



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  
**SELECT07**

PAGE  
**1**

ADDRESS CORRESPONDENCE TO ATTENTION OF  
**BETTY FRANCISCO**  
**304-558-0468**

RFQ COPY  
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

ALL STATE AGENCIES  
 AND POLITICAL SUBDIVISIONS  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
02/15/2007				

BID OPENING DATE: **03/01/2007** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>*****REQUEST FOR QUOTATION*****</p> <p>THE PURCHASE DIVISION IS SOLICITING BIDS FOR MICROSOFT PRODUCTS THROUGH A LARGE ACCOUNT RESELLER, ALL IN ACCORDANCE WITH THE MICROSOFT SELECT AGREEMENT 6.1 BETWEEN MICROSOFT AND THE STATE OF WEST VIRGINIA.</p> <p>AWARD SHALL BE BASED ON THE HIGHEST DISCOUNT PERCENTAGE FROM THE MICROSOFT LEVEL D ESTIMATED RETAIL PRICE (ERP QUOTED). QUOTES WILL ONLY BE CONSIDERED FROM AUTHORIZED MICROSOFT LARGE ACCOUNT RESELLERS.</p> <p>SUCCESSFUL VENDOR MUST SIGN THE ATTACHED NO DEBT AFFIDAVIT AND WV-96 FORMS PRIOR TO AWARD. ALL VENDORS SHOULD SIGN AND INCLUDE THE FORMS WITH THEIR BID.</p> <p>A NEW SELECT AGREEMENT MAY BE NEGOTIATED WITH MICROSOFT DURING THE LIFE OF THIS CONTRACT. THE TERMS AND CONDITIONS OF THE NEW AGREEMENT WILL SUPERCEDE THE TERMS AND CONDITIONS OF THE 6.1 AGREEMENT UPON THE MUTUAL WRITTEN CONSENT OF THE STATE AND THE SUCCESSFUL VENDOR. SUCH CONSENT SHALL BE PROCESSED AS A CHANGE ORDER TO THIS CONTRACT. IF MUTUAL CONSENT CANNOT BE REACHED, THE CONTRACT WILL BE CANCELED AND A NEW LAR WILL BE SELECTED THROUGH THE COMPETITIVE BID PROCESS.</p> <p>ATTACHMENTS:            SPECIFICATIONS WITH COST TABLE            AFFIDAVIT            WV-96</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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**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.

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**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



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0001	1	EA		099-00-01-001		
<p>FEE: LICENSE FOR SOFTWARE</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON ..... AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICE</p>						

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<p>SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES</p>						

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PAGE
<b>4</b>

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<p>AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY FOR ORDERS THAT ARE LESS THAN \$2,500 AS A CONDITION OF AWARD.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</p> <p>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>( ) BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>( ) BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING</p>						

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5

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<p>THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>( ) BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>( ) 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;</p> <p>OR</p> <p>( ) BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO</p>						

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PAGE  
**6**

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<p>YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX &amp; REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: -----</p> <p>DATE: -----</p>						

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PAGE  
**7**

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<p>SIGNED: -----</p> <p>TITLE: -----</p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S)            IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE            ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM            5% PREFERENCE FOR BOTH "A" AND "B".            (REV. 12/00)</p> <p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            BUILDING 15            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF            THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: FILE 42--</p> <p>RFQ. NO.: SELECT07-</p>						

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PAGE
<b>8</b>

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BID OPENING DATE:					<b>03/01/2007</b>	
BID OPENING TIME:					<b>1:30PM----</b>	
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						
-----						
CONTACT PERSON (PLEASE PRINT CLEARLY):						
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***** THIS IS THE END OF RFQ    SELECT07 ***** TOTAL:						_____

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**Request for Quotation**  
**Large Account Reseller for Microsoft Select Program**

The State of West Virginia and Microsoft Corporation have negotiated a Select Agreement that permits all entities of State and Local government (affiliates) to procure Microsoft products at the lowest possible Select price level, Level D. This includes all product pools, i.e., Application Pool, Server Pool, and System Pool.

Microsoft requires that the State choose and retain a Large Account Reseller through which the software is procured. This Large Account Reseller is defined by Microsoft as a reseller authorized by Microsoft or one of its affiliates to resell licenses in an enrolled affiliate's area under the Select program. Microsoft only recognizes eighteen (18) vendors as Large Account Resellers for their products.

