

July 29, 2014

Guy Nisbet  
West Virginia Public Defender Services  
One Players Club Drive, Suite 301  
Charleston, WV 25311

We are pleased to present our credentials to provide professional auditing services to the West Virginia Public Defender Services. Gibbons & Kawash is a leader in providing services to nonprofit and state and local governments in West Virginia. As a client of our firm, you can be sure of our total commitment to provide timely, responsive and quality service.

We will perform audits of the financial statements for each of the seventeen Public Defender Corporations (the PDCs) as of and for the year ended June 30, 2014, with the option of two additional one year renewals. Our audits will be performed in accordance with U.S. generally accepted auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Providing audit services to state government entities and nonprofit organizations is an important part of our practice and one in which we have extensive expertise. Our experience includes audits of 23 State of West Virginia component units over the last several years. These component units individually range in size up to \$4 billion in assets and \$1.8 billion in revenue. In addition, we also audit 20 nonprofit organizations each year. Should we be appointed to serve as auditors, the PDCs will receive high quality professional services from auditors that will plan, conduct, and report on the audits with competence, integrity, objectivity, and that are independent of the PDCs in all respects.

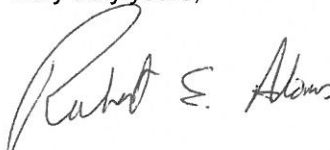
Gibbons & Kawash has provided technical assistance and consulting services to State of West Virginia entities and other local governments for the successful submission of a Comprehensive Annual Financial Report to receive the coveted Certificate of Achievement for Excellence in Financial Reporting. We have assisted seven State of West Virginia component units and one local government with multiple successful submissions for the Certificate.

Gibbons & Kawash is independent of the State of West Virginia, and all of its component units, as defined by auditing standards generally accepted in the United States of America and *Government Auditing Standards*. Gibbons & Kawash and all key professional staff are licensed to practice in West Virginia. There are no obligations or interests of our firm that might conflict with the interests of the West Virginia Public Defender Services and the State of West Virginia.

We have structured this proposal to communicate Gibbons & Kawash's experience and qualifications to effectively and efficiently respond to the requirements and expectations of the West Virginia Public Defender Services, and have made every effort to completely respond to all matters identified in your request for quotation. We would be pleased to meet with you and formally present our proposal upon your request. If you have any questions, please do not hesitate to contact me at 345-8400.

Very truly yours,

07/25/14 03:07:25PM  
West Virginia Purchasing Division



Robert E. Adams  
Director

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# PROFILE OF GIBBONS & KAWASH

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## OVERVIEW

The audits of the 17 Public Defender Corporations (the PDCs) requires experience in serving government entities and nonprofit organizations to properly respond to your needs. Our experience auditing 23 State of West Virginia component units and over 35 nonprofit organizations will enable us to effectively and efficiently meet the PDCs' needs for quality and timely audit services.

## GIBBONS & KAWASH'S PRACTICE

Gibbons & Kawash is a professional accounting firm which provides a full range of accounting and auditing, tax, and management consulting services to clients throughout West Virginia, and is a leading firm in providing services to governmental and nonprofit organizations. Our Firm has many years of experience in providing competent, high quality audit services to governmental entities and nonprofit organizations throughout West Virginia.

## AN INDEPENDENT MEMBER OF THE

Gibbons & Kawash is an independent member of the BDO Alliance USA, a nationwide association of local and regional accounting and consulting firms. Membership enables us to access a level of expertise in specialties which are usually available only from large national and international CPA firms, without the high overhead costs.

As a member, we have access to vast resources and technical expertise, outstanding audit, tax and consulting professionals, and their specialty niche expertise with BDO USA, LLP serving clients through 40 offices and more than 400 alliance firm locations across the United States.

As an independent member of the BDO Alliance USA we offer the resources of a national firm, yet we remain autonomous so you are assured of a local presence of highly trained and knowledgeable experts with your needs in the forefront.

## AUDIT QUALITY

Gibbons & Kawash's foremost goal is to provide *superior quality service*. Everything else is secondary to that goal. Our approach to client service incorporates the necessity to meet client needs as the primary focus of service. We strive to identify, understand and satisfy governments' needs and expectations. This approach has helped Gibbons & Kawash build its extensive governmental and nonprofit practices.

The *Government Auditing Standards*, issued by the Comptroller General of the United States, outline requirements that must be met by certified public accounting firms that perform audits of governmental units. Three of these requirements are:

- Individual CPAs and CPA firms must be independent in fact and appearance from personal, external, and organizational impairments to independence.
- CPAs performing audits of governmental units should have continuing professional education in programs directly related to government auditing and accounting.
- CPAs performing audits of governmental units must establish an internal quality control review program and participate in an external peer review program for audits of governmental units.

## PROFILE OF GIBBONS & KAWASH

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Gibbons & Kawash strongly supports the rendering of quality services to our governmental clients and meets or exceeds all requirements of *Government Auditing Standards*. The following few paragraphs demonstrate the Firm's dedication to each aspect of audit quality.

### ***Independence***

The credibility of the audit results is critical for oversight by the PDCs and in meeting public expectations. Gibbons & Kawash carefully evaluates all services provided to audit clients to ensure that the very detailed requirements for independence of *Government Auditing Standards* applicable to individual auditors and audit firms are satisfied. We are independent with respect to the PDCs, the State of West Virginia and its component units, and will carefully guard and maintain our independence during the course of any audit services provided to the PDCs and State of West Virginia.

### **Governmental Audit Quality Center**

Gibbons & Kawash is a member of the Governmental Audit Quality Center, established by the American Institute of Certified Public Accountants. This Center has established increased continuing education and quality control requirements for its voluntary membership to enhance the quality of governmental audits and audits of nonprofit organizations performed under *Government Auditing Standards* and OMB circular A-133.



### **Employee Benefit Plan Audit Quality Center**

As a member of the Employee Benefit Plan Audit Quality Center, we receive comprehensive resources and up-to-date information on a variety of technical, legislative, and regulatory subjects to assist us in performing employee benefit plan audits and ensure clients are in compliance with the appropriate standards and changes in regulations. These resources help us respond quickly to new standards and requirements to ensure the efficiency of your audit engagement.



### ***System of Quality Control***

To ensure the consistent delivery of quality services, we have developed a comprehensive system of quality control which covers virtually every aspect of our practice. This system is formalized in a written quality control document to which every staff member is expected to adhere.

The elements of our quality control system are as follows:

- Leadership responsibilities for quality
- Relevant ethical requirements
- Acceptance and continuance of clients and engagements
- Human resources
- Engagement performance
- Monitoring

### ***External Quality Control Review***

Gibbons & Kawash is a member of the American Institute of Certified Public Accountants' Peer Review Program. The Program has established a self-regulatory process which includes requirements for peer review of the member firms every three years. These reviews, which are performed by knowledgeable independent CPAs from other firms, periodically evaluate and test systems of quality control of member firms. Our system of quality control provides assurance that we maintain, on a continuing basis, the highest professional standards to which we are committed. Our most recently released external quality control review, which was completed on July 10, 2012, was performed by Rea & Associates, Inc. Their opinion, which was "pass" (the highest possible rating under the peer review standards), is on file with the AICPA and is included as **Appendix G**. This quality control review included governmental audit engagements.



## PROFILE OF GIBBONS & KAWASH

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### ***Continuing Professional Education***

One of the best measures of a firm's commitment to its audit practice is the depth of specialized training provided to its professionals. Gibbons & Kawash provides internal and external training on governmental accounting, auditing, reporting, and operations in excess of the GAO requirements. We continually monitor the issuance of technical auditing and accounting pronouncements and provide our personnel with specialized training in these areas. Professionals at the in charge level and above receive specialized training in seminars and courses presented by nationally recognized experts in governmental and nonprofit accounting, auditing and financial reporting. Gibbons & Kawash's professional staff has met all continuing professional education requirements within the proceeding two years.

