



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
INS11010

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
SHELLY MURRAY 304-558-8801

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

INSURANCE COMMISSION

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

SHIP TO

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
03/03/2011				

BID OPENING DATE: 03/31/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		961-72		
<p>OPEN END CONTRACT</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA INSURANCE COMMISSION, IS SOLICITING BIDS FOR TRANSCRIPTION AND DECISION TYPING SERVICES PER THE ATTACHED SPECIFICATIONS.</p> <p>TECHNICAL QUESTIONS MUST BE SUBMITTED IN WRITING TO SHELLY MURRAY IN THE WEST VIRGINIA PURCHASING DIVISION VIA MAIL AT THE ADDRESS SHOWN AT THE TOP OF THIS RFQ, VIA FAX AT 304-558-4115, OR VIA E-MAIL AT SHELLY.L.MURRAY@WV.GOV. DEADLINE FOR ALL TECHNICAL QUESTIONS IS 03/15/2011 AT THE CLOSE OF BUSINESS. ALL TECHNICAL QUESTIONS RECEIVED, IF ANY, WILL BE ADDRESSED BY ADDENDUM AFTER THE DEADLINE.</p> <p>TRANSCRIPTION SERVICES</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE UPON AWARD 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>						

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

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. 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).



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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> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A</p>						

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<p>WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, 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>EXHIBIT 6</p> <p>PRICE ADJUSTMENT PROVISION: THE STATE OF WEST VIRGINIA WILL CONSIDER BIDS THAT CONTAIN PROVISIONS FOR PRICE ADJUSTMENTS PRIOR TO THE ORIGINAL EXPIRATION OF THE CONTRACT, PROVIDED THAT SUCH PRICE ADJUSTMENT COVERS BOTH UPWARD AND DOWNWARD MOVEMENT OF THE COMMODITY PRICE, AND THAT ADJUSTMENT IS BASED ON THE "PASS THROUGH" INCREASE OR DECREASE OF RAW MATERIALS AND/OR LABOR, WHICH MAKE UP ALL OR A SUBSTANTIAL PART OF A PRODUCT. ADJUSTMENTS ARE TO BE BASED UPON AN ACTUAL DOLLAR FIGURE, NOT A PERCENTAGE. ALL PRICE ADJUSTMENT REQUESTS MUST BE SUBSTANTIATED IN A MANNER ACCEPTABLE TO THE DIRECTOR PURCHASING, E.G. GOVERNMENTAL BENCH MARKS, GENERAL MARKET INCREASE, PUBLISHED PRICE LISTS. SUCH REQUESTS FOR AND INCREASE</p>						

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<p>SHOULD BE RECEIVED IN WRITING BY THE DIRECTOR OF PURCHASING AT LEAST 30 DAYS IN ADVANCE OF THE EFFECTIVE DATE OF THE INCREASE. ANY TIME THE VENDOR REQUESTS A PRICE ADJUSTMENT, THE PURCHASING DIVISION MAY EITHER ACCEPT THE PRICE ADJUSTMENT AND AMEND THE CONTRACT ACCORDINGLY OR REJECT THE ADJUSTMENT IN ITS ENTIRETY AND CANCEL THE CONTRACT.</p> <p>PREFERRED TERMS: IT IS PREFERRED THAT THE PRICES ON THIS CONTRACT ARE FIRM FOR LIFE OF THE CONTRACT, AS INDICATED IN THE LIFE OF CONTRACT CLAUSE CONTAINED HEREIN, NOT TO EXCEED ONE (1) YEAR.</p> <p>PASS THROUGH PRICE INCREASES WILL BE CONSIDERED AT TIME OF CONTRACT RENEWAL ONLY.</p> <p>EXHIBIT 4</p> <p>LOCAL GOVERNMENT BODIES: UNLESS THE VENDOR INDICATES IN THE BID HIS REFUSAL TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO COUNTY, SCHOOL, MUNICIPAL AND OTHER LOCAL GOVERNMENT BODIES, THE BID SHALL EXTEND TO POLITICAL SUBDIVISIONS OF THE STATE OF WEST VIRGINIA. IF THE VENDOR DOES NOT WISH TO EXTEND THE PRICES, TERMS, AND CONDITIONS OF THE BID TO ALL POLITICAL SUBDIVISIONS OF THE STATE, THE VENDOR MUST CLEARLY INDICATE SUCH REFUSAL IN HIS BID. SUCH REFUSAL SHALL NOT PREJUDICE THE AWARD OF THIS CONTRACT IN ANY MANNER.</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING</p>						

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<p>CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</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: SHELLY MURRAY</p> <p>RFQ. NO.: INS11010</p> <p>BID OPENING DATE: 03/31/2011</p> <p>BID OPENING TIME: 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p>						

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CONTACT PERSON (PLEASE PRINT CLEARLY):						

***** THIS IS THE END OF RFQ INS11010 ***** TOTAL: _____						

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Purpose: To obtain a contractor to provide Transcription and decision typing services to the West Virginia Workers' Compensation Office of Judges.

OPERATING ENVIRONMENT:

Location: Agency is located at One Players Club Drive, Charleston, WV 25311.

Background: The Workers' Compensation Office of Judges conducts hearings, receives and weighs evidence and arguments and then issues written decisions in appeals from initial claim management decisions made by insurance carriers or by self-insured employers or their agents. Transcription and decision typing services are needed in order to process pending appeals in a timely manner.

PROCUREMENT SPECIFICATIONS

1) General Requirements of the Vendor:

- a) Vendor is to provide professional transcription services to the Workers' Compensation Office of Judges.
- b) The successful vendor will transcribe, from cassette tapes, hearings conducted by the Office of Judges regarding disputed Workers' Compensation claims.
- c) The successful vendor will provide a system allowing for Office of Judges employees to dictate decisions or orders via the telephone or other electronic transmission system and typing these documents within required time periods.
- d) The successful vendor shall have the ability to securely transfer electronically the transcribed documents to Office of Judges for printing at their location.

2) Scope of Work:

- a) Decisions/Orders from Cassette Tapes – The successful vendor will transcribe decisions/orders from cassette tapes if electronic means is unavailable due to malfunction of equipment. If vendor's equipment malfunctions, it must be repaired within a maximum of three (3) working days. The cassettes shall be delivered via U. S. Mail to the successful vendor at the mailing address specified by the vendor, unless other arrangements are mutually agreed to by the vendor and the Office of Judges. It is also a requirement that the vendor be available for in-person pick-up of cassettes at One Players Club Drive, Charleston, West Virginia.
- b) Searchable Data Base Program – It is the desire of the Office of Judges for the vendor to provide and maintain a searchable database program of all decisions and transcripts available on either Boolean or natural language search which will produce a listing of all files having the search criteria, as well as a highlighted display of the searched words with the file. For example, all the transcripts with the words "fatal" and "cardiac" will be listed in a directory-style listing and the transcripts will come up one at a time with the keywords fatal and cardiac highlighted every time they appear in each document.

- c) Electronic Transfer of Documents – The vendor must have the ability to electronically mail decisions/transcripts to Office of Judges in format compatible with the Office of Judges software such as Word 2007.

The vendor must have the ability to electronically mail the typed decisions/orders to the electronic mail address provided by the Office of Judges for printing at the local site within 48 hours of receiving the dictation. For example, a decision dictated by 5:00 p.m. on Friday, must be transcribed and returned to the Office of Judges no later than 5:00 p.m. on Tuesday. The vendor selected must indicate the security in place for electronic transfer of information. The vendor must accommodate the requirement of the Office of Judges to prioritize the order in which the dictations of decisions are typed.

The successful vendor will retain a "copy" of the electronically transmitted documents for a 45-day period. The successful vendor will provide to the Office of Judges the previous month's transcription of decisions/orders on a mass magnetic storage device (such as a compact disc) within ten (10) days of the end of each month.

If electronic mail is unavailable for a 24-hour period, the successful vendor shall deliver the transcribed decisions/orders to the Office of Judges by magnetic mass storage device (such as a compact disc).

- d) Confidentiality – The successful vendor agrees to keep all dictation of decisions/orders, and storage of those decisions/orders confidential and as secure as possible.
- e) Accuracy – The quality of the decisions/orders/transcripts shall be subject to a quality review by the Office of Judges. If the quality of the documents falls below 95% accuracy or if there is a consistent loss of dictation material (either to or from the Office of Judges and the successful vendor) the contract may be terminated as defined in this RFQ. The Office of Judges considers three or more errors per page of typed decision/order/transcript to exceed an acceptable level. This includes typing, grammar and English context or spelling errors. If the vendor fails to cure and the contract is terminated, all work in progress shall be delivered to the Office of Judges.

3) Project:

- a) Transcribing of Hearings – The Office of Judges conducts hearings that are digitally recorded to be transcribed. These include (but may not be limited to) evidentiary hearings, occupational pneumoconiosis board hearings, final permanent total disability hearings and other assigned types of hearings. The specific number of hearings held varies from month to month. The Office of Judges estimates 75 hearings recorded digitally to be transcribed per month.

