



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

Request for Quotation

RFQ NUMBER
INS07092

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
RON PRICE
304-558-0492

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

INSURANCE COMMISSION

1124 SMITH STREET
CHARLESTON, WV
25305-0540 304-558-3707

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B	FREIGHT TERMS
01/18/2007				

BID OPENING DATE: **01/30/2007** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
				ADDENDUM NO. 2		
				CHANGE THE BID OPENING DATE FROM 1/24/07 TO 1/30/07		
				TO PROVIDE SAMPLE TRANSCRIPTS		
0001		LS		961-20		
	1			TRANSCRIPTION SERVICES		
***** THIS IS THE END OF RFQ INS07092 ***** TOTAL:						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE		TELEPHONE		DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE		

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

**GENERAL TERMS & CONDITIONS
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

SIGNED BID TO:

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

WORKERS' COMPENSATION OFFICE OF JUDGES

and Claimant } Claim No.
Employer }

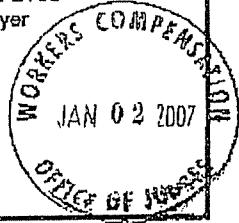
Transcript of proceedings had or testimony adduced at a hearing held in the Office of Judges, 5th Floor, 107-109 Adams Street, Fairmont, WV, on the 12th day of December, 2006, pursuant to notice duly given to all interested parties.

BEFORE: JOSEPH MANCUSO, Deputy Chief Administrative Law Judge

APPEARANCES: ROGER D. CURRY, Atty at Law 213 Locust Avenue Fairmont, WV 26554 representing the Claimant

JAMES HESLEP, Atty at Law PO Box 2190 Clarksburg, WV 26302-2190 representing the Employer

cc: ROGER D. CURRY JAMES HESLEP



1 JUDGE MANCUSO: This Claim Number
2 0 The Claimant is v. The
3 Employer is ()y. We're
4 here this morning on the Employer's protest to the
5 Claim Administrator's Order of May 19th, 2004,
6 which granted the Claimant a Permanent Total
7 Disability Award. And also, the Claimant's protest
8 to the same Order regarding the onset date.
9 Will Claimant's Counsel please
10 identify himself on the record?
11 MR. CURRY: Roger Curry, Curry & Swisher,
12 213 Locust Avenue, Fairmont, West Virginia,
13 26554.
14 JUDGE MANCUSO: And Counsel for the Employer?
15 MR. HESLEP: James Heslep, Steptoe &
16 Johnson, PO Box 2190, Clarksburg, West Virginia,
17 26302-2190, on behalf of
18 MR. CURRY: I'd ask that the record reflect I
19 have a new address. So it's not the one that
20 you've used in the past.
21 JUDGE MANCUSO: Did you already give it?
22 MR. CURRY: I gave it
23 JUDGE MANCUSO: Mr. Heslep, since this is your

Claim No. 3

1 protest to the entitlement issue, I'll let you go first
2 and make your argument as to why you believe the
3 Claimant is not, in fact, permanently and totally
4 disabled. Then I'll let Mr. Curry respond. After that
5 we'll let him address his protest regarding onset
6 date, okay?

7 MR. HESLEP: Okay. Thank you, Your Honor.
8 Your Honor, the Claimant sustained an injury on
9 November 1, 1994, at which time a rock fell and
10 struck him while working underground in the coal
11 mine.

12 The Claimant did sustain
13 significant injuries to his hip, cervical and lumbar
14 spines. He was treated for these injuries and as I
15 understand, has gone through significant surgeries
16 in the past. And eventually filed for a permanent
17 total disability claim in this matter, which initially led
18 to an evaluation being conducted by Dr. Jack
19 Koay, in February 2003.

20 Dr. Koay evaluated the Claimant
21 at that time and based on the Claimant's injuries to
22 his left hip, his lumbar spine, his cervical spine and
23 also posttraumatic stress disorder, Dr. Koay found

Claim No. 4

1 that the Claimant had a whole-person impairment
2 of 30%.

3 Now, the Claimant also
4 underwent an examination with Dr. Robert Gerbo
5 in February 2003. Dr. Gerbo also found significant
6 percentages of whole-person impairment to the left
7 hip, the lumbar spine and then prior injuries to the
8 hand, right ankle, right wrist and left knee. Dr.
9 Gerbo provided a rating of 40% whole-person
10 impairment.

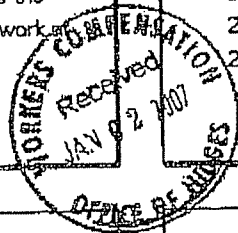
11 Based on the evidence before it,
12 the Commission granted the Claimant a
13 Permanent Total Disability Award on May 19,
14 2004, with an onset date of February 5, 2003.

15 In response to this Order,
16 many protested and
17 referred the Claimant to Dr. David Lynch in
18 Morgantown for an evaluation.

