT Medium Bucket Type 41 ft. min. to 52 ft. max. horizontal reach (including operator AND driver)							
UNDERBRIDGE INSPECTION UNIT Medium Bucket Type 53 ft. min. to 62 ft. max. horizontal reach (including operator AND driver)							
UNDERBRIDGE INSPECTION UNIT Large Bucket Type 63 ft. min. to 75 ft. max. horizontal reach (including operator AND driver)							
VACUUM/STREET SWEEPER Self-Propelled, 4 Cyd., Gas, 5 ft wide path							
VACUUM TRUCK/JETT-RODDER 1" hose - 65-85 GPM @ 3,000 PSI	Vactor	2100	3,150.00	22,050.00	94,500.00	500.00	4.02

WEST VIRGINIA
DIVISION OF HIGHWAYS



STANDARD SPECIFICATIONS
ROADS AND BRIDGES
Adopted 2010

ver. 20110520

SECTION 101
DEFINITION OF TERMS

101.1-ABBREVIATIONS:

Whenever the following abbreviations are used in these Specifications, Plans or Contract Documents, they are to be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
AIA	American Institute of Architects
AISC	American Institute of Steel Construction, Incorporated
AISI	American Iron and Steel Institute
AMA	Automotive Manufacturer's Association
AMS	Aerospace Material Specification
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
AREMA	American Railway Engineering and Maintenance of Way Association
ASCE	American Society of Civil Engineers
ASD	Aluminum Standards & Data-Aluminum Association
ASLA	American Society of Landscape Architects
ASTM	American Society for Testing and Materials
ATSSA	American Traffic Safety Services Association
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration
FSS	Federal Specifications and Standards, General Services Administration
IEEE	Institute of Electronic and Electrical Engineers
IPCEA	Insulated Power Cable Engineers Association
ISA	Instrument Society of America
MIL	Military Specification
MP	Materials Procedure (see 101.2 in definition)
NBFU	National Board of Fire Underwriters
NEC	National Electric Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
PEI-ALS	Porcelain Enamel Institute: Aluminum Standards
UL	Underwriters Laboratories
SAE	Society of Automotive Engineers
SSPC	Society for Protective Coatings
TTE-TTP	Federal Specifications and Standards

101.2-DEFINITIONS:

~ A ~

ACCESS CONNECTION-Any roadway facility by means of which vehicles enter or leave arterial highways.

ADVERTISEMENTS-The public announcement, as required by law, inviting bids for work to be performed, or material to be furnished.

ARTERIAL HIGHWAY-A general term denoting a highway primarily for through traffic.

AUXILIARY LANE-The portion of the roadway adjoining the traveled way for parking, speed-change or other purposes supplementary to through traffic movement.

AWARD-The acceptance by the Division of a bid.

~ B ~

BASE COURSE-A layer or layers of specified material of designated thickness placed on a subbase or a subgrade to support a surface course or courses.

BIDDER-An individual, firm, corporation, or combination thereof, acting directly or through a duly authorized representative, and prequalified according to the requirements and provisions of the Division, submitting a bid for the proposed work.

BRIDGE-A structure, including supports, erected over a depression or an obstruction, such as water, a highway or railway and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than 20 ft. (6.1 meters) between undercopings of abutments or extreme ends of openings for multiple boxes.

The length of a bridge structure is the overall length measured along the line of survey stationing back to back of abutments if present, otherwise, end to end of the bridge floor, but in no case less than the total clear opening of the structure. Roadway width is the clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs.

~ C ~

CALENDAR DAY-Every day shown on the calendar.

CERTIFIED TECHNICIAN-A Certified Technician is an individual who has been examined by the joint Industry-Division Certification Board and deemed competent in the particular technical field for which the individual has been examined. This competency is documented by written notification and issuance of a certificate to the individual and remains in effect for a given period of time as determined by the regulations of the Board. Should any questions develop concerning the status of an individual, verification may be made through the Training section of the Personnel Division of the Division.

CHANGE ORDER-A general term referring to force account work orders, supplemental agreements, and work orders of the Contract.

CHANNEL-A natural or artificial water course.

CITY, TOWN OR DISTRICT-A subdivision of the county used to designate or identify the location of the proposed work.

COMMISSIONER-West Virginia Commissioner of Highways.

CONSTRUCTION LIMITS-The physical limits of construction as described by designated lines drawn on the Plans.

CONTRACT-The written agreement between the Division and the Contractor covering the performance of the work, the furnishing of labor, equipment and materials, and the basis of payment. The Contract includes the invitation of bids, proposal, contract form, contract bond, specifications, supplemental specifications, special provisions, plans, notice to proceed, any change orders and supplemental agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

CONTRACT BOND-The approved form of security, executed by the Contractor and their surety, guaranteeing completion of the work and payment of all legal debts pertaining to the construction of the project.

CONTRACT PERIOD-The period from the specified date of commencement of work to the specified date of completion of the work, both dates inclusive, as is specified in the Contract.

CONTRACT TIME-The number of work or calendar days specified in the proposal, indicating the time allowed for the completion of the work contemplated, including authorized time extensions.

CONTRACTOR-The individual, firm or corporation, party of the second part to the Contract, acting directly or through their agents, employees, or subcontractors.

CONTROL OF ACCESS, FULL-The condition where the right of owners or occupants of abutting land or other persons to access, light, air or view in connection with a highway is fully controlled by public authority. The authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct driveway connections.

CONTROL OF ACCESS, PARTIAL-The condition where the right of owners or occupants of abutting land or other persons to access, light, air or view in connection with a highway is partially controlled by public authority. The authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

COUNTY-The County or Counties of West Virginia in which the work is to be done.

CULVERT-Any structure not classified as a bridge which provides an opening under the roadway.

~ D ~

DEPARTMENT-West Virginia Department of Transportation.

DIVISION-West Virginia Division of Highways

DIVIDED HIGHWAY-A highway with separated roadways for traffic in opposite directions.

~ E ~

EASEMENT-A right acquired by one party to use land belonging to another party for a specified purpose.

EMBANKMENT-The structure of soils, soils aggregate and broken rock between the embankment foundation and the subgrade.

EMBANKMENT FOUNDATION-The material below the original ground surface whose physical characteristics affect the support of the embankment.

EMPLOYEE-Any person working on behalf of the project who is under the direction of the Contractor or any subcontractor.

ENGINEER-The State Highway Engineer of the Division, or an authorized representative, limited by the scope of duties assigned.

EQUIPMENT-All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

ESTIMATES-The official written itemization of the value of materials in place and work performed.

EXPRESSWAY-A divided arterial highway for through traffic with full or partial control of access and generally with grade separations at intersections.

EXTRA WORK-An item of work not provided for in the contract as awarded, but found essential to the satisfactory completion of the Contract within its intended scope. See further 104.3.

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FORCE ACCOUNT WORK ORDER-An order signed by the Engineer or an authorized representative, directing additional work to be performed, with payments based on labor, materials used, equipment cost, plus specified percentages.

FREEWAY-An expressway with full control of access.

FRONTAGE STREET OR ROAD-A local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas, and for control of access.

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HIGHWAY-The entire improvement comprising the entire right-of-way. See definition for Road in Section 101.

HIGHWAY GRADE SEPARATION-Any structure carrying highway or street traffic over or under another highway or street.

HOLIDAYS-Official holidays are New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, West Virginia Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any day in which an election (Primary or General) is held through the State and such other days as the President, Governor, or other duly constituted authority shall proclaim to be holidays. If a holiday falls of Sunday, the following Monday shall be observed in lieu thereof. If a holiday falls on a Saturday, the previous Friday shall be observed in lieu thereof.

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INSPECTOR-The Engineer's authorized representative assigned to make any or all necessary inspection of the work as further described in 105.10.

INSTRUCTIONS TO BIDDERS-The notice to Contractors containing all necessary information as to provisions, requirements, date and time of submitting Proposals.

INVITATION FOR BIDS-The advertisement for bids, as required by law, inviting bids for work to be performed or material to be furnished.

ITEM-A specifically described unit of work for which a price is provided in the contract.

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LABORATORY-The testing laboratories of the Division or any other testing laboratory designated by the Division.

LOT-A lot is an isolated quantity of specified material from a single source or a measured amount of specified construction assumed to be produced by the same process.

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MATERIALS-Any substances specified for use in the construction of the project and its appurtenances.

MATERIALS PROCEDURE-A procedure defining standard methods or guidelines for the inspection, sampling, testing, evaluation, and documentation of the Material's Division activities relative to the quality assurance program for materials, products, and processes. Each Materials Procedure is identified by the letters MP followed by seven digits, (i.e. MP XXX.XX.XX).

MEDIAN-The portion of a divided highway separating the traveled ways for traffic in opposite directions.

MEDIAN LANE-A speed-change lane within the median to accommodate left-turning vehicles.

MULTIPLE DEFICIENCY-A multiple deficiency is defined as a failure to meet specified requirements involving more than one characteristic of a material within the same lot.

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NOTICE TO PROCEED-Written notice to the Contractor to proceed with the contract work including, when applicable, the date of beginning of contract time.

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PARKING LANE-An auxiliary lane primarily for the purpose of vehicular parking.

PARKWAY-An arterial highway for non-commercial traffic, with full or partial control of access, and usually located within a park or a ribbon of parklike development.

PAVEMENT STRUCTURE-The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

PLANS-The approved Plans, profiles, typical cross sections, working drawings, standard drawings, and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the work to be done.

PRE-CONSTRUCTION CONFERENCE-A conference normally called by the District Engineer, following award and prior to start of construction, to be attended by Division officials and by the responsible officials of the Contractor and other affected parties.

PRE-QUALIFICATION STATEMENT-The approved form or forms upon which Contractors shall furnish information as to their ability to perform work, their experience, personnel, equipment and financial condition.

PROFILE GRADE-The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadway. Profile grade means either elevation or gradient of such trace according to the context.

PROJECT-The specific section of the highway, together with all appurtenances and construction to be performed, under the Contract.

PROJECT ENGINEER OR PROJECT SUPERVISOR-The representative of the Engineer on a project. See further 105.9.

PROPOSAL-The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and material at the prices quoted.

PROPOSAL FORM-The approved form on which the Division requires a bid to be prepared and submitted for the work.

PROPOSAL GUARANTY-The security furnished with a bid to guarantee that the bidder will enter into the Contract if their bid is accepted.

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RAILWAY-HIGHWAY SEPARATION-Any structure carrying highway traffic over or under the tracks of any railway.

RAMP-A connecting roadway between two intersecting highways, usually at a highway grade separation.

RIGHT-OF-WAY-A general term denoting land, property, or interest, usually in a strip, acquired for or devoted to a highway.

ROAD-A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way, or needed for the maintenance of travel. See West Virginia Code, Chapter 17, Article 1, Section 3.

ROADBED-The grade portion of a highway, within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

ROADSIDE-A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

ROADSIDE DEVELOPMENT-Those items necessary to the complete highway which provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers; such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

ROADWAY-The portion of the highway within limits of construction.

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SEASONAL RESTRICTIONS-Limitations imposed on the work which prohibit the Contractor from performing certain types of work during specific seasons of the year.

SHOULDERS-The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

SIDEWALK-That portion of the roadway primarily intended for the use of pedestrians.

SINGLE DEFICIENCY-A single deficiency is defined as a failure to meet specified requirements involving one characteristic of a material.

SPECIAL PROVISIONS-Additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to an individual project.

SPECIALTY ITEM-An item of work designated as "Specialty Item" in the proposal that is limited to work which requires highly specialized knowledge, craftsmanship, or equipment that is not ordinarily available in contracting organizations prequalified to bid and is usually limited to minor components of the overall Contract.

SPECIFICATIONS-A general term applied to all directions, provisions, and requirements pertaining to performance of the work.

STATE-The State of West Virginia.

STREET-A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

STRUCTURES-Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the work and not otherwise classed.

SUBBASE-The layer or layers of specified or selected materials of designed thickness placed on a subgrade to support a base course.

SUBCONTRACTOR-An individual, firm, or corporation to whom the Contractor sublets part of the Contract.

SUBGRADE-The upper portion of a roadbed upon which the pavement structure and shoulders are constructed.

SUBSTANTIAL COMPLETION or SUBSTANTIALLY COMPLETE-The work on the Contract will be considered substantially complete when the Project could be opened continuously for the safe, convenient, and unimpeded use of the traveling public, or the Project has met the intention of the plans, as reasonably determined by the Engineer.

SUBSTRUCTURE-All that part of the structure below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

SUPERINTENDENT-The Contractor's authorized representative in responsible charge of the work.

SUPERSTRUCTURE-The entire structure except the substructure.

SUPPLEMENTAL AGREEMENT-A modification of the Contract covering changes in the Plans or quantities, or both, and establishing the basis of payment and time adjustment for the work necessitated by reason of the modification, requiring the signature of the Commissioner, the Contractor, and the Surety, or their authorized representatives.

SUPPLEMENTAL SPECIFICATIONS-Additions to and revisions of the Standard Specifications that are approved subsequent to issuance of the printed book. Supplemental Specifications prevail over Standard Specifications when in conflict therewith.

SURETY-The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

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TEMPORARY STRUCTURE-A structure required for the use of traffic or other purpose while construction is in progress and not to be retained as a part of the improvement.

TITLES-The titles or headings of the sections and subsections are intended for convenience of reference and shall not be considered as having any bearing on their interpretation except those titles and headings used in conjunction with the definition of terms.

TRAFFIC LANE-The portion of the roadway for the movement of a single line of vehicles.

TRAVELED WAY-The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

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WORK-Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the project and the carrying out of all duties and obligations imposed by the contract.

WORKING DAY-Every day shown on the calendar, exclusive of Saturdays, Sundays, and Holidays as set forth in definitions for Holidays in Section 101, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for a minimum of five hours with normal working forces engaged in performing the controlling item or items of work.

WORKING DRAWINGS-The Contractor shall submit to the Engineer all stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplemental plans or similar data for the Engineer's use.

WORK ORDER-A written order, signed by the Engineer, requiring certain performance by the Contractor without negotiation. Such order shall not change quantities of major items beyond the twenty-five percent (25%) limitations, shall not create new items, nor make revisions to item prices.

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101.3-INTERPRETATIONS:

In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer".

The Division may at its discretion issue to a Contractor a Proposal requiring prequalification in excess of the amount allotted the Contractor provided it considers that this Contractor is particularly fitted by reason of their experience or equipment, or both, to perform work of this type involved in an amount exceeding their prequalification limits and further provided that the prospective bidder furnish the Division with a letter from a reputable Surety advising of their willingness to furnish bond to the Contractor for the project.