### **EXPERTISE IN COMPUTERIZED SYSTEMS**

#### ***Computerizing the Audit***

Gibbons & Kawash is committed to providing our auditors access to the latest technology in order to ensure optimum levels of efficiency in our engagements. Computerizing the audit process, enables our auditors to spend more time on judgment matters and in-depth analysis, rather than on "number crunching" and other mechanical aspects of auditing, and enhances efficiency by allowing for quick updating of audit applications from year to year.

With an internet connection, our personnel can work from anywhere and have complete access to the Firm's local area network as well as access to multiple high quality research sites for research of accounting and auditing issues. Our electronic audit workpaper software allows efficient integration of client prepared word and excel files into our workpaper files.

We combine the use of spreadsheet, word processing, and trial balance software to perform the most efficient audits possible. Some of the benefits of full automation include the ability to:

- Import data directly from your accounting system, thereby eliminating manual keypunching
- Spend more time on judgment matters and in-depth research and analysis rather than on "number crunching" and other mechanical aspects of client service
- Prepare graphs for management presentations; and use pre-formatted spreadsheets from year to year, allowing us to perform ratio and trend analysis on key accounts

We use the following software packages to perform the aforementioned tasks:



**ProSystem Fx Engagement** - A workpaper preparation program that produces financial statements, trial balances, journal entries, fluctuation and ratio analysis.



**Checkpoint** - Online access to an expansive library of tax, accounting, auditing, and corporate finance content, including primary source materials and expert analysis.



**IDEA** - A powerful data extraction and analysis program that provides us with access to large amounts of data from which can we quickly import, join, analyze, sample and extract data from almost any source. Through data extraction and analysis programs, a significant amount of information can be evaluated for unusual relationships, which may be the result of erroneous data.



**Prosystemfx Portal** - Our client portal offers convenient online storage space in which your confidential information can be uploaded, downloaded, stored and shared in a safe and secure environment.

## PROFILE OF GIBBONS & KAWASH

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### ***Encryption***

All data on Gibbons & Kawash computers, including our workpapers in our computerized audit documentation management system, is encrypted using a 256-bit algorithm. The data encryption ensures that in the unlikely event that one of our computers were to be lost or stolen, your data and our workpapers would be unreadable to anyone other than Gibbons & Kawash personnel.

## QUALIFICATIONS AND EXPERIENCE

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### ENGAGEMENT TEAM

The ultimate success and quality of our professional services to the Agency depends on our ability to provide an experienced and capable client service team. We have selected a group of individuals experienced in serving governmental entities.

Your client service team will include:

**Engagement Director** - Robert E. Adams, a director with Gibbons & Kawash who has extensive experience in serving governmental clients, will serve as the engagement director responsible for the end product. In this role, Rob will assume primary responsibility for the successful completion of the engagement and will maintain contact with the PDCs throughout the engagement to ensure that services and resources are provided to the PDCs in a timely professional manner. Rob will also provide technical expertise to the team on any matters and perform certain review and supervision procedures.

**Engagement Quality Control Review Director** - Robert R. Denyer, a director with Gibbons & Kawash who has extensive governmental experience, will serve as engagement quality control review director (EQCRD). The role of the EQCRD is an essential element of Gibbons & Kawash's quality control program over the delivery of services to a client. Bob will be available to consult with the engagement team and provide technical expertise.

**Manager** - Anthony Carpenter will serve as the engagement manager. Anthony will be responsible for developing the engagement plan, supervising and coordinating the efforts of the engagement team, identifying and researching technical issues, and administrative matters. Anthony will be in contact with you on a regular basis to ensure your needs and deadlines are met.

**We will also utilize in-house experts in the nonprofit services area of our Firm including Director - Valerie Ellis, Senior Manager - Faye McQuinn, and Manager - Emily Facemeyer to provide supervision, review and expertise in the area of nonprofit accounting and reporting.**

See **Appendix C** for resumes of your client service team.

### GOVERNMENTAL AND NONPROFIT PRACTICE

Gibbons & Kawash has a long tradition of providing the highest quality professional services to nonprofit and governmental clients. Our governmental and nonprofit practice is managed by a core team of professionals, including 4 directors. The core engagement team for the PDCs has been selected from this pool of highly qualified professionals. The team's public sector experience includes nonprofit organizations, cities, counties, authorities, and State of West Virginia agencies.

Gibbons & Kawash has a long tradition of providing the highest quality professional services to nonprofit and governmental clients. Our governmental and nonprofit experience includes the following:

- Alderson-Broaddus College
- Appalachian Bible College
- Bible Center Church
- Capitol Market, Inc.
- Center for Neighborhood Enterprise
- Center for Rural Health Development, Inc.
- Charleston Area Alliance
- Charleston Catholic High School
- City of Charleston, West Virginia
- Central West Virginia Regional Airport Authority
- EastRidge Health Systems

## QUALIFICATIONS AND EXPERIENCE

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- Kanawha County Commission
- Kanawha Hospice Care, Inc.
- Kanawha Valley Regional Transportation Authority
- Logan-Mingo Area Mental Health, Inc.
- Seneca Health Services, Inc.
- School Building Authority of West Virginia
- Tobacco Settlement Finance Authority of West Virginia
- University of Charleston, Inc.
- Valley HealthCare System
- West Virginia Alcohol Beverage Control Administration
- West Virginia Board of Treasury Investments
- West Virginia Consolidated Public Retirement Board
- West Virginia Department of Transportation, Division of Highways
- West Virginia Drinking Water Treatment Revolving Loan Fund
- West Virginia Housing Development Fund
- West Virginia Independent Colleges and Universities
- West Virginia Infrastructure and Jobs Development Council
- West Virginia Jobs Investment Trust
- West Virginia Lottery Commission
- West Virginia Parkways Authority
- West Virginia Solid Waste Management Board
- West Virginia State Rail Authority
- West Virginia Water Development Authority
- West Virginia Water Pollution Control Revolving Loan Fund
- YMCA of Kanawha Valley

### AFFIRMATIVE STATEMENTS

**Independence** - Gibbons & Kawash is independent of the PDCs, the State of West Virginia, and any component units of the State of West Virginia, as defined by the AICPA and by *Government Auditing Standards*.

**License to Practice** - Gibbons & Kawash, CPAs, are properly licensed to practice in West Virginia.

**Disciplinary Action** - No disciplinary action has been taken or is pending against Gibbons & Kawash, CPAs.

**Conflict of Interest** - Gibbons & Kawash, its officers or members or employees, do not presently have or do not plan to acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Gibbons & Kawash will 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 PDCs.

**Insurance** - Gibbons & Kawash carries general liability and workers compensation insurance sufficient to comply with the requirements included in the request for quotation.

**HIPAA** - Gibbons & Kawash will provide all HIPAA compliance forms requested upon notification of successful award by the Agency and the purchaser.

**CPAs** - Gibbons & Kawash will staff the engagements of the PDC's so that 50% of its participants are CPAs.

## QUALIFICATIONS AND EXPERIENCE

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### GFOA'S CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING



Obtaining a Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA) is a goal for many governmental entities. Gibbons & Kawash is well qualified to assist governments in obtaining and maintaining these certificates.

