



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
COM04

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
BUYER 41 304-558-0492

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

VARIOUS LOCALES AS INDICATED
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
06/17/2010				

BID OPENING DATE: 07/15/2010 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	YR		906-29		
ENGINEERING SERVICES & GRANT AUDIT/REVIEW EXPRESSION OF INTEREST THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA DEPARTMENT OF COMMERCE, IS SOLICITING EXPRESSIONS OF INTEREST FOR PROFESSIONAL ENGINEERING SERVICES AND AUDIT/REVIEW SERVICES AS THEY RELATE TO THE ADHERENCE OF FEDERAL GRANT GUIDELINES FOR A PROJECT TO EXPAND BROADBAND SERVICES IN WEST VIRGINIA, PER THE FOLLOWING BID REQUIREMENTS AND ATTACHED SPECI- FICATIONS. 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. ***** THIS IS THE END OF RFQ COM04 ***** TOTAL:						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
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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. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. 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.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **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.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and 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.
14. **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>.
15. **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, and the West Virginia Insurance Commission. 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.
16. **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 material, 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.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. 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. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. 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
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).

Revised July 28, 2009

EXPRESSION OF INTEREST

#COM04

Department of Commerce Broadband (BTOP Grant) Engineering and Accounting for Grant Compliance

Part 1

GENERAL INFORMATION

1.1 Purpose:

The Acquisition and Contract Administration Section of the Purchasing Division "State" is soliciting Expression(s) of Interest (EOI) for Division of Commerce, State of West Virginia, from qualified vendors to provide engineering related services as defined in section two (2) and three (3).

1.2 Project:

The mission or purpose of the project described in sections 2 & 3 is to provide a qualified and experienced vendor that will serve as a "third" party principle to ensure engineering (technical), oversight, and accounting (including reporting) sufficient to validate overall grant compliance.

1.3 Format: N/A

1.4 Inquiries:

Additional information inquiries regarding this EOI must be submitted in writing to the State Buyer with the exception of questions regarding proposal submission, which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.16. All inquiries of specification clarification must be addressed to:

Chuck Bowman
Buyer Supervisor
Purchasing Division
P.O. Box 50130
Charleston, WV 25305-0130
Fax: (304) 558-4115
Charles.a.bowmanjr@wv.gov

The vendor, or anyone on the vendor's behalf, is not permitted to make any contact whatsoever with any member of the evaluation committee. Violation may result in rejection of the EOI. The State Buyer named above is the sole contact for any and all inquiries after this EOI has been released.

1.5 **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 an EOI, but the **successful vendor must** register and pay the fee prior to the issuance of an actual contract.

1.6 **Oral Statements and Commitments:**

Vendor must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between vendor's representatives and any State personnel are **not** binding. Only the information issued in writing and added to the Expression of Interest specifications file by an official written addendum is binding.

1.7 **Economy of Preparation:**

EOI's should be prepared simply and economically, providing a straightforward, concise description of vendor's abilities to satisfy the requirements of the EOI. Emphasis should be placed on completeness and clarity of content.

1.8 **Labeling of the Sections:** The response sections should be labeled for ease of evaluation.

1.9 **Submission:**

1.9.1 State law requires that the original expression shall be submitted to the Purchasing Division. All copies to the Purchasing Division must be submitted **prior** to the date and time stipulated as the opening date. All expressions will be date and time stamped on the Purchasing Division official time clock to verify time and date of receipt.

1.9.2 Vendors mailing expressions should allow sufficient time for mail delivery to ensure timely arrival. The Purchasing Division **CANNOT** waive or excuse late receipt of an expression which is delayed and late for any reason according West Virginia State Code §5A-3-11. Any EOI received after the bid opening time and date will be immediately disqualified in accordance with State law and the Legislative Rule 148-CSR-1.

Submit:

One original plus (4) convenience paper copies and one copy on CD to:

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

The outside of the envelope or package(s) should be clearly marked:

Buyer:	41
Req#:	COM04
Opening Date:	07/15/2010
Opening Time:	1:30 pm

1.10 Rejection of Expressions:

The State shall select the best value solution according to §5G-1-3 of the West Virginia State Code. However, the State reserves the right to accept or reject any or all expressions and to reserve the right to withdraw this Expression of Interest at any time and for any reason. Submission of, or receipt by the State of Expressions confers no rights upon the vendor nor obligates the State in any manner.

