



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

State of West Virginia
 Request for Quotation

Proc Folder: 100332

Doc Description: Addendum No.05 LCAP Well Monitoring.

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2015-11-03	2015-11-24 13:30:00	CRFQ 0313 DEP1600000009	6

BID RECEIVING LOCATION

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

VENDOR

Vendor Name, Address and Telephone Number:

Reliance Laboratories, Inc.
 P.O. Box 4657
 Bridgeport, WV 26330
 304-842-5285

11/24/15 09:07:20

WV Purchasing Division

Bid Opening Delayed
 Rescheduled to Open on
12-30-15

FOR INFORMATION CONTACT THE BUYER

Beth Collins
 (304) 558-2157
 beth.a.collins@wv.gov

Signature X

FEIN # 55-0580040

DATE 11/23/2015

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION:

Addendum

Addendum No. 05

This addendum is issued to modify the solicitation per the attached documentation and the following:

1. To modify the bid opening date to November 24, 2015 at 1:30PM, EST.

No other changes.

Addendum No. 04

This addendum is issued to modify the solicitation per the attached documentation and the following:

1. To modify the bid opening date to November 5, 2015 at 1:30PM, EST.

No other changes.

Addendum No. 03

This addendum is issued to modify the solicitation per the attached documentation and the following:

1. To provide answers to vendor submitted questions.
2. To provide the corrected terms and conditions. An incorrect copy was uploaded in error.
3. To modify the bid opening date to October 20, 2015 at 1:30 PM, EST.

No other changes.

Addendum No. 02:

This addendum is issued to modify the solicitation per the attached documentation and the following:

1. To publish the mandatory pre-bid attendance sign-in sheet.

The bid opening date will remain the same as October 8, 2015 at 1:30 PM, EST.

No other changes.

Addendum No.01 issued to publish and distribute the attached information to the vendor community.

CRFQ
 THE WEST VIRGINIA STATE PURCHASING DIVISION FOR THE AGENCY, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, IS SOLICITING BIDS FOR AN OPEN END CONTRACT FOR LCAP WELL MONITORING, PER THE ATTACHED SPECIFICATIONS AND DOCUMENTATION.

INVOICE TO		SHIP TO	
ENVIRONMENTAL PROTECTION OFFICE OF ENVIRONMENTAL REMEDIATION 601 57TH ST SE CHARLESTON WV25304 US		ENVIRONMENTAL PROTECTION 601 57TH ST. CHARLESTON WV 25304 US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Field services per well	325.00000	EA	\$25.00	\$8125.00

Comm Code	Manufacturer	Specification	Model #
71122800			

Extended Description :

Field services per well

INVOICE TO		SHIP TO	
ENVIRONMENTAL PROTECTION OFFICE OF ENVIRONMENTAL REMEDIATION 601 57TH ST SE CHARLESTON WV25304 US		ENVIRONMENTAL PROTECTION 601 57TH ST. CHARLESTON WV 25304 US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Statistical Analysis Setup	1.00000	EA	\$25.00	\$25.00

Comm Code	Manufacturer	Specification	Model #
81130000			

Extended Description :
Statistical Analysis Setup

INVOICE TO		SHIP TO	
ENVIRONMENTAL PROTECTION OFFICE OF ENVIRONMENTAL REMEDIATION 601 57TH ST SE CHARLESTON WV25304 US		ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV 25304 US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Statistical Analysis and Reporting	62.00000	EA	\$25.00	\$1550.00

Comm Code	Manufacturer	Specification	Model #
81130000			

Extended Description :
Statistical Analysis and Reporting

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Pre-Bid Meeting	2015-09-15
2	Tech Questions	2015-09-21

DEP160000009	Document Phase Final	Document Description Addendum No.05 LCAP Well Monit oring.	Page 4 of 4
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ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT**

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

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

DEFINITIONS:

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

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

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or 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: Reliance Laboratories, Inc.Authorized Signature: [Signature] Date: 9/28/15State of West VirginiaCounty of Harrison, to-wit:Taken, subscribed, and sworn to before me this 28 day of September, 2015.My Commission expires March 12, 2024.

