



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
PTR10012

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
FRANK WHITTAKER 304-558-2316

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DIVISION OF PUBLIC TRANSIT
 BUILDING 5, ROOM 906
 1900 KANAWHA BOULEVARD, EAST
 CHARLESTON, WV
 25305-0432 304-558-0428

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
10/15/2009				

BID OPENING DATE: 11/12/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		961-20		
<p>MONITORING AND OVERSIGHT SERVICES</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF PUBLIC TRANSIT IS SOLICITING BIDS FOR AN OPEN-END CONTRACT FOR MONITORING AND OVERSIGHT SERVICES OF THE AMERICAN RECOVERY & REINVESTMENT ACT (ARRA) FUNDS THAT ARE BEING EXPENDED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA), SECTION 5311 PROGRAM, TO ENSURE THAT TRANSPARENCY AND ACCOUNTABILITY PROVISIONS ARE MET PER THE ATTACHED SPECIFICATIONS.</p> <p>ALL TECHNICAL QUESTIONS MUST BE SUBMITTED IN WRITING TO FRANK WHITTAKER IN THE PURCHASING DIVISION VIA EMAIL AT FRANK.M.WHITTAKER@WV.GOV OR VIA FAX AT 304-558-4115. DEADLINE FOR TECHNICAL QUESTIONS IS 10/26/09 @ 4:00 PM. ALL TECHNICAL QUESTIONS WILL BE ADDRESSED BY ADDENDUM AFTER THE DEADLINE.</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>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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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 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, 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, the State may deem this contract null and void, and terminate such contract 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 Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

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 case 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: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



State of West Virginia
 Department of Administration
 Purchasing Division
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<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 SERVICES 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>						

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<p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT 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 AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 05/26/2009</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">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: 44</p> <p>RFQ. NO.: PTR10012</p>						

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
				BID OPENING DATE:		11/12/09
				BID OPENING TIME:		1:30 PM
				PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:		

				CONTACT PERSON (PLEASE PRINT CLEARLY):		

				***** THIS IS THE END OF RFQ PTR10012 ***** TOTAL: _____		

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REQUEST FOR QUOTE

West Virginia Department of Transportation
Division of Public Transit
Building 5, Room 906
1900 Kanawha Blvd., E.
Charleston, WV 25305-0432

RFQ # PTR10012

SECTION 1 – GENERAL INFORMATION, PURPOSE AND QUALIFICATIONS

1.1 PURPOSE OF WORK

The purpose of this project by the West Virginia Division of Public Transit (also known in this document as the DPT or the Division) is to provide additional oversight of the American Recovery and Reinvestment Act (ARRA) funds that are being expended by the Federal Transit Administration's (FTA) Section 5311 program to ensure that transparency and accountability provisions of the program are met.

The goals of this project are to verify a sampling of ARRA to document beyond current procedures transparency and accountability, a review and evaluation of any indirect cost proposals being employed to bill ARRA expenses, an evaluation of fund balances, technical assistance to provide any necessary revision in financial procedures and one training session.

One (1) on site visits must take place at each 5311 recipient's location during contract period. Additional site visits may be necessary should corrective actions be warranted. The contract may be extended by mutual agreement in accordance with the contract provisions should additional ARRA funds be acquired or as a result of the findings of the review.

1.2. EXPERIENCE, MANAGEMENT & TECHNICAL QUALIFICATIONS

All bidders shall have a minimum of three (3) years of work experience with the Federal Transit Administration's (FTA) Section 5307 and/or 5311 grant programs. All bidders shall have at least one (1) certified public accountant on the project. All bidders shall provide at least three (3) specific examples of their work experience and performance with FTA Section 5307 or 5311 recipients including the name(s) of the FTA recipients where the work was performed, contact person and phone number, a brief description of the work, duration of work, and whether the work was satisfactorily completed on time. All work experience may be with the same FTA Section 5307 or 5311 recipient. The organization must have been in existence for at least five (5) years.

All bidders shall also provide a description of their management and technical ability to perform the tasks. The bidder shall also identify the proposed project manager and the resources available to perform the work.

All bidders shall also indicate whether they or any subcontractor are certified by the West Virginia Department of Transportation (WVDOT), Equal Employment Opportunity Office, as a certified minority, woman owned, and/or disadvantaged business enterprise. A directory of DBE firms (consultants) which are certified by the WVDOT, EEO Office and categorized as socially and economically disadvantaged is at: http://www.wvdot.com/3_roadways/3d9a_consult_INC.PDF. Documentation of status must be provided. If a bidder or any subcontractor has minority, woman owned and/or disadvantaged business enterprise status, the bidder shall also describe the proportion

of the bid proposal that would be performed by a minority, woman owned, and/or disadvantaged business enterprise.

1.3. BIDDING

On the **BID FORM #1** bid sheet. The successful bidder shall be paid only for the services actually provided. **Additional charges such as administration costs, travel or lodging will not be allowed.**

1.4. BID PROPOSAL & SUBMISSION

The successful bidder agrees to accept all of the terms and conditions, both federal and state requirements, contained in this bid package.