When more than one project is advertised, Proposals will be issued on as many projects as the Contractor requests, providing the Contractor is qualified as above for each individual project, but no contracts will be awarded exceeding the permissible limit of the Contractor's prequalification rating except as otherwise provided in 103.1.

102.4-INTERPRETATION OF APPROXIMATE ESTIMATES:

The quantities appearing in the proposal form are approximate only and are prepared for the comparison of bids. Payment to the Contractor will be made only for the work accepted, or for materials furnished in accordance with the Contract. If upon completion of the construction the actual quantities show either increase or decrease, the unit bid prices offered in the Proposal will prevail except as further provided.

102.5-EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:

The bidder is required to examine carefully the Plans, Specifications, Supplemental Specifications, contract forms, and the site of the work contemplated. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and has judged for and satisfied themselves as to the character, quality, and quantity of work to be performed and material required to be furnished under the Contract.

102.6-PREPARATION OF PROPOSAL:

The bidders Proposal must be submitted through the Division's Bid Express Website. The bidder must furnish a unit price or a lump sum price as called for in the Proposal, in numerical figures, for each pay item listed, except that in the case of alternates, the bid may be made on only one alternate if so desired.

The Contractor or qualified and authorized agent shall use a digital signature as provided at law for the Proposal submission.

The proposal shall comply with West Virginia Contractor Licensing Act, Chapter 21, Article 11 Code of West Virginia, except that on Federal-Aid Projects a Contractor's license is not required at time of bid, but will be required before work can begin.

102.7-IRREGULAR PROPOSALS:

Proposals will be considered irregular and will be rejected for any of the following reasons:

i. When the Proposal is on a form other than that furnished by the Division or if the form is altered. Use of a Division approved computer generated Schedule of Items shall not be considered an alteration of form or format within the meaning of these Specifications.
ii. When there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the Proposal incomplete, indefinite, or ambiguous as to its meaning. Also, when Division approved computer generated Schedule of Items show any alteration of format, additions or amendments not called for, errors or omissions in units of measure, or erasures.
iii. When the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a Contract pursuant to an award. This does not exclude a bid limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, providing that any selection of awards will be made by the Division.
iv. Failure to sign or properly execute the Proposal.
v. Failure to indicate a proposed goal in Section C, Item 3 of the Notice contained in the Proposal, when a Division determined goal is indicated in paragraph 5 of the Special Provision for Disadvantaged Business Enterprise Utilization.
vi. Failure to properly acknowledge receipt of addendum(s) in accordance with Section J of the notice contained in the proposal.
vii. Failure to show the West Virginia Contractor's License Number when required in Section H of the notice contained in the proposal.

102.8-PROPOSAL GUARANTY:

No proposal will be considered unless accompanied by a digitally signed proposal guaranty bond in the form of a certified or cashier's check, or bid bond, in the amount specified in the Proposal, made payable to the West Virginia Division of Highways. Bid bonds will be accepted only if executed on the official form furnished by the Division, and any Proposal accompanied by a bond executed on a copy, duplicate, or facsimile will be rejected.

102.9-DELIVERY OF PROPOSALS:

Each Proposal shall be submitted electronically and must be received by the Bid Express website by the time designated in the proposal to proceed with the letting.

Cashier's Checks shall be submitted in an envelope and delivered prior to the date and time of letting. The Envelope and the Cashier's Check shall each contain the following Information:

- Call Number
- Project Number
- Letting Date
- Contractor's Name and Address

Envelopes shall be addressed to the West Virginia Division of Highways, Charleston, West Virginia.

102.10-WITHDRAWAL OF PROPOSALS:

At any time prior to the time designated in the Proposal, bidders may withdraw Proposals in a manner approved by the electronic bidding service provider.

After the time provided for the opening of proposals, a bidder may withdraw its bid during the course of reading of bids prior to the actual reading of bids on the project for which the bid is withdrawn only by providing a written document at the site of the letting in the following form:

"I, the undersigned, of _____, Contractor(s) hereby acknowledge that I have this day withdrawn the sealed bid of _____, Contractor(s) on West Virginia Division of Highways Project No. _____."

Contractors who are found to be low bidders on a number of projects of which the total exceeds the Contractor's rating may withdraw, with the approval of the Commissioner, bids on such project or projects as will bring the remaining total to within the limit of the rating. At their discretion, the Commissioner may award contracts for the project or projects on which bids have been so withdrawn to the next lowest qualified bidder.

102.11-COMBINATION PROPOSALS:

If the Division so elects, Proposals may be issued for projects in combination or separately, so that bids may be submitted either on the combination or on separate units of the combination. The Division reserves the right to make awards on combination bids or separate bids to the best advantage of the Division. No combination bids other than those specifically set up in proposals by the Division will be considered. Separate Contracts will be written for each individual project included in the combination.

102.12-PUBLIC READING OF PROPOSALS:

Proposals will be received, decrypted, and read publicly at the time and place indicated in the notice to Contractors. Bidders, their authorized agents, and other interested parties are invited to be present.

102.13-DISQUALIFICATION OF BIDDERS:

Either of the following reasons may be considered as being sufficient for the disqualification of a bidder and the rejection of their Proposal or Proposals.

i. More than one Proposal for the same work from an individual, firm, or corporation under the same or different name.

ii. Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Division until any such participant shall have been reinstated as a qualified bidder.

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.1-LAWS TO BE OBSERVED:

The Contractor shall keep fully informed of all Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees, whether by themselves, their subcontractors or their employees.

107.2-PERMITS, LICENSES AND TAXES:

The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

107.3-PATENTED DEVICES, MATERIALS, AND PROCESSES:

If the Contractor employs any design, devise, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Division, and affected third party, or political subdivision from and claims for infringement by reasons of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Division for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

107.4-RESTORATION OF SURFACES OPENED BY PERMIT:

The right to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time, is expressly reserved by the Division for the proper authorities of the municipality in which the work is done, and the Contractor shall not be entitled to any damages either for the digging up of the street or for any delay occasioned.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit from the Division. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the highway. The Contractor shall, when ordered by the Engineer, make in an acceptable manner all necessary repairs due to such openings and such necessary work will paid for as "Extra Work", or as provided in these Specifications, and will be subject to the same conditions as original work performed.

107.5-FEDERAL-AID PROVISIONS:

When the United States Government pays any portion of the cost of a project, the Federal Laws and the Rules and Regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal Agency.

Such inspection shall in no sense make the Federal Government a party to the Contract and will in no way interfere with the rights of either party hereunder.

107.6-SANITARY PROVISIONS:

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of their employees as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction. The Contractor shall not create, commit, or maintain a public nuisance.

107.7-PUBLIC CONVENIENCE AND SAFETY:

The Contractor shall at all times so conduct their work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under 104.5.

The Contractor shall comply with all applicable Federal, State, and local laws governing safety, health and sanitation. The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on their own responsibility, or as the Engineer may determine, reasonable necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Contract.

The Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1926, formerly Part 1518, as revised from time to time). promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).

107.7.1-Safety Plan: The Contractor shall comply with this subsection if the Total Contract Bid Amount exceeds $2,000,000 or is otherwise noted on the plans. The contractor will provide a copy of the company comprehensive safety and health program and the name of the company safety officer at the preconstruction conference or prior to start of work. A copy of the comprehensive safety and health program for each subcontractor and the name of the company safety officer must be submitted with the request for subcontract approval. The company comprehensive safety and health program should be in accordance with ANSI A10.38-1991, "Basic Elements of an Employer Program to Provide a Safe and Healthful Work Environment" or equivalent.

A site specific safety plan covering the work of the prime contractor and all known subcontractors must be prepared and submitted at the preconstruction conference or prior to the start of work. The site specific plan must include the name of the competent person(s) responsible for safety at the project site. As additional subcontracts are negotiated the site specific safety plan for that work can be submitted with the subcontract request.

Contractor employees shall be provided hazard recognition and avoidance training. Further, newly employed workers shall be provided safety orientation training prior to being assigned any task. This training can be provided by the contractor or the contractor's representative. Likewise, training provided by other sources based on an employee's initiative or his or her affiliation with the other groups is permissible. All training should be current and up to date with appropriate refresher courses provided if previous training was not within the last three years.

All contractor safety training shall be administered or monitored by the contractor's qualified representative, known as the company safety officer. "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, has successfully demonstrated his or her ability to solve or resolve problems relating to the subject matter, the work or the project. Acceptable training for this individual to be considered qualified includes, but is not limited to, completion of the 30-hour OSHA 500 Trainer Course in Occupational Safety and Health Standards for the Construction Industry or its equivalent.

The Contractor or Subcontractor working on the project will conduct weekly safety "tool box" talks to discuss relevant safety issues and this meeting will be open to attendance and active participation by the on-site Division of Highways Staff.

107.8-RAILWAY-HIGHWAY PROVISIONS:

The Contractor shall comply with the following provisions when performing any operations within the existing right of way of the Railroad or when railroad protective insurance is required by the contract documents. Railroad Protective insurance shall include all of the work set forth in 107.8 with exception of the provisions of sections 107.8.7 and 107.8.8.

107.8.1-NOTICE OF STARTING WORK: The Contractor shall not start any work on Railroad right of way until he has complied with the following conditions:

(a) Give the Railroad's Chief Engineer written notice at least ten days in advance of the date he proposes to begin work on or adjacent to the Railroad right of way.
(b) Obtain written approval from the Railroad of the Railroad Protective Insurance coverage as required herein.
(c) Obtain written authorization from the Railroad to begin work on Railroad right of way. This authorization can be expected within two weeks after insurance has been approved.

107.8.2-Insurance: The Contractor shall secure and provide, until all work under the terms of the project is satisfactorily completed and accepted, the following types of insurance in the amounts and form as hereinafter set forth:

107.8.2.1-Contractor's Public Liability Insurance and Protective Public Liability Insurance: CGL coverage as required by Section 103.6.1 shall be written with a $2,000,000 Each Occurrence Limit. This limit may be single limit of primary coverage or a combination of primary and excess coverage which will meet the $2,000,000 requirement. A certificate of insurance shall be provided to the Railroad before work begins and said certificate shall provide the Railroad thirty (30) days advance written notice of cancellation or material change in insurance coverage. If any part of the work is sublet, Commercial General Liability Insurance and evidence thereof in the same amounts as required of the Prime Contractor, shall be provided by or in behalf of the subcontractor to cover his operations on railroad right of way.

107.8.2.2-Railroad Protective Liability Insurance: With respect to the operations performed by the Contractor or subcontractors of any tier the Contractor must provide in the name of Railroad. This policy shall be written on the ISO/RIMA Form of Railroad Protective Insurance (ISO Form CG00350690) with Pollution Exclusion Amendment ISO Form CG 28311185 or their equivalents). The policy of insurance specified in this section shall be countersigned by a resident agent of the State of West Virginia in accordance with Section 103.6.5. The original of the policy shall be submitted to and approved by the Railroad before work is commenced on its right of way or within 200 feet of the nearest track or 1000 feet if blasting is required for the construction.

107.8.2.2.1-Railroad Protective Liability Insurance Limits for Non-Passenger Railway Facilities: A policy providing a limit of $2,000,000 per occurrence for bodily injury and property damage combined. Said insurance shall be furnished with an aggregate of $6,000,000 applying separately to each annual period.

107.8.2.2.2-Railroad Protective Liability Insurance Limits for Passenger Railway Facilities: A policy providing a limit of $5,000,000 per occurrence for bodily injury and property damage combined. Said insurance shall be furnished with an aggregate of $10,000,000 applying separately to each annual period.

107.8.3-USE OF GRADE CROSSINGS: If the Contractor desires a temporary grade crossing of the Railroad's tracks other than that shown in the project plans; to use an existing private grade crossing; or to use an existing public grade crossing with unlicensed construction equipment, the Contractor shall make arrangements in writing with the Railroad and will be required to bear all costs, including flagging, incidental to such crossings.

107.8.4-INTERFERENCE WITH RAILROAD OPERATIONS: All work to be performed by the Contractor shall be performed in a manner agreeable to the Railroad's Chief Engineer. The Contractor shall use reasonable care and diligence and cooperate with officials of the Railroad in order to avoid accidents, damages or unnecessary delay to, or interference

with train movement of the Railroad.

When work within Railroad right of way is of a nature that it impedes Railroad operations such as, but not limited to, use of runaround tracks or the necessity for reduced speed, the Contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.

Any cost incurred by the Railroad for repairing damages to its property or to property of its tenants, caused by or resulting from the operations of the Contractor, shall be paid directly to the Railroad by the Contractor.

The Contractor shall assume all liability for any and all damages to his work, employees, subcontractor, equipment and materials caused by Railroad traffic.

No charge or claim of the Contractor against either the Division or the Railroad will be allowed for hindrance or delay on account of train traffic, work done by Railroad, delay incident to or necessary for safe operation and maintenance of the railroad or any delays due to compliance with these special provisions.

107.8.5-CONSTRUCTION PROCEDURES: It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing his work and the Railroad's or its tenants work. The Contractor in arranging a schedule shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefor.

The Contractor shall submit to the Railroad's Chief Engineer, with a copy to the Division of Highways, work schedule and information regarding methods and procedures for performing work, e.g., plans and specifications for shoring and sheeting, and for protective shields covering all Railroad facilities. The Contractor shall obtain Railroad approval before commencing said work.

The Contractor shall take special precaution and care when excavating for shoring pits and footers adjacent to tracks and in driving piles to always provide adequate lateral support for the tracks and the loads which they carry, so as not to disturb the track alignment and surface and to avoid obstructing track clearances with working equipment, tools or materials.

A copy of the Contractor's blasting sequence will be provided to the railroad for their information prior to any blasting. The Contractor shall obtain specific approval of the Railroad's Chief Engineer for use of explosives on Railroad property.

All construction equipment that is parked near the track shall be effectively immobilized so that it cannot be moved by unauthorized persons.

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the right of way of the Railroad without first having obtained written permission from the Railroad's Chief Engineer.

The Contractor will be required to maintain all ditches and drainage structures and keep them free of silt or other obstructions, to promptly repair eroded areas within Railroad right of way and to repair any other damage to the property of the Railroad or its tenants which may be the results of their operations.

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad's right of way, all machinery, equipment, surplus

materials, falsework, rubbish or temporary buildings which belong to the Contractor and leave said right of way in a condition satisfactory to the Railroad's Chief Engineer.

107.8.6-TRACK CLEARANCES: The minimum track clearances to be adhered to by the Contractor during construction will be 15 feet (3 m) from centerline of the track or as approved by the Railroad's Chief Engineer. However, before undertaking any work within Railroad right of way or before placing any obstruction over any track, the Contractor shall:

a) Notify the Railroad's Chief Engineer at least 72 hours in advance of work.
b) Receive assurance from the Railroad's Chief Engineer that arrangements have been made for any flagging services necessary.
c) Receive permission from the Railroad's Chief Engineer to proceed with the work.