AFFIX SEAL HERE



NOTARY PUBLIC

[Signature]

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: Reliance Laboratories, Inc. Signed: [Signature]
Date: 10/19/2015 Title: President

CERTIFICATION AND SIGNATURE PAGE

By signing below, or submitting documentation through wvOASIS, 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, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Reliance Laboratories, Inc.
(Company)

Tenley Miller Tenley Miller, President
(Authorized Signature) (Representative Name, Title)

304-842-5285 304-842-5351 11/23/15
(Phone Number) (Fax Number) (Date)

SOLICITATION NUMBER: CEOI DEP1600000009

Addendum Number: 05

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:

This addendum is issued to modify the solicitation per the attached documentation and the following:

1. To modify the bid opening date to November 24, 2015 at 1:30PM, EST.

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.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CE01 DEP1600000009

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 checked="" type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input checked="" type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input checked="" type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input checked="" 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.

Reliance Laboratories, Inc.
Company

J. Miller
Authorized Signature

11/23/2015
Date

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

REQUEST FOR QUOTATION
LCAP Groundwater Monitoring

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Environmental Protection to establish an open-end contract for groundwater monitoring at 31 facilities which includes 160 groundwater monitoring wells per Attachment A.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 “**Contract Item**” or “**Contract Items**” means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 “**Solicitation**” means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 2.3 “**WVDEP**” means the West Virginia Department of Environmental Protection.
 - 2.4 “**LCAP**” means the Landfill Closure Assistance Program.

3. **GENERAL REQUIREMENTS:**
 - 3.1 **Desired Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.
 - 3.1.1 **General:**
 - 3.1.1.1 The vendor shall furnish all personnel, labor, transportation, tools, equipment, incidentals, and supplies to obtain samples from the monitoring wells, to perform the required analysis, to determine statistical trends, and to submit the required reports.
 - 3.1.1.2 All standard protocols required by the WVDEP and sound analytical procedures shall be used when performing the services.
 - 3.1.1.3 All sampling shall be conducted using the WVDEP, Division of Water Resources QA/QC & Standard

REQUEST FOR QUOTATION
LCAP Groundwater Monitoring

Operating Procedures for Ground Water Sampling (SOP). This information can be found at the following web address:

http://www.dep.wv.gov/wwe/programs/gw/documents/17812_groundwater_sampling_procedures.pdf

and made part of these specifications.

- 3.1.1.4** The vendor shall provide equipment suitable to the WVDEP for performing the work.
- 3.1.1.5** Any modifications to the wells must be requested in writing and shall be approved or disapproved in writing by the WVDEP LCAP Program Manager should the contractor desire to modify wells to achieve a certain procedure for monitoring, such as a dedicated well pump, etc.
- 3.1.1.6** The Vendor shall be responsible for locking the monitoring wells while not in use. The wells shall remain locked to prevent unauthorized use. The Vendor shall be provided a key to the commonly keyed locks that have been installed by WVDEP.
- 3.1.1.7** The WVDEP will be responsible for maintaining reasonable access to well heads to allow for field sampling. Maintenance may include removal of brush, lubrication of hinges, etc.
- 3.1.1.8** The contractor will report excessive deterioration to access roads if encountered, to allow for repair to be scheduled and completed in a timely manner. If the Vendor cannot access a well, they must notify WVDEP immediately.
- 3.1.1.9** The Vendor must make a reasonable effort to sample all wells approved by WVDEP. A sampling event shall be defined as an event in which an actual sample was collected. A dry well cannot be defined as a sampling event.

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LCAP Groundwater Monitoring

3.1.2 Disposal of Purge Water:

3.1.2.1 The specific locations, leachate pond, sewer manhole, or leachate tank, shall be identified to the successful Vendor. The Vendor shall provide for all labor, materials, transportation, tools, equipment, supplies, and incidentals to manage and dispose of purge water at an approved facility. The costs associated with purge water management shall be included in the unit (per well) cost for field sampling and laboratory analysis.

3.1.3 Statistical analysis:

3.1.3.1 Any landfill that has two years of data either acquired of historical shall receive a semi-annual statistical analysis in accordance with 33CSR1 Section 4.11, groundwater monitoring and corrective action program. The successful Vendor will be paid a one-time statistical analysis setup fee. This fee will include all labor, materials, and incidentals required for the successful Vendor to prepare a DEP approved statistical analysis database.