Transcripts shall be typed in the following manner:

- The first page shall have 1" margin at top.
- All subsequent pages shall have header on line 5 leaving 5/8" margin at top. All pages shall have 1" margin on left and 5/8" margin on the right side.
- Single spacing Questions and Answers format.
- Arial 12 point Font type size.
- Index of Direct, Cross, Redirect, Recross, etc. on second page.
- Certification on last page
- Header with claimant name and claim number
- The first typing line is line 8 on all pages after first and end on line 59 leaving 51 typing lines on page.

The completed transcripts shall be printed on 8.5" by 11", 20# White bond as "mini-pages" using four-to-a-page compatible with existing MS Word 2007.

- b) Typing of Decisions/Orders – The Office of Judges has approximately 20 individuals reviewing claim files and dictating decisions. These decisions vary in length from two pages to as many as 18 pages. A "typical" decision is 5 – 7 pages. The Office of Judges issues approximately 300 decisions per month.

Decisions shall be typed in the following manner:

- The first page shall have 1" margin.
- All subsequent pages shall have header on line 5 leaving 5/8" margin at top. All pages shall have 1" margin on left-hand side and a 3/4" margin on the right hand side of each page.
- The first typing line on page 1 is "7" and shall end at approximately "59", for 52 typing lines on page 1.
- All subsequent pages shall begin on line "8" and end approximately on line "59" leaving 51 typing lines per page.
- Single space with appropriate paragraphing.
- Arial 12 point Font type size.

"Standard" decisions are attached to this RFQ for the Office of Judges (**Attachment A**) to show the form of the respective decisions/orders.

The persons dictating the decisions/orders will reference certain preformatted language. The Office of Judges uses approximately 55 of the preformatted "paragraphs". The Office of Judges will update and change the preformatted language as necessary.

The vendor must have the ability to accommodate the possibility that all decisions/orders writers may be dictating simultaneously. All cost necessary to accommodate this level of dictation, is a cost of doing business with the agency similar to all other overhead and must be calculated within the vendor's price/cost per page quotation.

4) General Terms and Conditions:

By signing and submitting its bid, the successful Vendor agrees to be bound by all the terms contained in this RFQ.

a) *Conflict of Interest:*

Vendor affirms that neither it nor its representatives have any interest nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

b) *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 or to pursue any other remedies available under this contract or by law.

c) *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.

d) *Vendor Relationship:*

The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this RFQ and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *et cetera* 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.

e) *Indemnification:*

The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage laws.

f) *Contract Provisions:*

The RFQ and the Vendor's response will be incorporated into the contract by reference. The order of precedence shall be the contract, the RFQ and any

addendum, and the Vendor's bid in response to the RFQ.

g) *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 and regulations as provided by Federal, State, and local governments.

h) *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.

i) *Subcontracts/Joint Ventures:*

The Vendor may, with the prior written consent of the State, enter into subcontracts for performance of work under this contract.

j) *Term of Contract & Renewals:*

This contract will be effective upon award 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 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 providing services pursuant to the terms of the contract.

k) *Non-Appropriation of Funds:*

If funds are not appropriated for the Agency in any succeeding fiscal year for the continued use of the services covered by this contract, the State may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The State shall give the Vendor written notice of such non-appropriation 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.

l) *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 may endanger the contract's continuation. If after such notice the Vendor fails to remedy the conditions within the established timeframe, the State shall order the Vendor 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 be terminated by the State with thirty (30) days prior notice pursuant to **West Virginia Code of State Rules § 148-1-7.16.2.**

m) *Changes:*

If changes to the contract become necessary, a formal contract change order will be negotiated by the State, the Agency, and the Vendor.

As soon as possible, but not to surpass thirty (30) days after receipt of a written change request from the Agency, 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. The Vendor shall provide a description of any price change associated with the implementation.

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

n) *Invoices:*

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.

o) *Record Retention (Access & Confidentiality):*

Vendor shall comply with all applicable Federal and State rules, 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 such records available to Agency personnel at the Vendor's location during normal business hours upon written request by the Agency within ten (10) days after receipt of the request.

Vendor shall have access to private and confidential data maintained by the Agency to the extent required for the 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 the 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.

- p) *License Requirements:*
Successful Vendor must present evidence of certification or licensure with the West Virginia Workers Compensation and Unemployment Funds, a copy of its W. Va. Business Certificate and any other licenses it may be required to hold by the nature of its operation.
- q) *Debarment and Suspension:*
Successful Vendor must certify that no entity, agency or person associated with the Vendor is currently debarred or pending suspension from conducting business with any governmental unit.
- r) *Purchasing Affidavit:*
West Virginia Code §5A-3-10a requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the bid.
- s) *Resident Vendor Preference:*
In accordance with **West Virginia Code** §5A-3-37, Vendors may make application for Resident Vendor Preference. Said application must be made on the attached Resident Vendor Certification form at the time of bid submission.
- t) *Special Terms and Conditions:*
Not Applicable
- u) *RFQ Sections:*
There are two sections required for vendor response to this request for quotations. Attachment B: Acknowledgment of Mandatory requirements and Attachment C: Cost proposal.

Attachment B: Mandatory Requirements Acknowledgement and Signature Page

By signing this page vendor certifies that they have read and understand all requirements of this request for quotations and can provide the services in the manner requested by the agency.

Attachment C: Cost Proposal

Cost must be all inclusive. The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract. All cost associated with the provision of this service must be included in the cost per page.

STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES
P.O. Box 2233, Charleston, WV 25328
Telephone (304) 558-0852

IN THE MATTER OF:

RE: OOJ Case ID: OOJ-A310-000950

CLAIMANT

JCN: 2010129747

and

CRN: 2010006175

D.O.I.: 03/30/2010

EMPLOYER**DECISION OF ADMINISTRATIVE LAW JUDGE****PARTIES:**

Claimant, _____ by counsel, Patrick K. Maroney
Employer, _____ by counsel, Bradley A.
Crouser

ISSUE:

The claimant protested the Order of April 7, 2010 rejected the claim, as it was found to be an aggravation of the injury in Claim No. 2009016124.

DECISION:

It is ORDERED that the Order of April 7, 2010 be AFFIRMED.

RECORD CONSIDERED:

See attached.

FINDINGS OF FACT:

1. On July 16, 2009, the claimant suffered an injury to his right hip, right shoulder, neck and thoracic spine. The claim was eventually held compensable for 843.9, sprain of unspecified site of hip and right thigh; 847.2, lumbar sprain; 924.01, acromioclavicular joint and ligament sprain on right; 923.00, contusion to right shoulder; and 847.0, neck sprain. The claimant missed work on this injury until approximately March 5, 2010, when he returned to work on restricted duty.

2. On March 30, 2010, the claimant was working on the No. 6 furnace. He was putting a dog bone shackle on it. This is a large shackle with a

steel pin used to move the electrodes in the furnaces. While doing this, he strained his back. He was taken to the Emergency Room at Montgomery General Hospital. He was given two shots and some pills and was told to see his treating physician. The claimant was thereafter treated primarily by Bobby Green, D.C., of Fayetteville Chiropractic.

3. The instant claim was filed on or about March 30, 2010. By Order entered April 7, 2010, the claim was rejected, as the subject of the claim was an aggravation/recurrence of a pre-existing condition. The Order stated "This claim is an aggravation of Claim No. 2009016124. Please submit all requests for treatment and correspondence in this claim number." The claimant protested this Order.

4. The claimant petitioned to reopen Claim No. 2009016124 by application of April 5, 2010. By Order entered April 7, 2010 in that particular claim, the claim was reopened, and it was found that the injury of March 30, 2010 was an aggravation of the July 16, 2009 injury. A companion Order of April 7, 2010 in Claim No. 2009016124 granted temporary total disability benefits from March 30, 2010 through April 29, 2010. An Order of April 19, 2010 authorized chiropractic treatment in Claim No. 2009016124. A second Order of April 19, 2010 authorized rehabilitation services in that same claim. There is no indication that the claimant has protested any of these Orders.

5. The employer introduced the claimant's March 30, 2010 application for benefits. This stated that the injury occurred to his right side, right leg, hip, back, neck and shoulder while installing a dog bone shackle. Section II of the application listed the injury as thoracic and lumbar sprain/strain.

6. The employer introduced the July 16, 2009 application for benefits for Claim No. 2009016124. This listed how the injury occurred when a carbon electrode mashed him against a steel platform on which he was standing.

7. The employer introduced medical records from Montgomery General Hospital. A July 16, 2009 x-ray report was of the pelvis, right hip and right femur. There was a small hypertrophic spur at the right femoral head adjacent to articular space. The study was otherwise negative. This is a degenerative change.

A July 15, 2009 Emergency Room record from Montgomery General Hospital showed the claimant appeared for injury to the right thigh, right hip and right shoulder. He had swelling of the right hip area. A carbon electrode fell on the patient. No bruising or abrasions were noted. He was moving all extremities well without difficulty. No fracture was found. This was found to be a machinery crush injury.