107.8.7-FLAGGING SERVICES: Under the terms of the agreement between the Division and the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations.

In general, the services of Railroad flaggers will be requested when the Contractor's operations will be on or over the Railroad's right of way: (a) during the excavation, placing and removal of cofferdams, sheeting, shoring, driving of piling or placing of concrete footers adjacent to the track; (b) driving of pile bents adjacent to the track; (c) construction of the permanent structure including erection and removal of falsework, bracing or forms over or adjacent to the track; (d) transporting material or equipment across the track; (e) any operations involving direct interference with and/or coming in the close vicinity of power lines or Railroad signal and communication lines, underground cables, fuel oil facilities or pipelines which might result in fire or damage to such facilities to endanger Railroad operations or to endanger the public in the transacting of business on Railroad right of way; (f) fouling of operating clearances or reasonable probability of accidental hazard to Railroad traffic; (g) during removal of portions of existing structures immediately over or adjacent to a track; and (h) at all other times when the Railroad's Chief Engineer has determined conditions require such protection.

Flagging hours shown in the plans shall be reviewed by the Contractor and will be used as the approved flagging hours. If the Contractor feels that the hours shown in the plans are not correct, he shall submit to the Engineer, in writing within 60 days of the award of the project, his estimate for review and approval. The Department shall have 30 days to approve the revised flagging hours. Additional hours may be permitted per Section 104.9.

Additionally, all flagging charges resulting from any work done solely for the benefit of the Contractor will be deducted from the current estimate, due the Contractor.

If the Contractor works within distances that violate instructions given by the Railroad's Chief Engineer or performs work that has not been coordinated with the Railroad's Chief Engineer, a flagman may be required full time at Contractor's expense until the project has been completed.

Any work to be performed by the Contractor which requires flagging service or inspection service (watchman) shall be deferred by the Contractor until the flagging service or inspection service required by the Railroad is available at the job site.

The Contractor shall furnish to the Railroad and the Division of Highways a schedule for all work required to complete the portion of the project within Railroad right of way and arrange for a job site meeting between the Contractor, the Division of Highways, and the Railroad's Chief Engineer. A flagman may not be provided until the job site meeting has been conducted and the Contractor's work schedule provided.

The Contractor will be required to give the Railroad's Chief Engineer at least ten working days of advance written notice of his intent to begin work within Railroad right of way. Once work is begun, and is then suspended at any time for any reason, the Contractor will be required to give the Railroad's Chief Engineer at least three working days advance notice before resuming work on Railroad right of way. Such notice shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. Initially, it may take up to 30 days to obtain flagging from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed. A flagman cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may again take up to 30 days to obtain a flagman from the Railroad. Due to Railroad labor agreements, it may be necessary to give five working days notice before flagging service may be discontinued and responsibility for payment stopped.

The Division of Highways will reimburse the Railroad directly for all costs incurred for flagging services by Railroad personnel, including any temporary grade crossing shown in the project plans up to the amount of hours shown on the Division's Project plans. In the event the Division of Highways is required to reimburse the Railroad for flagging service in excess of the approved flagging hours, such excess cost will be deducted from the monthly and/or final statements of money due the Contractor.

The Railroad flagman assigned to the project will be responsible for notifying the Project Engineer upon arrival at the job site on the first working day that flagging services begin and on the last day that he performs such services. This will be required for each separate period that services are provided. The Project Engineer will document such notification in the project records. When requested, the flagman will also sign the Inspector's daily report form showing daily time spent and activity performed at the project site.

The Contractor and Division of Highways will review and sign the Railroad flagman's time sheet, attesting that the flagman was present during the time recorded. Flagman may be removed by Railroad if form is not signed. If flagman is removed, the Contractor will not be allowed to work on or re-enter the Railroad right of way until the issue is resolved.

107.8.8-FAILURE TO COMPLY: In the event the Contractor violates or fails to comply with any of the requirements of these provisions:

a) The Railroad's Chief Engineer may require that the Contractor vacate Railroad property.
b) The Division may stop all work adjacent to the Railroad.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad's Chief Engineer and the Division of Highways.

All costs incurred resulting from compliance with these provisions shall be incidental to the items in the contract and no separate payment shall be made.

107.9-BRIDGES OVER NAVIGABLE WATERS:

All work on navigable waters shall be so conducted that free navigation of the waterways will not be interfered with and that the existing navigable depths and vertical clearances will not be impaired except as by the U.S. Army Corps of Engineers and/or the U.S. Coast Guard.

107.10-BARRICADES AND WARNING SIGNS:

The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other traffic control devices, except as provided by 104.5, and the Contractor shall take all necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic and at all intermediate points where the new work crosses or coincides with an existing road. Such warning signs shall be erected in accordance with the Plans furnished.

All barricades, warning signs, lights, temporary signals, and other protective devices must conform with the Standard "Traffic Control for Street and Highway Construction and Maintenance Operations," Published by the West Virginia Division of Highways, and the provisions of 715.9.

107.11-USE OF EXPLOSIVES:

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life or property, including new work. The Contractor shall be responsible for any and all damage resulting from the use of explosives.

All explosives shall be stored in a secure manner, in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the Engineer and in general not closer than 1,000 ft. (305 meters) from the road or from any building or camping area or place of human occupancy.

The Contractor shall notify each public utility company, having structures in proximity to the site of work, of their intention to use explosives and such notice shall be given sufficiently in advance to enable the companies to take such steps as they may deem necessary to protect their property from injury.

107.12-PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE:

The Contractor shall be responsible for the preservation of all public and private property and shall protect carefully from disturbance or damage all land monuments and property marks until the Engineer has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in the Contractor's manner or method of executing the work, or at any time due to defective work or materials, and this responsibility will not be released until the project shall have been completed and accepted.

When or where and direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the nonexecution thereof by the Contractor, the Contractor shall restore, at their own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in as acceptable manner.

107.13-FOREST PROTECTION:

In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with all regulations of the State Fire Marshall, Division of Natural Resources, or any other authority having jurisdiction, governing the protection of forests and the carrying out of work within forests, and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tank, and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires and shall require their employees and subcontractors, both independently and at the request of forest officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them.

107.14-RESPONSIBILITY FOR DAMAGE CLAIMS:

The Contractor shall indemnify and save harmless the Division, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act," or any other law, ordinance, order, or decree; and so much of the money due the Contractor under and by virtue of their Contract as may be

considered necessary by the Division for such purpose may be retained for the use of the Division or, in case no money is due, their surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Division; except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor is adequately protected by public liability and property damage insurance.

107.15-OPENING SECTIONS OF PROJECT TO TRAFFIC:

At the option of the Engineer, certain sections of the work may be opened for traffic. Such opening will not constitute acceptance of the work, or any part thereof, or a waiver of any provisions of the Contract; provided however, that on such portions of the project as are accepted for use of traffic, the Contractor shall not be required to assume any expense entailed in maintaining the roadway for traffic. Such expense will be borne by the Division or will be compensated for in the manner provided in 109.4. Any damage to the highway not attributable to traffic which might occur on such section, except slides, shall be repaired by the Contractor at their expense. The removal of slides shall be performed by the Contractor and payment will be in accordance with 104.3.

If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may order all or a portion of the project open to traffic, but in such event the Contractor shall not be relieved of their liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of their construction operations so as to cause the least obstruction to traffic.

107.16-CONTRACTOR'S RESPONSIBILITY FOR WORK:

Until final written acceptance of the project by the Engineer, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, or from the nonexecution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault of or negligence of the Contractor, including but not restricted to acts of God, of the public enemy or governmental authorities.

In case of suspension of work from any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage and to erect any necessary temporary structures, signs, or other facilities at their expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under their Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

107.17-CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES:

At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, and power companies, or are adjacent to other property, damage to which might result in considerable expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption to water or utility services as a result of accidental breakage, or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with such authority in the restoration of service. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

107.18-FURNISHING RIGHT-OF-WAY:

The Division will be responsible for securing all necessary right-of-way in advance of construction. Any exceptions will be indicated in the Contract.

107.19-PERSONAL LIABILITY OF PUBLIC OFFICIALS:

In carrying out any of the provisions of these Specifications, or is exercising and power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Commissioner, Engineer, or their authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the Division.

107.20-NO WAIVER OF LEGAL RIGHTS:

The Division shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract. The Division shall not be precluded or estopped, notwithstanding and such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or sureties, or both, such damage as it may sustain by reason of their failure to comply with the terms of the Contract. Neither the acceptance by the Division or any representative of the Division, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Division, shall operate as a waiver of any portion of the Contract or of any power reserved or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

107.21-PROTECTION OF RIVERS, STREAMS, AND IMPOUNDMENTS:

107.21.1-Erosion and Siltation Control: The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent silting of rivers, streams, and impoundments such as lakes, reservoirs, etc. Construction of drainage facilities as well as performance of other contract work which will contribute to the control of siltation shall be carried out in conjunction with earthwork operations or as soon thereafter as is practicable.

The manual entitled "WVDOT Division of Highways Erosion and Sediment Control Manual, latest version is made a part of the Contract. Where any provision of said manual is in conflict with any special erosion and sediment control provision set out and contained in the Proposal and/or in the Plans of a project, the Proposal and/or Plans shall prevail.

Prior to suspension of construction operations for any appreciable length of time, the Contractor shall shape the top of earthwork in such a manner as to permit the runoff of rainwater and shall construct earth berms along the top edges of embankments to intercept runoff water. The berm construction shall not be permitted to decrease the stability of the embankment section. Temporary slope drains shall be provided to carry runoff from embankments which are located in the immediate vicinity of rivers, streams, and impoundments. The slope drains shall be located at approximate 500-ft (150 meter) intervals and shall be stabilized by paving or covering with waterproof materials. Preventive measures taken under this paragraph shall be adequate to control any runoff or erosion products from adjacent cut slopes. Should such preventative measures fail and an appreciable amount of material begins to erode into a river, stream, or impoundment, the Contractor shall act immediately to bring the siltation under control.

The erosion control measures shall be continued until the permanent drainage facilities have been constructed and until the project is accepted.

Unless otherwise approved in writing by the Engineer, construction operations in rivers, streams, and impoundments shall be restricted to those areas where channel changes are shown on the Plans and to those areas which must be entered for the construction of temporary or permanent structures. Rivers, streams, and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed or caused by the construction operations.

Excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or so near to rivers, streams, or impoundments that it will be washed away by high water or runoff.

Frequent fording of live streams with construction equipment will not be permitted; therefore, temporary bridges or other structures shall be used wherever an appreciable number of stream crossings are necessary. Unless otherwise approved in writing by the Engineer, mechanized equipment shall not be operated in live streams except as may be required to construct channel changes and temporary or permanent structures.

The location of all local material pits, other than commercially operated sources, and all waste areas shall be subject to the approval of the Engineer, and construction operations in these areas shall be so scheduled and conducted

that during and after completion of the work, erosion will not result in water pollution.

107.21.2-Pollution: The Contractor shall exercise every reasonable precaution throughout the life of the Project to prevent pollution of rivers, streams, or impoundments. Pollutions such as chemicals, fuels, lubricants, bitumens, raw sewage, products associated with bridge cleaning and painting, and other harmful wastes shall not be discharged into or alongside of rivers, streams, impoundments, or into natural or man-made channels leading thereto. The quality of the surface waters affected by construction shall meet the requirements of the West Virginia Code, Volume 8A, Chapter 22, Article 11.

The manual entitled, "West Virginia Division of Highways, Best Management Practice for Containment/Disposal of Waste Products Generated During Bridge Cleaning and Painting Activities". Latest addition, as amended is made part of the contract as a guide to follow for containment/disposal activities.

107.21.3-Basis of Payment: Except when pay items are specifically described and furnished as pay items in 642, Temporary Pollution Control, the water pollution and erosion and siltation control requirements set forth shall be at the expense of the Contractor.

107.22-PLANT PEST REGULATIONS:

The indiscriminate movement of nursery stock, hay or straw mulch, equipment and soil samples into and out of West Virginia constitutes a potential hazard to State and National Agriculture. Therefore, it shall be the responsibility of the prime Contractor to comply with all applicable State and Federal Plant Pest Regulations in the fulfillment of this contract.

Information regarding these regulations may be obtained from Plant Pest Control Division, West Virginia Department of Agriculture, Charleston, West Virginia 25305, or United States Department of Agriculture, Agriculture Research Service, Plant Pest Control Division, P.O. Box 1257, Roanoke, Virginia 24001.

107.23-AIR POLLUTION CONTROL:

The Contractor shall exercise every reasonable precaution throughout the life of the project to keep air pollution to a minimum. The Contractor shall also comply with the applicable regulations of the West Virginia Air Pollution Control Commission. During times of limited dispersion, construction operations may be suspended.

All plants in West Virginia producing bituminous concrete for the Division shall obtain a permit or certification from the West Virginia Air Pollution Control Commission.

107.24-CLEAN WATER ACT/WETLANDS:

The Contractor will comply with all aspects of Section 404 of the Clean Water Act including any and all regards to wetlands on all work associated with the project. A wetland will not be filled or disturbed on the project or any work related to the project such as a haulroad, waste area, borrow pit or any other activity without a permit.

107.25-LEAD EXPOSURE IN CONSTRUCTION:

The Contractor will comply with all aspects of 29 CFR, Part 1926, Lead Exposure in Construction, by the United States Department of Labor, Occupational Safety and Health Administration.

107.26-NOTIFICATION OF ABATEMENT, DEMOLITION OR RENOVATION:

The notification for projects involving abatement, demolition, or renovation will conform to this section. The Project Engineer will have a copy of all asbestos inspection reports available at the field office. The Contractor shall provide copies of all notifications and correspondence to the Project Engineer.

107.26.1-Abatement: Abatement activities shall conform to section 681.

107.26.2-Demolition:

107.26.2.1-Asbestos Containing Materials Reported: Notifications will be in accordance with 107.26.4.

107.26.2.2-No Asbestos Containing Materials Reported: For buildings or bridges that do not contain asbestos, *only the notification form* must be submitted to the West Virginia Division of Environmental Protection (DEP) and the United States Environmental Protection Agency (EPA) at the address given in 107.26.4.

If an asbestos inspection report indicates that there is no asbestos present on a bridge scheduled for demolition or renovation, the need for a trained individual to be on site during either process is waived. However, the Contractor shall have an individual trained in accordance with the provisions as set forth in 40 CFR Part 61, Subpart M on site to observe building demolition and file a report with the Project Engineer indicating if any suspect (asbestos containing) material was encountered during demolition. A copy of the individual's current training certification must be attached to this report.