1.11 Incurring Costs:

The State and any of its employees or officers shall not be held liable for any expenses incurred by any vendor responding to this EOI for expenses to prepare, deliver, or to attend the short-list interviews.

1.12 Addenda:

If it becomes necessary to revise any part of this EOI, an official written addendum will be issued by the State to all potential vendors of record.

1.13 Independent Price Determination:

A contract will not be considered for award if the negotiated price was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor.

1.14 Price Quotations: No "price" or "fee" quotation is requested or permitted in the response.

1.15 **Public Record:**

1.15.1 *Submissions are Public Record.*

All documents submitted to the State Purchasing Division related to purchase orders/contracts are considered public records. All EOI's submitted by vendors shall become public information and are available for inspection during normal official business hours in the Purchasing Division Records and Distribution center after the expressions have been opened.

1.15.2 *Written Release of Information.*

All public information may be released with or without a Freedom of Information request, however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are \$0.50/page, or a minimum of \$10.00 per request, whichever is greater.

1.15.3 *Risk of Disclosure.*

The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets as submitted by a vendor are the only exemption to public disclosure. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State does not guarantee non-disclosure of any information to the public.

1.16 **Schedule of Events:**

Release of the EOI.....	June 17, 2010
Expressions of Interest	
Opening Date.....	July 15, 2010

1.17 **Mandatory Prebid Conference: N/A**

1.18 **Bond Requirements:**

1.19 **Purchasing Affidavit:**

West Virginia State Code §5A-3-10a (3) (d) requires that all vendors submit an Affidavit regarding any debt owed to the State and licensing and confidentiality certifications. The Affidavit **must** be signed and submitted prior to award. It is preferred that the Affidavit be submitted with the EOI.

PART 2**OPERATING ENVIRONMENT**

- 2.1 **Location:** Agency is located: West Virginia Department of Commerce, State Capitol Complex, Bldg. 6, Room 525 Charleston, WV.
- 2.2 **Background:**

Following is the overall description NTIA grant NT10BIX5570031.

In February 2010, West Virginia received full award of \$126,323,296.00 with an in kind/match of \$33,500,000.00. The link to the full grant is <http://www.recovery.wv.gov/Documents/WVBTOPApplication.pdf>.

The West Virginia Statewide Broadband Infrastructure Project extends broadband services across the state by leveraging existing infrastructure to build a middle mile network with Multiprotocol Label Switching (MPLS) over Microwave and Fiber technology. The proposed network will provide a backbone to community anchors, including: schools, libraries, hospitals, public safety agencies and jails.

Following is the Executive Summary of the grant submission.

Recognizing that broadband is imperative in serving its citizens and bringing economic development, West Virginia Governor Joe Manchin, III signed legislation creating the Broadband Deployment Council (BDC), an entity designed to facilitate innovative, quality, affordable broadband to all West Virginians. West Virginia is positioned to systematically and completely deploy broadband throughout the state, which will create a replicable model for other states to follow. West Virginia, located in the heart of Appalachia, is entirely mountainous, is the only state entirely located in the Appalachian Regional Commission, and has challenging demographics. Compared to the national averages, West Virginia's population is older; is less educated; lives in more rural areas; has a higher poverty rate; is in poorer health, including smoking, obesity, diabetes, and asthma; and lacks health insurance. Combined, these present West Virginia with unique broadband challenges. West Virginia's terrain is a major challenge for broadband deployment, as is reflected in the build out rate. This leaves a major part of the state's households with limited or no access to broadband. Coverage cannot be extended due to the cost of deployment and population scarcity. The most challenging parts of the state both demographically and topographically remain un-served. In order to facilitate broadband deployment; the delivery of critical public services in healthcare, education, and public safety; and private investment in infrastructure and technology applications for broadband, it is critical that West Virginia have a complete and robust middle mile. West Virginia's broadband deployment strategy

begins with the expedient, systematic, and sustainable build out of an open network middle mile solution that will provide fiber to critical community anchor tenants. Distribution of the bandwidth to support private, public, and individual connectivity will then occur through switching, routing, and leadership. This high quality middle mile is essential to last mile completion of broadband deployment, and will provide a full range of interconnect possibilities to meet provider, carrier, and end user requirements. West Virginia's strategy is designed to foster competition generated by built-in multiple accesses, with the foreseeable reduction in costs for service for actual end users.