A July 16, 2009 x-ray of the right shoulder showed degenerative changes

at the right acromioclavicular joint. The study was otherwise negative.

A July 20, 2009 x-ray of the lumbar spine showed degenerative changes.

A July 20, 2009 x-ray of the right elbow was negative.

8. The employer introduced the July 23, 2009 Order entered in Claim No. 2009016124 for the July 16, 2009 injury holding that compensable for 924.01, confusion of the hip, and 923.00, confusion of the shoulder region.

9. The employer introduced a September 29, 2009 independent medical examination of Prasadarao B. Mukkamala, M.D., rendered in Claim No. 2009016124. Dr. Mukkamala examined the claimant on September 21, 2009. The conditions he was instructed to evaluate were 843.9, sprain of unspecified site of the hip and thigh on the right; 847.2, lumbar sprain; 924.01, acromioclavicular joint and ligament strain on the right; 923.00, contusion to the right shoulder; and 847.0, neck sprain.

The claimant complained of pain in the right hip and thigh, right elbow and right shoulder. He complained of pain and stiffness in his neck and low back as well. He was 56 years old. He was 5 feet 10 1/2 inches tall and weighed 197 pounds. Radiological findings showed degenerative changes in the right acromioclavicular joint, right femoral head and lumbosacral spine. Otherwise, they were negative.

Dr. Mukkamala found the claimant had not reached maximum medical improvement from the injury. He recommended an MRI of the right shoulder and two weeks of aggressive physical therapy followed by two more weeks of work conditioning. He felt the claimant could probably do light duty but should be able to return to his normal job duties after his recommended therapy.

10. The employer introduced an October 16, 2009 MRI of the cervical spine from Raleigh General Hospital. This showed a mild midline disc bulging and disc degeneration at C5-6, as well as multilevel disc degeneration in each cervical disc. There was also mild cervical vertebral body lipping.

11. The employer introduced the February 17, 2010 independent medical examination of Saghir Mir, M.D., orthopedic surgeon. This was rendered in Claim No. 2009016124. He examined the claimant on February 17, 2010. The claimant was complaining, at that time, of aching, throbbing and burning-type pain in the right cervicospinal and trapezius muscle areas all the time. He described swelling over the trapezius muscle just over the collarbone. His neck would stay stiff. Intermittently, he would have pain going to the right upper arm. He occasionally had numbness and tingling in the right hand. He claimed that there were no symptoms in the left arm or shoulder. He had aching, throbbing and burning pain in the low back and right buttock all the time.

Intermittently, the pain would go into his right leg down to his foot. He had no symptoms in the left leg. He had occasional numbness and tingling in the right leg. Prolonged sitting, standing, walking and riding in a car increased the symptoms. Lying down would help to some extent.

The claimant told Dr. Mir he had a left shoulder and neck injury in 2007. He stated that he injured his left fourth toe in November 1992.

Dr. Mir found cervical range of motion somewhat restricted. There might have been some localized swelling on the right trapezius muscle above the right collarbone area. There was no gross muscle spasm noted. The shoulder showed no atrophy. There was some swelling on the right side of the neck at the trapezius. The claimant stated that he had a previous shoulder injury, but this was to the left shoulder. However, records showed he had a cervical MRI, as a result of this. Dr. Mir felt it would be interesting to see previous compensation records to see if the claimant had a prior injury to his neck at that time, and if he had received an impairment rating. Three to four months after the date of injury of July 16, 2009, the neck was added as a compensable component of this claim.

Dr. Mir found the claimant had reached his maximum medical improvement. He could continue periodic follow-up for symptomatic treatment for a couple of month intervals with his treating physician. However, Dr. Mir felt he had reached the maximum degree of improvement from any further chiropractic care. He recommended an impairment rating for the cervical spine, lumbar spine, right hip and right shoulder.

12. The employer introduced the claim application for the March 30, 2010 injury. The claimant listed the injured areas as his right side, right leg, right hip, back, neck and right shoulder. Section II of the application listed the injury as thoracic and lumbar strain.

13. The employer introduced the March 30, 2010 accident investigation by the employer. It stated the claimant was unhooking six C electrode on No. 6 furnace. He was installing a dog bone shackle on the 6C electrode holder. After doing this, he felt pain in his back area.

14. The employer introduced the April 5, 2010 reopening application for Claim No. 2009016124 mentioned *supra*, as well as the Orders granting benefits in that claim, as a result of the reopening.

15. The employer introduced the May 20, 2010 independent medical examination of Michael Condaras, D.C., for Claim Number 2009016124. Dr. Condaras was aware of the March 30, 2010 injury. The claimant was still not working. The claimant told him that chiropractic treatment offered relief for only one to two days at a time. Dr. Condaras found the claimant had reached

maximum medical improvement. He found that no further diagnostic testing or treatment would enhance his condition. No maintenance treatment was required. No further chiropractic treatments were recommended, and he found that any further chiropractic treatment would be considered excessive.

16. The employer introduced the December 30, 2009 notes of Rajesh Patel, M.D. The claimant was complaining of neck pain, right arm pain, back pain, right hip pain, and leg pain since July 2009. An MRI was reviewed, and it showed a disc bulge at C5-6 "with no significant herniations noted." Dr. Patel told the claimant his pain was actually centered more in the brachial plexus area and not necessarily the cervical spine area. "His MRI does not show any significant herniations and I am not sure if a surgical discectomy infusion would be in his best interest." Dr. Patel recommended pain management.

17. The employer introduced the December 31, 2009 request of Dr. Patel for authorization in Claim No. 2009016124 to add a herniated cervical disc.

18. The employer introduced the February 9, 2010 Order of the Claim Administrator in Claim No. 2009016124 denying the request to add a cervical herniated disc as a compensable component. This was based on the MRI of October 16, 2009, which did not show the claimant suffered from a cervical herniated disc.

19. The employer introduced the April 2, 2010 determination of the StreetSelect Grievance Board from Claim No. 2009016124. The Board met to reconsider the denial of the request to add 722.0, cervical herniated disc as a compensable component. The Board members found that there was no diagnostic evidence of any cervical herniated disc. Dr. Patel actually mentioned this fact and then at the same time, asked that the diagnosis be added. There was also evidence of preexisting conditions.

20. The employer introduced the April 12, 2010 Order of the Claim Administrator in Claim No. 2009016124 denying the cervical herniated disc, based upon the determination of the StreetSelect Grievance Board.

21. The employer introduced records from Fred Akerberg, M.D. A December 6, 1991 entry showed the claimant appeared for follow-up on ulcer disease. He also had pain in his back from an injury on November 19, 1991, which occurred when he picked up a heavy piece of metal and hurt his back.

An August 26, 1992 injury showed he had been complaining of a stiff neck for four days, as well as stiffness and pain in the right shoulder.

22. The employer introduced the January 25, 1995 treatment note of M.A. Ghannam, M.D. This was an otolaryngological examination. Dr. Ghannam noted in this that the claimant's neck revealed tenderness in the right upper neck

and cervical vertebrae.

23. The employer introduced an April 23, 2009 independent medical examination of Luis Loimil, M.D., in Claim No. 2008032718. This was for an injury, which occurred on October 13, 2008. The claimant did not lose work time, as a result of this injury. He had stepped over something to turn off a valve and slipped. He grabbed a hose and landed on his feet. This caused him to pull his neck, mid-back, and left posterior rib area. Dr. Loimil found the claimant to be at his maximum medical improvement. He recommended an impairment award for the cervical spine and thoracic spine. He noted that the claimant was going to Bobby Green, D.C., for treatment. The claimant did not mention any other work injuries to the neck or other areas of the body.

24. The employer introduced the October 5, 2009 MRI of the right shoulder from Raleigh General Hospital. This showed no obvious acute fracture or subluxation. There was no obvious acute rotator cuff tear. There was some scarring of the bursal surface of the supraspinatus tendon and distal intrasubstance fibers of the infraspinatus tendon. This was consistent with fibrosis. He found degenerative changes of the labrum and also findings most consistent with enchondroma of the humeral head.

25. The employer introduced the January 17, 2002 treatment note of H.S. Ramesh, M.D. The claimant was complaining of pain in both hands, both arms and the right shoulder. It was the same since his last visit. There was no mention of when the last visit was. The impression was left wrist carpal tunnel syndrome and myofascial pain syndrome and also cervical sprain/strain.

A September 24, 2002 entry by Dr. Ramesh showed the claimant complaining of pain in the neck and left shoulder area, the same since his first visit. The impression was the same as the January 17, 2002 visit. Dr. Ramesh prescribed physical therapy and also an injection to the wrist.

26. The claimant testified in a deposition of July 13, 2010. He stated that on March 30, 2010, he was on restricted duty. His normal job was pipe fitting and assembling electrodes. He had been sent to No. 6 furnace and was putting a dog bone shackle on the electrode. While doing this, he pulled his back. He was working with a coworker. He went to Montgomery General Hospital Emergency Room. He was given two shots and some pills and told to see his treating physician, which was Dr. Green, D.C.