Gibbons & Kawash has provided technical assistance to the following state agencies in connection with obtaining the GFOA Certificate of Achievement for Excellence in Financial Reporting:

- City of Charleston, West Virginia
- West Virginia Board of Treasury Investments
- West Virginia Department of Transportation, Division of Highways
- West Virginia Parkways Authority
- West Virginia Lottery Commission
- West Virginia Prepaid College Tuition Fund
- West Virginia Housing Development Fund
- West Virginia Consolidated Public Retirement Board

### OTHER SPECIALIZED SERVICES

In addition to providing traditional audits in accordance with U.S. generally accepted auditing standards, some of the additional services we offer include the following:

- Compliance audits in accordance with OMB Circular A-133
- Preparation and examination of indirect cost rate proposals
- Financial forecasts and projections
- Capital financing/financial feasibility studies
- Exempt entity tax planning and compliance, including evaluation of UBTI issues
- Employee benefit plan auditing and IRS/DOL compliance
- Recruitment of financial personnel
- Design and evaluation of internal controls
- Software evaluations and consultations
- Benchmarking and ratio analysis

## SERVICE APPROACH

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Gibbons & Kawash understands that time and money are important concerns for our clients. We take these concerns seriously, and have designed our approach to yield a rate of return that is reflected in timeliness, effectiveness, and cost efficiency.

The following paragraphs describe some of the most significant elements of the Gibbons & Kawash service approach.

### A SERVICE PHILOSOPHY BASED ON VALUE

We reject the notion that an audit is a commodity. First and foremost, we are in business to serve our clients, to help them solve their problems, achieve their objectives, and to make a solid contribution to their success. From the staff accountant to the engagement director, our people work to identify and respond to our clients' needs. We believe that in the course of conducting an audit, your accounting firm should generate information and develop insights that in the hands of professionals who combine competence with judgment, maturity, and creativity will result in improved controls, greater efficiencies, and clear, concise, and understandable financial reporting. It is this "value-added" philosophy to client service that has molded our approach to engagement management and distinguishes us from other firms.

### CLEAR COMMUNICATION

We value the candid exchange of ideas and opinions with our clients, and we maintain an open and robust dialogue with management and the board of directors. We believe that communication is the most important tool for maximizing audit efficiency and effectiveness.

- Prior to the audit, we will meet with senior management and the board of directors to assist us in planning the audit. Taking the time to listen to you during the planning process is crucial to ensuring that we understand your organization and its risks.
- Our key team members will also meet with management frequently during the engagement to keep you apprised of our progress, to discuss any issues that may arise, and to solicit feedback regarding our performance.
- At the conclusion of our audit, we will communicate in writing regarding the results of the audit and any internal control matters that are required by professional standards to be communicated and we will meet with the board of directors to discuss these matters.
- We also encourage contact throughout the year, and your client service team will be ready to consult with you any time you have a question. To demonstrate this commitment to meaningful dialogue, we do not bill for brief phone calls throughout the year. Of course, if a question requires extensive research, we will let you know and arrive at a fee estimate in advance.

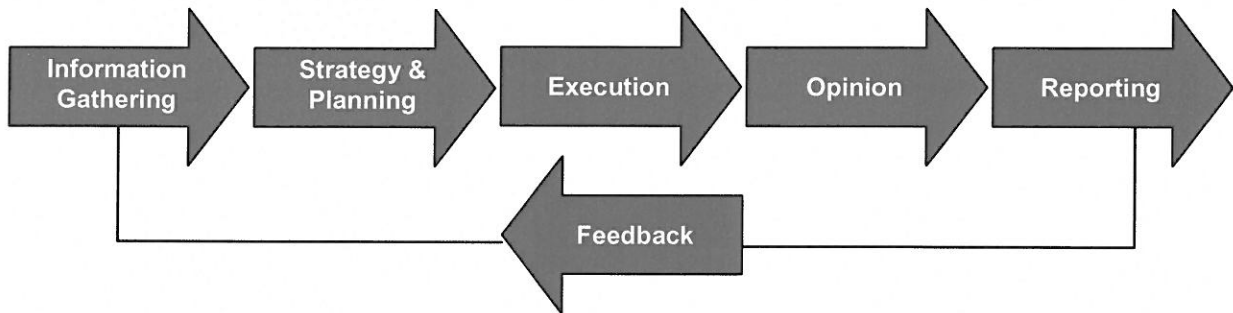


## SERVICE APPROACH

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### OUR METHODOLOGY

Our methodology is broken down into six phases:



- We will gather sufficient information on the key business/audit risks to enable us to design appropriate audit procedures, and conduct the audit in the most efficient manner and within the pre-agreed time frame and budget.
- Information gathering will also include a "prepared by client" list with agreed timetable for provision of information and pre year-end planning meetings.
- We will calculate an appropriate materiality level which reflects the perceived audit risk and is based on our in-depth understanding of your business.
- We will use suitably qualified staff to ensure an efficient audit, while maximizing the opportunity for value added service from their experience.
- We will ensure clear and timely communication of issues to avoid any surprises and to enable smooth reporting.

### EMPHASIS ON PLANNING AND RISK ASSESSMENT

We recognize that every organization we serve is unique. Effective and thorough planning is the key to ensuring that our approach is tailored to meet your specific needs and is the cornerstone of successful engagement management. From this understanding emerges a written plan and work programs - road maps which will be used by the engagement team to execute field work.

The most critical part of planning an audit is risk assessment. **Risk assessment refers to the auditor's identification and assessment of risks of material misstatement at both the financial statement and relevant assertion levels.** Obtaining an understanding of the organization, including its internal control, is an essential aspect of the consideration of risk. Our goal here is to get beyond the numbers, to develop a clear understanding of your organization, your goals and objectives, and the environment in which you operate.

Some risk assessment procedures which we will perform are as follows:

- Inquiries of management and others within the organization and those charged with governance, including specific inquiries related to fraud risks
- Analytical procedures
- Obtaining an understanding of internal controls (both entity- level and activity-level controls)

## SERVICE APPROACH

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- Performing “walkthroughs” of key internal controls
- Review of internal documents such as by-laws, minutes, and written policies and procedures
- Review of important contracts and agreements
- Engagement team “brainstorming” session to identify ways in which the financial statements could be misstated, especially as related to misappropriation or intentional misstatement

Once risk has been assessed, we are able to determine the quality and quantity of audit evidence required to limit that risk to an acceptable level. We will synthesize the information gathered during the planning and risk assessment procedures to develop a risk-based approach that concentrates audit effort on those areas where the dollar volume of transactions is significant and the risk of material misstatement is greatest.

### STAFFING CONTINUITY

Our staffing and scheduling policies have historically been very successful in maximizing audit team continuity from year to year. Effective staff recruiting and retention is a top priority for our firm, because we realize that our most valuable investment is our people. We recruit only those who have achieved a high academic standing and have demonstrated commitment, ambition, and leadership skills, and offer them a proactive approach to staff development that includes a mentoring program, comprehensive training at every level, and performance evaluations after every significant engagement.

We view continuity of engagement teams to be in the best interest of the Firm and our clients. Staff repetition enhances audit effectiveness and efficiency, and is our guiding principle in scheduling. When personnel changes are unavoidable, the depth of our pool of experienced nonprofit professionals gives us the ability to select a replacement with relevant experience at comparable institutions.

### SERVICES TO BE PROVIDED

We will audit the financial statements of the West Virginia Public Defender Services for the year ended June 30, 2014, with options to renew for the years ended June 30, 2015 and 2016 in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

In connection with our audit, we will also prepare a “management letter” which contains our comments and recommendations regarding opportunities for strengthening internal control and improving operational performance.