Due to West Virginia's topographical and demographic challenges, this middle mile build out be completed by the private sector, partially due to the low take rate throughout the state. This is another hurdle that West Virginia must overcome. Statewide the take rate is 40.1%, a number so low that it illuminates the reality that the vast majority of the state has a much lower take rate. For a private provider, the costs are too high to reach too few customers who have not proven historically likely to purchase broadband services when provided. Left to pure market forces, West Virginia, and other rural areas, will have inferior technology or none at all.

To address demand and sustainability issues, the State, through the selection of the anchor tenants for the build out, designed the broadband deployment strategy to enhance critical services to citizens, which is paramount to building demand for robust broadband service. West Virginia's project is anchored by critical community facilities. West Virginia systematically assessed its schools, libraries, healthcare facilities, public safety institutions, and emergency response entities to determine those with adequate broadband infrastructure. The facilities identified in this grant application are unserved by fiber. The State's plan will deliver fiber and connectivity to that fiber to the facility/institution. This deployment of robust middle mile infrastructure would begin immediately upon receipt of funds. The requested service creates opportunity for redundancy, increased investment by private providers in response to the demand for enhanced services, and the deployment of current technology. This middle mile solution will push fiber into parts of the state where there is none, thus creating the opportunity for the build-out of broadband to homes, businesses, and other public institutions currently without access. The last mile solutions can now be technology neutral as backbone will exist where it previously did not.

West Virginia's approach serves other important goals and initiatives. The jobs created by this request are easily quantified. Extrapolating from U.S. Department of Commerce data, CWA estimates an employment multiplier effect of 19.5 jobs in telecommunications and information technology (IT) for every \$1 million invested. Secondly, the economic development benefits are well documented and the impact on this rural state will be profound and immediate. According to a Brookings study,

as detailed in a February 2008 report by Connected Nation, for every 1% increase in broadband penetration, employment is projected to increase by 0.2 to 0.3%. The U.S. Department of Commerce also determined that communities with broadband not only increased the employment rate by 1%, but added 0.5% to the growth of business establishments and 0.5% to the share of IT establishments. Thirdly, the services critically needed by West Virginia's vulnerable population (aged, more likely to suffer from chronic disease, more likely to be disabled, more likely to be undereducated) are enhanced and accelerated because the build out serves critical community facilities first, by design.

- **Healthcare** – The West Virginia Department of Health and Human Resources (DHHR) provided input into the overall strategy and is primed to be an anchor of the system. DHHR envisions the efficient delivery of healthcare through the use of electronic health records. DHHR's portion of the middle mile has been specifically designed to complement the federal initiative for Electronic Health Records (HER) and the state Health Information Network (HIN). The middle mile will provide access to over 25,000 providers serving doctor's offices, healthcare facilities, hospitals, and individuals. The bandwidth specifications and system deployment are designed to deliver healthcare to the West Virginians in greatest need of healthcare. These individuals are also the least likely to have access to a hospital.

- **Education** – As primary stakeholders, the West Virginia schools are in dire need of this middle mile solution in order to provide suitable bandwidth to an additional 471 schools. The West Virginia Department of Education has the history, and the vision, of investing in technology, but the most remote schools, which face the greatest challenges in student demographics, are the ones that have been left behind in bandwidth. West Virginia's strategy systematically addresses this problem and brings all West Virginia schools to the desired bandwidth.

- **Libraries** – Public libraries (176) complement West Virginia's education initiatives. The majority of the libraries are without sufficient broadband capability to serve the needs of a community public computing facility; this middle mile will serve to reach the general community during normal business hours and after hours. As the last mile solutions are developed and funded, the library system is essential to the Governor's goal of broadband accessibility for all citizens and businesses of West Virginia.

- **Public Safety** – The 53 (+2 redundancy) West Virginia public safety answering points (PSAPs) cannot function without the middle mile solutions. The PSAPs are ready and have sustainment funding earmarked for the last mile solution. Ultimately the PSAP solution will enable over 344 law enforcement (state police ((77)), county deputies/sheriff departments/police departments) and 447 volunteer and paid fire departments full broadband services. Geographic information system

Due to these considerations, a contract is essential providing service in the following areas:

Area 1: During the specification and engineering process, validate the specific engineering and specifications for compliance with grant guidance.