3.1.3.2 The Vendor shall perform semiannual monitoring starting the month of the Purchase Order effective date, and extending for one full year, resulting in two semiannual reporting periods. Currently, it is anticipated that the monitoring will begin in 2015 and end in 2016. The noted semiannual periods are defined as follows:

First semiannual period: July, August, September, October, November and December (2015)

Second semiannual period: January, February, March, April, May and June (2016)

3.1.3.3 A list of the thirty-one (31) LCAP facilities and the number of wells at each location is included as Attachment A. It is the responsibility of the contractor to obtain any other background information necessary to complete the services.

3.1.3.4 Additional information may be obtained from the WVDEP at the following address:

REQUEST FOR QUOTATION
LCAP Groundwater Monitoring

West Virginia Department of Environmental Protection
Division of Land Restoration
Office of Environmental Remediation
601 57th Street SE
Charleston WV 25304
Phone: (304) 926-0455

- 3.1.3.5** The contractor shall determine whether there is a statistical increase over the background values for each parameter according to ASTM Standard D 6312-98 (available from <http://www.astm.org>) except that any re-sampling of implementing Phase II sampling will be at the discretion of the WVDEP. The Vendor shall have the capability to monitor for parameters as described in 33CSR1; Section 4.11.c, Phase II assessment monitoring program.
- 3.1.3.6** The Vendor shall develop and submit reports for groundwater monitoring events in accordance with 33CSR1 Section 4.11, groundwater monitoring and corrective action program. There must be no less than one hundred and twenty (120) days between the sampling events. Reports shall be submitted within sixty (60) days of each sampling event. The Vendor shall monitor for parameters as described in 33CSR1 Section 4.11b, Phase I detection monitoring program. The Vendor shall submit reports including test results to the WVDEP LCAP Project Manager, WVDEP Division of Water and Waste Management, and the facility owner. The results of the groundwater analysis from each monitoring well shall be provided in a format acceptable to the WVDEP Division of Land Restoration, Office of Environmental Remediation, and both MDL's and PQL's shall be specified for all laboratory analyses. Electronic copies of analyses and reports will be required. *Note: Lab cost is not part of this contract and any such costs shall be direct billed the WVDEP using WVDEP Laboratory Contracts.*
- 3.1.3.7** Work and services to be performed under this contract shall be subject to continuous monitoring and inspection by the State's authorized representatives to ensure compliance.

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3.1.4 Method of Measurement:

3.1.4.1 Field services such as gauging, purging and sampling shall be measured as the “per well” unit cost including all labor, equipment, materials, transportation, and incidentals to obtain and preserve samples and to ship to laboratory for analysis. (Do not include the cost of analysis). The unit cost per well measurement shall be per sampling event. A sampling event shall be defined as an event in which an actual sample was collected. A dry well cannot be defined as a sampling event. Payment will only be made for a sampling event. (Note: A shorter bailer may be necessary if the longer bailer will not pass through a bend in the well.)

3.1.4.2 Statistical Analysis Setup shall be measured as the “per site” unit price including all labor, equipment, materials, transportation and incidentals to collect, compile and construct the facility data base for statistical evaluations of information obtained in field services and laboratory analysis. The per site measurement shall be a one-time initial cost to the project for development of the database. Any subsequent renewal of the contract shall not include the statistical analysis setup item.

3.1.4.3 Statistical analysis and reporting shall be measured per site, including all labor, equipment, materials, transportation and incidentals to evaluate data and to report findings. The per site measurement shall be per sampling event.

3.1.5 Invoicing:

3.1.5.1 Invoices shall be submitted on a semiannual basis after monitoring, including reporting, has been submitted to the indicated parties. The invoices shall be submitted to the following address:
West Virginia Department of Environmental Protection
Division of Land Restoration
Office of Environmental Remediation
Attn: Travis Cooper
Phone: (304) 926-0466 ext. 1117

REQUEST FOR QUOTATION
LCAP Groundwater Monitoring

4. CONTRACT AWARD:

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost.

5 Ordering Procedure:

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

- 6.1 Delivery Time:** Vendor shall deliver standard orders within 10 working days after orders are received. Vendor shall deliver emergency orders within 5 working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

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

- 6.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B.

REQUEST FOR QUOTATION
LCAP Groundwater Monitoring

destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

6.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

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

7. VENDOR DEFAULT:

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

7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.