From your request for quotation, we have obtained an understanding of your expectations for the public accounting firm with whom you will work in the future. Key among these are that your accounting firm should:

- Present a diversity of audit experience which demonstrates that the firm can meet your service needs.
- Have an experienced team of professionals with a proven record of providing high quality audit services and who will work closely with management. We would expect this experienced team of professionals to be utilized on a consistent basis from year-to-year.
- Have an audit approach that addresses areas of highest risk, concentrates its efforts in areas of most concern, and results in a smooth and efficient audit.
- Provide ongoing communications with management regarding any accounting or financial reporting developments which may affect the PDCs.

## SERVICE APPROACH

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Draft financial statements for the year ending June 30, 2014, will be delivered to the Financial Accounting and Reporting Section of the Department of Administration (FARS) by September 15, 2014. The final audited financial statements for the year ending June 30, 2014, will be issued no later than October 15, 2014.

### AUDIT OBJECTIVES AND REPORTING

The objective of our audit is the expression of an opinion about whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles. The objective also includes reporting on:

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts and grant agreements, noncompliance with which could have a direct and material effect on the financial statements in accordance with *Government Auditing Standards*.

### AUDIT PROCEDURES - GENERAL

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected funding sources, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

### AUDIT PROCEDURES - INTERNAL CONTROL

In planning and performing our audit, we will consider the internal control sufficient to plan the audit and assess risk to determine the nature, timing, and extent of our auditing procedures for the purpose of expressing our opinion on the West Virginia Public Defender Services's financial statements and issuing a report on internal control over financial reporting and on compliance and other matters based on an audit performed in accordance with *Government Auditing Standards*.

Gibbons & Kawash will not express an opinion on the effectiveness of the PDCs's internal control over financial reporting. Our consideration of internal control over financial reporting is for the limited purpose described in the preceding paragraph and is not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses will be identified.

### AUDIT PROCEDURES - COMPLIANCE AND OTHER MATTERS

As part of obtaining reasonable assurance about whether the PDCs's financial statements are free of material misstatement, we will perform tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions is not an objective of our audit, and accordingly, we will not express such an opinion. However, we will report on the results of our tests if we discover any instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

## SERVICE APPROACH

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### COORDINATION OF EFFORT

We continue to anticipate cooperation from your staff, and assistance in our engagement where feasible. We will coordinate our efforts with you and your staff to avoid duplication of work and increase efficiency. Assistance typically requested of client personnel includes locating documentation and preparing schedules to support certain management assertions.

### SCHEDULE

Our primary goal in scheduling is to ensure that the engagement is thoroughly planned, that field work is scheduled at times which are compatible with the schedules of the PDCs' accounting staff, and that the audits are completed well in advance of the deadline to allow management adequate time to review our draft reports. *We will establish the audit schedule, coordinating with the management and staff of the PDCs, to ensure that all deadlines established by FARS and the RFQ are met.*

### AVAILABILITY THROUGHOUT THE YEAR

At Gibbons & Kawash, we believe that ongoing communication with management is the key to being effective professional advisors. Our goal is to be proactive in helping management identify and address challenges and opportunities in a timely manner, when successful resolution is most likely, rather than merely providing an after-the-fact reporting of the issues in connection with our engagement.

## **APPENDIX A**

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**COST PROPOSAL - RFQ # PDS201410**

## APPENDIX A

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### Breakdown by Circuit:

Brooke, Hancock & Ohio	\$ 10,000
Marshall, Tyler & Wetzel	5,000
Calhoun, Jackson, Mason & Roane	6,500
Cabell & Wayne	10,000
Logan	5,000
McDowell	5,000
Mercer	7,200
Raleigh	8,000
Greenbrier & Pocahontas	5,000
Fayette	5,000
Kanawha	11,000
Harrison	8,500
Preston	5,000
Berkeley, Jefferson & Morgan	11,000
Boone & Lincoln	5,800
Nicholas	5,000
Mingo	<u>5,000</u>
Total all-inclusive fee for all Circuits	<u>\$ 118,000</u>

The prices quoted in this proposal will not be subject to any increase and will be considered firm for the life of the contract.

Gibbons & Kawash will submit invoices, in arrears, to the West Virginia Public Defender Services at the address on the face of the purchase order labeled "invoice to." If acceptable to the West Virginia Public Defender Services, we would expect to submit invoices for progress payments each month on the basis of percentage of work completed during the month, in arrears, subject to a minimum 10% retainage until final deliverable is accepted.

Please see **Appendix B** for a signed copy of the Request for Quotation.



## **APPENDIX B**

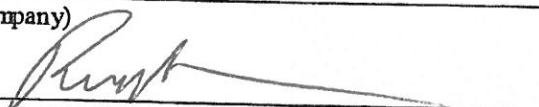
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### **REQUEST FOR QUOTATION**

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.

Gibbons & Kawash, A.C.  
(Company)

  
(Authorized Signature)

Director  
(Representative Name, Title)

304-345-8400      304-345-8451  
(Phone Number)      (Fax Number)

July 29, 2014  
(Date)



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

# Solicitation

NUMBER
PDS201410

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
GUY NISBET
304-558-2596

RFQ COPY  
TYPE NAME/ADDRESS HERE

RFQ COPY

PUBLIC DEFENDER SERVICES  
ONE PLAYERS CLUB DRIVE  
SUITE 301  
CHARLESTON, WV  
25311 304-558-3905

SHIP TO

DATE PRINTED
06/19/2014

BID OPENING DATE: 07/22/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		946-20		
AUDITING SERVICES FOR PUBLIC DEFENDER						
REQUEST FOR QUOTATION (RFQ)						
THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, WEST VIRGINIA PUBLIC DEFENDER SERVICES, IS SOLICITING BIDS FROM QUALIFIED VENDOR TO PROVIDE THE AGENCY WITH AUDITING SERVICES FOR THE FINANCIAL AND COMPLIANCE AUDIT OF SEVENTEEN (17) PUBLIC DEFENDER CORPORATIONS LOCATED THROUGHOUT THE STATE OF WEST VIRGINIA, PER THE ATTACHED SPECIFICATIONS, TERMS AND CONDITIONS, AND BID REQUIREMENTS.						
***** THIS IS THE END OF RFQ PDS201410 ***** TOTAL:						\$118,000
SIGNATURE <i>[Signature]</i>						
TITLE Director			FEIN 55-0738985		TELEPHONE 304-345-8400	DATE July 29, 2014
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: July 10th, 2014 at 10:00 AM. EST.

Submit Questions to: Guy Nisbet, Senior Buyer, File 21  
2019 Washington Street, East  
Charleston, WV 25305  
Fax: (304) 558-4115  
(Vendors should not use this fax number for bid submission)  
Email: Guy.L.Nisbet@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: July 22nd, 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 **one (1)** year(s).

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to **two (2)** successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. 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.

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

- ☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.
- ☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall this Contract extend for more than one fiscal year.
- ☐ **Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

- ☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
- ☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- ☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.
6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.
7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.
- ☐ **BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.
- ☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of . The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.
- ☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a

performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☒ **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.

☐ **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:



**Commercial General Liability Insurance:**

\$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.



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  
for  
  
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](mailto: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 hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

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

**53. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference.

If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.



**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of Public Defender Services to establish a contract for Professional Auditing Services.
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 Services"** means to conduct a financial and compliance audit of each of the seventeen Public Defender Corporations for the fiscal year.

2.1.1 **"Fiscal Year"** means the time period from July 1, 2013 to June 30, 2014.

2.1.2 **"Public Defender Corporation" (hereinafter "PDC")** means Corporations as described in *W.Va. Code §29-21 et seq.* PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its Comprehensive Annual Financial Report for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations.

2.1.3 According to *W.Va. Code §29-21-11*, Public Defender Corporation may apply to the executive director of the WV Public Defender Services for state financial assistance. The amount of state funding varies per fiscal year.