107.26.3-Renovation:

107.26.3.1-Asbestos Containing Materials Reported: For projects involving the renovation of a bridge or building, that has asbestos containing materials, the Contractor shall submit a "Notification of Abatement, Demolition or Renovation" in accordance with 107.26.4.

107.26.3.2-No Asbestos Containing Materials Reported: Structures that are being renovated and are free of asbestos, per the inspection report, do not require submittal of the "Notification of Abatement, Demolition or Renovation".

107.26.4-Notifications: In accordance with state and federal regulations, the Contractor shall submit a "Notification of Abatement, Demolition or Renovation" to the address shown below prior to the commencement of

demolition of any building or bridge (regardless of the presence of asbestos). All notifications must be made a minimum of 10 working days prior to the commencement of demolition or renovation operations. Particular attention is to be made to the "Schedule" section of the form. If for any reason, demolition or renovation cannot begin on the date as submitted, the DEP, Office of Air Quality must be notified at the address below:

West Virginia Division of Environmental Protection
Office of Air Quality
601 57th Street S.E.
Charleston, West Virginia 25304
Attn: Asbestos Coordinator
Telephone: (304) 926-0499
Fax: (304) 926-0478

United States Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
Attn: Stephen Forostiak, 3WC32
Asbestos Coordinator
Telephone: (215) 814-2100
Forostiak.stephen.epa.gov

If a building or bridge contains asbestos, the notification process as outlined in Section 681, Asbestos Abatement shall be followed.

107.27-CONSTRUCTION ACCESS AND ENVIRONMENTAL PERMITS:

The Division has obtained permits for activities shown in the contract documents. The anticipated *Temporary Construction Access* (*TCA*) methods are included, if a TCA is not shown in the plans, or the permit, it has been determined that at least one TCA method exists that does not require a permit. A copy of these permits is in the contract documents.

The contractor must comply with the approved permits and exercise best environmental management practices at no additional cost to the Division.

The permits do not cover waste or borrow sites, haul roads, storage sites, staging areas or activity not shown in the contract documents or permits. These permits are to be handled in accordance with Section 107.2.

107.27.1-Temporary Construction Accesses: A Temporary Construction Access is any road, cofferdam, causeway and/or stream crossing, access fill, dike, channel retaining structure, etc that may be required to access the work. This work shall consist of the construction of all temporary construction access required for the project and shall include, but is not limited to, all culverts, structures, excavation, rock borrow and incidental construction as required to construct the access. This work shall also include all necessary work required to maintain and remove the temporary construction access and to restore the area to its original condition. All of the work shall be in accordance with these Specifications and in reasonably close conformity with the contract documents, approved permits, or as established

by the Engineer.

No payments shall be made for the Temporary Construction Access unless otherwise stated in the plans.

107.27.1.1-Changing Temporary Construction Accesses: The Contractor may elect to utilize alternate temporary construction access methods from those shown in the contract documents. If the Contractor proposes alternate temporary construction access methods, he shall obtain written approval from all affected landowners and shall provide to the Engineer all of the permit documents required to obtain additional or revised permits. The Division will submit the permit documents to the appropriate agencies for approval. Acceptance of the permit documents by the Engineer or forwarding them to the permitting agency does not guarantee or constitute approval of the permit. No work shall be performed on a permittable activity until a copy of all the appropriate approvals and permits are received by the Engineer. No time extensions or additional payments will be made for the contractor to obtain additional approvals or permits or for changes to the design of the temporary construction access.

107.27.1.2-Excavated Material: The excavated material, unless otherwise directed by the Engineer, shall be utilized for backfill or embankments. Surplus material shall be disposed in accordance with section 207.6 and in such a manner that the efficiency or appearance of the structure shall not be impaired, and the stream shall not be obstructed or excess sediment introduced into the stream.

107.27.2-Corps Of Engineers Permit: If this project has been determined to involve activities, which are regulated by the Department of the Army, Corps of Engineers a permit has been included in the contract documents. These activities involve the discharge of dredge or fill materials into the Waters of the United States as regulated by Section 404 of the Clean Water Act or the obstruction or alteration of Navigable Waters of the United States regulated by Section 10 of the River and Harbor Act of 1899.

The Engineer will decide all questions that may arise as to the interpretation or violation of these conditions. The Contractor shall comply with the conditions of the Permits and the following.

1. Material will not be stockpiled in the watercourse.
2. Bilge, ballast or wash water pumped from barges or out of cofferdams will not be discharged into the watercourse without acceptable removal of solids, oils and/or toxic compounds.
3. Discharges shall be avoided during fish spawning seasons to the maximum extent practicable unless a note prohibiting such discharge is included in the construction plans.

108.8-DEFAULT AND TERMINATION OF CONTRACT:

If the Contractor:

1. fails to begin work under the Contract within the time specified in the "Notice to Proceed"; or
2. fails to perform the work with sufficient employees and equipment or sufficient materials to assure the prompt completion of the work; or
3. performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable;
4. discontinues the prosecution of the work; or
5. fails to resume work which has been discontinued within a reasonable time after notice to do so; or
6. becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency; or
7. allows any final judgment to stand against the Contractor unsatisfied for a period of ten (10) days; or
8. makes an assignment for the benefit of creditors; or
9. for any other cause whatsoever, fails to carry out the Contract terms in an acceptable manner;

the Engineer will give notice in writing to the Contractor and his/her Surety of such delay, neglect or default. If the Contractor or Surety, within a period of ten (10) days after such notice, shall not proceed in accordance therewith, the Division will, upon written notification from the Engineer of the fact of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority, without violating the Contract, to terminate the Contract. The Division may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement with another contractor for the completion of the Contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of the Contract in an acceptable manner.

All cost charges incurred by the Division, together with the cost of completing the work under Contract, will be deducted from any money due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Division the amount of such excess.

108.9-TERMINATION OF CONTRACT FOR CONVENIENCE OF THE STATE:

The Division may terminate the entire Contract or any portion thereof, if the Engineer determines that a termination is in the Division's interest. The Engineer will deliver to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

1. **Submittals and Procedures.** After receipt of a Notice of Termination, the Contractor shall immediately proceed with the following obligations:
    a. Stop work as specified in the notice.
    b. Place no further subcontracts or orders for materials, services, or facilities for the terminated portion of the Contract.
    c. Terminate all subcontracts that relate to the work terminated.
    d. Settle all outstanding liabilities and termination settlement Proposals arising from the termination of the contract or portion thereof.
    e. Transfer title and deliver to the Division (1) fabricated, partially fabricated, or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (2) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the Division.
    f. Complete performance of the work not terminated.
    g. Acceptable materials obtained by the Contractor for the Project that have not been incorporated in the work shall be inventoried in conjunction with the Engineer at a date identified by the Engineer.
    h. Take any action necessary, or that the Engineer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the Division has or may acquire an interest.

2. **Settlement Provisions.** When the Division orders termination of all or a part of the Contract effective on a certain date, completed items of work as of that date will be paid for at the Contract bid price. Payment for partially completed work will be made either at agreed prices or under the provisions below. Items that are eliminated in their entirety by such termination shall be paid for as provided in Subsection 109.5.

    a. **Additional Costs.** Within sixty working days of the effective termination date, the Contractor shall submit a claim for additional damages or costs not covered above or elsewhere in the Contract. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original Contract, and any other cost or damage for which the Contractor feels reimbursement should be made.

The Contractor and the Division may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. Anticipated profits will not be considered as part of any settlement. The agreed amount may not exceed the total Contract price as reduced by the amount of payments previously made, and the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount.

b. **Additional Cost Review.** If the Contractor and the Division fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Division will pay the amounts determined as follows, but without duplication of any amounts agreed upon above:

i. For Contract work performed before the effective date of termination, the total (without duplication of any items) of:

1) The cost of work performed;
2) The cost of settling and paying termination settlement Proposals under terminated subcontracts that are properly chargeable to the termination portion of the Contract if not included in subparagraph 1 above; and
3) A sum, as profit on (1) above determined by the Division to be fair and reasonable. The Division shall allow no profit under this subdivision if the Contractor's costs incurred on work performed exceed the bid item payments made.

ii. The reasonable costs of settlement of the work terminated, including:

1) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;
2) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
3) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

iii. Except for normal spoilage, and to the extent that the Division expressly accepts the risk of loss, Division will

exclude from the fair value, all that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Division or to the buyer.

iv. In arriving at the amount due the Contractor under this clause, there will be deducted the following:

1) All unliquidated advance or other payments to the Contractor under the terminated portion of the Contract;
2) Any claim that the Division has against the Contractor under the Contract; and
3) The agreed price for or the proceeds from the sale of materials, supplies, or other things acquired and sold by the Contractor not recovered by or credited to the Division.

If termination is partial, the Contractor may file a Proposal with the Division for an equitable adjustment of the price(s) of the continued portion of the Contract. The Division will make any equitable adjustment agreed upon. Any Proposal for an equitable adjustment under this clause shall be requested within sixty (60) working days from the effective date of termination unless extended in writing by the Engineer.

The Division may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the termination portion of the Contract, if these payments will not exceed the amount to which the Contractor is entitled.

The Contractor shall maintain and make available all project cost records to the Division for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on the Contractor's costs and expenses under the Contract. These records and documents shall be made available to the Division at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Division, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

Termination of the Contract or portion thereof shall not relieve the Contractor of contractual responsibilities of the work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out the work performed.

108.10-FIELD OFFICE OVERHEAD:

The Division may consider compensating the Contractor for Field office overhead costs as long as the Contractor can provide documentation that the field office overhead costs are not covered by the project bid items.

108.11-HOME OFFICE OVERHEAD:

The Department shall consider payment to the Contractor for any unabsorbed or extended home office overhead costs for which payment is not previously provided for if all of the following criteria are met:

SECTION 109
MEASUREMENT AND PAYMENT

109.1-MEASUREMENT OF QUANTITIES:

All work completed under the Contract will be measured by the Engineer according to United States standard measure.

The method of measurement and computations to be used in determining of quantities of materials furnished and of work performed under the Contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise indicated, the requirements prescribed shall govern.

Earthwork will be computed by the average end area method, using the horizontal length measured along the centerline as the distance between sections, applying corrections for curvature where the apparent error exceeds 25 percent of the volume in any one cut. Other acceptable methods may be used.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally and no deductions will be made for individual fixtures having an area of nine square feet (one square meter) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the Plans or ordered in writing by the Engineer.

Structures will be measured according to neat lines shown on the Plans or as altered to fit field conditions.

All items which are measured by the linear foot (meter), such as pipe culverts, guardrail, underdrains, etc., will be measured parallel to the base or foundations upon which such structures are placed.

The term "gage" when used in connection with the measurements of plates, will mean the U.S. Standard Gage.

The galvanized sheet thicknesses to be used in the manufacture of metal cribbing, corrugated steel culvert pipe, underdrain pipe, plate pipe, pipe arches, plate pipe arches and plate arches shall be as specified in AASHTO M 36 or AASHTO M 167. The sheet thicknesses to be used in the manufacture of corrugated aluminum alloy culvert pipe, underdrain pipe, plate pipe, pipe arches, plate pipe arches and plate arches shall be as specified in AASHTO M 196 or AASHTO M 219.

The "size number" used in the measurement of wire will be as specified in AASHTO M 32 or AASHTO M 225.

The term ton will mean the short ton consisting of 2,000 lb (The term megagram is defined as a mass of 1,000 kg). All materials which are measured or proportioned by weight shall be weighed on approved scales by competent, qualified personnel. Scales for weighing shall be of either the beam type, springless-dial type or digital recorder type. All plant and truck scales and metering devices shall be inspected, approved and sealed in accordance with the requirements of the West Virginia Division of Labor, Bureau of Weights and Measures, or other appropriate agencies of the State or its political subdivisions. Poises shall be designed to be locked in any position to prevent unauthorized changes. When the beam type scales are used, provisions for a "telltale" dial shall be made for indicating to the operator that the required load in the weighing hopper is being approached. A device on the weighing beams shall clearly indicate the critical position.

Truck scales shall be provided by the producer or Contractor, except that truck scales are not required where the material is weighed at properly calibrated automatic batching plant facilities which are equipped with digital print-out equipment. The scales shall be of sufficient size and capacity to weigh the heaviest loaded trucks that are used for delivery of the material. All truck scales shall be mounted on solid foundations which will ensure their remaining plumb and level.

A weigh person shall be provided by the producer. The weigh person shall certify that the weight of the material, as determined either by the truck scales or from the digital print-out of the weights, is correct. To signify the certification of weight the weigh person must either sign their full name on each ticket, or if the ticket printer prints the weigh person's full name they must at least initial each ticket.

Each truck shall be weighed empty prior to each load, except at automatic batch plants approved to operate without truck scales. A digital recorder shall be required on all truck scales. The digital recorder shall produce a printed record of the gross, tare and net weights, and the time, date, truck identification and project number. Provision shall be made for constant zero compensation and further provision shall be made so that the scales may not be manually manipulated during the printing process. The system shall be interlocked so as to allow printing only when the scale has come to rest.

In case of a breakdown of the automatic equipment, the Engineer may permit manual operation for a reasonable time, normally not to exceed 48 hours, while the equipment is being repaired.

If material is shipped by rail, the car weight may be accepted provided the actual weight of material only will be paid for. However, car weights will not be acceptable for material to be passed through mixing plants.

Devices, used to meter or measure component or other materials in a simultaneous manner, shall be located so as to be readily accessible and visible to a single Inspector, unless otherwise directed by the Engineer.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Engineer, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

When approved by the Engineer, material specified to be measured by the cubic yard (meter) may be weighed and these weights converted to cubic yard (meter)s for payment purposes. Further, when it is impractical to measure the material by weighing, or in its original position, the material will be measured in its final position and adjusted by a volume change factor. These conversion factors will be determined by the Engineer and shall be agreed to by the Contractor before these methods of measurement are used.

When bituminous material is measured by volume, the measured volume at loading temperature shall be converted to volume at 60° F (15° C) using the temperature correction factors in 705 for asphaltic materials and 706 for tar materials, except that when volume is measured by an approved temperature compensated metering device, no further volume correction for temperature shall be required. When bituminous material is measured by weight, the actual specific

gravity, API gravity, or weight per gallon (liter) of the material shall be used to convert the measured weight to volume at 60° F (15° C). The Contractor shall furnish all information necessary as determined solely by the Division to determine the amount of bituminous material actually incorporated into the project.

Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when bituminous material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work.

When bituminous materials are shipped by truck or transport, net certified weights or volume, subject to correction for loss or foaming may be used for computing quantities.