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

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

7.1.4 Failure to remedy deficient performance upon request.

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

7.2.1 Immediate cancellation of the Contract.

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

7.2.3 Any other remedies available in law or equity.

8. MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

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

8.4 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: Tenley Miller
Telephone Number: 304-842-5285
Fax Number: 304-842-5351
Email Address: TMiller@wvdsi.net

Attachment A

Listed below are the thirty-one (31) LCAP facilities to be monitored under this RFQ:

1. Berkeley County Landfill	8 wells
2. Midwest Landfill	11 wells
3. City of Buckhannon Landfill	4 wells
4. Capon Springs Landfill	4 wells
5. Central WV Refuse Landfill	3 wells
6. City of Clarksburg Landfill	4 wells
7. Don's Disposal Landfill	4 wells
8. Elkins Landfill	8 wells
9. ERO Landfill	7 wells
10. Fayette County Landfill	4 wells
11. Fleming Landfill	7 wells
12. Grant County / Petersburg Landfill	4 wells
13. Hampshire County Landfill	4 wells
14. Jackson County Landfill	4 wells
15. Jefferson County Landfill	15 wells
16. Kanawha Western Landfill	4 wells
17. City of Kingwood Landfill	4 wells
18. Marion County Landfill	4 wells
19. McDowell County Landfill	6 wells
20. Mingo County Landfill	4 wells
21. Monongalia County Landfill	5 wells
22. City of Montgomery Landfill	4 wells

23. Morgan County Landfill	4 wells
24. City of Morgantown Landfill	7 wells
25. City of Moundsville Landfill	3 wells
26. Pine Creek / Omar Landfill	4 wells
27. Preston County / Rehe Landfill	4 wells
28. City of South Charleston Landfill	4 wells
29. City of Wheeling Landfill	4 wells
30. Webster County Landfill	4 wells
31. Wyoming County Landfill	4 wells

LANDFILL	WELL #	CONSTRUCTION	DEPTH	STATIC WATER LEVEL
BERKELEY	MW-1B	2" PVC	25.37'	6.89'
	MW-2A	2" PVC	27.76'	9.65'
	MW-3A	2" PVC	28.71'	6.85'
	MW-4A	2" PVC	28.16'	17.55'
	MW-5	2" PVC	168.73'	42.30'
	MW-7	2" PVC	32.33'	23.11'
	MW-9	2" PVC	73.60'	35.25'
	MW-11	2" PVC	21.11'	14.69'
BUCKHANNON	MW-1	2" PVC	170.61'	156.32'
	MW-2	2" PVC	180.48'	163.49
	MW-4	2" PVC	28.00'	15.11'
	MW-5	2" PVC	162.19'	110.55'
CAPON SPRINGS	MW-1	2" PVC	60.18'	15.11'
	MW-2	2" PVC	69.71'	27.24'
	MW-3	2" PVC	60.99'	21.37'
	MW-4	2" PVC	63.96'	3.89'
CENTRAL	MW-3D	2" PVC	83.24'	32.61'
	MW-5D	2" PVC	160.00'	112.71'
	MW-7	2" PVC	350.00'	133.45'
CLARKSBURG	MW-4	2" PVC	44.23'	18.11'
	MW-5	2" PVC	162.50'	N/A
	MW-6	2" PVC	100.00'	83.01'
	MW-7	2" PVC	75.00'	30.04'
DON'S DISPOSAL	GW-3A	2" PVC	51.94'	25.71'
	PWA	2" PVC	173.30'	143.45'
	PWB	2" PVC	57.13'	26.17'
	GW-5C	2" PVC	84.70'	41.89'
ELKINS	MW-1	2" PVC	58.00'	38.25'
	MW-2	2" PVC	74.00'	54.72'
	MW-3	2" PVC	38.00'	9.47'
	MW-4	2" PVC	102.00'	97.28'
	MW-5	2" PVC	150.00'	119.77'
	MW-6	2" PVC	165.00'	131.67'
	MW-7	2" PVC	224.00'	169.49'
	MW-8	2" PVC	230.00'	146.02'
ERQ	MW-8	2" PVC	34.32'	17.09'
	MW-13	2" PVC	50.51'	15.92'
	MW-17	2" PVC	88.00'	67.32'