He had injured his back in July 2009. He had returned to work on either March 4 or March 5 of 2010. The claimant stated that he had a herniated disc in his neck, although there is no clinical evidence or radiological evidence, which substantiates this. He said that his July 2009 injury was different from the one in March 2010, as he had been told by the doctor at the Emergency Room that he had sciatica. He was currently not working. He was still seeing Dr. Green, the

chiropractor but was paying for this himself.

27. The claimant introduced the March 30, 2010 accident investigation report of the employer, mentioned *supra*.

28. In a closing statement of November 11, 2010, the employer argued that there was considerable evidence in the file showing previous injuries to the spine even before the July 2009 injury. There were radiological studies showing degenerative changes in 2008. The claimant had been treated by a chiropractor prior to the 2009 injury even. There was evidence of multilevel disc degeneration in the cervical spine. The employer stated this all showed the claimant did not sustain a new injury.

29. The claimant introduced his March 30, 2010 claim application mentioned *supra*, the April 7, 2010 Order rejecting the claim, as there was an aggravation of the previous injury, March 30, 2010 records from Montgomery General Hospital, which have already been mentioned.

DISCUSSION:

W. Va. Code §23-4-1g provides that, for all awards made on and after July 1, 2003, the resolution of any issue shall be based upon a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considered and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

A preponderance of evidence shows that this is an aggravation of the July 16, 2009 injury. The claimant's complaints were identical to the injury of July 16,

2009, after the March 30, 2009 injury. In fact, he was still complaining of those complaints resulting from the July 2009 injury when he was examined by Dr. Mukkamala on September 22, 2009 and by Dr. Mir on February 17, 2010. He had returned to work on March 4 or 5, 2010, on modified duty. He was still having the same complaints. The evidence of record does not indicate that a new injury occurred. The claimant had only been back to work a short time and was still suffering back pain. It is apparent in this case that he has re-aggravated his July 16, 2009 injury.

Furthermore, the July 16, 2009 claim has been reopened, and the claimant was paid benefits, both in the form of temporary total disability benefits and treatment in that claim. There is no evidence the claimant ever protested any of these Orders. Therefore, it is found that a final Ruling has been issued holding that the incident on March 30, 2010 was an aggravation of the July 16, 2009 injury. This is now the law of the case regarding whether a new injury occurred on March 30, 2010, or an aggravation of the July 16, 2009 injury. Accordingly, the rejection of the claim of March 30, 2010, as a re-aggravation of the July 16, 2009 injury should be affirmed.


CONCLUSIONS OF LAW:

The claimant suffered an aggravation of his July 16, 2009 injury on March 30, 2010. He had only returned to work on March 4, 2010 or March 5, 2010. It is therefore ORDERED that the Order of April 7, 2010 be AFFIRMED.

APPEAL RIGHTS:

Under the provisions of W.Va. Code §23-5-12, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. The appeal shall be filed with the Board of Review at P.O. Box 2628, Charleston, WV, 25329.

DATE: January 26, 2011


Henry Haslebacher, Deputy Chief
Administrative Law Judge

HH:lm:srp:tlh

cc:

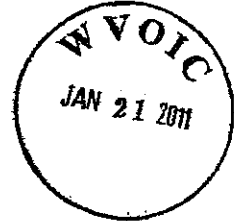
Thomas Patrick Maroney

Timothy Huffman
Brickstreet Mutual

JAN 20 2011

WORKERS' COMPENSATION OFFICE OF JUDGES

and)
) Claimant)
) Claim No. A310-002317)
))
))
) Employer)
))



Transcript of proceedings had or testimony adduced at a hearing held in the Workers' Compensation Office of Judges, Beckley, WV, on the 11th day of January, 2011, pursuant to notice duly given to all interested parties.

BEFORE: MARK C. CAMPBELL, Administrative Law Judge

APPEARANCES:

660 COLEMAN
 F, Claimant

REGINALD HENRY, Esq.
 Counsel for the Claimant
 600 NEVILLE ST., STE. 200
 BECKLEY, WV 25801

MARION RAY, Esq.
 Counsel for the Employer
 600 QUARRIER STREET
 CHARLESTON, WV 25301

cc:)
) Claimant)
 REGINALD HENRY
 MARION RAY

JAN 20 2011

1 JUDGE CAMPBELL: This is an expedited
2 hearing in the matter of _____ and _____
3 _____, OoJ Case Number A310-002317;
4 JCN: 2011008468; CRN: 2010015856. This matter comes
5 on for hearing pursuant to the Claimant's protest to an Order
6 of the Claim Administrator dated September 15, 2010, which
7 rejected the claim for workers' compensation benefits. The
8 decision states more specifically as follows: "Your
9 application for benefits filed in the above claim is denied for
10 the following reasons; the disability complained of was not
11 due to an injury received in the course of and resulting from
12 employment. This Decision was based primarily upon the
13 following: referencing the Staff Instant Report dated
14 September 1, 2010; Employer First Report of Injury, dated
15 September 1, 2010; and West Virginia Code §23-4-1,
16 without further specifying." Let the record reflect that the
17 Claimant is present in person together with her counsel,
18 Reginald Henry; the Employer is present by counsel, Marion
19 Ray. Prior to today's hearing, counsel for the Claimant faxed
20 to my office a three-page report signed by Joe M. Pack, D.O.
21 Mr. Ray, have you had a chance to review this record?
22 MR. RAY: I did receive a copy of it,
23 Your Honor, and yes, I have had a chance to review it.

JAN 20 2011

1 JUDGE CAMPBELL: Okay, Mr. Henry, you're
2 moving for this document to be introduced into the record?

3 MR. HENRY: Yes, Your Honor. We
4 have submitted it formally. I just thought given the close
5 proximity to the hearing, it would be appropriate to fax it to
6 you directly, and it was submitted to Charleston as well, and
7 we would ask that it be included and considered in your
8 Decision.

9 JUDGE CAMPBELL: Okay, well there's no need
10 then to actually mark it as an exhibit for the purposes of
11 today's hearing. Very well, Mr. Henry, do you wish to take
12 testimony from the Claimant?

13 MR. HENRY: I do, Your Honor.

14 JUDGE CAMPBELL: Very well. Ms. ..., do
15 you swear the testimony you're about to give in this matter
16 be the whole truth and nothing but the truth?

17 MS. Yes.

18 JUDGE CAMPBELL: Then we can proceed.

19 MR. HENRY: Your Honor, thank you.

20 Would you please state your name and address for the
21 record?

22 MS. M

23 ..., Frankford, West Virginia 24938.

Claim No. A310-002317

4

JAN 20 2011

1 DR. HENRY: How old are you?
2 MS. Thirty-eight.
3 MR. HENRY: Are you presently
4 employed?
5 MS. Yes.
6 MR. HENRY: Who do you work for?
7 MS. I s,
8 incorporated.
9 MR. HENRY: How long have you
10 worked for that employer?
11 MS. I It'll be 10 years on
12 February 7th.
13 JUDGE CAMPBELL: In what capacity?
14 MS. I I've been a secretary and
15 an office manager both, there.
16 JUDGE CAMPBELL: Thank you.
17 MR. HENRY: You've filed an application
18 for a work related injury of September 1, 2010, is that
19 correct?
20 MS. Yes.
21 MR. HENRY: The injury involves your
22 right upper extremity, is that correct?
23 MS. Yes.

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1 MR. HENRY: Prior to September 1,
2 2010, had you ever sustained any injuries or undergone any
3 treatment for your right upper extremity?

4 MS. I No.

5 MR. HENRY: Had you ever had any
6 injuries to your right wrist prior to September 1, 2010?

7 MS. Yes.

8 MR. HENRY: Can you identify when you
9 sustained an injury involving your right wrist and the
10 circumstances surrounding it?

11 MS. In 2000, I guess it was
12 2000, I had fallen down my stairs at my house and had hit
13 my wrist on the wall.

14 MR. HENRY: What type of injury did you
15 sustain, if any, as a result of that fall?

16 MS. I believe it was just a
17 sprain.

18 MR. HENRY: Did you require any
19 medical treatment?

20 MS. I did go to the emergency
21 room; they did put just an ace bandage and a metal brace on
22 it.

23 MR. HENRY: How long, if at all, were

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1 you off work following that accident?

2 MS. I I wasn't.

3 MR. HENRY: In terms of your recovery
4 from that accident, did your symptoms persist or resolve?

5 MS. No, they cleared up and I
6 didn't have any more trouble out of my wrist at all.

7 MR. HENRY: Had you ever had any
8 injuries to your right shoulder, to the best of your
9 recollection, prior to September 21, 2010?

10 MS. Not to my knowledge.

11 MR. HENRY: In what capacity were you
12 employed on September 1, 2010; what was your job?

13 MS. Support staff.

14 MR. HENRY: Would you just briefly
15 describe what your activities were as a support staff?

16 MS. I. As a support staff, I do
17 secretarial duty and also support the other staff that's in the
18 office on anything that they're needing then.

19 MR. HENRY: In terms of your job title,
20 was it as a support staff or secretary, if you can recall?

21 MS. I Support staff.

22 MR. HENRY: What time, approximately,
23 did you start work on September 1, 2010?

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1 MS. I 8:30 a.m.