At a minimum, the bid should contain the following:

- a. All materials related to experience, management, and technical qualifications requested in Section 1.2.
- b. Any affidavits, forms or documents required by the State of West Virginia.
- c. The completed price bid sheet found in BID FORM # 1.
- d. A description of similar or related projects successfully completed by the bidder including (2) two contact persons with telephone numbers as a reference.
- e. The names of those personnel in the firm who will be assigned to the projects and the resumes that emphasize Federal Transit Administration Section 5307 or 5311 projects and experience.
- f. An indication of level of effort to be devoted to the project by each professional involved with the project.
- g. A project time schedule based on the required completion date.
- h. A written description of how the successful bidder intends to carry out the project.
- i. A statement of Equal Employment Opportunity that assures that the firm has an affirmative action plan.
- j. A statement indicating if your firm is a Disadvantaged Business Enterprise (DBE). The Division cannot give preference to minority firms, but federal regulations require the reporting of this information.
- k. Bid Forms #1 - #6.

1.5 TRAVEL COSTS

Any and all anticipated costs for travel should be included in the proposed cost for the completion of this project. The successful bidder shall be responsible for all travel costs of this project.

1.6 OWNERSHIP OF DATA

All materials developed for this project shall become the property of the West Virginia Division of Public Transit. The successful bidder shall not place any successful bidder name, firm's name, address or telephone number on any part of the data, or handouts.

1.7. METHOD OF AWARD & EVALUATION

Award will be made to the lowest responsible bidder on the basis of Grand Total Bid. The DPT reserves the right to recommend to the Director of Purchasing the rejection of all bids.

1.8. INTERPRETATIONS AND REPRESENTATIONS

If for any reason it becomes necessary to revise or clarify any information published herein, such revision or clarification shall be set forth by written amendment. The DPT shall not be bound by any oral representations or any written changes made to the specifications, terms, and conditions issued by any person, including employees of the DPT, unless such clarification, revision, or other change is provided to bidders via written amendment issued by the Purchasing Division.

1.9. CLARIFICATION OF OFFERS

The Division of Purchasing reserves the right to request clarification from offerer's for purposes of assuring a full understanding of responsiveness to the requirements of this solicitation. Clarification may be permitted from all offerer's determined to be acceptable for being selected for contract award. All offerer's will be accorded fair and equal treatment with respect to their opportunity for discussion and clarification of offers.

1.10 VENDOR PREFERENCE CERTIFICATION

The Federal Transit Administration's "Third Party Contracting Circular" (4220.1E), requires grantees (the Division) to conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Therefore, the in-state vendor preference shall not apply to this procurement since it is partially or entirely funded with Federal Transit Administration funds.

1.11 VENDOR REGISTRATION:

Vendors participating in this process should complete and file a **Vendor Registration and Disclosure Statement** (Form WV-1) and remit the registration fee. Vendor is not required to be a registered Vendor in order to submit a bid, but the **successful Bidder must** register and pay the fee prior to the award of an actual purchase order/contract.

1.12 COST PROPOSAL FORMAT/BID SHEETS

The successful Bidder will be paid only for the services actually provided. The bid amount shall be **all-inclusive**. All travel costs and any other expenses associated with visits to Charleston, workshop sites or the on-site reviews and all other work tasks or items associated with the project

shall be included in the price quote. **All prices should be quoted in whole dollars and submitted on the bid form.**

1.13 TERMINATION

The State may terminate any contract resulting from this RFQ immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFQ and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated by the State with thirty (30) days prior notice.

1.14. CONTRACT PERIOD

The Contract Period shall begin on or about November 15, 2009. All work shall be completed by a mutually agreed upon date. All contract renewals shall be in accordance with 3.3.9.

Section 2 - DETAILED PROJECT SCOPE AND OBJECTIVES

2.1 SCOPE OF WORK METHODOLOGY

2.1.1 The successful bidder shall conduct two on site visits to each Section 5311 recipient to conduct a sampling of ARRA expenses and documentation. The sample shall be large enough to assure the Division that it can ascertain that the accountability and transparency required of the ARRA funds are being met. This review is not meant to take the place of the annual agency audit.

2.1.2 The successful bidder shall conduct an in-depth review and evaluation of any indirect cost plans being used and costs being billed using ARRA funds. The successful vendor shall determine the appropriateness of the cost allocation method and recommend changes if needed.

2.1.3 The successful bidder shall produce a report of findings needing corrective action and recommendations to financial operations of the recipients. The report on the on-site findings and recommendations must be produced and submitted to the recipient and the Division within 30 days of the on-site visit.

2.1.4 The successful bidder shall review the cash balance and determine if the ARRA funds will aid in the goal of the recipients having at least three months of operating expenses on hand at all times. The Division currently requires that the Grantees to at least have one month's operating expenses on hand at all time to ensure that the recipients have adequate cash flow.