Cement will be measured by the cwt (hundredweight = 100 lb) (kilogram). For the purpose of determining the total amount used in the mixture, one bag of cement shall be considered as weighing 0.94 cwt (42.64 kg), and one barrel of cement shall be considered as weighing 3.76 cwt (175.55 kg).

Timber will be measured by the thousand feet board measure (mfbm) (cubic meters) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.

The term "lump sum" when used as an item of payment will mean complete payment for the work described in the Contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gage, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

109.2-SCOPE OF PAYMENT:

The Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all materials and for performing all work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof, subject to the provisions of 107.20.

If the "Basis of Payment" clause in the Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, this work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Specifications, except as provided in 104.6.

When the Contract specifies payment of an item or a portion of an item on a plan quantity basis, the quantities for payment will be those shown on the Plans with deductions from or additions to such quantities resulting from authorized deviations from the Plans.

If the Contractor believes that a quantity which is specified for payment on a plan quantity basis is incorrect, the Contractor may request the Division in writing to check the questionable quantity. The request shall be accompanied by calculations, drawing, or other evidence indicating why the plan quantity is believed to be in error. If the plan quantity is found to be in error, payment will be made in accordance with the corrected plan quantity.

The Division reserves the right to check the quantity of an item which is specified for payment on a plan quantity basis if there is reason to believe that it is inaccurate. If the quantity is found to be in error, payment will be made in accordance with the corrected plan quantity.

Should the Division determine during construction that conditions have varied from those anticipated in design to the extent that actual measurement of a plan quantity item is warranted, the Division will make such measurement, and payment will be based in lieu of the plan quantity.

109.2.1-General Basis of Adjusted Payment:

109.2.1.1-Single Deficiency: In the case of the single characteristic deficiency, the resulting deficiency shall be used directly to determine an adjusted price.

109.2.1.2-Multiple Deficiency: In the case of a multiple deficiency, the related adjusted percentage of contract price as determined by the acceptance plan for each characteristic shall be determined and the resulting percent of contract price to be paid shall be the product of these related adjusted percentages.

109.2.2-Basis of Charges for Additional Testing: When additional acceptance testing is performed by the Division for reworked lots or sublots in accordance with 106.3.1.2, the cost of such testing will be deducted on current estimates from the amount due the Contractor by the Division. The cost of such testing will be determined in accordance with the unit costs per test as shown in Table 9-1, published in MP 109.00.20.

109.3-COMPENSATION FOR ALTERED QUANTITIES:

When the accepted quantities of work vary from the quantities in the bid schedule, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit price for the accepted quantities of work done. No allowance except as provided in 104.2 will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations of indirectly from unbalanced allocation among the contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursements therefore or from any other cause.

Increased work involving supplemental agreements will be paid for as stipulated in such agreements. The Contractor shall furnish substantiating data required in the preparation of these agreements.

109.4-FORCE ACCOUNT WORK:

If directed by the Division, as provided for in 104.3, the Contractor shall perform extra or unforeseen work on a force account basis and shall be compensated in the following manner:

109.4.1-Labor: For all labor and for foremen and superintendence in direct charge of the specific force account operations, the Contractor or subcontractor shall receive the actual current local rate of wage, agreed to in writing before beginning work, paid for each and every hour that the labor and foremen are actually engaged in the work.

The Contractor or subcontractor shall also receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, Worker's Compensation insurance premiums, unemployment insurance contributions, Social Security and Medicare taxes, health and welfare benefits, and pension fund benefits when such amounts are required by employment contract generally applicable to the classes of labor employed on the work. The Contractor or subcontractor shall furnish satisfactory evidence of the rate or rates and the amount paid for insurance premiums and taxes.

For overhead and profit, an amount equal to sixteen percent of the sum of the above labor costs shall also be paid to the Contractor or subcontractor.

109.4.2-Materials: For all materials used in the specific force account operation and incorporated into the project, the Contractor or subcontractor shall receive the actual cost of materials delivered including labor charges for employees of the material supplier who are required to perform an incidental amount of work in conjunction with the material furnished and freight charges paid exclusive of equipment rentals as hereinafter set forth. The Contractor or subcontractor shall furnish invoices to document actual materials costs; however, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's or subcontractor's inventory, then in lieu of the invoices the Contractor or subcontractor shall furnish an affidavit certifying that such materials were taken from inventory, that the quantity claimed was actually used, and that the price and freight claimed represent the Contractor's or subcontractor's actual cost.

For overhead and profit, an amount equal to sixteen percent of the sum of the above materials costs shall also be paid to the Contractor or subcontractor. All materials paid for will become the property of the Division.

109.4.3-Equipment: The movement of equipment to and from the specified force account operation shall be as directed by the Engineer. All equipment must be in good operating condition to qualify for rental payment. For all Contractor or subcontractor equipment either rented or owned, the rental rates and operating costs include full compensation for major repairs, repairs due to normal wear and tear, labor and parts needed for routine daily servicing of the equipment, operating expendables such as fuel, lubricants, tires and ground engaging components, and the percentage of mechanic's wages and related maintenance vehicles chargeable to preventive and field maintenance.

Payable time periods shall not include time elapsed before the Engineer has advised the Contractor or subcontractor that the equipment is required for use in the force account or time elapsed after the Engineer has advised the Contractor or subcontractor that the equipment is no longer needed exclusive of costs for transportation, assembly and disassembly set forth in 109.4.3.4, time elapsed while equipment is broken down or time spent repairing equipment. No separate payment will be made for any type of repairs to equipment.

When equipment is rented from a rental agency which the Contractor or subcontractor owns or is part owner, the equipment shall be treated as owned equipment and rental rates determined accordingly.

109.4.3.1-Rented Equipment: For required equipment which is not owned and must be obtained by rental, the Contractor or subcontractor shall be paid the actual rental cost for the equipment for the time that the equipment is required solely for use in the force account work. The Contractor or subcontractor shall furnish invoices to document actual equipment rental costs. Estimated operating costs shall also be paid for each hour the rented equipment is actually operated in the force account work, not to exceed the estimated operating cost per hour set forth for the equipment in the current Rental Rate Blue Book for Construction Equipment published by Dataquest, Inc.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for rented equipment shall also be paid to the Contractor or subcontractor.

109.4.3.2-Owned Equipment: For owned equipment, other than small tools costing less than $500 each, the Contractor or subcontractor shall be paid a rental rate determined from the current Rental Rate Blue Book for Construction Equipment published by Dataquest, Inc. The hourly rate shall be determined by dividing the monthly rate set forth in the Rental Rate Blue Book by 176 with appropriate adjustments made for age and region. The hourly rate for overtime work shall be determined by dividing the monthly rate set forth in the Rental Rate Blue Book by 176 with appropriate adjustments made for age and region. The estimated operating cost per hour set forth in the Rental Rate Blue Book shall also be paid for each hour the equipment is actually operated in the force account work.

If the owned equipment is not referred to in the current Rental Rate Blue Book, the hourly rental rate will be an agreed amount not to exceed the hourly rate computed as follows: A monthly rental rate equivalent to six percent of the Contractor's or subcontractor's original acquisition cost of the equipment shall be established. The hourly rental rate shall then be determined by dividing this monthly rental rate by 176. Operating costs in such cases shall be a reasonable agreed-upon amount for each hour the equipment is actually operated in the force account work.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for owned equipment shall also be paid to the Contractor or subcontractor.

109.4.3.3-Idle Equipment: For required equipment held on the site of force account work on an idle basis at the request of the Engineer, the Contractor or subcontractor shall be paid for such idle time at an adjusted hourly rental rate exclusive of estimated operating costs. For owned equipment, such payment shall be made at one-half (1/2) the hourly rate determined by dividing the monthly rate set forth in the Rental Rate Blue Book by 176 with appropriate adjustments made for age and region.

Payment of idle time for owned equipment on force account work shall not exceed eight (8) hours each day less the hours the equipment operates that day. Payment for idle time shall not be made on Saturday, Sunday, holidays set forth in 101.2, when equipment is operated more than eight (8) hours per day or forty (40) hours per week, when equipment is idle due to the Contractor's or subcontractor's decision not to work on potential working days or when equipment is idle due to weather.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for idle owned equipment shall also be paid to the Contractor or subcontractor.

109.4.3.4-Miscellaneous: Transportation charges for owned or rented equipment to and from the site of the force account work shall be paid provided the equipment is obtained from the nearest approved source, the return charges do not exceed the delivery charges, haul rates do not exceed the established rates of licensed haulers, and charges are restricted to those units of equipment not already available and not on or near the project. In the case of owned equipment, the Contractor or subcontractor shall be paid idle time rates for the equipment being hauled in addition to the applicable rental rates for the hauling equipment. All costs associated with the assembly and disassembly of the equipment for transport shall also be paid. All charges by persons or firms other than the Contractor or subcontractor shall be supported by satisfactory invoices.

109.4.4-Taxes: When the work is done by the Contractor, the amount of State and municipal taxes related to the force account work required to be paid by the Contractor will be reimbursed to the Contractor. For work performed by a subcontractor, the amount of extra cost paid by both the Contractor and the subcontractor for corporate and business taxes levied by the State and municipalities due to the force account work shall be paid to the Contractor.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for State and municipal taxes shall also be paid to the Contractor or subcontractor.

For work performed by a subcontractor, the amount of extra cost incurred by the Contractor for increased business and corporate taxes shall be computed on the gross amount of the force account work, exclusive of the increased corporate and business taxes incurred by the subcontractor.

109.4.5-Contract Bond: The cost of premiums for contract bond required by 103.5 which is extra cost and related to the force account work will be paid to the Contractor.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for contract bond shall also be paid to the Contractor or subcontractor.

109.4.6-Insurance: The cost of premiums for Contractor's Public Liability and Property Damage Liability Insurance required by 103.6.1 and Contractor's Protective Public Liability and Property Damage Liability Insurance required by 103.6.2 which is extra cost and related to the force account work will be paid to the Contractor.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for insurance shall also be paid to the Contractor or subcontractor.

When the force account work involves a railroad and the Contractor is required to carry Railroad's Protective Public Liability Insurance or Railroad's Protective Property Damage Liability Insurance, or both, the cost of premiums for this insurance which is extra cost and related to the force account work will be paid to the Contractor.

For overhead and profit, an amount equal to sixteen percent of the sum of the above costs for railroad insurance shall also be paid to the Contractor or subcontractor.

109.4.7-Administrative Allowance: For force account work performed by an approved subcontractor, the Contractor shall be paid an administrative allowance equal to sixteen percent of the total amount paid for all work performed by the subcontractor on the specific force account operation exclusive of additives paid for overhead and profit.

109.4.8-Records: The Contractor's representative and the Engineer shall compare records daily of the cost of work done as ordered on a force account basis, and shall indicate agreement by signature on such records.

No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer an itemized statement of the cost of such force account work detailed as follows:

a. Name, classification, date, daily hours, total hours, wage rate, fringe benefit rate and extended amounts for each laborer and foreman.

b. Quantities of materials, unit prices and extended amounts.

c. Transportation of materials.

d. Designation, dates, daily hours, total hours, rental rate/hour, operating cost/hour, and extended amount for each unit of equipment.

e. Transportation of equipment.

f. Rates for property damage insurance, liability insurance, bond, municipal tax, subsistence and travel allowance, Worker's Compensation insurance, unemployment insurance, Social Security and Medicare taxes.

The Contractor must also furnish satisfactory evidence of the actual cost for each of the charges listed on the itemized statement (excluding those charges for owned equipment determined from the Rental Rate Blue Book).

109.4.9-Basis of Payment: The compensation provided in 109.4.1 to 109.4.7, inclusive, shall be received by the Contractor as payment in full for extra work done on a force account basis, including all labor, materials, equipment, fuel, lubricants, maintenance of equipment, administration, overhead, use of small tools and equipment for which no rental is allowed, profit, taxes, bond costs, insurance premiums, unemployment contributions and any other expense arising from the performance of the force account work.

109.5-ELIMINATED ITEM:

Should any items contained in the proposal be found unnecessary for the proper completion of the work, the Engineer may, upon written order to the Contractor, eliminate such items from the Contract, and such action will in no way invalidate the contract. When a Contractor in notified of the elimination of items, the Contractor will be reimbursed for actual work done and all costs incurred, including mobilization of materials prior to the notification.

109.6-PARTIAL PAYMENTS:

The Engineer will make current estimates in writing, once each month on or before the date set by the Engineer at the time of starting the work, or from time to time as the work progresses, of the materials complete in place and the amount of work performed in accordance with the Contract, during the preceding month or period and the value thereof figured at the unit prices contracted. Current estimates may be prepared for payment on a semi-monthly basis at the discretion of the Engineer when the amount due the Contractor for work during the semi-monthly period exceeds $10,000. Should there be any doubt by the Engineer as to the integrity of any part of the completed work, the estimates for that portion will not be allowed until the cause for such doubt has been removed.

As set forth in 103.5, paragraph four, if the successful bidder submits a good and sufficient surety or collateral bond payable to the State of West Virginia in an amount equivalent to 100 percent of the contract price, an amount equivalent to two percent of the whole will be deducted from the total of the amounts ascertained as payable and will be retained by the Division until the completion of the entire Contract in an acceptable manner. The balance, or an amount equivalent to 98 percent of the whole, less all previous payments, will be certified for payment.

When the work under contract has been completed and its acceptance is recommended by the Engineer, and upon written request by the Contractor accompanied by proper release by the Contractor's surety, a part of the two percent retained as outlined above, in an amount determined by the Engineer, may be released and paid the Contractor. A minimum of 0.5% *(zero point five percent)* of the approximate total final contract amount will be retained until payment of the final estimate.

Unless otherwise requested by the Contractor in writing, all amounts retained by the Division will be invested in the Consolidated Investment Fund of

the State of West Virginia with interest accrued in the name of the Contractor. Dividends will be paid annually and a service fee as determined by the Fund will be deducted from the interest earned.