2 MR. HENRY: Is that your usual starting
3 time?

4 MS. I Yes.

5 MR. HENRY: And just so the record is
6 clear, can you identify the office at which you're working;
7 where is it located?

8 MS. I In Ronceverte, West
9 Virginia.

10 MR. HENRY: And about how long have
11 you worked at that particular office?

12 MS. I Three and a half years.

13 MR. HENRY: What activities were you
14 performing on September 1, 2010?

15 MS. I I was doing my secretarial
16 support staff duties of supporting the other staff in the office,
17 answering the phone and my typical duties.

18 MR. HENRY: What happened that day?

19 MS. I That day,
20 came in to pick up a box of items that was left for her by one
21 of our other staff that had quit; she was moving back to
22 North Carolina and she had left a box of her items there in
23 the office, and I had showed her where they were and it was

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1 a rather large box so she asked me if I could help her to lift
2 the box, if I could help her lift it off the floor, she could carry
3 it, so that's what I did.

4 MR. HENRY: Can you recall the
5 individual who was leaving employment and left the box
6 there; what was her name, if you can recall?

7 MS. F Lindsey F

8 MR. HENRY: Where was the box
9 located?

10 MS. F It was in my front office,
11 just across from where my desk is.

12 MR. HENRY: What is Ms. F
13 job title or occupation?

14 MS. She's a Respite 1 worker,
15 contract worker. We have the title 19 waivers clients.

16 MR. HENRY: Can you describe the size
17 of the box approximately?

18 MS. F It was rather large,
19 probably if you stood it up to its end, it might come up to my
20 chest.

21 MR. HENRY: That would perhaps be
22 two and a half or 3 feet tall if one would estimate it?
23

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- 1 MS. M. Probably more of, yeah, at
2 least three feet tall and probably a foot and half wide, two
3 foot.
- 4 MR. HENRY: Was it a cardboard box?
- 5 MS. . It was a cardboard box.
- 6 MR. HENRY: Was it sturdy or flimsy?
- 7 MS. It was flimsy because it
8 was not sealed.
- 9 MR. HENRY: What was in the box?
- 10 MS. . It was Elisa's maternity
11 clothes that Lindsey was returning back to her.
- 12 MR. HENRY: Can you recall the extent
13 to which the box was full? In other words, was there a little
14 bit of clothing or a lot of clothing in the box?
- 15 MS. It was over packed. It was
16 very full.
- 17 MR. HENRY: Now if I understood you,
18 you indicated that Elisa Robinette asked for your help, is that
19 correct?
- 20 MS. I Yes she did.
- 21 MR. HENRY: What did she specifically
22 say to you?
- 23 MS. She just asked me if I

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1 could help her lift the box up off the floor so that she could
2 carry it to her van.

3 MR. HENRY: Where were you when she
4 asked you to do that?

5 MS. I I was at my desk.

6 MR. HENRY: What did, or how did you
7 respond?

8 MS. I I told her, yes I would
9 because it's support staff, that's my duty.

10 MR. HENRY: What happened after that?

11 MS. When I bent down to lift
12 the box, to help her lift the box, I lost had my grip on it
13 because it wasn't properly closed, to where and when I lost
14 my grip, I fell backwards and tried to catch myself with my
15 arm like you normally would do.

16 MR. HENRY: Did you actually have your
17 hands under the box?

18 MS. Yes.

19 MR. HENRY: Were you able to get an
20 appreciation in terms of the weight of the box?

21 MS. I It was rather heavy. I
22 would say it probably easily weighed over, I'd say 25
23 pounds.

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- 1 MR. HENRY: I believe you indicated you
2 lost your balance, is that correct?
- 3 MS. I Yes, I did.
- 4 MR. HENRY: What happened after that?
- 5 MS. When I lost my balance, I
6 fell backwards and when I fell backwards I tried to catch
7 myself with my arm as I flung it backwards and fell on my
8 butt.
- 9 MR. HENRY: Did your arm come in
10 contact with the floor?
- 11 MS. I Yes it did.
- 12 MR. HENRY: How much force or
13 exertion did you come in contact with the floor?
- 14 MS. Um.
- 15 MR. HENRY: In other words, did you just
16 kind of ease back or did you fall abruptly on to it?
- 17 MS. I No, I fell pretty hard.
- 18 MR. HENRY: What happened after that?
- 19 MS. After that, I went back to
20 help her lift the box up so she could carry it out and helped
21 her walk out to her vehicle, by opening the doors as she
22 carried the box out.
- 23 MR. HENRY: After you lost your balance

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1 and fell, did you have any symptoms?

2 MS. P It was a little painful at first
3 but as the afternoon progressed, it got to where I couldn't
4 type; I couldn't even hold a pencil. My wrist and arm had
5 swollen all the way to my elbow.

6 MR. HENRY: If I understood you
7 correctly, after you fell, you ultimately helped her lift the box
8 up, is that correct?

9 MS. Yes, I did go back and
10 help her to lift that to finish what we had started.

11 MR. HENRY: Did she then proceed to
12 carry the box out?

13 MS. Yes she did.

14 MR. HENRY: And you indicated, if I
15 understood you correctly, that you resumed your activities,
16 your work activities, is that correct?

17 MS. Yes, to the best that I
18 could.

19 MR. HENRY: As the day progressed,
20 how did your symptoms change?

21 MS. They got much worse, to
22 where I could not even hold a pencil, I couldn't answer the
23 phone because I couldn't lift it with my wrist; I couldn't type

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1 on the computer which is part of my job duty.

2 MR. HENRY: What did the pain feel

3 like?

4 MS. I It was very éxcruciating. It

5 hurt really bad and I wasn't sure what happened. I just knew

6 I hurt it.

7 MR. HENRY: Where was the pain

8 located?

9 MS. I It was in my wrist and it

10 would radiate up my arm.

11 MR. HENRY: Did it go into your

12 shoulder?

13 MS. I I noticed more, I did have

14 some pain with my shoulder but I noticed more in my wrist at

15 that time.

16 MR. HENRY: As you, as your symptoms

17 progressed did you have any conversations with anyone at

18 work about what you were experiencing? Did you talk to a

19 cóworker, a supervisor, or anyone of that nature?

20 MS. I did. I went to my

21 supervisor, because I had to fill out an incident report form

22 and give it to her because she had to sign off on it so I could

23 send it to our regional office.

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- 1 MR. HENRY: Who is your supervisor?
- 2 MS. M The supervisor at the time
- 3 was C
- 4 MR. HENRY: Did you complete your
- 5 shift on September 1, 2010?
- 6 MS. M Yes I did.
- 7 MR. HENRY: How were you feeling at
- 8 the end of the day?
- 9 MS. M In a lot of pain. I had
- 10 called and scheduled a doctor's appointment to be checked
- 11 out so I could find out what was, what I did to my wrist.
- 12 MR. HENRY: Did you seek medical
- 13 treatment after work?
- 14 MS. M Yes I did.
- 15 MR. HENRY: Where did you go?
- 16 MS. M Robert C. Byrd Clinic.
- 17 MR. HENRY: What kind of evaluation
- 18 did you receive there; what did they do for you?
- 19 MS. M They took x-rays and
- 20 examined my wrist and my shoulder, checking movements
- 21 to see if I could move it or what limitations I had with it.
- 22 MR. HENRY: And you were later
- 23 referred to a Dr. Joe Pack, is that correct?

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- 1 MS. I They made that referral
2 that same day.
- 3 MR. HENRY: He treated you for a period
4 of time, is that correct?
- 5 MS. I Yes.
- 6 MR. HENRY: Are you still seeing him at
7 this point?
- 8 MS. I No. I'm on an open; if I
9 need to see him, all I have to do is call if I have any more
10 major problems.
- 11 MR. HENRY: Have you had physical
12 therapy?
- 13 MS. I Yes.
- 14 MR. HENRY: Where was that done?
- 15 MS. I I don't recall the name of
16 the place.
- 17 MR. HENRY: There are some notes
18 from Holly Katchuk.
- 19 MS. She owns the physical
20 therapy.
- 21 JUDGE CAMPBELL: You want to spell that for
22 the transcriptionist, Mr. Henry?
- 23 MR. HENRY: I will try, Your Honor.

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- 1 JUDGE CAMPBELL: Oh, I thought you were
2 reading something.
- 3 MR. HENRY: Her notes are handwritten
4 and I think we had an indication in terms; I'm sorry, here it is:
5 K-A-T-C-H-U-K.
- 6 JUDGE CAMPBELL: Thank you.
- 7 MR. HENRY: You're welcome. It's my
8 understanding you were off work for a period of time
9 following the accident, is that correct?
- 10 MS. M Yes.
- 11 MR. HENRY: I believe the record
12 reflects that you were off from approximately September 2,
13 2010 until September 20, 2010; does that sound about right
14 to you?
- 15 MS. M Yes.
- 16 MR. HENRY: Have you missed any
17 other work as a result of the injury, either because of your
18 symptoms or simply to attend a medical appointment or
19 physical therapy appointment?
- 20 MS. M Yes.
- 21 MR. HENRY: Have you missed
22 complete days or parts of days?
- 23 MS. M Parts of days.