2.1.5 The successful bidder shall meet with the Division in Charleston for an initial meeting and three additional progress meetings in Charleston.

2.1.6 The successful bidder shall provide technical assistance to the individual 5311 recipients to bring the 5311 recipient's programs into compliance with the financial requirements set by the Division. Technical assistance may be provided through the mail, email, on-site or at meetings. The level of technical assistance shall be determined by mutual agreement of the Division and the successful vendor.

2.1.7 The successful bidder may be required to conduct one financial training session either in Charleston or Morgantown. The location and date shall be mutually agreed upon by the Division and the successful vendor. This task may or may not be utilized.

2.2. "800" TELEPHONE NUMBER & E-MAIL ACCESS

The successful bidder shall maintain an "800" telephone number and/or e-mail address for transit systems to use to contact the successful bidder to provide information and assistance with any policy changes and program oversight recommended by the successful vendor . All responses must be made within 24 hours.

2.3. ARRA Reviews or Audits

The successful bidder may be required to assist the DPT in preparation for any OMB, GAO or other review or audit concerning the oversight and documentation of ARRA funds. The successful bidder, with assistance from the DPT, may be responsible for gathering and providing any materials requested for a review and assist with resolving any findings.

2.4 MEETINGS WITH DPT

At the onset of this project, the Division shall brief the successful Bidder on information that might be pertinent to conducting this project. This kick off meeting shall take place at the offices of the DPT in Charleston, WV. Three additional progress meeting shall also be held at the Division's offices in Charleston.

2.5 WORK TASKS

Specific work tasks are to be developed by the successful bidder and should be included in the bid when submitted.

2.6 DETAILS OF WORKSHOPS

The successful bidder may be required to conduct one workshop on the findings resulting from the on-site reviews. The location and date of the workshop shall be mutually agreed upon by the Division of Public Transit and the successful bidder after the award of the bid. The successful bidder shall be responsible for the cost of audio visual equipment, workshop materials and supplies, registration the day of the workshop, if required. It should be noted that the successful bidder is responsible for seeing that all conference material is delivered to the workshop site. At no time shall the vendor expect the Division of Public Transit to deliver the materials to the workshop sites. **No registration fees may be charged by the successful bidder for the workshops.** Workshops will likely be held in either Charleston or Morgantown.

The entire content of the workshop/trainings shall be mutually agreed upon by the Division and the successful bidder after the award of the bid. This task may or may not be utilized.

2.7 TIME FRAME

These projects are anticipated to begin as of the date of the encumbered purchase order and be completed in accordance with the contract.

SECTION 3 - SPECIAL TERMS AND CONDITIONS:

FEDERAL FUNDING AND POSSIBLE REPORTING:

Federal funding for this project is being provided by the Federal Transit Administration, Section 5311 CFDA 20.509 at 100% federal funding. Although this project will not be funded with ARRA funds, additional reporting requirements may apply due to its association with ARRA program funds.

PURCHASING AFFIDAVIT:

West Virginia State Code § 5A-3-10a-(3)(d) requires that all Vendors submit an affidavit of debt, which certifies that there are no outstanding obligations or debts owed the State of West Virginia. The Purchasing Affidavit is attached to this request for proposal, which should be completed, signed and returned with the Vendor's bid. **If bidding a joint proposal, a Purchasing Affidavit must be completed for both (all) Vendors.**

INSURANCE REQUIREMENTS:

The successful bidder as an independent contractor is solely liable for the acts and omissions of its employees and agents. The Vendor shall provide proof of insurance to the Purchasing Division at the time the contract is awarded. The Vendor shall maintain and furnish proof of coverage of liability insurance for loss, damage, or injury (including death) of third parties arising from acts and omissions on the part of the Vendor, its agents and employees in the following amounts:

1. For bodily injury (including death): \$500,000 per person up to \$1,000,000 per occurrence.
2. For property damage and professional liability: Up to \$1,000,000.

3.3 GENERAL TERMS AND CONDITIONS:

By signing and submitting their bid, the successful bidder agrees to be bound by all the terms contained in Part 3 of the RFQ.

3.3.1 Conflict of Interest:

Vendor affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

3.3.2 Prohibition Against Gratuities:

Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the Vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

3.3.3 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

the parties to 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 RFQ and resulting contract. Neither the Vendor nor any employees or contractors of the Vendor shall be deemed to be employees of the State for any purposes 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, and 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.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

3.3.4 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; (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 laws.

3.3.5 Contract Provisions:

After the successful bidder is selected, a formal contract document will be executed between the State and the Vendor. In addition, the RFQ and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFQ and the Vendor's bid in response to the RFQ.

3.3.6 Governing Law:

The laws of the State of West Virginia shall govern this contract. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

3.3.7 Compliance with Laws and Regulations:

The Vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the Contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

3.3.8 Subcontracts/Joint Ventures:

The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The State will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of the State, enter into written subcontracts for performance of work under this contract; however, the Vendor is totally responsible for payment of all subcontractors.