2.1.4 Each Public Defender Corporation is currently (For year ending as described in 2.1.1) contracted as follows:

1 <sup>st</sup> Judicial Circuit	Brook, Hancock, & Ohio	\$ 1,127,058
2 <sup>nd</sup> Judicial Circuit	Marshall, Tyler, & Wetzel	\$ 512,693
5 <sup>th</sup> Judicial Circuit	Calhoun, Jackson, Mason, & Roane	\$ 818,592
6 <sup>th</sup> & 24 <sup>th</sup> Judicial Circuit	Cabell & Wayne	\$ 1,929,261
7 <sup>th</sup> Judicial Circuit	Logan	\$ 660,644
8 <sup>th</sup> Judicial Circuit	McDowell	\$ 457,897
9 <sup>th</sup> Judicial Circuit	Mercer	\$ 962,317
10 <sup>th</sup> Judicial Circuit	Raleigh	\$ 1,064,355
11 <sup>th</sup> Judicial Circuit	Greenbrier & Pocahontas	\$ 582,980
12 <sup>th</sup> Judicial Circuit	Fayette	\$ 545,576
13 <sup>th</sup> Judicial Circuit	Kanawha	\$ 3,511,383
15 <sup>th</sup> Judicial Circuit	Harrison	\$ 1,118,836
18 <sup>th</sup> Judicial Circuit	Preston	\$ 453,855
23 <sup>rd</sup> Judicial Circuit	Berkeley, Jefferson, & Morgan	\$ 2,734,725
25 <sup>th</sup> Judicial Circuit	Boone & Lincoln	\$ 752,346
28 <sup>th</sup> Judicial Circuit	Nicholas	\$ 365,599
30 <sup>th</sup> Judicial Circuit	Mingo	\$ 531,402

**2.2 "Contract Renewal"** means the maximum time frame in which subsequent services can be awarded after the initial award. This is further defined in Section 5 of this document.

**2.3 Pricing Page** means the pages upon which Vendor should list its proposed price for the Contract Services. The Pricing Page is either included on the last page of this RFQ or attached hereto as Exhibit "A".

**2.4 "RFQ"** means the official request for quotation published by the Purchasing Division and identified as PDS201410.

**2.5 "Agency"** means Public Defender Services.

**2.6 "FARS"** means *the Financial Accounting & Reporting Section* of the Department of Administration of the State of West Virginia as described in *W.Va. Code §5A-2-33*.

**3. QUALIFICATIONS:** Vendor shall have the following minimum qualifications:

**3.1. Certified Public Accountant Designation**

The successful bidder must be an independent accounting firm who can demonstrate that 50 percent of their auditing staff engaged in this solicitation are duly licensed to practice as certified public accountants in the State of West Virginia. Vendor should submit the names and qualifications (i.e., WV CPA designation) of those individual engaged in solicitation with this bid with the final confirmation presented prior to award as defined in Attachment "B".

**3.2. Prior Experience**

The successful bidder must demonstrate that the firm has experience in auditing other component units of the State of West Virginia's Comprehensive Annual Financial Reports as well as experience with the reporting requirements of 501 (c) (3) non-profit corporations. Vendor should provide the names of those entities to which prior experience as previous defined with this bid with the final confirmation presented prior to award as defined in Attachment "C".

**4. MANDATORY REQUIREMENTS:**

**4.1 Mandatory Contract Services Requirements and Deliverables:** Contract Services must meet or exceed the mandatory requirements listed below.

**4.1.1 INDEPENDENT AUDIT REPORTS:** The audits must be performed in accordance with Government Auditing Standards issued by the Comptroller

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General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office.

4.1.1.1 Draft Audit Reports to be delivered to Agency and FARS not later than September 15, 2014.

4.1.1.2 Final Audit Reports to be delivered to Agency and FARS not later than October 15, 2014.

**4.2 Record Retention & Confidentiality:**

4.2.1 Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency.

4.2.2 Vendor shall have access to private and confidential data maintained by the Public Defender Corporations and the Agency to the extent required for the successful Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by Vendor.

**5. CONTRACT AWARD:**

**5.1 Contract Award:** The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Page, Exhibit "A".

**5.2 Pricing Page:** Vendor should complete the Pricing Page, Exhibit "A" providing a breakdown of each PDC by counties service. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

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Vendor should type or print the information into the Pricing Page to prevent errors in the evaluation.

6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
7. **PAYMENT:** Agency shall pay invoice (as described in 7.1 and 7.2), as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
  - 7.1. The Vendor shall submit invoices, in arrears, to the Agency at the address of the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Progress payments may be made at the option of the Agency on the basis of percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.
8. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.
9. **FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:
  - 9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
  - 9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
  - 9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
  - 9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
  - 9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

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**10. VENDOR DEFAULT:**

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

10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

10.1.2. Failure to comply with other specifications and requirements contained herein.

10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4. Failure to remedy deficient performance upon request.

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

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

**11. MISCELLANEOUS:**

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

**Contract Manager:** Robert E. Adams, Director

**Telephone Number:** 304-345-8400

**Fax Number:** 304-345-8451

**Email Address:** radams@gandkcpas.com

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
  - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
  - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
  - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
  - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111<sup>th</sup> Congress (2009).



- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

## 2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.



### 3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
  - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
  - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
  - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
  - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
  - the date of disclosure;
  - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
  - a brief description of the PHI disclosed; and
  - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. **Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. **Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- i. **Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. **Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. **Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at [www.state.wv.us/admin/purchase/vrc/agencyli.htm](http://www.state.wv.us/admin/purchase/vrc/agencyli.htm) and,

unless otherwise directed by the Agency in writing, the Office of Technology at [incident@wv.gov](mailto:incident@wv.gov) or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

#### 4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

**5. General Provisions/Ownership of PHI.**

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

000074

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: PDS201410**

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

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

**Addendum Numbers Received:**

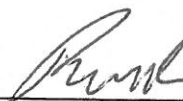
(Check the box next to each addendum received)

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

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

Gibbons & Kawash, A.C.

Company



Authorized Signature

July 29, 2014

Date

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





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

# Solicitation

NUMBER
PDS201410

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
GUY NISBET 304-558-2596

RFQ COPY  
TYPE NAME/ADDRESS HERE

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PUBLIC DEFENDER SERVICES

ONE PLAYERS CLUB DRIVE  
SUITE 301  
CHARLESTON, WV  
25311

304-558-3905

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DATE PRINTED
07/11/2014

BID OPENING DATE: 07/29/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO.01						
ADDENDUM ISSUED TO PUBLISH AND DISTRIBUTE THE ATTACHED INFORMATION TO THE VENDOR COMMUNITY.						
BID OPENING WAS: 07/22/2014 AT 1:30 PM. EST.						
CHANGED TO: 07/29/2014 AT 1:30 PM. EST.						
0001	1	LS	946-20	AUDITING SERVICES FOR PUBLIC DEFENDER		
***** THIS IS THE END OF RFQ PDS201410 ***** TOTAL:						\$118,000

SIGNATURE	TELEPHONE	DATE
	304-345-8400	July 29, 2014
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
Director	55-0738985	

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



SOLICITATION NUMBER: PDS201410  
Addendum Number: No.01

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

**Applicable Addendum Category:**

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

**Description of Modification to Solicitation:**

Addendum issued to publish and distribute the following information as attached.

1. Bid Opening moved from: 07/22/2014 at 1:30 PM. EST.  
to: 07/29/2014 at 1:30 PM. EST.
2. Attachment of vendor submitted questions and agency responses.
3. No other changes.