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- 1 MR. HENRY: Are you undergoing
2 physical therapy presently?
- 3 MS. P No.
- 4 MR. HENRY: Have you had any new
5 injuries involving your right upper extremity since September
6 1, 2010, such as a slip, trip and fall, automobile accident or
7 anything of that nature?
- 8 MS. P No.
- 9 MR. HENRY: I don't have anything else,
10 thank you. Marion?
- 11 MR. RAY: I have a just a few
12 questions and out of an abundance of caution, let me ask
13 first, if I may, Your Honor, if Reggie has seen the Employee
14 and Physician's Report of Injury?
- 15 MR. HENRY: Yes I have, thank you,
16 Your Honor. Thank you.
- 17 MR. RAY: I'm not sure if that's part of
18 the record or not Your Honor, but out of an abundance of
19 caution, what I'd like to do is introduce that into evidence.
- 20 MR. HENRY: Marion, I believe we had
21 submitted it, but I certainly have no objection if you feel the
22 need to.
- 23 MR. RAY: Well, if you've already

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1 submitted it, I didn't see it as such, Reggie, but that.

2 JUDGE CAMPBELL: Very well, we'll submit it as
3 an Employer's Exhibit, given the way these records work, it
4 certainly can't hurt anything.

5 MR. RAY: Alright, Your Honor. And
6 Reggie, this is the Accident Injury Report, have you seen
7 that?

8 MR. HENRY: I believe we also
9 submitted that into evidence as well Marion.

10 MR. RAY: Okay.

11 MR. HENRY: I appreciate you allowing
12 me to review it and to confirm that we did submit. Thank
13 you.

14 JUDGE CAMPBELL: Do you wish to include that
15 as an exhibit?

16 MR. RAY: Yes, Your Honor, I do.

17 JUDGE CAMPBELL: Very well. That will be
18 Number Two.

19 MR. RAY: Alright. Finally Your
20 Honor, I believe that the denial of this claim was based in
21 part on the Employer First Report of Injury, dated 9/1/2010.
22 Reggie.

23 MR. HENRY: Thank you.

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1 MR. RAY: And let me apologize for
2 doing it in this manner, but when there's an expedited
3 hearing, there's just not always time to send it and make
4 sure that everybody has a copy, so I apologize, Reggie.

5 MR. HENRY: No, that's fine; I have a
6 copy of that as well, thank you.

7 JUDGE CAMPBELL: And you wish to include
8 that as Number Three?

9 MR. RAY: Yes, Your Honor. That
10 should be my final exhibit today.

11 JUDGE CAMPBELL: Thank you. Do you have
12 questions?

13 MR. RAY: Yes, Your Honor, I do. I
14 guess my first question would be this; as I understand it, you
15 say that the injury happened as you were picking up a box of
16 maternity clothes, is that correct?

17 MS. J Not when I was picking it
18 up but when I fell, when I lost my grip on it.

19 MR. RAY: Okay, you were picking up
20 a box of maternity clothes, lost your grip on this box of
21 maternity clothes and fell?

22 MS. J Yes.

23 MR. RAY: Alright, now where did this

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- 1 happen?
- 2 MS. I ↓ In the office where I work.
- 3 MR. RAY: Now, earlier I heard you
- 4 say, I believe, that the injury happened in the office in front
- 5 of, or across from your desk? Am I mistaken, did I not hear
- 6 that?
- 7 MS. The maternity clothes, the
- 8 box of maternity clothes was in the same office, in the same
- 9 room as I was in.
- 10 MR. RAY: Okay.
- 11 MS. I It was just like my desk is
- 12 on the right side of the room and the box was over by the
- 13 window on the left side of the room.
- 14 MR. RAY: Was it carpeted, was it
- 15 tiled?
- 16 MS. It's carpeted.
- 17 MR. RAY: Carpeted. Was there any
- 18 water on the floor?
- 19 MS. I No.
- 20 MR. RAY: Did you slip on anything?
- 21 MS. I No.
- 22 MR. RAY: Did you trip on anything?
- 23 MS. I No.

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- 1 MR. RAY: What happened then is
2 that you bent down, picked up the box of maternity clothes,
3 lost your balance and fell backwards, is that fair to say?
- 4 MS. W: I lost my grip on the box
5 because it was flimsy and when I lost my grip, I fell.
- 6 MR. RAY: Okay, now the fact that
7 you mentioned several times that the box of maternity
8 clothes was flimsy; was that the employer's fault in some
9 manner, are you alleging that?
- 10 MS. No.
- 11 MR. RAY: So you're not alleging
12 that?
- 13 MS. I don't know how to
14 answer that one.
- 15 JUDGE CAMPBELL: Would you mind repeating
16 that question?
- 17 MR. RAY: Yes, Your Honor. I'm
18 asking you; this box that you repeatedly have said, this box
19 of maternity clothes that you said was flimsy; I'm asking you
20 is the fact that if the box was flimsy, is that some how the
21 fault of the Employer?
- 22 JUDGE CAMPBELL: Do you understand the
23 question, ma'am?

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- 1 MS. P I do.
- 2 JUDGE CAMPBELL: You do, or do not?
- 3 MS. P Can I speak with my
- 4 attorney?
- 5 MR. RAY: Well, I've got a question
- 6 and I'd like for you to answer the question for just to give me
- 7 an answer and then if there's something that Mr. Henry
- 8 wants to address to you about my question, he can do so I
- 9 think, on rebuttal.
- 10 JUDGE CAMPBELL: To tell you the truth,
- 11 ma'am, it's not really a trick question, I don't think the case is
- 12 going to turn on how you answer this particular question;
- 13 don't be nervous.
- 14 MR. RAY: Alright, let me withdraw
- 15 the question for now, Your Honor.
- 16 MS. P Please.
- 17 MR. RAY: Okay. Did the Employer
- 18 cause the box to be brought into the office?
- 19 MS. P Are you meaning, Lindsey
- 20 the other person that worked in the office?
- 21 MR. RAY: Alright, let me do it this
- 22 way; how did the box get in the office?
- 23 MS. Lindsey delivered it to the

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1 office to be returned.

2 MR. RAY: Okay, Lindsey brought

3 maternity clothes into the office?

4 MS. I. Yes.

5 MR. RAY: Okay, now your job is as a

6 secretary and to assist from time to time other staff, is that

7 correct?

8 MS. I. Yes.

9 MR. RAY: Alright. Now is there

10 something in your job description that tells you that you are

11 to pick up boxes of maternity clothes?

12 MS. I. Maybe not specifically

13 maternity clothes, but my job description is 'other duties as

14 assigned' and that goes with picking up any boxes to help

15 support staff or helping move desks or chairs or anything

16 that another staff needs support with.

17 MR. RAY: So, hypothetically, if a

18 couch had been brought to the office and someone wanted

19 you to help them take their personal private couch to their

20 personal private vehicle and put it in there, you believe that

21 that's your responsibility?

22 MR. HENRY: Please note my objection.

23 I mean, that's a totally different fact pattern. I mean, here we

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1 have, we believe that there is maternity clothing that she's
2 assisting a co-worker as opposed to a private, as opposed to
3 private property that's apparently is supposedly at the
4 employers' place of operation and an individual asking her
5 then to assist in moving it.

6 JUDGE CAMPBELL: Alright, I understand the
7 point you're trying to make. I think, if I understand the point
8 of your question, it is, does the Claimant perceive a limit to
9 this particular mandate of her job?

10 MR. RAY: That is correct, Your
11 Honor.

12 MS. Which means?

13 MR. RAY: Which means, is, at what
14 point in time do you think that you no longer are required to
15 help or assist individuals that are other staff?

16 MS. I would say none, because
17 I help all of the staff all the time.

18 MR. RAY: Okay, now the maternity
19 clothes that were being returned were not going to be used
20 by the office, were they?

21 MS. They were going to be
22 reused by Elisa, she is expecting again.

23 MR. RAY: Okay, she's expecting. So

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1 in her private capacity as an individual, personal capacity,
2 she got pregnant and now she wants maternity clothes?

3 MS. I No, they were hers to
4 begin with.

5 MR. RAY: They were hers to begin
6 with, but the fact that she needs, wants, her maternity
7 clothes returned has.

8 MS. No, they were being
9 returned because Lindsey had already delivered her baby
10 and she was moving to South Carolina, so she was just
11 returning them back to Lindsey. She did not, or to Elisa, she
12 did not know that Elisa was expecting again.

13 MR. RAY: At what point in time did
14 the clothes being returned become the responsibility of the
15 Employer, from your perspective?

16 JUDGE CAMPBELL: I'm not sure I understand
17 that question, Mr. Ray? You want to take another shot at it?

18 MR. RAY: Sure, I'll do it again. What
19 we have here is an individual who brings or returns to an
20 employee, that employee's personal clothing, is that correct?