3.3.9 Term of Contract & Renewals:

This contract will be effective **as of the date of the issuance of the encumbered purchase order** and shall extend for the period of one (1) year, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period the Vendor may terminate the contract for any reason upon giving the Agency ninety (90) days written notice. Notice by Vendor of intent to terminate will not relieve Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

Any change in Federal or State law, or court actions which constitute binding precedent in West Virginia, and which significantly alters the Vendor's required activities or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the Vendor by the Agency and of such other provisions of the contract that are affected. If such renegotiation proves unsuccessful, the contract may be terminated by the State upon written notice to the Vendor at least thirty (30) days prior to termination of this contract.

3.3.10 Non-appropriation of Funds:

If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by the contract by the West Virginia Legislature, the Agency may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The Agency shall give the Vendor written notice of such non-allocation of funds as soon as possible after the Agency receives notice. No penalty shall accrue to the Agency in the event this provision is exercised.

3.3.11 Contract Termination:

The State may terminate any contract resulting from this RFQ immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFQ and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

3.3.12 Changes:

If changes to the original contract become necessary, a formal contract change order will be negotiated by the State, the Agency and the Vendor, to address changes to the terms and conditions, costs of work included under the contract. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office, encumbered and placed in the U.S. Mail prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Agency a written statement identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Vendor shall, provide a description of the price increase or decrease involved in implementing the requested change.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.

3.3.13 Invoices, Payments

The Vendor shall submit invoices, in arrears, pursuant to the terms of the contract, to the

Division of Public Transit
Building 5, Room 906
1900 Kanawha Boulevard, East
Charleston, WV 25305-0432

When submitting invoices for payment to the Division of Public Transit, the Vendor shall be required to provide an original typed invoice that reflects the Vendor's Federal Employee Identification Number (FEIN) and Purchase Order Number.

Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. On-site visits can be billed as completed once the on-site report has been submitted and accepted by the Division. All on-site reports must be completed within 30 days of the on-site review. An extension of 30 days can be granted by the Division if the request is made prior to the expiration of the 30 day period and the successful vendor provides an explanation acceptable to the Division. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services. Additionally, the successful bidder agrees to bill on a monthly basis.

3.3.14 Record Retention (Access & Confidentiality):

Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency within 10 days after receipt of the request.

Vendor shall have access to private and confidential data maintained by Agency to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims

brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by Vendor.

3.3.15 Federal Transit Administration Master Agreement:

The "Federal Transit Administration Master Agreement," FTA MA (15), October 1, 2008 and any revisions, amendments or reissuance under any title which may occur now or in the future for the life of the Agreement by the Federal Transit Administration or its assigns is incorporated by reference and made a part of this agreement. Copies of the Master Agreements can be found on the FTA web site. In the event that any of the covenants, agreements, terms or provisions contained in this Agreement shall be in conflict with the "Federal Transit Administration Master Agreement", the current "Federal Transit Administration Master Agreement" shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration.

3.3.16 Disadvantage Business Enterprise (DBE):

The Bidder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The requirements of 49 C.F.R. Part 26 and the WV Department of Transportation's (WVDOT) U.S. Department of Transportation (USDOT) approved Disadvantaged Business Enterprise (DBE) Program are incorporated in the Contract by reference. The Bidder agrees to take all necessary and reasonable steps under the requirements of 49 C.F.R. Part 26 and the USDOT approved Disadvantaged Business Enterprise (DBE) Program (where required) to ensure that eligible DBEs have the maximum feasible opportunity to participate in USDOT approved Contracts. Failure by the Bidder to carry out these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy as the WV Division of Public Transit deems appropriate

A directory of DBE firms (consultants) which are certified by the WV DOT, EEO office, may be found at: http://www.wvdot.com/3_roadways/3d9a_consult_INC.PDF.

3.3.17 No Federal Government Obligations to Third Parties

The WV Division of Public Transit and Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the WV Division of Public Transit, Vendor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Vendor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3.3.18 Program Fraud and False or Fraudulent Statements or Related Acts

The Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federal Transit Administration (FTA) assisted project for which this contract work is being performed. In addition to other penalties that

may be applicable, the Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Vendor, to the extent the Federal Government deems appropriate.

The Vendor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3.3.19 Exclusionary or Discriminatory Specifications

The Vendor agrees that it will comply with the requirements of 49 U.S.C. § 5325(h) by refraining from using any Federal assistance awarded by the WV Division of Public Transit to support procurements using exclusionary or discriminatory specifications.

3.3.20 Geographic Restrictions

The Vendor agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA.