	MW-18	2" PVC	54.85'	33.69'
	MW-19	2" PVC	54.42'	33.44'
	MW-20	2" PVC	51.86'	32.77'
	MW-22	2" PVC	32.72'	15.94'
FAYETTE	MW-1	2" PVC	37.53	31.75
	MW-2	2" PVC	67.25'	N/A
	MW-3	2" PVC	87.5'	N/A
	MW-4	2" PVC	210.00'	N/A

FLEMING	MW-1A	2" PVC	N/A	OBSTRUCTED
	MW-1B	2" PVC	N/A	OBSTRUCTED
	MW-3A	2" PVC	265.00'	142.97'
	MW-3B	2" PVC	46.00'	28.73'
	MW-4A	2" PVC	34.00'	22.43'
	MW-4B	2" PVC	127.00'	95.83'
	MW-5A	2" PVC	28.00'	16.89'

HAMPSHIRE	MW-1	2" PVC	46.19'	19.45'
	MW-2	2" PVC	46.37'	20.05'
	MW-3	2" PVC	60.53'	15.94'
	MW-4	2" PVC	70.68'	35.17'

JACKSON	MW-2	2" PVC	155.00'	41.60'
	MW-2A	2" PVC	160.00'	45.16'
	MW-3	2" PVC	147.00'	37.14'
	MW-4	2" PVC	178.00'	67.17'

JEFFERSON	MW-11	2" PVC	46.44'	30.12'
	MW-104	2" PVC	52.88'	20.90'
	SMW-2	2" PVC	27.57'	19.19'
	BC-4	2" PVC	42.72'	OBSTRUCTED
	MW-103R	2" PVC	79.09'	28.61'
	SMW-3	2" PVC	33.93'	28.56'
	MW-4	2" PVC	38.03'	31.53'
	MW-101UG	2" PVC	66.44'	57.31'
	BC-3	2" PVC	68.09'	OBSTRUCTED
	MW-106	2" PVC	53.06'	48.01'
	MW-6B	2" PVC	95.42'	68.55'
	MW-6A	2" PVC	63.22'	59.61'
	SMW-4	2" PVC	34.02'	26.03'
	MW-102	2" PVC	105.44'	25.61'
	MW-105DG	2" PVC	75.01'	52.47'

KANAWHA WEST	S-1	2" PVC	38.35'	8.45'
	MW-1A	2" PVC	77.33'	53.99'
	MW-2	2" PVC	103.87'	14.65'

	MW-3A	2" PVC	292.00'	112.61'
KINGWOOD	MW-1	2" PVC	56.40'	25.97'
	MW-2	2" PVC	59.87'	29.19'
	MW-3	2" PVC	71.58'	51.11'
	MW-4	2" PVC	76.10'	50.74'

MARION	MW-1	2" PVC	269.00'	243.31'
	MW-4B	2" PVC	67.05'	50.62'
	MW-5B	2" PVC	74.72'	55.77'
	MW-6	2" PVC	63.30'	50.63'
MCDOWELL	MW-1	2" PVC	59.22'	45.66'
	MW-2	2" PVC	8.02	DRY
	MW-3	2" PVC	N/A	DRY
	MW-4	2" PVC	81.73'	51.12'
	MW-5	2" PVC	N/A	DRY
	MW-6A	2" PVC	28.3'	DRY

MID-WEST	MN-01	2" PVC	126.79'	112.8'
	MN-02	2" PVC	30.08'	25.9'
	MN-03	2" PVC	34.46'	21.9'
	MN-04	2" PVC	31.50'	26.6'
	MN-07	2" PVC	34.63'	28.6'
	MN-08	2" PVC	46.99'	31.9'
	MN-09	2" PVC	39.51'	N/A
	MN-10A	2" PVC	114.66'	N/A
	MN-10B	2" PVC	43.84'	N/A
	MN-11A	2" PVC	55.54'	42.00'
	MN-11B	2" PVC	13.29'	13.2'

MINGO	MW-4A	2" PVC	305.50'	225.81
	MW-4	2" PVC	260.00'	131.77'
	MW-3B	2" PVC	49.90'	19.42'
	MW-2A	2" PVC	51.00'	19.61'