Substitution of Securities for Retainages:

i The Contractor may, from time to time, withdraw the whole or any portion of the amount retained for payments to the Contractor, under the Contract, with the written release from Contractor's surety, pursuant to the terms of the Contract, notwithstanding the provisions above, upon depositing with the State Treasurer, United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills, or bonds or notes of the State of West Virginia. A safe keeping receipt from a bank located in the State of West Virginia may be deposited with the State Treasurer in lieu of any of the definitive securities. No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or of the par value of the securities, whichever is lower.

ii The State Treasurer shall on a regular basis, collect all interest or income on the obligations so deposited and shall pay the same, when and as collected, to the Contractor who deposited the obligations. If the deposit is in the form of coupon bonds, the State Treasurer shall deliver each coupon as it matures to the Contractor.

iii Any amount deducted by the State, or by any public department or official thereof, pursuant to the terms of the Contract, from the retainages due the Contractor, shall be deducted, first from that portion of the retainages for which no security has been substituted then from the proceeds of any deposited security. In the latter case, the Contractor shall be entitled to receive interest, coupons or income only from those securities which remain after such amount has been deducted.

iv Any Contractor who has substituted a security or securities for retainages and the same matures before the completion and finalling of the Contract for which the security or securities were substituted for retainages may, from time to time, substitute another security or securities for the one or ones having so matured in the same manner that the original security or securities were substituted so long as the substituted security or securities are of a kind designated in (i) above, of equal value to the matured security or securities for which it is substituted. All interest and income accruing on such substituted security or securities shall be collected and paid and the security or securities themselves shall be held, handled and delivered by the State Treasurer in the same manner, as is provided in (ii) and (iii) above, for the original security or securities deposited.

109.7-PAYMENT FOR MATERIAL ON HAND:

Partial payment may be made to the extent of the delivered costs of material to be incorporated into the work, provided the material meets the requirements of the Plans and Specifications when delivered in the vicinity of the project or at approved off-site locations. In any event, partial payment for material on hand will not exceed the bid price. Such material shall be stored in acceptable storage places, and the Contractor shall furnish evidence of payment for the delivered cost of the material within 90 days of the cut-off date of the estimate on which this material was paid.

109.8-ACCEPTANCE AND FINAL PAYMENT:

When the project has been accepted, as provided in 105.16, the Engineer will prepare the final estimate of the quantities of the various classes of work performed. Before the final payment is made, the Contractor shall execute the Statement of Acceptance on the back of the final estimate. After the Contractor executes such final estimate or if the Contractor fails or declines to execute the final estimate within 30 days after receipt, the Division will consider the estimate approved and accepted and he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the Contract. Upon written request from the Contractor received within 30 days of his receipt of the final estimate, the time for review and execution of the final estimate will be extended up to 60 additional calendar days. Should the Contractor desire to reserve the right to file a claim with the State Court of Claims for any sum or compensation not included in the final estimate, growing out of the Contract, then a Reservation of Right stipulating the nature, each item and the amount claimed shall be added at the end of the acceptance statement. This claim must be filed with the State Court of Claims within 120 days of execution of the final estimate. If any monies owed the Division are not paid within 120 days of the execution of the final estimate, the Division shall have the right to revoke the Contractor's Prequalification until the monies are paid.

All prior partial estimates and payments will be subject to correction in the final estimate and payment.

109.9-PRICE ADJUSTMENT OF FUELS:

Because of the uncertainty in estimating the cost of diesel fuel that will be used during the life of this contract, adjustment in compensation for certain contract items is provided for as follows:

Product price quotations for Fuel Oil No. 2 (diesel fuel) as published by the Oil Price Information Service (**OPIS**) will be utilized to establish the contract base price as well as the monthly base price thereafter. These prices will be the average of the individual prices for the following locations:

Charleston, West Virginia
Ashland, Kentucky
Pittsburgh, Pennsylvania
Roanoke, Virginia
Marietta, Ohio

as published on the Thursday prior to the date of the first letting of the month. If the Thursday prior to the first letting date of the month falls on a holiday or the price is otherwise not published for that date, the index will be based on prices published by OPIS for the Wednesday prior to the date of the first letting of the month.

The contract base price **(Cbp)** and the monthly base price **(Mbp)** may be found posted on Contract Administration's website for Fuel And Asphalt Prices at the following link:
http://www.transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx.

Any dispute concerning the **(Cbp)** shall be resolved during the first voucher estimate review.

The portion of the contract unit price which reflects the cost of the specified material will be adjusted for the change in accordance with the following formulae:

$$\mathbf{Pa = [(Mbp \div Cbp) - 1.00] \times Cbp \times C \times Q}$$

Where:

Pa	=	Price Adjustment
Mbp	=	Monthly base price at time of placement
Cbp	=	Contract Base Price at time of bidding
C	=	Cost Adjustment Factors per Unit of Contract Item Bid as outlined in chart below
Q	=	'As Constructed' Quantity

Adjustments in compensation for any period may be either plus or minus. If (Mbp) is greater than (Cbp), the adjustment will be plus. If (Cbp) is greater than (Mbp), the adjustment will be minus.

The adjustment in compensation for diesel fuel used for the listed items will be made on the separate items on the basis of the average diesel fuel requirements for processing a unit of the item as shown in the table below.

The gallons (liters) of diesel fuel for price adjustment will be determined by multiplying the usage factors listed in the table below by the amount of acceptable work performed on the separate adjustable items during an estimate period.

All adjustments will be made based on the gallons (liters) of diesel fuel indicated in the table below and no changes will be made for variations between these usage factors and the actual factors.

TABLE OF MATERIALS TO BE ADJUSTED
AND
COST ADJUSTMENT FACTORS FOR DIESEL FUEL USAGE

		UNITS	FACTOR
Class 1:	Excavation under Sections 207 and 211	Gallons per cubic yard (Liters per cubic meter)	0.25 (1.24)
Class 2:	Crushed aggregate under Sections 307, 311, and 405	Gallons per ton** (Liters per megagram)	0.62 (2.59)
Class 3:	Bituminous concrete under Sections 401 and 402	Gallons per ton** (Liters per megagram)	1.06 (4.43)
Class 4:	Rigid concrete pavement under Sections 501 and 502	Gallons per cubic yard (Liters per cubic meter)	0.76 (3.77)

** Where the pay item for aggregate is in cubic yards (meters), conversion to tons (megagrams) for the purpose of diesel fuel price adjustment will be made on the basis that one cubic yard (meter) equals 1.75 tons (2.08 megagrams).

Any difference between the checked final quantity and the sum of quantities shown on the monthly estimates for any item will be adjusted by the following formula:

$$FA = (FCQ \div PRQ) \times EA$$

Where:

FA = Final Adjustment (dollars) for the item which increased or decreased

FCQ = Final Checked Quantity of the item which increased or decreased

PRQ = Total Quantity of said item previously reported on the most recent estimate

EA = Total adjustment in dollars of said item shown on most recent estimate

The monthly base price for determining price adjustments for all work performed after the contract completion date, as revised by approved time extensions, will be the monthly base price (Mbp) at the time of the contract completion date (as extended) or at the time the work was performed, whichever is less.

The final adjustment will take into consideration any error(s) that may have been made in the computation of any prior monthly adjustments.

109.10-PRICE ADJUSTMENT OF ASPHALT BINDER:

Because of the uncertainty in estimating the cost of petroleum products that will be used during the life of this contract, adjustment in compensation for certain contract items is provided for as follows:

The contract items listed in the Proposal in the *TABLE OF MATERIALS TO BE ADJUSTED FOR PRICE OF ASPHALT AT THE TIME OF PLACEMENT* will be adjusted in accordance with the Division's indices for asphalt binder. The bidding index **(Ib)** for asphalt binder will be equal to the placement index for the month immediately prior to the month in which the project is bid. The placement index **(Ip)** will be the price in effect for the month in which the specified adjustable material was actually placed. Both the bidding index **(Ib)** and the placement index **(Ip)** will be based on the average of the posted prices of PG 64-22 asphalt binder per ton/megagram as reported from the following sources for the first day of each calendar month:

Marathon Petroleum Company, LLC, Catlettsburg, Kentucky
Marathon Petroleum Company, LLC, Floreffe, Pennsylvania
Asphalt Materials, Inc., Marietta, Ohio
NuStar Asphalt Refining Company, Baltimore, Maryland
Associated Asphalt, Martinsburg, West Virginia

The bidding index **(Ib)** and the placement index **(Ip)** may be found posted on Contract Administration's website for Fuel And Asphalt Prices at the following link:
http://www.transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx.

If one of the sources listed above changes ownership and/or name the posted price for that terminal will continue in use as though the ownership and/or name change had not occurred.

If one of the sources used for determining either the bidding index or the placement index goes out of business, any future index will be based on the average of the remaining sources. Thus, the bidding index **(Ib)** could be based on the average of five sources and the placement index **(Ip)** on the average of four sources or vice-versa. If a source that goes out of business reopens at a later date, the placement index would once again be based on the average of five sources as indicated above.

The posted price for each source will be compared to the average of all sources. If the difference between the average and the individual price is greater than 25 % of the average, that individual source will be excluded from the calculation of the average price **(Ib)** or **(Ip)** and a new average will be calculated using the remaining sources.

Sources chosen for the index are required to report their posting to the Division no later than the first day of each month. Failure to report in a timely manner may impact scource approval.

The portion of the contract unit price which reflects the cost of the specified material will be adjusted for the change in accordance with the following formulae:

$$Pa = [(Ip \div Ib) - 1.00] \times Q \times \text{Applicable "C" Factor (C1 or C2)}$$

Where:

Pa	=	Price Adjustment
Ip	=	Price Index at time of placement
Ib	=	Price Index for Bidding
C1, C2	=	Adjustable Material Cost per Unit of Contract Item Bid
Q	=	"As Constructed" Quantity

The price index for determining price adjustments for all work performed after the contract completion date, as revised by approved time extensions, will be determined as follows: The price index (Ip) shall be for the month in which the contract completion date (as extended) alls, or the price index for the month in which the work was performed, whichever is less.

TABLE OF MATERIALS TO BE ADJUSTED FOR PRICE OF ASPHALT AT THE TIME OF PLACEMENT (English & Metric)

Adjustable Material	Bidding Index (I_b)	Adjustable Material Cost (C), (C_1) or (C_2) Dollars Per Unit of Asphalt Mixture or Per Gallon (Liter) or Liquid Asphalt Material
Asphalt Binder under Sections 401 and 402	*	(C_1)
Asphalt Binder under Section 311	*	(C_2)

*The bidding Indexes (Ib) and the placement indexes (Ip) may be found posted on Contract Administrations website for Fuel And Asphalt Prices at the following link: http://www.transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx.

The bidding index for asphalt binder will be the price in effect for the month prior to the month in which this contract is let.

Any dispute concerning the bidding index shall be resolved during the first voucher estimate review.

**In order to determine the applicable adjustable material cost ("C") factor for asphalt material under sections 405 and 636, multiply the bidding index (I_b) by 0.0027 for English or 0.001 for metric.

The "C" values given per gallon of Liquid Asphalt Material is based on the use of an emulsion which is assumed to contain 65% asphalt material and a gallon of emulsion weights 8.43 pounds of a liter of emulsion weights 1.00 kg. If a cut-back asphalt is used "C" as given in the above table must be multiplied by 1.54 to arrive at a modified "C" factor for use in the formula. No change will be made in the Adjustable Material Cost (C) for variations between these assumptions and actual factors.

The adjustable materials costs (C_1) and (C_2) are based on the approved job mix formula for the specific asphalt mixture being placed in accordance with the following formulae:

$$(C_1) = I_b \times A_c \times 1 \text{ ton} \quad \text{or} \quad [\,(C_1) = I_b \times A_c \times 1 \text{ megagram}\,]$$

Where A_c equals the approved asphalt content expressed in decimals, i.e. 5.8% asphalt content equals 0.058. When reclaimed asphalt pavement (RAP) is used in the mix, A_c is the % virgin or new asphalt added to the mix.

$$(C_2) = I_b \times A_c \times 1.6 \text{ tons/cy} \quad \text{or} \quad [\,(C_2) = I_b \times A_c \times 1.9 \text{ mg/m}^3 \times 1 \text{ meter}\,]$$

where A_c equals approved asphalt content expressed in decimals and it is assumed that a cubic yard of asphalt treated open-graded free draining base weights 1.6 tons or 1.9 Mg. No change will be made in C_2 for variations between this assumption and the actual factor.

109.11 THROUGH 109.19-BLANK:

109.20-LOAD LIMIT VIOLATIONS AND WEIGH TICKETS:

The Allowable Gross Weight for any vehicle being used to haul materials on publicly maintained highways under the terms of this contract shall be as follows.

Title 23 Code of Federal Regulations, Section 658.17, establishes maximum allowable gross weight on the Interstate System. The maximum allowable gross weight on WV and US Routes will be as established in Chapter 17C, Articles 17 and 17A of the Official Code of West Virginia, as amended. The Public Service Commission, Weight Enforcement Section is responsible for the enforcement of these provisions.

A weigh ticket shall be required with each load of material from a commercial source which would normally have truck scales. This includes, but is not limited to, all asphalt paving materials and all aggregates regardless of the contract pay unit. The weigh ticket shall include gross, tare, and net weights, time and date of loading, Item Number or Description of Materials, Contract Number or Project Number, number of axles on haul unit, license number of haul unit, and signature of the weigher certifying that all information on the ticket is correct. If the weigher's name is printed by the computer on the ticket, then it only needs to be initialed by the weigher.

For material from a commercial source or a batch plant, which would not normally have truck scales, a weigh ticket documenting the tare weight, number of axles on the haul unit, license number of haul unit, date weighed, location of

scales, and signature of the weigher certifying that all information on the ticket is correct, may be supplied for each haul unit as an alternate to the ticket required in the previous paragraph. The tare weight ticket shall be supplied for each contract on a yearly basis and when modifications are made to the vehicle or combination of vehicles. The weight of the material delivered shall be calculated and furnished by the vendor/supplier shipping the material to the project site or DOH facility. This includes, but is not limited to, concrete, structural steel, piling, reinforcing steel and all prepackaged material of known weight, such as cement, grout, fertilizer, lime, abrasives, etc.

If the haul unit is a combination of vehicles, the license number shall be supplied for each component. The tare weight shall be for the complete haul unit.

All weighing shall be done on scales approved and sealed by the West Virginia Division of Labor, Bureau of Weights and Measures. If the scales are moved or upon the request of the Engineer, the scales shall be reapproved and sealed. The Engineer shall be notified of any scale malfunctions. The Division of Highways may, at its option, accept inspection and sealing by out of state agencies when the material is being loaded outside West Virginia.

Any material, covered by this provision, which is delivered without the proper weigh ticket shall not be accepted by the Division of Highways.

Nothing in this provision relieves any party from compliance with the State Law on load limits or any fines which may be assessed for violation of said law.

SECTION 110
MISCELLANEOUS PROVISIONS

110.1-COMMON CARRIER RATES:

The common carrier rates and taxes which are current on the date of opening the bids shall be considered as applicable to all items subject to transportation charges there under.

If such rates or taxes are thereafter increased by public authority on any materials entering into and forming a part of the Contract, an amount equal to the sum of all such increases, when evidenced by receipted common carrier bills, will be paid to the Contractor by the Division. All claims for such payments shall be made within sixty (60) days after final acceptance of the work.