3.3.21 Civil Rights

The following requirements apply to the underlying contract:

1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et. seq. Section 303 of the Age Discrimination Act of 1974, as amended, 42 U.S.C. § 6101, et. seq. Section 202 of the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101, et. seq. and Federal transit law at 49 U.S.C. § 5332, the Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity, " 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Vendor agrees to take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, creed, national origin, sex, disability or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

b. Age. In accordance with the Age Discrimination Act of 1974, as amended, 42 U.S.C. §§ 6101 et seq. and implementing regulations, the Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities. In accordance with Section 102 of the Americans With Disabilities Act, as amended, 42 U.S.C. § 12112, the Vendor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

3. The Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

3.3.22 Energy Conservation

The Vendor agrees to comply with, and obtain the compliance of its subcontractors, with mandatory standards and policies relating to energy efficiency contained in applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.

3.3.23 Application of Federal, State and Local Laws and Regulations

To achieve compliance with changing federal, state and local requirements, the Vendor shall note that federal, state and local requirements may change and the changed requirements will apply to this Contract as required.

3.3.24 Bankruptcy

Upon entering of a judgment of bankruptcy or insolvency by or against a Vendor, the WV Division of Public Transit may terminate this Contract for cause.

3.3.25 Prohibited Interest

No employee, officer, board member, agent or their family members of the WV Division of Public Transit may participate in the selection, award, or administration of a Contract supported by Federal funds if a real or apparent conflict of interest is involved. Such a conflict could arise when any of the parties mentioned above have a financial or other interest in the Vendor selected for the Contract.

3.3.26 Metric System

As required by U.S. DOT or FTA, the Vendor agrees to use the metric system of measurement in its Project activities, as may be required by Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et. seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA.

3.3.27 Severability

In the event any provision of the Contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Contract and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

3.3.28 FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provision. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any WV Division of Public Transit requests that would cause the WV Division of Public Transit to be in violation of the FTA terms and conditions.

3.3.29 Prompt Payment

The prime Vendor agrees to pay each sub-contractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime Vendor receives from the Division of Public Transit. The Vendor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Division of Public Transit. This clause applies to both DBE and non-DBE subcontractors.

Payment Process

When submitting invoices for payment to the Division of Public Transit, the Vendor shall be required to provide an original typed invoice. The following items shall appear on the invoice:

- (1.) Vendor's Federal Employee Identification Number (FEIN)
- (2.) Purchase Order Number
- (3.) Submit all invoices to:
Division of Public Transit
Building 5, Room 906
1900 Kanawha Blvd., East
Charleston, West Virginia 25305-0432

3.3.30 Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the WV Division of Public Transit. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to the WV Division of Public Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions. All Contractors shall be required to certify that they are not on the Comptroller General's list of ineligible contractors on **Bid Form #3**.

3.3.31 Restrictions on Lobbying

Every Vendor who applies or bids for an award of \$100,000 or more shall file the certification on **Bid Form #2** required by C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of the registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Division of Public Transit.

3.3.32 Amendments to Solicitation and Postponement of Bid Due Date

1. The State of West Virginia reserves the right to amend any element or part of these bid documents and specifications and/or change the bid opening date and time, up to the time and date that bids are due. In this event, all potential Vendors that have received a copy of these contract documents and specifications shall be notified of the postponement and the new time and date that bids will be due. Such notification shall be mailed or otherwise provided. Any bids received in accordance with the original bid due date shall be held unopened till the new bid opening date.

2. In the event that amendments are issued by the State fourteen (14) or more days prior to the original bid due date, the original date and time established for the receipt of bids, at the State's option, may or may not be changed. The addendum notification sent by the State shall contain either a statement that the bid due date remains as previously established or shall provide a new time and date if the bid due date is changed.

3. In the event that addenda are issued by the State, Vendors must complete the Addendum Acknowledgment form contained within these contract documents and specifications and submit that form with their bid. **Bid Form #6** shall be used for this purpose.

3.3.33 Protest Procedures

1. Filing of Protest(s)

Protests based on a violation of State law or rule must be filed no later than five (5) working days after issuance by the Purchasing Division of the notice of intent to award the contract or purchase order. Protests based on restrictive bid specifications or alleged improprieties in any type of solicitation, which are apparent prior to the bid opening or closing date for receipt of bids or proposals, must be filed no later than five (5) working days prior to the bid opening or closing date. Any other protest must be filed no later than five (5) working days following award of the contract or purchase order.

The Contractor is responsible for knowing the bid opening and award dates. Protests filed after the time frames specified above will not be considered. In addition, after these time frames, protests may not be amended, altered or changed.

All protests must be in writing and filed with the WV Purchasing Division containing the following:

- a) Include the name and address of the protester.
- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a statement of the grounds for protest and any supporting documentation.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

Failure to submit this information shall be grounds for rejection of the protest by the Director of the Purchasing Division.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

The protest must be filed in writing with the:

Director
WV Purchasing Division
2019 Washington Street, East
P. O. Box 50130
Charleston, WV 25305-0130

with a copy of the protest sent to the:

Division of Public Transit
Building 5, Room 906
1900 Kanawha Boulevard, East
Charleston, WV 25305-0432

To expedite handling, the address should include "**ATTENTION: Bid Protest – Bid # _____**".