Area 2: During the physical construct of the grant concept, validate vendor/contractors/construction crews comply with the noted engineering specifications.

Area 3: During the completion and invoicing process, validate that the invoice is within the actual scope of work as detailed in the specifications and engineering process. This may be done under the confines of testing of network. Written validation of invoices may be required.

Area 4: Compile statistical data and prepare reports as required by grant processes.

Area 5: Serves as a third party auditor to validate the overall compliance with the terms and conditions of the grant award, while providing the WV Grant implementation team information, recommendations, and guidance as to the overall ongoing process.

3.2 Project Description:

The selected vendor serves as an agent to the Governor's Executive Office and WV Department of Commerce for grant oversight/validation/auditing/engineering.

The grant award is for three years, commencing February 1, 2010, with a substantial completion expected at the end of year two.

From a logical design, the grant implementation is divided into three categories:

Category 1: Fiber connectivity between West Virginia University (WVU), Morgantown, WV and National Radio Astronomy Observatory (NRAO), Greenbank, WV.

Category 2: Twelve tower sites requiring tower design, build, microwave connectivity, and connectivity off the tower site. Following are tower sites:

Cleveland Mountain	Webster Co.
Cottle Knob	Nicholas Co.
Franklin	Pendleton Co.
Five Forks	Calhoun Co.
Glenville	Gilmer Co.
Greenbrier	Greenbrier Co.
Kenna	Jackson Co.
Williamson	Mingo Co.
Sharps Knob	Pocahontas Co.
Snowshoe	Pocahontas Co.
Spencer	Roane Co.
Weirton	Brooke Co.

Category 3: Multiprotocol Label Switching (MPLS) connectivity to anchor tenants of public schools (K12); Public Safety Access Points (PSAP); County Courthouses; libraries, prisons/jails, and health facilities (see grant for details).

Each noted category requires specific and unique engineering design which we expect to be completed as follows:

Category 1: NRAO personnel, via a Steering Committee, are in the process of developing the overall standards for the connectivity. Engineering, Design, and Installation will likely be a process of an established telecommunications provider vendor.

Category 2: Vendors specifically associated with tower engineering, design, applicability, etc. under the auspices of DHHR.

Category 3: The MPLS efforts will be accomplished via an existing contract with Verizon which, after the merger will be honored by Verizon. The following entities will be most involved with engineering associated with the MPLS category: Department of Education technical personnel; Governor's Office of Technology, Verizon/Fibernet, and others.

Specifically, but not limited to, following are expectations resultant from this potential award.

Chosen vendor will:

Validate engineering design of each of the noted categories prior to, during and after installation.

Provide written validation of invoices, directly their compliance with chosen engineering, value, and compliance within the confines of the grant process.

Provide oversight via validation of network and other engineering as an end state.

Provide final drafts of engineering, financial, compliance, and progress reports that are complete, accurate, and meet grant guidelines.

Serve as an independent auditor/reviewer of all grant processes in order to ensure full compliance with the grant and related processes.

Serves as third party validation authority on noted processes.

There may be interaction with parties such as vendors, anchor tenant representatives, grant program managers, participants, and others.

Provide on site and remote personnel as required to accomplish work detailed in conjunction with proposal.

Provide necessary tools such as computers, test devices, etc to accomplish task associated with proposal.

Vendor must provide methodology for documentation of effort while understanding that all work/products remain owned by the State of West Virginia.

3.3 Special Terms and Conditions:

3.3.1 Bid and Performance Bonds: N/A

3.3.2 *Insurance Requirements:* \$1,000,000 General Liability per Occurrence
 \$2,000,000 Aggregate
 \$1,000,000 Automobile Liability
 --- \$1,000,000 Professional Liability
 Workers Compensation Certificate upon award
 West Virginia Statutory requirements including
 West Virginia Code §23-4-2 (Mandolidis)

3.4 **General Terms and Conditions:**

By signing and submitting the EOI, the successful vendor agrees to be bound by all the terms contained in Section Three (3) of this EOI.

3.4.1 *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.