21 MS. I Yes.

22 MR. RAY: Alright. Now, the fact that
23 she then takes that personal clothing and wants to have it

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1 placed in her vehicle has nothing to do with her job does it?

2 MS. I With her job?

3 MR. RAY: Her job, Elisa, is

4 that her name?

5 MS. I Right.

6 MR. RAY: Elisa, the fact

7 that she wants to take her personal clothes out to her

8 personal vehicle has nothing to do with her job

9 responsibilities, does it?

10 MS. I Not hers, no.

11 MR. RAY: Okay. And so when you

12 were assisting her as you put it, to lift the box of clothes to

13 return to her personal car, again, that has nothing to do with

14 either your employment or her employment, does it?

15 MS. They were at the office, it

16 wouldn't matter what it was. We as support staff support in

17 any manner, even if it is a personal item or if it's a pack of

18 paper, it doesn't matter.

19 MR. RAY: Okay, then going back to

20 what the Judge said earlier, that you perceive there to be no

21 limits and on what your responsibilities are in terms of

22 helping individuals with their personal, I'd say obligations but

23 there are no obligations here; with their personal functions?

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- 1 MS. M No.
- 2 MR. RAY: Alright, then I go back to
- 3 my questions then; your position is that this is the same as if
- 4 this had been a couch. You still would have been
- 5 responsible for picking, helping to pick up the couch and
- 6 take it out to her personal car?
- 7 MS. M If it was in the office.
- 8 MR. RAY: Now again, as I
- 9 understand it, your primary responsibility is as a secretary, is
- 10 that correct?
- 11 MS. M I'm a support staff
- 12 secretary.
- 13 MR. RAY: Alright.
- 14 MS. M I am a secretary but in our
- 15 office we are classified as support staff; we are not called
- 16 secretaries.
- 17 MR. RAY: Alright, let's go back one
- 18 more time here and then try to figure out what it is that you
- 19 do in the office. Do you type?
- 20 MS. M Yes.
- 21 MR. RAY: Okay, you answer the
- 22 phone?
- 23 MS. M Yes.

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1 MR. RAY: Okay, is that what you do
2 the vast majority of the day?

3 MS. I And support the other staff
4 members in the office.

5 MR. RAY: Answer my question; is
6 that what you do for the majority of the day?

7 MS. I No.

8 MR. RAY: Okay, what do you do for
9 the majority of the day?

10 MS. I The majority of the day,
11 I'm supporting the other staff that's in the office.

12 MR. RAY: That's the vague, so can
13 you be a little more descriptive as opposed to just saying, I
14 am helping the rest of the staff. What do you do in
15 particular?

16 MS. I I help the rest of the staff
17 with any computer issues they have, any copier issues they
18 have.

19 MR. RAY: I'm listening to you.

20 MS. Okay.

21 MR. RAY: So computers, you help
22 them with the computers?

23 MS. Yes.

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- 1 MR. RAY: Fixing the computer?
- 2 MS. M Yes.
- 3 MR. RAY: Okay and copiers; fixing
- 4 the copier?
- 5 MS. M Yes.
- 6 MR. RAY: Okay, do you go outside
- 7 and I'm not trying to be flippant when I ask you this, do you
- 8 go outside and sweep the sidewalk?
- 9 MS. M No.
- 10 MR. RAY: Do you shovel snow?
- 11 MS. M No.
- 12 MR. RAY: Do you move equipment?
- 13 MS. M Yes.
- 14 MR. RAY: Alright. Now perhaps we'll
- 15 get somewhere. If you move equipment, what kind of
- 16 equipment do you move?
- 17 MS. M We move filing cabinets,
- 18 desks, chairs; any office equipment, any thing that's in the
- 19 building.
- 20 MR. RAY: Does all of that then
- 21 belong to the Employer?
- 22 MS. M No.
- 23 MR. RAY: Okay.

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- 1 MS. M There are personal items
2 there as well.
- 3 MR. RAY: And you go around moving
4 the personal property?
- 5 MS. When I'm asked to assist
6 them to move items, yes.
- 7 MR. RAY: And now did you know
8 what was in the box?
- 9 MS. I Not right off, no.
- 10 MR. RAY: When did...
- 11 MS. I (unin) guess at what it was
12 when we lifted the box, that's when she told me what was
13 being returned.
- 14 MR. RAY: Now, Ms. , Elisa
15 is that her name?
- 16 MS. I Yes.
- 17 MR. RAY: Okay, now tall is she?
18 MS. Around my height, 5'3",
19 5'4".
- 20 MR. RAY: Okay and it took two of
21 you to lift a box that weighed approximately 25 pounds, or to
22 get it off the ground, is that correct?
- 23 MS. I I was estimating 25

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pounds, yes.

MR. RAY:

Okay, that's what you said.

MS. M

Yes, it was very heavy; it

was, when you're lifting it up off the floor.

MR. RAY:

Okay. But once you got

the box, the two of you, that you, plural you, once the two of you got the box up off the floor, she could carry that by herself?

MS. I

Not easily, no.

MR. RAY:

Not easily, okay. Did you

feel the need to assist her?

MS.

She told me not to. She

said she had it, she was fine.

MR. RAY:

Okay, now when you were

bending down to pick up this box that was on the ground, and you said you didn't slip and you didn't trip on anything, did you bend over as if you were touching your toes or did you squat down to try to lift it up?

MS. I

I was squatted.

MR. RAY:

Okay and did you get the

box all the way up, before you fell?

MS.

No.

MR. RAY:

Okay, so you weren't even

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- 1 at a, at your natural height of 5'3", 5'4"?
- 2 MS. No, I was still squatted
- 3 when I fell backwards.
- 4 MR. RAY: So you just, okay. But you
- 5 don't think you rolled back, you think you actually fell and
- 6 placed your right hand behind you to catch yourself as you
- 7 were rolling?
- 8 MS. I I did not roll, I fell.
- 9 MR. RAY: Okay. At what point in
- 10 time, I won't ask that question. Now you say that you, other
- 11 than, I guess it was in 2000, you sprained your wrist, is that
- 12 correct?
- 13 MS. I Yes.
- 14 MR. RAY: Alright. Did a ganglioni
- 15 cyst develop as a result of that?
- 16 MS. I Not to my knowledge.
- 17 MR. RAY: Have you ever had
- 18 ganglion cysts?
- 19 MS. Not to my knowledge.
- 20 JUDGE CAMPBELL: Do you know what a
- 21 ganglion cyst is?
- 22 MS. M. No, I've never heard of
- 23 that.

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- 1 JUDGE CAMPBELL: Does that help clarify the
2 situation, Mr. Ray?
- 3 MR. RAY: Well, actually the reason
4 why I asked the question is that on page 2, I believe it is, of
5 Dr. Pack's report; he makes reference to a mild ganglion
6 cyst which is chronic in nature and so I was trying to find out
7 here if you've have a ganglion. No one's ever told you've
8 had, that you have a ganglion cyst?
- 9 MS. I No.
- 10 MR. RAY: Did you ever have any
11 swelling where a knot appeared on your wrist?
- 12 MS. I No.
- 13 MR. RAY: Okay. But you did see Dr.
14 Joe Pack?
- 15 MS. I Yes.
- 16 MR. RAY: Alright, just for the record
17 and then, Reggie, you'll know where I am. Again, I'm on
18 page two where he says, "We saw her back on October, on
19 10/5/10. At that time, the MRI showed a radial collateral
20 ligament sprain with a mild ganglion cyst which was chronic
21 in nature. The new injury was the radial collateral ligament
22 sprain." I think that's all I have Judge.
- 23 JUDGE CAMPBELL: Redirect?

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- 1 MR. HENRY: Yes, just a few, Your
2 Honor. In terms of the box; when was that actually dropped
3 off at the Employer's property? How long had that box been
4 there, if you can recall?
- 5 MS. I I don't know exactly how
6 long. But I know it had been there probably two weeks.
- 7 MR. HENRY: Was the box in a
8 conspicuous location? In other words, someone going
9 through your office, would it be readily apparent that, yes,
10 there's a box sitting over there?
- 11 MS. Yes.
- 12 MR. HENRY: Had your supervisor come
13 into your office over the period of time that the box was
14 present in the corner of your office?
- 15 MS. Yes.
- 16 MR. HENRY: And just so the record is
17 clear, was it a client of the agency who dropped off the box?
- 18 MS. No, it was one of our staff.
- 19 MR. HENRY: In terms of other personal
20 items, I believe you indicated that other staff members would
21 have such items on the premises, is that correct?
- 22 MS. Yes.
- 23 MR. HENRY: There had been prior

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1 occasions, if I understood you correctly, where you would
2 assist those individuals in moving, not only the property of
3 the entity but also personal items of employees, is that
4 correct?

5 MS. M Yes.

6 MR. HENRY: Had, to the best of your
7 knowledge, had there ever been any instances where your
8 supervisor either had observed you engaging in such activity
9 or participating in such activity with you?

10 MS. R Yes.

11 MR. HENRY: Were you ever advised
12 that engaging in such activity, specifically the movement of
13 personal items for a co-worker, was something you should
14 not do?