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

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

000003

# ATTACHMENT A

**PDS2014**  
**Public Defenders Auditing Services**  
**7/10/14 10: AM.**

1. Could you please provide a copy of the prior year's audited financial statements for the WV Public Defender Services in reference to RFQ PDS201410

Answer.1: FY 2013; FY 2012; FY 2011; and FY 2010 Audits are publically available on the Public Defender Services website. These can be found following the link below

<http://www.pds.wv.gov/Public-Defender-Corporations/pdaudit/Pages/default.aspx>

2. Can you provide copies of all final deliverables (specifically management letters and auditor communications) for the year ended June 30, 2013 for each of the 17 entities to be audited as listed in RFQ PDS201410?

A.2. What is available is listed in the audit reports (see A.1). Additional communications between the auditor and each Corporation would be available from that specific corporation and not centrally located within Public Defender Services.

3. Can you provide a list of all misstatements identified during the audit (corrected and uncorrected) for the year ended June 30, 2013 for each of the 17 entities to be audited?

A.3. Audit finding were included with the audits and are available online (see A.1). As for any audit working papers, those rest with the previous auditor and should be available to the successful bidder from the previous auditor.

4. Will the implementation of WV OASIS effective July 1, 2014 have any impact on the presentation or availability of information to be audited for the years ended June 30, 2015 and 2016?

A.4. Yes. The grant issuance information is anticipated to be more available. However, Public Defender Corporations utilize their own accounting functions and maintain their own accounting records.

5. Is there a central accounting function, accounting procedures or financial reporting manual, specified software utilized for financial reporting, or other commonalities whereby the 17 reporting entities must comply or share?

A.5. There is not a centralized accounting function at this time. There are financial guidelines located on the website:

<http://www.pds.wv.gov/Public-Defender-Corporations/Accountinginfo/Pages/default.aspx>

These are subject to change based on best practices and management directives. The preferred software package is QuickBooks, but some offices do not use this.

6. Does each of the reporting entities maintain an accounting function or is that service contracted out to a vendor?

A.6. That is at the discretion of each office.

7. Is there a consolidating financial statement and accompanying audit report for such a deliverable required under RFQ PDS201410?

A.7. These will be 17 separate reports without a need for a master consolidation or comprehensive financial statements beyond that which is required for the Comprehensive Annual Financial Report as prepared by the Financial Accounting and Reporting Section.

8. Is there a requirement under RFQ PDS201410 to provide CAFR preparation services in any manner to the entities in this RFQ?

A.8. Yes. The bid specification addresses this, see 2.1.2 with emphasis in bold.

*"2.1.2 "Public Defender Corporation" (hereinafter "PDC") means Corporations as described in W.Va. Code §29-21 et seq. PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its **Comprehensive Annual Financial Report** for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations."*

9. Do the individual entities listed in this RFQ prepare their own full disclosure governmental GAAP financial statements, or is it an expectation of the WV Public Defenders that the successful auditor prepare the financial statements for each entity?

A.9. Pursuant to the provisions as noted below, the successful vendor is expected to exercise discretion in preparing audit reports.

*"4.1.1 **INDEPENDENT AUDIT REPORTS:** The audits must be performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office."*

Moreover, it is acceptable for the vendor to present, in this audit report, the financial report as prepared by the public defender corporation. This has historically been done by prior auditors. With respect to bookkeeping and consulting services as noted in the vendor question "...is it an expectation of the WV Public Defenders that the successful auditor prepare the financial statements for each entity?", the answer is no based on the H.R. 3763 of the 107<sup>th</sup> U.S. Congress titled "Sarbanes-Oxley Act of 2002". (see attached).

10. Are the reporting entities considered Not for Profit (following the FASB codification) or are they considered Governmental (following GASB) for financial reporting purposes, if they follow GASB do the individual entities prepare their own Management Discussion and Analysis (MD&A) in accordance with GASB statement 34?

A.10. Refer to 4.1.1 of the bid [with emphasis in bold]

*"4.1.1 **INDEPENDENT AUDIT REPORTS:** The audits must be performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office."*

With respect to the MD&A, each office must comply with GASB 34 consistent with the provisions as noted above.

11. Is there any supplementary information or required supplementary information that is required to be reported in addition to the financial statements?

A.11. PDS is not requesting that additional reports be prepared that are outside the scope of the auditing process.

12. Are employees of the 17 reporting entities considered state of WV employees participating in pension and OPEB benefits of the State or are they merely not for profit employees who may have benefits provided from other sources?

A.12. This is addressed in 2.1.2 of the bid with emphasis in bold.

*"2.1.2 "Public Defender Corporation" (hereinafter "PDC") means Corporations as described in W.Va. Code §29-21 et seq. PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its Comprehensive Annual Financial Report for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations."*

Moreover, each corporation functions as a public entity under the Internal Revenue Code section 501(c)3. As a result, the employees are considered Non-State Employees. Consequently, corporations may elect and have elected to participate in the Public Employees Retirement System and the Public Employees Insurance Agency. However, each corporation may withdraw and chose not to participate in those systems.

13. Are there any special Group audit procedures that will be required of the successful bidder as it relates to RFQ PDS201410 that are not mentioned in the specifications of RFQ PDS201410?

A.13 No.

14. What were the prior fees under this contract?

A.14. This contract has not been awarded, thus no fees have been issued. For the services rendered by the previous auditor for FY 2013, the vendor was compensated at \$74,000.00.

15. Are there any changes to the audit process, reporting, etc. included in this RFQ as compared to previous RFQ's for this work?

A.15. Only those changes that are required to be included in the audit which were issued outside PDS such as GASB.

16. Are there any changes you would like to see in the audit process (Communication, Timing, Order of Audits, etc.)?

A.16. Not at this time.

17. Are there separate presentations required with the Boards of each individual corporation, the State, the Department of Administration, etc.

A.17. There are no required presentations to other entities as noted above.

18. It appears that the HIPAA Business Associate Addendum and Appendix A are not required to be included in the proposal but only completed if awarded. Can you confirm if that understanding is correct?

A.18. It should be noted that each office represents clients in many criminal proceeding and eligible proceedings as designated by *W.Va. Code §29-21 et seq.* As such, the vendor may be exposed to case files, information, and other data whilst performing services as specified by this bid. As such, some of this information may include but not be limited to those items noted in Appendix A. It is the intention of PDS to provide clients with the maximum protect to which they are entitled to under the *Supreme Court Rules of Professional Conduct*.

H. R. 3763

# One Hundred Seventh Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,  
the twenty-third day of January, two thousand and two*

### An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Sarbanes-Oxley Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

#### TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

#### TITLE II—AUDITOR INDEPENDENCE

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

#### TITLE III—CORPORATE RESPONSIBILITY

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods.
- Sec. 307. Rules of professional responsibility for attorneys.
- Sec. 308. Fair funds for investors.

#### TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.
- Sec. 402. Enhanced conflict of interest provisions.
- Sec. 403. Disclosures of transactions involving management and principal stockholders.



## **APPENDIX C**

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### **QUALIFICATIONS AND EXPERIENCE OF THE ENGAGEMENT TEAM**

## APPENDIX C



**Robert E. Adams, CPA, CGMA**

**DIRECTOR**

304-345-8400 ph  
304-345-8451 fax  
radams@gandkcpas.com

### ***Engagement Responsibilities***

The role of the engagement quality control review director is an essential element of Gibbons & Kawash's quality control program over the delivery of services to a client. He

will consult with the engagement team on engagement matters, including planning and reporting the work product, and will provide technical expertise to the engagement team throughout.