Protests received timely will be reviewed and a written decision issued. The Director of the WV Purchasing Division has the authority to make the final determination on any protest.

2. Protest Review

The Purchasing Director or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the Purchasing Director or assigned designee.

3. Division of Public Transit Report/Response

The Division of Public Transit shall submit a complete report/response on the protest to the Director of the WV Purchasing Division responding in detail to each substantive issue raised in the protest, with a copy to the protester, as expeditiously as possible but not later than twenty-five (25) working days after being notified of the protest.

4. Withholding of Award

When a protest has been filed before award, the WV Purchasing Division will not make an award prior to the resolution of the protest, and when a protest has been filed before the opening of bids, the WV Purchasing Division will not open bids prior to the resolution of the protest, unless the WV Purchasing Division determines that:

- a) The items to be procured are urgently required; or
- b) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c) Failure to make prompt award will otherwise cause undue harm to a recipient, the Division of Public Transit or the State of West Virginia.

In the event that the WV Purchasing Division determines that the award is to be made during the pendency of a protest, the Division of Public Transit will notify the Federal Transit Administration (FTA) prior to making such award.

5. Request for Reconsideration

Reconsideration of a decision by the WV Purchasing Division may be requested by the protester or any party involved in the protest. The request for reconsideration must be in writing, made to the Director of the Purchasing Division and shall contain the following:

- a) Include the name and address of the aggrieved party.
- b) Identify the requisition number of the bid or the purchase order number.
- c) Contain a detailed statement of the grounds for reconsideration with supporting documentation; and a statement of whether a hearing is requested.
- d) Indicate the ruling or relief desired from the WV Purchasing Division.

Request for reconsideration of a decision of the WV Purchasing Division shall be filed not later than five (5) working days after the initial written decision. The protest shall not be considered pending during the five (5) working day period specified in this paragraph.

In the event a hearing is requested by the aggrieved party, the Purchasing Director, or his or her designee, will set a time and place for the hearing for full review of the matter.

If no hearing is requested, the Purchasing Director, or his or her designee, will review the request for reconsideration and issue a written decision. If a hearing is requested, the Purchasing Director, or his or her designee, will hold the hearing and then issue a written decision.

6. Refusal of Protests

The State of West Virginia may refuse to decide any protest or reconsideration where the matter involved is one of the following:

- a) the protest is the subject of litigation before a court of competent jurisdiction;
- b) the protest has previously been decided on the merits by a court of competent jurisdiction;
- c) the protest has been decided in a previous protest.

The provisions do not apply where the court requests, expects, or otherwise expresses interest in the decision of the State.

7. Appeals to the Federal Transit Administration (FTA)

Under the Federal Transit Administration's Circular 4220.1F, the Federal Transit Administration's (FTA's) appeals process for reviewing protests of a recipient's procurement decisions are:

1. Requirements for the Protester. The protester must:

- a) Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the contract at issue.

1. Subcontractors. A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

2. Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an "interested party" because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

3. Associations or Organizations. An association or organization that does not perform contracts does not qualify as an "interested party," because it does not have a direct economic interest in the results of the procurement.

- b) Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing the WV Division of Public Transit's protest procedures to completion before appealing the WV Division of Public Transit's decision to FTA.
- c) Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator, Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124 within five (5) working days of the date when the protester has received actual or constructive notice of the WV Division of Public Transit's final decision. Likewise, the protester must provide its appeal to the same address within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the WV Division of Public Transit's failure to have or failure to comply with its protest procedures or failure to review the protest.

2. Extent of FTA Review. FTA limits its review of protests to:

- a) Failure of the Division of Public Transit to have or adhere to its written bid protest procedures, or failure of the Division of Public Transit to review a complaint or protest.
- b) Alleged violations on other grounds are under the jurisdiction of the appropriate State or local administrative authorities.
- c) Alleged violations of a specific Federal Law or regulation that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal Law or regulation. See, e.g., Buy America Requirements, 49 C.F.R. Part 661 (Section 661.15); Participation by Minority Business Enterprise in Department of Transportation Programs, 49 C.F.R. Section 26.89. FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

3. FTA Determinations to Decline Protest Reviews. FTA's determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with the Division of Public Transit's decision or that FTA has determined the contract is eligible for Federal participation. FTA's determination means only that FTA does not consider the issues presented to be sufficiently important to FTA's overall program that FTA considers a review to be required.

3.3.34 Privacy

The Vendor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Vendor agrees to obtain the express consent of the Federal Government before the Vendor or its employees operate a system of records on behalf of the Federal Government. The Vendor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

The Vendor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

3.3.35 Clean Air & Clean Water Requirements

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the WV Division of Public Transit and understands and agrees that the WV Division of Public Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided from FTA.