15 MS. Yes.

16 MR. HENRY: You're continuing to work
17 for this same employer, is that correct?

18 MS. Yes.

19 MR. HENRY: Thank you, I don't have
20 anything else.

21 JUDGE CAMPBELL: Further?

22 MR. RAY: Do you remember which
23 staff member. Yes, Your Honor. Do you remember which

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1 staff member dropped off the box?

2 MS. Lindsey

3 MR. RAY: Was Lindsey your
4 supervisor?

5 MS. No.

6 MR. RAY: Was, and I apologize if
7 you've answered this, was Ms. your supervisor?

8 MS. No.

9 MR. RAY: Finally, did you follow Ms.
10 out to her vehicle or did you just stop at the door
11 after you'd opened the door?

12 MS. I stopped at the door, after
13 I'd opened the door.

14 MR. RAY: Okay. Thank you.

15 JUDGE CAMPBELL: I still have a couple of
16 questions in my own mind. Now this lady whom
17 you were helping, does she routinely give you directions or
18 make requests of you during the course of your
19 employment?

20 MS. No. That was the first.

21 JUDGE CAMPBELL: First time? What does she
22 do in the office?

23 MS. She doesn't work in the

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- 1 office; she works with our clients in their home, in her home.
- 2 JUDGE CAMPBELL: Well, how is she
- 3 connected with your office, let's put it that way?
- 4 MS. ↑ She is a contract
- 5 employee, meaning she has a contract with our agency to
- 6 take care of our waiver title 19 clients in her home.
- 7 JUDGE CAMPBELL: Okay, now when she
- 8 asked you for assistance in moving the box, were there any
- 9 witnesses?
- 10 MS. ↓ No.
- 11 JUDGE CAMPBELL: Okay. Were there any
- 12 witnesses to the incident of your falling?
- 13 MS. ↓ Elisa.
- 14 JUDGE CAMPBELL: Okay, thank you.
- 15 MR. HENRY: I don't have anything else,
- 16 Your Honor.
- 17 MR. RAY: I have nothing, Your
- 18 Honor.
- 19 JUDGE CAMPBELL: Okay, is this case ready
- 20 for argument?
- 21 MR. HENRY: Yes, I believe it is, Your
- 22 Honor.
- 23 MR. RAY: Yes, Your Honor.

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1 JUDGE CAMPBELL:

Well, I'll start out by saying

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it seems to me that this case is going to come down to a

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question of a deviation from the, in the course of and

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resulting from employment; whether it's a reasonable

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deviation or not. You all can challenge that analysis

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obviously in your argument. And I'm not saying if it is or if it

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isn't, but that, from a legal point of view, seems to me to be

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where this is headed. Mr. Henry, what's your thought on the

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matter?

10 MR. HENRY:

Your Honor, I would agree

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with your analysis that, that is the selling issue in this claim.

12

We do have facts that I think, that mitigate to establishing

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that this in fact a work related injury which occurred in the

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course of and resulting from employment. There's no

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question that she was in the course of her employment. She

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was at work, she was performing a job-related function when

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an individual who is also employed by this organization,

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requested her assistance. To the extent that would one

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characterize her assistance of this individual as a deviation,

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it certainly is a reasonable deviation in terms of what she

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was doing and the assistance that she was providing to a co-

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worker. You have a box of clothing that was on the

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employer's premises, according to Ms. . . . imony,

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1 had been there for quite some time. It was clearly obvious to
2 the Employer; the Employer had either acquiesced, if not
3 outright permitted employees to assist one another in
4 performing such activities. Ms. [redacted] un-controverted
5 testimony establishes that she had, in fact, assisted other
6 employees on prior occasions in moving personal items. In
7 this case, Your Honor, the employer clearly gains a benefit
8 from having employer/employees who work collaboratively
9 and cooperatively with one another rather than risking
10 acrimony by declining a reasonable request for assistance in
11 performing activities. The Employer clearly has an
12 awareness of these activities, has consented, overtly or
13 implicitly, to their continuance, and we believe, Your Honor,
14 when one looks at the context in which the injury occurred,
15 there's certainly no dispute in terms of the facts themselves,
16 concerning the mechanism of the injury. We believe, Your
17 Honor, that when one considers the totality of the
18 circumstances, they certainly put this claim within the context
19 of finding that the injury occurred not only in the course of,
20 but in fact resulted from her employment, and we would,
21 therefore, ask that you issue an Order holding the claim
22 compensable.

23 JUDGE CAMPBELL:

Mr. Ray.

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1 MR. RAY: Your Honor, it's the
2 Employer's position and I think here, actually correct
3 position, that this was not an injury that resulted from or in
4 the course of the Claimant's employment. What you have
5 here is an individual, not her supervisor, who, according to
6 her testimony, requested that she perform not a job function
7 but that she help her in a personal activity, which was to lift a
8 box of personal items, again, none of it being work related.
9 It was not the Employer's property, it was not brought to the
10 Employer's office at the request of the Employer, and it
11 certainly was not a benefit to the Employer to have an
12 employee's maternity clothes sitting around or brought to the
13 office. That's clearly without the scope of the Employer's
14 business. We don't have this raising to the level of
15 horseplay, and I really don't mean to suggest that, Your
16 Honor, but what we do have is again, two individuals
17 involved and engaged in a personal activity that is not of
18 benefit to the Employer. Again, what we have here is not
19 shelving, not computer, we don't have computer paper, we
20 don't have anything that is related to the Employer being
21 performed or handled by the Claimant. What we do have is
22 the Claimant, and I'm not faulting her for trying to be a good
23 friend or for trying to even be helpful, but it certainly was not

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within the scope of her duties, it was certainly not within the scope of her responsibilities. She is thereto among other things, type, work on computers, and in the exhibits that you have there, you'll find that the Employers have described her job responsibilities as being those of clerical and secretarial in the nature and having nothing to do with this assisting folks by doing whatever they ask; whether it's personal or whether it's related and simply because they asked, say, 'oh, well it's work related and I need to do it.' Finally, the question arises as to whether the Employer somehow acquiesced in allowing the Claimant to pick up this box, this 25 pound box being lifted between two adult women, that the one can lift and carry by herself and actually says she needs no assistance with carrying, but it's been described as a heavy box. But what we don't have is the Employer requesting it; we don't have the Employer being there to supervise this; we have no Employer involvement whatsoever other than the fact that the Claimant is the Employer's employee. That's what I would say at this time, Your Honor.

JUDGE CAMPBELL: Is the Employer ready to submit?

MR. RAY: The Employer is ready to submit.

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1 JUDGE CAMPBELL: Claimant ready to submit

2 Mr. Henry?

3 MR. HENRY: Yes, Your Honor.

4 JUDGE CAMPBELL: Very well, the Claim shall

5 be submitted. Thank you for your help.

6 MR. HENRY: Thank you, Your Honor.

7 MR. RAY: Thank you, Your Honor.

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MCC:dls

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JAN 20 2011

STATE OF WEST VIRGINIA,
WORKER'S COMPENSATION
OFFICE OF JUDGES, to wit:

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

This, the 19th day of January, 2011.

Angelo K.

Attachment B**CERTIFICATION OF UNDERSTANDING
MANDATORY REQUIREMENTS**

1. All transcripts will be formatted/typed in the exact manner detailed in the RFQ.
2. Toll free lines will be provided for receipt of dictation from Office of Judges employees located in Charleston, Beckley and Fairmont, West Virginia. This system must be compatible with the Dictaphone Enterprise System equipment owned by the Office of Judges.

A sufficient number of lines will be available in place to accommodate all employees dictating simultaneously.
3. Hearing transcribed from cassettes and those transcribed from phone or other electronic format will be prepared in the format specified in the RFQ.
4. In the event telephone communication or other electronic means are unavailable, vendor shall transcribe decision orders from cassette tapes. If required these tapes will be picked up daily at the Office of Judges offices located at One Players Club Drive, Charleston, WV.
5. Vendor shall be able to electronically mail decisions/transcripts to the agency. System used to transmit electronically must provide absolute security of the documents content and format.
6. Vendor must accommodate the requirements of the Office of Judges to prioritize work and comply with special requests regarding the order in which dictations are transcribed.
7. Vendor must provide the agency with a magnetic storage disc (such as compact disc) of all the previous months transcriptions within ten days of the end of each month.
8. Vendor agrees to maintain strict confidentiality and security of dictation system, cassettes and all transcripts.

I certify that I have read and understand the requirement of this request by signing this certification; I agree that the terms outlined in the request for quotations are non-negotiable and must be met or the contract may be cancelled.

Vendor Name: _____

Representative: _____

Signature: _____

Date: _____

Attachment C

**INS11010
COST PROPOSAL**

Transcribing Hearings from Digital Voice Files \$ _____ PER PG.

Transcribing Hearing from Cassette Tapes \$ _____ PER PG.

Transcribing Telephone Dictation \$ _____ PER PG.

TOTAL \$ _____

Award will be based upon the total cost.

Vendor Name: _____

Representative: _____

Signature: _____

Date: _____

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 _____

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.