If such rates or taxes are thereafter reduced by public authority on any materials entering into and forming a part of the Contract, an amount equal to the sum of all such decreases, when evidenced by receipted common carrier bills, will be deducted by the Division from the monies due the Contractor on the work performed under the Contract.

When deliveries of materials are performed by means other than common carriers, an increase or decrease in price will not be allowed or charged for changes in rates or methods of delivery.

110.2-MINIMUM WAGE DETERMINATIONS:

The West Virginia Division of Labor Wage Rates and Prevailing Wage Classification Work Descriptions in effect at the time of the bid opening will become a part of the contract documents. The Contractor must post the West Virginia Division of Labor Wage Rates on the jobsite at a location accessible to employees.

The West Virginia Division of Labor Wage Rates may be found by accessing Contract Administration's Prevailing Wage Rates website at the following link:
http://www.transportation.wv.gov/highways/contractadmin/prevailing_Wage_rates/Pages/default.aspx

A printed version can be obtained from the Secretary of State's Office or from the West Virginia Department of Transportation, Division of Highways, Contract Administration Division or from the West Virginia Division of Labor at the following address:

West Virginia Division of Labor
Building 6, Room 749-B
1900 Kanawha Boulevard, East
Charleston, WV 25305-0570

If the Proposal contains U.S. Department of Labor Wage Rates and the wage rates established by the West Virginia Division of Labor the minimum wage paid shall be the higher rate for each job classification.

The Prevailing Wage Classification Work Descriptions may be found posted on Contract Administration's Prevailing Wage Rates website at the following link:

http://www.transportation.wv.gov/highways/contractadmin/prevailing_Wage_rates/Pages/PrevailingWageWorkerClassifications.aspx

A printed version can be obtain from the West Virginia Department of Transportation, Division of Highways, Contract Administration Division or from the West Virginia Division of Labor at the address listed above.

110.3-NONDISCRIMINATION OF EMPLOYEES (GOVERNOR'S EXECUTIVE ORDER):

During the performance of this Contract for public work or for goods or services, the Contractor agrees as follows:

The Contractor and subcontractors shall provide equal employment opportunity for all qualified persons and shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

Contractors and subcontractors are required to give written notice to any labor union with which they have a collective bargaining or other agreement, that they have complied with the requirements of the Executive Orders by the Governor of the State of West Virginia, dated October 16, 1963, and December 15, 1965. These provisions shall be fully and effectively enforced and any breach of them will be regarded as a material breach of the Contract.

110.4-PROVISIONS FOR WEST VIRGINIA STATE FUNDS CONTRACTS:

110.4.1-Applications: These contract provisions shall apply to all work performed on the Contract by the Contractor with their own organization and with the assistance of employees under their immediate superintendence and to all work performed on the Contract by piece work, station work, or by subcontract.

110.4.2-Employment Lists, Labor Selection: A local public employment agency will be designated by the State to prepare the employment lists for the project. At, or prior to contract award, the Contractor will be advised of the exact designation and location of the agency selected for this purpose, and the name and location of such agency will be inserted in the Contract.

All qualified unskilled labor shall be employed inasfar as possible from lists furnished to the Contractor by the employment agency designated in the Contract. The Contractor may avail themselves of the services of the employment agency for obtaining labor of the intermediate and skilled grade.

In the performance of this Contract, the Contractor shall not discriminate against any worker because of race, creed, color, or national origin.

110.4.3-Payrolls: Submission by the Contractor, or subcontractor, of payrolls, or copies thereof, is not required. Each Contractor, or subcontractor, shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract. The payroll records shall set out

accurately and completely the project number, name, classification, hourly wage rate of each employee, hours worked by each employee daily and weekly wages earned by each employee, and deductions made from such weekly wages, and the actual weekly wages paid to each employee. Such payroll records shall be made available at all times for inspection by authorized representatives of the Division.

110.4.4-Payment of Predetermined Minimum Wages: These contract provisions are supplemented elsewhere in the Contract by Special Provisions which set forth the certain predetermined minimum wage rates. The Contractor shall pay not less than these rates.

The wages of all labor shall be paid in legal tender of the United States, except that this condition will be considered satisfied if payment is made by negotiable check, on a solvent bank, which may be readily cashed by the employee in the local community for the full amount, without discount or collection charges of any kind. Where checks are used for payment, the Contractor shall make all necessary arrangements for the checks to be cashed and shall give information regarding such arrangements.

The minimum wages specified shall be exclusive of any charges for medical examination, medical fees, or insurance, except as specifically required by State Law. No individual employed on the project in other than an administrative position shall be paid less than the minimum rate for unskilled labor.

WEST VIRGINIA DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATIONS

TO ACCOMPANY THE 2010 EDITION OF THE STANDARD SPECIFICATIONS Roads and Bridges

ISSUED JANUARY 1, 2011

DIVISION 100
GENERAL PROVISIONS

SECTION 107
LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.1-LAWS TO BE OBSERVED:

DELETE THE LAST SENTENCE AND REPLACE WITH THE FOLLOWING:

The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify, defend and hold DOH harmless from any and all claims, liabilities and causes of action for any fines or penalties imposed on DOH by any state or federal agency because of violation by CONTRACTOR or any of its subcontractors and/or consultants of any state or federal law or regulation.

107.2-PERMITS, LICENSES, AND TAXES:

ADD THE FOLLOWING PARAGRAPH TO THE SECTION:

The Contractor shall provide the Division with sufficient documentation that all applicable taxes have been paid within 120 days of the project acceptance as provided for in 105.16. The Division shall have the right to revoke the Contractor's Prequalification until the Contractor provides sufficient documentation that all taxes have been paid or are the subject of a timely filed dispute currently pending in a court or other body having legal authority and jurisdiction to hear the dispute.

107.14 – RESPONSIBILITY FOR DAMAGE CLAIMS:

DELETE THE SECTION AND REPLACE WITH THE FOLLOWING:

107.14-RESPONSIBILITY FOR DAMAGE CLAIMS:

The Contractor shall indemnify and save harmless the Division, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor, its subcontractors and/or consultants; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the

Contractor its subcontractors and/or consultants; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act," or any other law, ordinance, order, or decree; and so much of the money due the Contractor under and by virtue of their Contract as may be considered necessary by the Division for such purpose may be retained for the use of the Division or, in case no money is due, their surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Division; except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor is adequately protected by public liability and property damage insurance.

107.21-PROTECTION OF RIVERS, STREAMS, AND IMPOUNDMENTS:

107.21.1-Erosion and Siltation Control:

DELETE THE ENTIRE SUB-SUBSECTION AND TITLE AND REPLACE WITH THE FOLLOWING:

107.21.1-Erosion and Sedimentation Control:

The Contractor shall be responsible for water quality throughout the duration of construction in accordance with the National Pollutant Discharge Elimination System (NPDES) permit registration with the West Virginia Department of Environmental Protection Agency (WVDEP). The Contractor will responsible for the following:

i. Developing and implementing an effective erosion and sediment control plan.
ii. Directing the construction, operation, maintenance and dismantling of temporary erosion and sediment control features.
iii. Implementing remedial action to correct and/or repair failing erosion and sediment control features.
iv. Implementing storm and winter shutdown procedures.
v. Shaping the earthwork prior to the suspension of grading operations each day in a manner that will permit storm runoff with minimum erosion.
vi. Installing, operating and maintaining erosion and sediment control features in an acceptable condition.
vii. Cleaning out and restoring to original conditions any erosion or sediment control feature that has reached half of its capacity. For sediment basins, one half of its capacity is considered as wet volume storage.

The Contractor shall prepare a Spill Prevention, Control and Countermeasures (SPCC) plan that itemizes specific measures that will be

implemented to prevent and clean up chemical and petroleum product spills that may occur during all phases of construction. Fuel storage and refueling activities, equipment maintenance activities and equipment washing will be kept at least 500 feet away from any watercourse or wetland.

Any details not shown in the plans shall be in accordance with the latest version of the West Virginia Division of Highways Erosion and Sediment Control Manual. In the event that temporary erosion and sediment control measures are necessary due to the Contractors negligence, carelessness or failure to install permanent controls as part of the work as scheduled, such work shall be performed by the Contractor at his own expense.

In addition to the above, the Contractor shall make themselves familiar with all requirements contained within the WVDEP's General Water Pollution Control Permit, Stormwater Associated with Construction Activities Permit Number WV0115924. A copy of this permit can be found at the following internet address:

http://www.dep.wv.gov/WWE/Programs/stormwater

Noncompliance with permit conditions constitutes a violation of the Clean Water Act and State Code and is subject to enforcement action by the WVDEP.

At the Project's Pre-Construction Conference, the Contractor shall submit to the Department in addition to the appropriate number of Erosion and Sediment Control Plans, the Co-Applicant #1 signature page (Exhibit 1) and the Contractor's E&S Manager Contact.

The Contractor's E&S Contact shall contain the following information: the name, title, mailing address and telephone number of the person who will be responsible for the Erosion and Sediment Control plans, implementation, maintenance, etc., for the life of the NPDES registration.

Upon completion of the Pre-Construction Conference, the Department will modify the existing NPDES registration for this project to make the Contractor the number one Co-Applicant to the permit. Once this has been completed, the Contractor shall be responsible for any and all fees, violations and fines assessed against the project that is a result of the Contractor's negligence, carelessness, or failure to install permanent controls as part of the work as scheduled.

Once the project is complete, the Contractor will still bear responsibility for the NPDES registration until either a Notice of Termination (NOT) is received from the WVDEP or the Contractor has received final payment for the project. If an NOT has not been received by the time the final payment is made, the Department will modify the NPDES registration to remove the Contractor's name from the registration.

The exhibit can be located online at:

http://www.transportation.wv.gov/highways/contractadmin/specifications/107.21.1EnSExhibit1/Pages/default.aspx

SECTION 107.21.1 EXHIBIT 1
COAPPLICANT #1 SIGNATURE PAGE

dep	**Co-Applicant #1:** **Co-Applicant #1 Signature Page**	**New NPDES Storm Water Construction** **Project Name:**

BY COMPLETING AND SUBMITTING THIS APPLICATION, I HAVE REVIEWED AND UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS OF THE GENERAL PERMIT ISSUED ON NOVEMBER 5, 2007. I UNDERSTAND THAT PROVISIONS OF THE PERMIT ARE ENFORCEABLE BY LAW. VIOLATION OF ANY TERM AND CONDITION OF THE GENERAL PERMIT AND/OR OTHER APPLICABLE LAW OR REGULATIONS CAN LEAD TO ENFORCEMENT ACTION.

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED ON THIS FORM AND ALL ATTACHMENTS AND THAT, BASED ON MY INQUIRING OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT.

_____

(CO-APPLICANT #1 SIGNATURE)

Print Name:

Print Title:

Date:

PRIOR TO FILING THIS APPLICATION, YOU MAY WISH TO OBTAIN A COPY OF THE LEGISLATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, TITLE 47, SERIES 26, WATER POLLUTION CONTROL PERMIT FEE SCHEDULE IN ORDER TO DETERMINE THE APPROPRIATE PERMIT APPLICATION FEE REQUIRED TO ACCOMPANY YOUR SUBMISSION OF THIS APPLICATION. YOU CAN OBTAIN A COPY OF THE REGULATION FROM THE SECRETARY OF STATE'S OFFICE, STATE CAPITOL BUILDING, CHARLESTON, WV 25305. HOWEVER, YOU MAY WISH TO USE THE TABLE FOUND IN ITEM V. OF THE ATTACHED INSTRUCTIONS.

ALL SPILLS OR ACCIDENTAL DISCHARGES ARE REQUIRED TO BE REPORTED IMMEDIATELY TO THE EMERGENCY RESPONSE SPILL ALERT SYSTEM TOLL FREE TELEPHONE NUMBER 1-800-642-3074. CALLS FROM OUT OF STATE SHOULD BE MADE TO 304-348-8899.

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATIONS

TO ACCOMPANY THE 2010 EDITION OF
THE STANDARD SPECIFICATIONS
Roads and Bridges

ISSUED JANUARY 1, 2012

Contract Time except as when provided in section 108.6. Any additional cost, including extended overhead incurred between the Contractor's scheduled completion date and the Contract Completion Date set forth in the Proposal, shall be the responsibility of the Contractor.

Should the Schedule indicate an earlier completion date than the time for completion set forth in the Contract, the Schedule shall define any positive float developed between an early completion point and the Contract completion date as part of the overall project float. It is understood by the Contractor and the Division that positive float is a shared commodity, not for the exclusive use or benefit of either party. Either party has the full use of the positive float until it is depleted.

108.6.2-Extension of Contract Time:

DELETE PARAGRAPH SEVEN AND REPLACE WITH THE FOLLOWING:

Only delays in the activities on the critical path, or in the absence of scheduling requirements, delays in the controlling operation will be considered for a Contract Time extension, provided when required, the Contractor has submitted proper notification and supporting documentation justifying the request. For projects with Schedule requirements, Time Extension reviews will be evaluated along the critical path, as determined by the project's longest path. Time Extension reviews will consider the free float and total float of all relevant activities in determining the actual project delay. The Engineer shall within fourteen (14) Calendar Days advise the Contractor in writing of the approval or rejection of the time extension request. If approved, the extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

SECTION 109
MEASUREMENT AND PAYMENT

109.9-PRICE ADJUSTMENT OF FUELS:

DELETE PARAGRAPH TWO AND REPLACE WITH THE FOLLOWING:

Product price quotations for Fuel Oil No. 2 (diesel fuel) as published by the Oil Price Information Service (OPIS) will be utilized to establish the Contract Base Price (Cbp) as well as the Monthly Base Price (Mbp) thereafter. These prices will be the average of the individual prices for the following locations:

Charleston, West Virginia
Ashland, Kentucky
Pittsburgh, Pennsylvania
Roanoke, Virginia
Marietta, Ohio

as published on the Wednesday prior to the first day of the month, with the effective date of the index being the first day of the month. If the Wednesday prior to the first day of the month falls on a holiday or the price is otherwise not published for that date, the index prices will be based on the next earliest date as published by OPIS.