3.3.36 Audit and Inspection

The Vendor agrees to permit the WV Division of Public Transit, the Secretary of the United States Department of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Contract work, materials, payrolls, and other data and records with regard to the Contract. The Vendor also agrees to permit an audit of the books, records, and accounts of the Vendor and its subcontractors.

3.3.37 Electronic and Information Technology

The vendor agrees to provide any reports or information for distribution to FTA, among others, using electronic or information technology capable of assuring that the reports or information, when provided to FTA, will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194.

3.3.38 Accessibility

Vendor agrees that products provided shall be in accordance with the 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint ATBCB/DOT regulations, "American with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

3.3.39 Clean Air

The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7414 and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Vendor agrees to report each violation to the Division of Public Transit and understands and agrees that the Division of Public Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

3.3.41 Clean Water

The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1368, and other provisions of the Federal Water Pollution Act, as amended, U.S.C. 1251 et seq. The Vendor agrees to report each violation to the Division of Public Transit and

understands and agrees that the Division of Public Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

3.3.42 Sensitive Security Information

Each Vendor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of this contract or any subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 CFR Part 1520.

BID FORM #1

TASK	Description	Estimated Quantity	Unit	Cost Per Unit	TOTAL
Task 2.1.1	Two on-site visits to 11 Section 5311 recipients	22 Visits	Each		
Task 2.1.2	Review and Evaluation of cost allocation plans	11	Each		
Task 2.1.3	Report of findings and recommendations	11 reports (originals) and 4 copies for a total of 55 reports	Each		
Task 2.1.4	Review of cash balances and cash flow at 11 Section 5311 Recipients	11	Each		
Task 2.1.5	Initial meeting and progress meetings	4 meetings	Each		
Task 2.1.6	Technical Assistance	1	Hour		
Task 2.1.7	Financial Workshop (One) (Location: Charleston or Morgantown; date to be mutually agreed upon- Maximum of 8 hours)	1 workshop	Each		
GRAND TOTAL BID					

Quantities listed above are estimates for bidding purposes only. Actual quantities purchased may vary.

Vendor Name: _____

Vendor Address: _____

Date: _____

Signature: _____

BID FORM #2
CERTIFICATION OF RESTRICTIONS ON LOBBYING

The undersigned [Vendor, Contractor] certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Vendor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Date

Authorized Signature

Title

BID FORM #3

**CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Participant (applicant for an FTA grant or cooperative agreement, or potential contractor for a major third party contract),

_____ (COMPANY NAME) certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(If the primary participation (applicant for an FTA grant, or cooperative agreement, or potential third party contractor) is unable to certify to any statements in this certification, the participant shall attach an explanation tot his certification.)

THE PRIMARY PARTICIPANT (APPLICANT FOR AN FTA GRANT OR COOPERATIVE AGREEMENT, OR POTENTIAL CONTRACTOR FOR A MAJOR THIRD PARTY CONTRACT),

_____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature and Title of Authorized Official

BID FORM #4

_____ hereby certifies that it **IS** or **IS NOT** (check the appropriate box) included on the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for violations of Various Public Contracts Incorporating Labor Standards Provisions.

Date

Authorized Signature

Title

Company Name

BID FORM #5
VENDOR'S CERTIFICATION OF UNDERSTANDING AND ACCEPTANCE

The Contractor hereby certifies that all Technical Specifications and Contract Terms and Conditions have been carefully reviewed, are fully understood and shall be adhered to in the performance and completion of any contract resulting from this bid.

Date

Authorized Signature

Title

Company Name

**BID FORM #6
ADDENDUM ACKNOWLEDGMENT**

I hereby acknowledge receipt of the following checked addendum(s) and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum No.'s

No. 1 _____

No. 2 _____

No. 3 _____

No. 4 _____

No. 5 _____

I understand that failure to confirm the receipt of the addendum(s) is cause for rejection of bids.

If no addendums are issued, please check this box and sign this form.

Signature

Company

Date

STATE OF WEST VIRGINIA
Purchasing Division
PURCHASING AFFIDAVIT

VENDOR OWING A DEBT TO THE STATE:

West Virginia Code §5A-3-10a provides that: 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 owed is an amount greater than one thousand dollars in the aggregate.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the *West Virginia Code*. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the *West Virginia Code* and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the *West Virginia Code* may take place before their work on the public improvement is begun.

ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will 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 the bidder. I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

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

Vendor's Name: _____

Authorized Signature: _____ Date: _____

Exhibit A

SECTION 5311 RECIPIENTS

Bluefield Area Transit operated by
the City of Bluefield
Patrick McKinney, CCTM, Manager
1642 Bluefield Avenue
PO Box 1838
Bluefield, West Virginia 24701
Serving Bluefield/Princeton area, Mercer; Welch, McDowell Counties

Phone: 304-327-8418
Toll Free: 1-866-759-0978
FAX: 304-325-6783; TDD: 304-327-8418
Email: pmckinney@ridethebatbus.com
Web: www.ridethebatbus.com

Buckwheat Express operated by
Preston County Senior Citizens, Inc.
Sidney Murphy, Executive Director
421 1/2 East Main Street
PO Box 10
Kingwood, West Virginia 26537
Serving Preston County

Phone: 304-329-0464 or 329-0678
Toll Free: 1-800-661-7556
FAX: 304-329-2584; TDD: 304-329-0464
Email: prestonseniors@atlanticbb.net
Web: www.busride.org/Kingwood.htm

Central WV Transit Authority
Belinda J. Rollins, Manager
208 North 4th Street
PO Box 430
Clarksburg, West Virginia 26301
Serving Harrison County

Phone: 304-623-6002
Toll Free: None
FAX: 304-623-2950; TDD: 304-623-2950
Email: bjs@centrabus.com
Web: www.centrabus.com

Country Roads Transit operated by
The Committee on Aging in Randolph County, Inc.
Rebecca Poe, Executive Director
5th Street & Railroad Avenue
PO Box 727
Elkins, West Virginia 26241
Serving Randolph & Upshur Counties

Phone: 304-636-6472
Toll Free: 1-877-636-6472
FAX: 304-637-4991; TDD: 304-637-4991
Email: randolphcountyseniorcenter@yahoo.com
Web: www.countryroadstransit.com

Fairmont-Marion County Transit Authority
George Levitsky, CCTM, General Manager
400 Quincy Street
Fairmont, West Virginia 26554
Serving Marion County

Phone: 304-366-8177 or 304-366-8180
Toll Free: None
FAX: 304-366-2308; TDD: 304-366-5295
Email: fmcta@wvdsi.net
Web: www.fmcta.com

Barbour County Senior Center, Inc., dba
Here and There Transit
Brenda Wilmoth, Director
101 Church Street
PO Box 146
Philippi, West Virginia 26416
Serving Barbour County

Phone: 304-457-1818
Toll Free: None
FAX: 304-457-2017; TDD: 304-457-1818
Email: bcsc@bcnetmail.org
Web: www.hereandtheretransit.com

Little Kanawha Transit Authority

Darlene Harris, Manager
794 Arnoldsburg Road
PO Box 387
Grantsville, West Virginia 26147
Serving Calhoun, Jackson, & Roane Counties

Phone: 304-655-8999
Toll Free: 1-866-354-5522
FAX: 304-655-9927; TDD: 304-655-8999
Email: lkbc@frontiernet.net
Web: www.littlekanawhabus.com

Mountain Transit Authority

David L. Johnson, Manager
1096 Broad Street
Summersville, West Virginia 26551
Serving Fayette, Greenbrier, Nicholas, & Webster Cos.

Phone: 304-872-5872
Toll Free: 1-877-712-9432
FAX: 304-872-5877; TDD: 304-872-5872
Email: mta68@hotmail.com
Web: None

Potomac Valley Transit Authority

J. Douglas Carter, Director
Grant County Industrial Park
PO Box 278
Petersburg, West Virginia 26847
Serving Grant, Hardy, Hampshire, Mineral, & Pendleton Counties

Phone: 304-257-1414
Toll Free: 1-800-565-7240
FAX: 304-257-2804; TDD: 304-257-1414
Email: ptva@citlink.net
Web: www.potomacvalleytransit.org

TriRiver Transit Authority

Jennifer Woodall, Manger
11 Lincoln Plaza
PO Box 800
West Hamlin, West Virginia 25571
Serving Lincoln, Logan, Boone & Mingo Counties

Phone: 304-824-2944
Toll Free: 1-877-212-0815
FAX: 304-824-3889; TDD: 304-824-3889
Email: tririvertransit@zoominternet.net
Web: www.tririver.org

Wayne County Community Services Organization, Inc., dba

Wayne X-Press

Rose Meredith, Executive Director
3609 Hughes Street
Huntington, West Virginia 25704
Serving Wayne County

Phone: 304-429-0070
Toll Free: 1-800-377-6265
FAX: 304-429-0026; TDD: 304-429-4666
Email: rmeredith@wccso.org
Web: www.wccso.org

Suggested Vendors

Somerville & Co., PLLC
501 5th Avenue
Huntington, WV 25701

Gibbons & Kawash
707 Virginia Street, East
Charleston, WV 25301

Mary Kern, CPA
109 Haves Avenue
Charleston, WV 25314

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

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

- 1. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or, Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. Application is made for 2.5% resident vendor preference for the reason checked: Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
4. Application is made for 5% resident vendor preference for the reason checked: Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked: Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

VENDOR OWING A DEBT TO THE STATE:

West Virginia Code §5A-3-10a provides that: 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 owed is an amount greater than one thousand dollars in the aggregate.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the *West Virginia Code*. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the *West Virginia Code* and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the *West Virginia Code* may take place before their work on the public improvement is begun.

ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will 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 the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

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. 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/noticeConfidentiality.pdf>.

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

Vendor's Name: _____

Authorized Signature: _____ Date: _____