### ***Experience***

Rob's professional experience during the past 18 years has included significant engagement responsibilities for several large governmental entities and nonprofit organizations. His governmental and nonprofit clients include the following:

- Central West Virginia Regional Airport Authority
- Charleston Area Alliance
- Charleston Urban Renewal Authority
- City of Charleston, West Virginia
- Kanawha County, West Virginia
- Kanawha County Parks and Recreation Commission
- Kanawha Valley Regional Transportation Authority
- Metro Emergency Operations Center of Kanawha County
- School Building Authority of West Virginia
- Tobacco Settlement Finance Authority
- West Virginia Alcohol Beverage Control Administration
- West Virginia Board of Treasury Investments
- West Virginia Consolidated Public Retirement Board
- West Virginia Department of Transportation - Division of Highways
- West Virginia Department of Transportation
- West Virginia Drinking Water Treatment Revolving Loan Fund
- West Virginia Economic Development Authority
- West Virginia Educational Broadcasting Authority
- West Virginia Independent Colleges and Universities
- West Virginia Infrastructure and Jobs Development Council
- West Virginia Jobs Investment Trust
- West Virginia Lottery Commission
- West Virginia Regional Jail and Correctional Facility Authority
- West Virginia Solid Waste Management Board
- West Virginia State Rail Authority
- West Virginia Water Development Authority
- West Virginia Water Pollution Control Revolving Fund

### ***Professional Activities***

Rob is a member of the American Institute of Certified Public Accountants, the West Virginia Society of Certified Public Accountants, and the Charleston Chapter of the West Virginia Society of CPAs. Rob is the Firm's Director assigned to the Government Audit Quality Center.

## APPENDIX C

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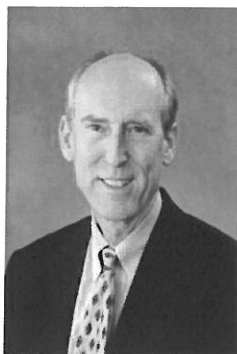
### ***Education***

Rob graduated from the West Virginia Wesleyan College with a Bachelor of Science degree in business administration.

### ***Continuing Professional Education***

Rob is in compliance with all applicable CPE requirements.

## APPENDIX C



**Robert R. Denyer, CPA**

**DIRECTOR**

304-345-8400 ph  
304-345-8451 fax  
rdenyer@gandkcpas.com

### ***Experience***

Bob has more than 30 years of experience in providing audit, tax, and consulting services to public sector entities, state agencies, nonprofit organizations, and local governments. His in-depth industry knowledge includes such areas as federal grant compliance, indirect cost reimbursement, employee benefit plan issues, and internal control and operational matters. His service to governmental entities includes the following:

- Central West Virginia Regional Airport Authority
- Charleston Urban Renewal Authority
- City of Charleston, West Virginia
- Kanawha County Parks and Recreation Commission
- Kanawha County, West Virginia
- Kanawha Valley Regional Transportation Authority
- Metro Emergency Operations Center of Kanawha County
- School Building Authority of West Virginia
- Tobacco Settlement Finance Authority
- West Virginia Alcohol Beverage Control Administration
- West Virginia Board of Treasury Investments
- West Virginia Consolidated Public Retirement Board
- West Virginia Department of Transportation
- West Virginia Department of Transportation, Division of Highways
- West Virginia Drinking Water Treatment Revolving Loan Fund
- West Virginia Economic Development Authority
- West Virginia Educational Broadcasting Authority
- West Virginia Housing Development Fund
- West Virginia Infrastructure and Jobs Development Council
- West Virginia Jobs Investment Trust
- West Virginia Lottery Commission
- West Virginia Parkways Authority
- West Virginia Regional Jail and Correctional Facility Authority
- West Virginia Solid Waste Management Board
- West Virginia State Rail Authority
- West Virginia Water Development Authority
- West Virginia Water Pollution Control Revolving Fund

### ***Professional Activities***

Bob is a member of the American Institute of Certified Public Accountants, West Virginia Society of Certified Public Accountants, and the Charleston Chapter of the West Virginia Society of CPAs. He is as a board member and past president of the South Charleston Rotary Club and a member of the South Charleston Chamber of Commerce.

### ***Education***

Bob graduated from West Virginia University with a Bachelor of Science degree in business administration.

### ***Continuing Professional Education***

Bob is in compliance with all applicable CPE requirements.

## APPENDIX C



**Anthony Carpenter, CPA**

**MANAGER**

304-345-8400 ph  
304-345-8451 fax  
acarpenter@gandkcpas.com

### ***Experience***

Anthony has 7 years of professional experience providing audit, tax, and consulting services to several non-profit organizations and local and state governmental agencies, and retirement plans. His service to public sector entities includes the following:

- Central West Virginia Regional Airport Authority
- Hatfield-McCoy Regional Recreational Authority
- Kanawha County, West Virginia
- Kanawha Valley Regional Transportation Authority
- Public Service Commission of West Virginia
- School Building Authority of West Virginia
- West Virginia Consolidated Public Retirement Board
- West Virginia Housing Development Fund
- West Virginia Independent Colleges and Universities
- West Virginia Lottery Commission
- West Virginia Municipal Pensions Oversight Board
- West Virginia Parkways Authority
- West Virginia Regional Jail and Correctional Facility Authority
- West Virginia Solid Waste Management Board
- West Virginia Board of Treasury Investments

### ***Professional Activities***

Anthony is a member of the American Institute of Certified Public Accountants, the West Virginia Society of CPAs, and the Charleston Chapter of the West Virginia Society of CPAs.

### ***Education***

Anthony graduated from West Virginia State University with a Bachelor of Science degree in business administration

### ***Continuing Professional Education***

Anthony is in compliance with all applicable CPE requirements.

## APPENDIX C

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In addition to our high level of governmental accounting and auditing experience, the following members of our team will serve as nonprofit experts and reviewers of the deliverables to be issued to the PDCs:

- Valerie R. Ellis, Director
- Faye McQuinn, Senior Manager
- Emily Facemeyer, Manager

## APPENDIX C



**Valerie R. Ellis, CPA, CGMA**

**DIRECTOR**

304-345-8400 ph  
304-345-8451 fax  
vellis@gandkcpas.com

### ***Nonprofit Experience***

Valerie has more than 25 years of experience in providing audit, tax, and consulting services to nonprofit organizations, including colleges and universities, foundations, church-related organizations, and health and welfare organizations. Her in-depth industry knowledge includes such areas as federal grant compliance, indirect cost reimbursement, considerations of issues affecting tax exempt status, unrelated business taxable income, employee benefit plan issues, and internal control and operational matters. Her service to nonprofit organizations includes the following:

- Alderson-Broaddus College
- Appalachian Bible College
- Bible Center Church
- Capitol Market, Inc.
- Concord University Foundation, Inc.
- Kanawha Hospice Care, Inc.
- The First Presbyterian Church
- The Presbytery of West Virginia
- United Methodist Foundation of West Virginia, Inc.
- University of Charleston, Inc.
- West Virginia Independent Colleges and Universities, Inc.
- West Virginia Wesleyan College
- YMCA of Kanawha Valley, Inc.
- YMCA of Kanawha Valley Endowment Fund, Inc.
- More than 75 parishes and schools under the auspices of the Diocese of Wheeling - Charleston

### ***Professional Activities***

Valerie is a member of the American Institute of Certified Public Accountants, West Virginia Society of CPAs (WVSCPA), and the Charleston Chapter of the West Virginia Society of CPAs. She was honored by the WVSCPA as the recipient of the 2012 Women to Watch - Experienced Leader Award.

Valerie has been a contributing author and technical reviewer for nationally distributed publications, and currently serves on the editorial board for a quarterly tax and management publication.

Valerie is a member and past treasurer of the Charleston Rotary Club and the Marshall University Division of Accountancy and Legal Environment Advisory Board. She has been a volunteer consultant for Junior Achievement, and currently serves as a mentor to high school students through The Education Alliance's e-mentoring program. She is also a member of the Children's Home Society of West Virginia advisory council.