109.10-PRICE ADJUSTMENT OF ASPHALT BINDER:

DELETE THE PARAGRAPH TWO AND REPLACE WITH THE FOLLOWING:

Because of the uncertainty in estimating the cost of petroleum products that will be used during the life of this contract, adjustments in compensation for certain contract items is provided for as follows:

The contract items listed in Table 109.10.1, will be adjusted in accordance with the Division's indices for asphalt binder. The bidding index (Ib) for asphalt binder will be equal to the placement index as listed on the Contract Administrations website for Fuel and Asphalt adjustments for the Wednesday prior to the first day of the month, with the effective date of the index being the first day of the month. If the Wednesday prior to the first day of the month falls on a holiday or the price is otherwise not published for that date, the index will be based on the next earliest date as reported. The placement index (Ip) will be the price in effect on the first of the month in which the specific adjustable material was actually placed. Both the bidding index (Ib) and the placement index (Ip) will be based on the average of the posted prices of PG 64-22 asphalt binder per ton/megagram as reported from the following sources on the Wednesday prior to the first day of each calendar month:

Marathon Petroleum Company, LLC, Catlettsburg, Kentucky
Marathon Petroleum Company, LLC, Floreffe, Pennsylvania
Asphalt materials, Inc., Marietta, Ohio
NuStar Asphalt Refining Company, Baltimore, Maryland
Associated Asphalt, Martinsburg, West Virginia

The bidding index **(Ib)** and the placement index **(Ip)** may be found posted on Contract Administration's website for Fuel And Asphalt Prices at the following link:

http://www.transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx.

If one of the sources listed above changes ownership and/or name the posted price for that terminal will continue in use as though the ownership and/or name change had not occurred.

If one of the sources used for determining either the bidding index or the placement index goes out of business, any future index will be based on the average of the remaining sources. Thus, the bidding index **(Ib)** could be based on the average of five sources and the placement index **(Ip)** on the average of four sources or vice-versa. If a source that goes out of business reopens at a later date, the placement index would once again be based on the average of five sources as indicated above.

The posted price for each source will be compared to the average of all sources. If the difference between the average and the individual price is greater than 25 % of the average, that individual source will be excluded from the calculation of the average price **(Ib)** or **(Ip)** and a new average will be calculated using the remaining sources.

Sources chosen for the index are required to report their posting to the Division no later than the Wednesday prior to the first day the month. Failure to report in a timely manner may impact source approval.

The portion of the contract unit price which reflects the cost of the specified material will be adjusted for the change in accordance with the following formulae:

$$Pa = Q*AC*(Ip - Ib)$$

Where:

Pa = *Price Adjustment*

Ip = *Price Index at time of placement*

Ib = *Price Index for Bidding*

AC[1] = *Asphalt Content (see Table 109.10.1)*

Q = *"As Constructed" Quantity*

The price index for determining price adjustments for all work performed after the contract completion date, as revised by approved time extensions, will be determined as follows: The price index **(Ip)** shall be for the month in which the contract completion date (as extended) falls, or the price index for the month in which the work was performed, whichever is less.

Table 109.10.1 - TABLE OF MATERIALS TO BE ADJUSTED FOR PRICE OF ASPHALT AT THE TIME OF PLACEMENT

(English & Metric)

Item Number	Asphalt Content (%)	Item Number	Asphalt Content (%)	Item Number	Asphalt Content (%)	Item Number	Asphalt Content (%)
311006-001	3.2%	401002-021	5.7%	401003-015	5.0%	402001-026	4.9%
401001-020	3.9%	401002-022	5.7%	401007-020	5.7%	402001-027	4.9%
401001-021	3.9%	401002-023	7.6%	401007-021	5.7%	402001-028	4.9%
401001-022	3.9%	401002-024	7.6%	401007-022	5.7%	402001-029	6.7%
401001-023	5.0%	401002-025	7.6%	401007-023	5.7%	402001-030	6.2%
401001-024	5.0%	401002-026	5.7%	401007-024	5.7%	402001-031	7.6%
401001-025	5.0%	401002-027	5.7%	401007-025	5.7%	402001-032	7.6%
401001-030	3.9%	401002-028	5.7%	401007-030	5.7%	402001-033	7.0%
401001-031	3.9%	401002-029	7.6%	401007-031	5.7%	402001-034	4.9%
401001-032	3.9%	401002-030	7.6%	401007-032	5.7%	402001-035	5.2%
401001-033	5.0%	401002-031	7.6%	401007-033	5.7%	402001-036	5.0%
401001-034	5.0%	402001-035	4.9%	401007-034	5.7%	402001-038	7.6%
401001-035	5.0%	402001-036	4.9%	401007-035	5.7%	402001-039	7.6%
401001-040	5.0%	402001-037	4.9%	401007-040	6.0%	402001-040	6.0%
401001-041	5.0%	401002-040	4.9%	401007-041	6.0%	402001-041	6.0%
401001-042	4.5%	401002-041	4.9%	401007-043	6.0%	402001-045	5.5%
401001-043	4.5%	401002-042	4.9%	401007-044	6.0%	402001-046	5.5%
401001-044	5.0%	401003-001	5.0%	401007-050	6.0%	402001-050	5.0%
401001-045	5.0%	401003-002	5.0%	401007-051	6.0%	402001-051	5.0%
401001-046	4.5%	401003-003	5.0%	401007-053	6.0%	402001-055	7.6%
401001-047	4.5%	401003-006	5.0%	401007-054	6.0%	402001-056	7.6%
401001-050	4.1%	401003-007	5.0%	402001-020	6.2%	402001-060	6.0%
401001-051	4.1%	401003-008	5.0%	402001-021	6.2%	402001-061	6.0%
401001-055	4.1%	401003-011	5.0%	402001-022	6.2%	402001-065	5.5%
401001-056	4.1%	401003-012	5.0%	402001-023	7.6%	402001-066	5.5%
401002-020	5.7%	401003-013	5.0%	402001-024	7.6%	402001-070	5.0%
		401003-014	5.0%	402001-025	7.6%	402001-071	5.0%

The bidding Indexes (Ib) and the placement indexes (Ip) may be found posted on Contract Administrations website for Fuel And Asphalt Prices at the following link:

http://www.transportation.wv.gov/highways/contractadmin/Lettings/Pages/FuelandAsphaltPrices.aspx

The bidding index (Ib) for asphalt binder will be listed on the Contract Administrations website for Fuel and Asphalt adjustments for the Wednesday prior to the first day of the month, with the effective date of the index being the first day of the month for which the contract is let.

Any dispute concerning the bidding index shall be resolved during the first voucher estimate review.

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

SUPPLEMENTAL SPECIFICATIONS

TO ACCOMPANY THE 2010 EDITION OF THE STANDARD SPECIFICATIONS
Roads and Bridges

ISSUED JANUARY 1, 2014

V. 20140102

DELETE THE SECTION AND REPLACE WITH THE FOLLOWING:

107.14-RESPONSIBILITY FOR DAMAGE CLAIMS:

The Contractor shall indemnify and save harmless the Division, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor, its subcontractors and/or consultants; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor its subcontractors and/or consultants; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act," or any other law, ordinance, order, or decree; and so much of the money due the Contractor under and by virtue of their Contract as may be considered necessary by the Division for such purpose may be retained for the use of the Division or, in case no money is due, their surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Division; except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor is adequately protected by public liability and property damage insurance.

107.21-PROTECTION OF RIVERS, STREAMS, AND IMPOUNDMENTS:

107.21.1-Erosion and Siltation Control:

DELETE THE ENTIRE SUB-SUBSECTION AND TITLE AND REPLACE WITH THE FOLLOWING:

107.21.1-Erosion and Sedimentation Control:

The Contractor shall be responsible for water quality throughout the duration of construction in accordance with the National Pollutant Discharge Elimination System (NPDES) permit registration with the West Virginia Department of Environmental Protection Agency (WVDEP). The Contractor will responsible for the following:

i. Developing and implementing an effective erosion and sediment control plan.

ii. Directing the construction, operation, maintenance and dismantling of temporary erosion and sediment control features.

iii. Implementing remedial action to correct and/or repair failing erosion and sediment control features.

iv. Implementing storm and winter shutdown procedures.

v. Shaping the earthwork prior to the suspension of grading operations each day in a manner that will permit storm runoff with minimum erosion.

vi. Installing, operating and maintaining erosion and sediment control features in an acceptable condition.

vii. Cleaning out and restoring to original conditions any erosion or sediment control feature that has reached half of its capacity. For sediment basins, one half of its capacity is considered as wet volume storage.

The Contractor shall prepare a Spill Prevention, Control and Countermeasures (SPCC) plan that itemizes specific measures that will be implemented to prevent and clean up chemical and petroleum product spills that may occur during all phases of construction. Fuel storage and refueling activities, equipment maintenance activities and equipment washing will be kept at least 500 feet away from any watercourse or wetland.

Any details not shown in the plans shall be in accordance with the latest version of the West Virginia Division of Highways Erosion and Sediment Control Manual. In the event that temporary erosion and sediment control measures are necessary due to the Contractors negligence, carelessness or failure to install permanent controls as part of the work as scheduled, such work shall be performed by the Contractor at his own expense.

In addition to the above, the Contractor shall make themselves familiar with all requirements contained within the WVDEP's General Water Pollution Control Permit, Stormwater Associated with Construction Activities Permit Number WV0115924. A copy of this permit can be found at the following internet address:

http://www.dep.wv.gov/WWE/Programs/stormwater

Noncompliance with permit conditions constitutes a violation of the Clean Water Act and State Code and is subject to enforcement action by the WVDEP.

At the Project's Pre-Construction Conference, the Contractor shall submit to the Department in addition to the appropriate number of Erosion and Sediment Control Plans, the Co-Applicant #1 signature page (Exhibit 1) and the Contractor's E&S Manager Contact.

The Contractor's E&S Contact shall contain the following information: the name, title, mailing address and telephone number of the person who will be responsible for the Erosion and Sediment Control plans, implementation, maintenance, etc., for the life of the NPDES registration.

Upon completion of the Pre-Construction Conference, the Department will modify the existing NPDES registration for this project to make the Contractor the number one Co-Applicant to the permit. Once this has been completed, the Contractor shall be responsible for any and all fees, violations and fines assessed against the project that is a result of the Contractor's negligence, carelessness, or failure to install permanent controls as part of the work as scheduled.

Once the project is complete, the Contractor will still bear responsibility for the NPDES registration until either a Notice of Termination (NOT) is received from the WVDEP or the Contractor has received final payment for the project. If an NOT has not been received by the time the final payment is made, the Department will modify the NPDES registration to remove the Contractor's name from the registration.

The exhibit can be located online at:

http://www.transportation.wv.gov/highways/contractadmin/specifications/107.21.1EnSExhibit1/Pages/default.aspx

SECTION 107.21.1 EXHIBIT 1
COAPPLICANT #1 SIGNATURE PAGE

dep	**Co-Applicant #1:** **Co-Applicant #1 Signature Page**	**New NPDES Storm Water Construction** **Project Name:**

BY COMPLETING AND SUBMITTING THIS APPLICATION, I HAVE REVIEWED AND UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS OF THE GENERAL PERMIT ISSUED ON NOVEMBER 5, 2007. I UNDERSTAND THAT PROVISIONS OF THE PERMIT ARE ENFORCEABLE BY LAW. VIOLATION OF ANY TERM AND CONDITION OF THE GENERAL PERMIT AND/OR OTHER APPLICABLE LAW OR REGULATIONS CAN LEAD TO ENFORCEMENT ACTION.

I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED ON THIS FORM AND ALL ATTACHMENTS AND THAT, BASED ON MY INQUIRING OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT.

_____

(CO-APPLICANT #1 SIGNATURE)

Print Name

Print Title:

Date.

PRIOR TO FILING THIS APPLICATION, YOU MAY WISH TO OBTAIN A COPY OF THE LEGISLATIVE RULES OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, TITLE 47, SERIES 26, WATER POLLUTION CONTROL PERMIT FEE SCHEDULE IN ORDER TO DETERMINE THE APPROPRIATE PERMIT APPLICATION FEE REQUIRED TO ACCOMPANY YOUR SUBMISSION OF THIS APPLICATION. YOU CAN OBTAIN A COPY OF THE REGULATION FROM THE SECRETARY OF STATE'S OFFICE, STATE CAPITOL BUILDING, CHARLESTON, WV 25305. HOWEVER, YOU MAY WISH TO USE THE TABLE FOUND IN ITEM V OF THE ATTACHED INSTRUCTIONS.

ALL SPILLS OR ACCIDENTAL DISCHARGES ARE REQUIRED TO BE REPORTED IMMEDIATELY TO THE EMERGENCY RESPONSE SPILL ALERT SYSTEM TOLL FREE TELEPHONE NUMBER 1-800-642-3074. CALLS FROM OUT OF STATE SHOULD BE MADE TO 304-348-0899.

The commissioner shall certify monthly to the state auditor the amount due to each member of the commission, himself and each employee of the commission f services rendered as such members, commissioner and employees and the auditor shall issue his warrant therefor on the state treasurer, payable out of the sta road fund appropriated for such purpose.

Any claim of a contractor or others, not otherwise provided for, for labor done or for materials, services or supplies furnishe to the state road commission, pursuant to the provisions of any article to this chapter, shall be audited by the commissione and, if found correct, the commissioner shall issue the commission's requisition upon the auditor of the state therefo showing the nature of such claim and whether it is for labor done or materials, services or supplies furnished for constructio of state roads, or for other purposes, and the auditor shall issue his warrant upon the state treasurer therefor, and th treasurer shall pay the same to the person, firm or corporation entitled thereto, out of the funds in the treasury provided fo that purpose.

Note: WV Code updated with legislation passed through the 2013 1st Special Session
The WV Code Online is an unofficial copy of the annotated WV Code, provided as a convenience. It has NOT been editec for publication, and is not in any way official or authoritative.

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with ***West Virginia Code***, §5A-3-37. (Does not apply to construction contracts). ***West Virginia Code***, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the ***West Virginia Code***. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. **Application is made for 2.5% resident vendor preference for the reason checked:**

____ 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,**

____ Bidder is a partnership, association or corporation resident vendor and 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 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,**

____ Bidder is a 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; **or,**

2. **Application is made for 2.5% resident vendor preference for the reason checked:**

____ 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 are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or,**

3. **Application is made for 2.5% resident vendor preference for the reason checked:**

____ 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 Bidder's 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; **or,**

4. **Application is made for 5% resident vendor preference for the reason checked:**

____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or,**

5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or,**

6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

7. **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.**

____ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of 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) reject the bid; 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.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of 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.

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.

Bidder: _____ **Signed:** _____

Date: _____ **Title:** _____

RFQ No. 66140031

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: DeAngelo Brothers, Inc.

Authorized Signature: [signature] Date: 3-31-14

State of Pennsylvania

County of Luzerne, to-wit:

Taken, subscribed, and sworn to before me this 31 day of March, 2014.

My Commission expires October 13, 2017.

AFFIX SEAL HERE

NOTARY PUBLIC Brenda L Swank

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Brenda L. Swank, Notary Public
Berwick Boro, Columbia County
My Commission Expires Oct. 13, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Purchasing Affidavit (Revised 07/01/2012)

NOTE:
Vendor and Notary's date must be the same.
Notary required to AFFIX SEAL on Purchasing Affidavit.