



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

Solicitation

NUMBER
6613C030

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ALAN CUMMINGS 804-558-2402

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DIVISION OF HIGHWAYS
 VARIOUS LOCALES AS INDICATED
 BY ORDER

DATE PRINTED
05/02/2013

BID OPENING DATE: 05/29/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		490-80		
SURFACE TREATMENT REQUEST FOR QUOTATION (OPEN-END CONTRACT) THE WEST VIRGINIA STATE PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF HIGHWAYS, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH AN OPEN-END CONTRACT FOR SURFACE TREATMENT WORK FOR USE ON MAINTENANCE AND REPAIR PROJECTS THROUGHOUT THE STATE OF WEST VIRGINIA PER THE ATTACHED SPECIFICATIONS. ***** THIS IS THE END OF RFQ 6613C030 ***** TOTAL:						

SIGNATURE		TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE	

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

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

A pre-bid meeting will not be held prior to bid opening.

A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

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A **MANDATORY PRE-BID** meeting will be held at the following place and time:

West Virginia Purchasing Division 2019 Washington Street, East Charleston, WV 25305 05/16/2013 - 11:00 A.M.
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All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required

information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Question Submission Deadline: 05/21/2013

Submit Questions to:

Alan Cummings

2019 Washington Street, East

P.O. Box 50130

Charleston, WV 25305

Fax: 304-558-3970

Email: Alan.W.Cummings@WV.Gov

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The bid delivery address is:

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

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID

BUYER: _____
 SOLICITATION NO.: _____
 BID OPENING DATE: _____
 BID OPENING TIME: _____
 FAX NUMBER: _____

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus n/a convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: [] Technical
 [] Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the official Purchasing Division time clock.

Bid Opening Date and Time:

05/29/2013 - 1:30 P.M.

Bid Opening Location:

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

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
 - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.
 - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.
 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.
 - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.
 - 2.5 **"Purchase Order"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.
 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.
 - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
 - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. **CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

Term Contract

Initial Contract Term: This Contract becomes effective on

 and extends for a period of year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal must be submitted to the Purchasing Division Director thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to successive one (1) year periods. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Reasonable Time Extension: At the sole discretion of the Purchasing Division Director, and with approval from the Attorney General's office (Attorney General approval is as to form only), this Contract may be extended for a reasonable time after the initial Contract term or after any renewal term as may be necessary to obtain a new contract or renew this Contract. Any reasonable time extension shall not exceed twelve (12) months. Vendor may avoid a reasonable time extension by providing the Purchasing Division Director with written notice of Vendor's desire to terminate this Contract 30 days prior to the expiration of the then current term. During any reasonable time extension period, the Vendor may terminate this Contract for any reason upon giving the Purchasing Division Director 30 days written notice. Automatic extension of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases, but Attorney General approval may be required.

- Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within days.
- One Time Purchase:** The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall this Contract extend for more than one fiscal year.
- Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.
- Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. 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.
- Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
- Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.
6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.
7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.
- BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

[] **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of []. The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

[] **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

[] **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

[✓] **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.

[✓] **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award:

[✓] **Commercial General Liability Insurance:**
\$250,000.00 or more.

[] **Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.

[] []

[] []

[] []

[] []

[] []

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

LICENSE(S) / CERTIFICATIONS / PERMITS: In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

- Contractors license
-
-
-

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

9. LITIGATION BOND: The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

10. ALTERNATES: Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

11. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or

other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

12. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount

defined within the specifications for contract nonconformance.

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

13. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.

14. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee if applicable.

15. COMMUNICATION LIMITATIONS: In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

16. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

17. PAYMENT: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."

18. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

19. DELIVERY: All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.

20. INTEREST: Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.

21. PREFERENCE: Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's

failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.

- 22. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 23. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 24. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
- 25. WAIVER OF MINOR IRREGULARITIES:** The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.
- 26. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 27. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
- 28. COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.
- 29. PREVAILING WAGE:** On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage

requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

- 30. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 31. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.**
- 32. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
- 33. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 34. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
- 35. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
- 36. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- 37. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

- 38. HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at <http://www.state.wv.us/admin/purchase/vrc/hipaa.html> and is hereby made part of the agreement provided that the Agency meets the definition of a Covered entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the Vendor. Additionally, the HIPAA Privacy, Security, Enforcement & Breach Notification Final Omnibus Rule was published on January 25, 2013. It may be viewed online at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-25/pdf/2013-01073.pdf>. Any organization, that qualifies as the Agency's Business Associate, is expected to be in compliance with this Final Rule. For those Business Associates entering into contracts with a HIPAA Covered State Agency between January 25, 2013 and the release of the 2013 WV State Agency Business Associate Agreement, or September 23, 2013 (whichever is earlier), be advised that you will be required to comply with the 2013 WV State Agency Business Associate Agreement. For those Business Associates with contracts with a HIPAA Covered State Agency executed prior to January 25, 2013, be advised that upon renewal or modification, you will be required to comply with the 2013 WV State Agency Business Associate Agreement no later than September 22, 2014.
- 39. CONFIDENTIALITY:** The Vendor agrees that it 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/default.html>.
- 40. DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 41. LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 42. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to 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 Vendor.
- 43. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also 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.