MONONGALIA	MW-4A	2" PVC	55.00'	31.46'
	MW-3C	2" PVC	60.00'	41.93'
	MW-6	2" PVC	139.00'	102.25'
	MW-1A	2" PVC	155.45'	147.68'
	MW-7	2" PVC	100.00'	64.25'

MONTGOMERY	MW-1A	2" PVC	55.6'	29.7'
	MW-2	2" PVC	47.57'	29.43'
	MW-3	2" PVC	49.63'	29.85'
	MW-4	2" PVC	34.55'	21.19'

MORGAN	MW-1A	2" PVC	222.00'	98.95'
	MW-5	2" PVC	95.00'	N/A
	MW-6	2" PVC	91.55'	N/A
	MW-7	2" PVC	80.00'	65.01'

MORGANTOWN	MW-101BG	2" PVC	154.43'	121.64'
	SMW-2	2" PVC	16.45'	9.61'
	SMW-1	2" PVC	20.37'	8.45'
	MW-4	2" PVC	47.57'	20.33'
	MW-103DG	2" PVC	28.60'	17.61'
	MW-102DG	2" PVC	34.44'	15.49'
	SMW-3	2" PVC	15.35'	10.68'
MOUNDSVILLE	MW-A2	2" PVC	114.00'	95.51'
	MWE	2" PVC	65.00'	42.55'
	MWG	2" PVC	35.00'	13.39'
PETERSBURG	MW-4A	2" PVC	51.44'	33.87'
	MW-2A	2" PVC	46.50'	31.09'
	MW-7	2" PVC	51.38'	27.49'
	MW-3A	2" PVC	140.00'	74.11'
PINE CREEK OMAR	MW-1	2" PVC	240.6'	210.49'
	MW-2	2" PVC	253.00'	59.73'
	MW-3B	2" PVC	N/A	N/A
	MW-4	2" PVC	104.49'	78.33'
REHE	MW-1U	2" PVC	39.20'	24.59'
	MW-2D	2" PVC	39.20'	26.94'
	MW-3D	2" PVC	49.30'	38.96'
	MW-4D	2" PVC	44.00'	19.07'
SOUTH CHARLESTON	MW-1	2" PVC	66.00'	27.91'
	NW-1	2" PVC	319.00'	>300'
	NW-2	2" PVC	380.00'	181.51'
	NW-3	2" PVC	340.00'	268.51'
Webster	MW-1	2" PVC	61.4'	43.1'
	MW-2	2" PVC	57.4'	42.0'
	MW-3	2" PVC	257.4'	218.4'
	MW-4	2" PVC	217.3	197.9
WHEELING	MW-GR	2" PVC	195.00'	169.79'
	MW-1	2" PVC	115.00'	87.99'
	MW-4	2" PVC	35.00'	22.13'
	MW-5	2" PVC	27.00'	19.82'

WYOMING	MW-2	2" PVC	165.55'	98.27'
	MW-4	2" PVC	75.55'	25.19'
	MW-6	2" PVC	29.12'	16.38'
	MW-8	2" PVC	17.91'	8.39'

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Award Document 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 or 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. **"Award Document"** 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 contract holder.
 - 2.6. **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 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 contract 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 three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed ³⁶ 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.

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

Fixed Period Contract with Renewals: This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one year renewal 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.

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

- 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:** In the amount of 1,000,000.00 _____ or more.

- Builders Risk Insurance:** In an amount equal to 100% of the amount of the Contract.

- Automobile Liability: \$1,000,000.00

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. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. 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.

11. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount of

_____ 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.

12. **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 Award Document, upon receipt.
13. **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.
14. **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.
15. **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.
16. **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 also 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.
17. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
18. **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.
19. **COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable law.
20. **PREVAILING WAGE:** Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable.

- 21. 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.
- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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.
- 27. 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.
- 28. 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.
- 29. 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>.

- 30. 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. and the competitive bidding laws found West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-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. 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. Additionally, pricing or cost information will not be considered exempt from disclosure and requests to withhold publication of pricing or cost information 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.

- 31. 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.
- 32. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document 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.

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

34. 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.

35. 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.

- 36. 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.
- 37. 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.
- 38. 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.
- 39. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an 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.
- 40. 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.

- 41. 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.

- 42. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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

- d. 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.

43. 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.