### ***Education***

Valerie graduated from Marshall University with a Bachelor of Business Administration degree with a concentration in accounting.

### ***Continuing Professional Education***

Valerie is in compliance with all applicable CPE requirements.



## APPENDIX C



### **Faye McQuinn, CPA**

#### **SENIOR MANAGER**

304-345-8400 ph  
304-345-8451 fax  
ffarren@gandkcpas.com

### ***Nonprofit Experience***

Faye has 8 years of experience providing audit, tax, and consulting services to numerous not-for-profit organizations, including colleges and universities, foundations, churches, and various health and welfare organizations. In addition, Faye has participated in more than 15 employee benefit plan audits during her career. Her professional and supervisory service to not-for-profit organizations includes the following:

- Alderson-Broaddus College
- Bible Center Church
- Center for Neighborhood Enterprise
- Charleston Catholic High School
- Concord University Foundation, Inc.
- Immaculate Conception Parish
- Kanawha County Dental Health Council
- Parkersburg Catholic Schools Foundation
- Parkersburg Catholic High School
- Risen Lord Parish
- Sacred Heart Co-Cathedral
- Sacred Heart Parish
- St. Agnes Parish
- St. John Parish
- St. Peter Claver Parish
- TMH Services, Inc.
- University of Charleston

### ***Professional Activities***

Faye is a member of the American Institute of Certified Public Accountants, West Virginia Society of CPAs (WVSCPA), and the Charleston Chapter of the West Virginia Society of CPAs.

### ***Education***

Faye graduated from Marshall University with a Bachelor of Business Administration in accounting and a Master of Business Administration.

### ***Continuing Professional Education***

Faye is in compliance with all applicable CPE requirements.

## APPENDIX C



### **Emily Facemyer, CPA,**

#### **MANAGER**

304-345-8400 ph  
304-345-8451 fax  
efacemyer@gandkcpas.com

### ***Nonprofit Experience***

Emily has four years of experience providing audit, tax, and consulting services to numerous nonprofit organizations, including colleges and universities, foundations, and various religious organizations. Her

professional and supervisory service to nonprofit organizations includes the following:

- Appalachian Bible College
- Bible Center Church
- Capitol Market, Inc.
- Education Alliance
- Kanawha Hospice Care, Inc.
- Various Catholic Schools and Parishes within the Diocese of Wheeling-Charleston
- West Virginia Independent Colleges & Universities
- West Virginia University Alumni Association
- West Virginia Wesleyan College

### ***Professional Activities***

Emily is a member of the American Institute of Certified Public Accountants, the Association of Certified Fraud Examiners, the West Virginia Society of CPAs, and the Charleston Chapter of the West Virginia Society of CPAs. She is a member of the Young CPAs project group of the West Virginia Society of CPAs.

Emily serves as a volunteer with the American Cancer Society and as an E-Mentor through the West Virginia Education Alliance. She is also a charter officer of the Charleston Young Professional Kiwanis organization.

### ***Education***

Emily graduated from West Virginia Wesleyan College with a Bachelor's degree in business administration and received a Master of Professional Accountancy and Forensic Accounting and Fraud Examination Certificate from West Virginia University.

### ***Continuing Professional Education***

Emily is in compliance with all applicable CPE requirements.

## **APPENDIX D**

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### **PRIOR EXPERIENCE WITH SIMILAR ENGAGEMENTS FOR OTHER GOVERNMENTAL ENTITIES**

## APPENDIX D

### PDS201410 Professional Auditing Services

Engagements performed in the last six years that are similar to the Agency are as follows:

	<u>Scope of Work</u>	<u>Years Served</u>	<u>Engagement Director</u>	<u>Principal Client Contact</u>	<u>Phone Number</u>
West Virginia Housing Development Fund	GAS/ OMB - A133	2013, 2012, 2011, 2010, 2009, 2008	Robert R. Denyer	Erica Boggess	304-926-1900
West Virginia Consolidated Public Retirement Board	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert R. Denyer	J. Darden Greene	304-558-3570
West Virginia Infrastructure and Jobs Development Council	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Chris Jarrett	304-414-6500
West Virginia Water Development Authority	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Chris Jarrett	304-414-6500
West Virginia Drinking Water Treatment Revolving Loan Fund	GAS/ OMB - A133	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Chris Jarrett	304-414-6500
West Virginia Jobs Investment Trust	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert R. Denyer	Andy Zulauf	304-345-6200
West Virginia Parkways, Authority	GAS	2010, 2009, 2008	Robert R. Denyer	Greg Barr	304-926-1900
West Virginia Regional Jail and Correctional Facility Authority	GAS	2009, 2008, 2007	Robert R. Denyer	Tony Davis	304-558-2110
West Virginia Solid Waste Management Board	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Scott Norman	304-926-0448
West Virginia School Building Authority	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Garry Stewart	304-558-2541
West Virginia Lottery Commission	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert R. Denyer	Dean Patrick	304-558-0500
West Virginia Board of Treasury Investments	GAS	2013, 2012, 2011, 2010, 2009, 2008	Robert E. Adams	Kara Hughes	304-340-1564

All of the above audits were performed in accordance with *Government Auditing Standards* and/or OMB Circular A-133, *Audits of States, Local Governments, and Nonprofit Organizations*.

## **APPENDIX E**

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### **CERTIFIED PUBLIC ACCOUNTANT DESIGNATION**

## APPENDIX E

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### Certified Public Accountant Designation

Name	WV CPA	License Number
Robert E. Adams	<input checked="" type="checkbox"/>	4405
Robert R. Denyer	<input checked="" type="checkbox"/>	1290
Anthony Carpenter	<input checked="" type="checkbox"/>	5033
Valerie Ellis	<input checked="" type="checkbox"/>	2443
Faye McQuinn	<input checked="" type="checkbox"/>	5008
Emily Facemeyer	<input checked="" type="checkbox"/>	4763

## **APPENDIX F**

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### **PURCHASING AFFIDAVIT**



RFQ No. PDS201410STATE 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.

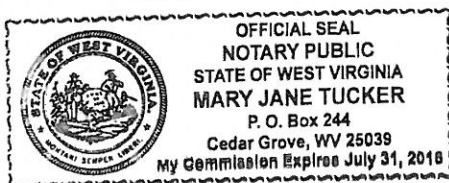
**DEFINITIONS:**

**"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 exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that 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: Gibbons & Kawash, A.C.Authorized Signature: [Signature] Date: 7/29/14State of WVCounty of Kanawha, to-wit:Taken, subscribed, and sworn to before me this 29 day of July, 2014.My Commission expires July 31, 2015, 2015.**AFFIX SEAL HERE****NOTARY PUBLIC**

[Signature]  
Purchasing Affidavit (Revised 07/01/2012)

## **APPENDIX G**

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### **PEER REVIEW REPORT**



Rea & associates *a brighter way*

## System Review Report

July 10, 2012

To the Partners of Gibbons & Kawash, A.C.  
and the AICPA National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Gibbons & Kawash, A.C. (the firm) in effect for the year ended February 29, 2012. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary).

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Gibbons & Kawash, A.C., in effect for the year ended February 29, 2012, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Gibbons & Kawash, A.C. has received a peer review rating of *pass*.

*Rea & Associates, Inc.*

## **APPENDIX H**

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### **VENDOR PREFERENCE CERTIFICATE**

## 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 Vendor Preference, if applicable.

1. **Application is made for 2.5% 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% 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% 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% 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% 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% 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: Gibbons & Kawash, A.C.

Signed: 

Date: July 29, 2014

Title: Director