19 Dr. Lynch again evaluated the
20 Claimant and did find significant impairment for the
21 conditions based on the injury of 1994. Dr. Lynch
22 concluded that the Claimant displayed 23% whole-
23 person impairment. Dr. Lynch did note that the

Claim No. /

1 Claimant's knee appeared to have recovered well.
 2 And in sum, Dr. Lynch really found that the
 3 Claimant, he felt could perform at a light-duty level.
 4 And this examination by Dr.
 5 Lynch was followed up with an FCE performed by
 6 Health Works in Morgantown. And in the course of
 7 this testing, the evaluator at Health Works
 8 conducted what testing the Claimant could perform
 9 at that time. Again, at this time, the Claimant
 10 discontinued some of the testing because of
 11 reported pain.
 12 It has been somewhat difficult to
 13 get a full functional capacity evaluation, but the
 14 medical information that we have been given by
 15 Dr. Lynch, indicates that the Claimant can perform
 16 in a light-duty level.
 17 And really, it's this light-duty
 18 level upon which the Employer bases its protest.
 19 This Claim, in the eyes of the Employer, should be
 20 viewed under the Posey-Cardwell standards. And
 21 under that standard, the Employer believes the
 22 Claimant can perform some remunerative work at
 23 a light-duty level.



Claim No. /

6

1 The Employer would like to note
 2 that I did work in a supervisory capacity
 3 while working for [redacted] company.
 4 And it seems that his skills and intelligence
 5 certainly lend him to be able to find another
 6 suitable light-duty position.
 7 As for the term -- as for the
 8 protest to the entitlement to the award, that's
 9 basically the Employer's stance.
 10 JUDGE MANCUSO: Mr. Curry, would you like to
 11 respond?
 12 MR. CURRY: Yes, sir. [redacted] is a high
 13 school graduate, age [redacted] on the date of the injury,
 14 age 59 now. His date of birth is [redacted] I agree
 15 that this Claim is to be decided under Posey-
 16 Cardwell standard.
 17 Just to give you about one
 18 sentence of what happened here, on November 1,
 19 1994, the roof caved in and [redacted] was covered
 20 up and had to get dug out. He had a left hip injury,
 21 broken talbone -- whenever I heard that I always
 22 make the joke about yeah, we'll really have to put
 23 your butt in a sling. And left pelvis fracture, disc in

Claim No. /

7

1 the neck, disc in the back and a knee. He's had a
 2 total knee, total hip. He has been -- that's in Dr.
 3 Koay's report that the joint replacements are not
 4 forever, that they need what the doctors call
 5 "revision" at some point in the future. Apparently,
 6 God makes things a lot better than man does with
 7 plastic and steel.
 8 But the way, I have previously
 9 submitted a designation of evidence. I don't know
 10 if the Court has that at hand or if it would be helpful
 11 for me to give you another one.
 12 JUDGE MANCUSO: You can give me one with a
 13 copy of your exhibits later on if you have it.
 14 MR. CURRY: I'll do that, Judge. The medical
 15 evidence all agrees -- the Employer agrees,
 16 [redacted] is pretty doggone hurt. He has consistently
 17 reported chronic pain to medical providers all
 18 through the years.
 19 He consistently reports great
 20 difficulty sleeping, which requires that he lay down
 21 during the day. Now, that's an important point
 22 when we're talking about any other employment.
 23 Because there are jobs out there you can sit at, but

Claim No. /

6

1 I've not -- if I could find a job I could lay at, I'd get
 2 out of this work and get into that. But there are
 3 none.
 4 [redacted] continues to be on a
 5 number of medications and continues to fuss with
 6 the Insurance Commissioner about meds. You
 7 know how their standards change about every
 8 hour-and-a-half.
 9 His current meds include Lorcet,
 10 a strong narcotic pain medication; Effexor, Lexapro
 11 and Alprazolam, which are all depression
 12 medications. He's been on Trazodone for sleep.
 13 He has been diagnosed with posttraumatic stress
 14 disorder, single incident. And that's this injury. Dr.
 15 Sine has opined that he's totally disabled from a
 16 psychiatric standpoint alone. His activities are very
 17 limited. He doesn't drive. He doesn't sit for any
 18 long periods of time. He doesn't have any
 19 hobbies. He has to focus a lot on his troubles.
 20 For a good summary of the
 21 evidence, I would refer the Court to the vocational
 22 report of Nazrin Jordan, which the Employer got
 23 And it has kind of weak tea recommendations,