The purpose of this Request for Quotation is to competitively choose a Large Account Reseller (LAR) to be used by all State and local entities under this contract. Actual product prices will be established by a contract with a Large Account Reseller (LAR). This pricing will be available to any affiliate, regardless of the size of the affiliate or the volume of products procured. These product prices will be based upon the LAR's percentage discounts from Microsoft Level D Estimated Retail Price (ERP).

If Microsoft introduces new products, the discounts established by this contract will be applied to Microsoft's new product ERP to determine product pricing under the State's Select Agreement.

The LAR will be responsible for insuring that Microsoft provides the Office of Technology with a copy of the Microsoft Licensing CD kit and updates for each pool and group. If an agency is only buying licenses and does not need CD's, this kit will be available at the Office of Technology Service Desk. The agency can either ask that the Office of Technology staff install the software at a billable rate or they can request a copy of the software so that they can install the software themselves. It is understood that if an agency uses the Microsoft Licensing kit, they must procure the license by the end of the month in which the copy was made.

The State's affiliates can establish Select Enrollments with the LAR under the terms and conditions of the State's amended Select Agreement and the LAR's contract.

Some agencies want to buy their own CD's for the software procured. The LAR will provide World Wide Fulfillment media for those agencies at a specific cost per CD. This cost must be included on the cost table.

Any procurement from this contract will require a State Contract Order (WV-39). Any procurement exceeding \$10,000 will require approval from IS&C and the Chief Technology Officer.

The term of the contract with the LAR shall be one year upon award, with the option to renew two additional one-year terms if determined by the State to be in its best interests.

The Large Account Reseller must provide the following:

- 1) The LAR must have a dedicated, fulltime sales representative managing the State of West Virginia's account who can be reached via telephone and/or e-mail between the hours of 8:00 a.m. to 5:00 p.m. EST. We understand that this sales representative may be handling other accounts but his/her workload must permit a response time of no more than four business hours from receipt of call or e-mail.
- 2) The LAR must provide Help Desk type of support to provide assistance and guidance on what to buy, prerequisites, and problems encountered during installation. This support must be provided via telephone and/or e-mail from 8:00 a.m. to 5:00 p.m. EST.
- 3) The LAR must host at least one on-site meeting with State agencies once a year to explain the contract and the services provided, as well as an overview of new product offerings from Microsoft.
- 4) The LAR must provide orientation and planning sessions with individual affiliates regarding benefits, terms and conditions, and service elements offered. These sessions may be via conference call, video conferencing, or on-site.
- 5) The LAR must have a Select licensing expert available that can be contacted by telephone and/or e-mail.
- 6) The LAR's price sheet must show the LAR's product number, Microsoft's product number, the description of the product, and the agency cost.
- 7) A Change Order must be processed each time the Cost Sheets change. The LAR must provide the State Purchasing Division with a hard copy of the LAR's cost sheets as pricing and offerings change, a letter explaining that a Change Order is required and why, and a copy of Microsoft's ERP pricing. A Change Order requires approval by IS&C and the CTO prior to processing, and processing through the government channels could take up to two weeks so the LAR must provide the information required in a timely manner.
- 8) The LAR must provide to the State Purchasing Division and Office of Technology quarterly reports showing all purchases made under this contract. This report must show the agency procuring the software, the amount of software procured, and the dollars spent by the agency.
- 9) The LAR must provide Internet tracking of the agency purchase that is accessible by both the agency and IS&C.
- 10) The LAR must accept orders of any quantity and ship orders direct to the agency free of any shipping charges within seven (7) business days after receipt of order.

11) The LAR must provide the agencies with a written confirmation of purchase. The Office of Technology will receive the license confirmations on a statewide basis and will compare these licenses with the quarterly report provided to the State Purchasing Division and the Office of Technology.

12) The LAR must accept the State's Purchasing Card as payment for procurements under \$1,000 and in some cases, \$2,500. The reseller must provide the agency with an invoice with an annotation that it was paid by credit card.

**COST TABLE**

% Discount Below Microsoft's Estimated Retail Price	
World Wide Fulfillment media – Cost per CD	
Select CD-ROM kits – Cost per kit	

# A F F I D A V I T

**West Virginia Code §5A-3-10a states:**

No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate

**DEFINITIONS:**

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

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

**EXCEPTION:**

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

**LICENSING:**

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:**

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

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

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

**ACCEPTED BY:**  
**STATE OF WEST VIRGINIA**

**VENDOR**

Spending Unit: \_\_\_\_\_

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_