3.4.2 *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.

3.4.3 *Certifications Related to Lobbying:*

Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, 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.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or 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 vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

3.4.4 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 all individuals employed pursuant to the terms of this EOI 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.

The 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.

The Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against 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.

3.4.5 *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 vendor 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.

3.4.6 *Contract Provisions:*

After the most qualified vendor is identified, and fee negotiations are concluded, a formal contract document will be executed between the State and the vendor. The order of precedence is the contract, the EOI and the vendor's response to the EOI.

3.4.7 *Governing Law:*

This contract shall be governed by the laws of the State of West Virginia. The vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

3.4.8 *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.

3.4.9 *Subcontracts/Joint Ventures:*

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.

3.4.10 *Term of Contract:*

This contract will be effective (date set upon award) and shall extend until the scope of work is complete or for one (1) consecutive twelve (12) month period. The contract may be renewed upon mutual consent for two (2) consecutive years one (1) year periods or until such reasonable time as may be necessary to obtain a new contract or to complete work.

3.4.11 *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 this 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.

3.4.12 *Contract Termination:*

The State may terminate any contract resulting from this EOI immediately at any time the vendor fails to carry out its responsibilities or to make substantial progress under the terms of this EOI 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 contained in the notice, the State shall issue the vendor an order to cease and desist 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.

3.4.13 *Changes:*

If changes to the original contract become necessary, a formal contract change order will be required. Prior to any work being performed, the change must be negotiated and approved by the State, the Agency and the vendor. 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 prior to the effective date of such amendment. **NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**

3.4.14 *Invoices, Progress Payments, & Retainage:*

The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Progress payments may be made at the option of the Agency based on percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.

If progress payments are permitted, vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to Agency with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the vendor's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

3.4.15 *Liquidated Damages:*

According to West Virginia State Code §5A-3-4(8), vendor agrees that liquidated damages shall be imposed at the rate of N/A per workday, for failure to provide deliverables at the agreed upon date identified in the final contract. This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue to any other additional remedy to which the State or Agency may have legal cause for action including further damages against the vendor.

3.4.16 *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 the 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 the vendor.

PART 4**EVALUATION & AWARD****4.1 Evaluation and Award Process:**

- a) **Expressions of Interest will be evaluated and awarded in accordance with §5G-1-3 “Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.”**

“In the procurement of architectural and engineering services for projects estimated to cost two hundred and fifty thousand dollars or more the director of purchasing shall encourage such vendors engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications, and performance data and may include anticipated concepts and proposed methods of approach to the project. All such jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three [§59-3-1et seq.] A committee comprised of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by the interested vendors and select three vendors which in their opinion are the best qualified to perform the desired service. Interviews with each vendor selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and the proposed methods of approach to the assignment. The committee shall then rank in order of preference no less than three professional vendors deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional vendor for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional vendor considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the vendor of second choice shall commence. Failing accord with the second most qualified professional vendor, the committee shall undertake price negotiations with the third most qualified professional vendor. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional vendors, it shall select additional professional vendors in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.”

b) The evaluation criteria and assigned point values are as follows:

(1) **Qualifications:.....(40 points)**

- Engineers
- Staff – capable of working with stakeholders, state & local leaders, National and State level grant staff.
- Grant writers
- Grant executors
- Overall ability to lead grant engineering validation and reporting processes

(2) **Experience:.....(40 points)**

- Proven results with large projects
- Demonstrated successes in engineering consultation, preparation of accurate and timely grant reporting, including final and closeout reporting.
- Proven knowledge of applicability of overall grant concept

(3) **Oral Interview/Concept(20 points)**

- Overall concept understandable with regard to delivery, presentation depth, and execution of provided concept
- Illustrate ability and understanding of dealing with complex NTIA and NOAA or similar grant applicability and reporting process

Total Points.....(100 points)

Note: The format for the presentations will be a 15 – 30 minute PowerPoint presentation consisting, at a minimum, of the following:

- Corporate/personnel qualifications to accomplish project.
- Corporate/personnel illustration of experience commensurate with such a project.
- Key personnel available for proposed work.
- Proposed project management and execution plan.
- Proposed subcontractors
- Project cost control.
- Overall quality control

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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 owed 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 exceed 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.

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.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____