1 which I'll get to in a minute. But in terms of one
 2 place you can look to get a good photograph of the
 3 evidence, it's pretty good.
 4 Specifically, I'll refer you to
 5 Page 12 of that report where it synthesizes what
 6 Dr. Sine had to say. One thing about the Dr.
 7 Lynch report that the Employer has pointed out in
 8 written argument is that [redacted] had in Dr. Lynch's
 9 opinion, preexisting degenerative arthritis and in
 10 this is the argument we always hear and my
 11 response is the response you always hear, it was
 12 not symptomatic. [redacted] was working six or
 13 seven days a week, ten or twelve hours a day. I
 14 couldn't get wild horses to take me down in a coal
 15 mine, but I [redacted] loved it.
 16 [redacted] was granted Social
 17 Security Disability in 1995, so we want the onset
 18 date to be 1/1/96. There is no reasoned decision
 19 from the Social Security Administration. And that's
 20 simply because [redacted] condition was so serious
 21 and so well documented that the Social Security
 22 Administration granted Social Security Disability
 23 the first time around. And [redacted] age is

1 something, which has been mentioned. He got the
 2 Social Security Disability in 1985, even though at
 3 that point he was age 48.
 4 The vocational evidence
 5 submitted by the Employer is, I previously
 6 characterized it as being "weak tea." The
 7 conclusions of the vocational evaluator are
 8 basically that probably at one time --
 9 JUDGE MANCUSO: He doesn't even have to be
 10 here --
 11 MR. CURRY: That's okay.
 12 UNKNOWN PERSON: He just needs to walk --
 13 JUDGE MANCUSO: There's no reason --
 14 (WHEREUPON, a short break
 15 was held in the proceeding.)
 16 MR. CURRY: That's okay. That's okay. The
 17 vocational evaluator said basically that they
 18 thought I [redacted] had returned to work in "some
 19 capacity" but didn't identify any jobs that they
 20 believed he could do. [redacted] work history is
 21 exemplary. He went to work for [redacted] when he
 22 was 19 and he worked there for 28 years until this
 23 injury. He worked himself up to a foreman. He

1 was making great money and there's always the
 2 suggestion that people want to sign up for disability
 3 for the money. We could take all of [redacted]
 4 checks together and multiple times two and we still
 5 wouldn't be anywhere near the kind of money he
 6 was making working as a foreman in the coal
 7 mine.
 8 [redacted] never returned to work
 9 following this injury. He has significant prior PPD.
 10 In a 1993 claim he got a 9% on his fingers. In a
 11 1994 claim he got a 3%. I think that was on a
 12 shoulder. In 1997 he got a hearing loss of 2.5%
 13 and in this Claim he got a 30% orthopedic and a
 14 2% psychiatric. So [redacted] is more than 46% in
 15 PPD awards previously.
 16 It's the Claimant's position that
 17 the onset should be 1/1/96 based upon the Social
 18 Security determination. Also, the Claimant has
 19 basically for the record, protested termination of
 20 benefits at age 70 under the Statute.
 21 Frankly, I think the Supreme
 22 Court has pretty much put us to bed on that. I wish
 23 that to remain in the record just in case I can figure

1 out a way to beat the Supreme Court. But in all
 2 likelihood, I'm not that smart.
 3 So that's the nature of the case.
 4 And maybe I need to do an active contrition. I
 5 know I paint with a broad brush a lot when I'm in
 6 front of the Court, but honest to mercy, this one I
 7 can paint with a roller because the evidence for
 8 permanent total disability is just so compelling.
 9 JUDGE MANCUSO: Mr. Heslep?
 10 MR. HESLEP: In response to Mr. Curry's
 11 statements about the onset date, the Employer
 12 would simply like to point out that the Claimant
 13 applied for a Permanent Total Disability Award in
 14 January of 2002. There was on medical finding of
 15 permanent total disability until Dr. Koay's
 16 evaluation in February of 2003. It was at this
 17 evaluation date that the onset date was set. The
 18 date of Dr. Koay's evaluation February 2003.
 19 Again, Mr. Curry has pointed out
 20 that the Claimant did have Social Security
 21 Disability award, I believe, in 1995. But again, this
 22 did not address permanent total disability based on
 23 only work conditions.

Claim No.:

1 I believe Mr. Curry pointed out
2 that there is no reason decision from the Social
3 Security Administration because it was initially
4 granted. So really, the only medical evidence we
5 have establishing permanent total disability is the
6 report of Dr. Koay from February 2003.

7 And again, that is the onset date
8 that has been chosen in this Claim. And the
9 Employer supports that onset date if the
10 entitlement to the award is granted.

11 JUDGE MANCUSO: Mr. Curry, you want an onset
12 date of 1/1/96; right?

13 MR. CURRY: That is correct, Your Honor.

14 JUDGE MANCUSO: Do you want to respond to Mr.
15 Heslep?

16 MR. CURRY: I think I already did in my earlier
17 presentation, Your Honor. So I think we're ready
18 to have this submitted to the Court.

19 JUDGE MANCUSO: Anything further?

20 MR. HESLEP: No, Your Honor.

21 JUDGE MANCUSO: With nothing further, the matter
22 will be submitted.

Claim No.:

STATE OF WEST VIRGINIA,
WORKERS' COMPENSATION
OFFICE OF JUDGES, to wit

I hereby certify that the foregoing proceeding was
transcribed from a recorded tape.

This, the 30th day of December, 2006.