The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

- 44. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

- 45. 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 Solicitation 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, *etc.* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- 46. 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 and hour laws.
- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

50. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

- Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.
- Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.

51. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

52. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or

such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- b. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

53. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

(Company)

(Authorized Signature)

(Representative Name, Title)

(Phone Number)

(Fax Number)

(Date)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: 6613C030

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Division of Highways to establish an open-end Contract for Surface Treatment work for use on maintenance and repair projects throughout the state of West Virginia.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Item” or “Contract Items”** means the list of items identified in Section 3.2.
 - 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals attached hereto as Exhibit A and used to evaluate the RFQ.
 - 2.3 **“RFQ”** means the official request for quotation published by the Purchasing Division and identified as 6613C030.
 - 2.4 **“WVDOH”** used throughout this RFQ means the West Virginia Division of Highways.
 - 2.5 **“Contractor” or “Vendor”** used throughout this RFQ and in any cited sections of the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted 2010, as modified by the January 1, 2011 Supplemental Specifications, the January 1, 2012 Supplemental Specifications and the January 1, 2013 Supplemental Specifications are interchangeable.
 - 2.6 **“Standard Specs”** used throughout this RFQ means the West Virginia Department of Transportation, Division of Highways Standard Specifications, Roads and Bridges, adopted 2010, as modified by the January 1, 2011 Supplemental Specifications, the January 1, 2012 Supplemental Specifications and the January 1, 2013 Supplemental Specifications.

3. **GENERAL REQUIREMENTS:**
 - 3.1 The following sections of the Standard Specs shall apply to the administration of this Contract: Sections 101, 102.4, 102.5, 105.1, 105.3, 105.4, 105.10, 105.11, 105.12, 105.13, 106.3, 106.4, 106.5, 106.6, 106.7, 106.9, 107.1, 107.2, 107.3,

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107.12, 107.14, 107.15, 107.16, 107.19, 107.20, 107.23, 108.3, 108.5, 108.6, 108.7, 108.8, 109.1, 109.2, 109.9, 109.10, 109.20 and 401.9.3.

A copy of these Standard Specs may be obtained from:

West Virginia Division of Highways
Contract Administration
Building 5, Room 722
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
(Phone) 304-558-2885

<http://www.transportation.wv.gov/highways/Contractadmin/specifications/2010StandSpec/Pages/default.aspx>

3.2 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

3.2.1 Surface Treatment shall be furnished and administered in accordance with the requirements of **Section 405** of the Standard Specs with the exception that the cost to haul aggregate is not to be included in Contract Items A, B and C as is stated in Section 405.14, Basis of Payment, of the Standard Specs. Instead, it is to be bid as Contract Item J of this Contract and is to be computed in accordance with Section 3.2.6 of this Contract.

3.2.1.1 Section 405, Surface Treatment, Type B Single, Contract Item A

3.2.1.2 Section 405, Surface Treatment, Type C Double, Contract Item B

3.2.1.3 Section 405, Surface Treatment, Type D Triple, Contract Item C

3.2.2 Bituminous Material shall be included in the unit bid price for all Contract Items in Section 3.2.1 of these specifications.

3.2.3 Maintenance of Traffic: While undergoing Surface Treatment, the project site shall be kept open to traffic in such condition that both local and through traffic will be adequately and safely accommodated. All construction operations shall be scheduled by the Contractor to keep traffic delay to a minimum.

Traffic Control may be furnished by the WVDOH. When Pilot Truck and Driver, Contract Item D, Traffic Control Devices, Contract Item E, Flagger, Contract Item F and/or Arrow Board, Contract Item G are requested by the WVDOH for a project, traffic shall be maintained by the Vendor in accordance with Section 636 of the Standard Specs.

3.2.4 Mobilization: Mobilization will be paid when the Contractor is required to move his equipment from his Equipment Storage Lot location to the WVDOH project site. When the Contractor has multiple projects, mobilization will be paid from project to project or from the Vendor's Equipment Storage Lot location to the project, whichever is less mileage. Mobilization will only be paid one way. Contract Items H and I.

- 3.2.5 Vendor's Equipment Storage Lot:** The Vendor shall provide the Equipment Storage Lot location's physical address that will be used to supply the materials requested on this Contract on the Pricing Page.
- 3.2.6 Hauling Surcharge per County:** The Vendor shall provide a per ton cost for aggregate hauling per County in a District, Contract Item J. The WVDOH shall use the following formula when calculating the hauling surcharge, converting the per square yard quantity to the ton quantity:
$$\text{Item A} \times 0.01 + \text{Item B} \times 0.0225 + \text{Item C} \times 0.040 = \text{ton}$$

4. PRICE ADJUSTMENTS:

- 4.1 Price Adjustment of Asphalt Cement:** Due to the uncertainty in estimating the cost of petroleum products that will be used during the life of this Contract, adjustment in compensation for Contract Items A, B and C is provided for in the table below:

Item	Description	AC (Average Asphalt Content)
A	Section 405 – Surface Treatment, Type B Single	0.325
B	Section 405 – Surface Treatment, Type C Double	0.625
C	Section 405 – Surface Treatment, Type D triple	1.1

The WVDOH shall use the following formula when calculating the asphalt adjustment cost per gallon rate:

$$\text{Item A} \times 0.325 + \text{Item B} \times 0.625 + \text{Item C} \times 1.10 = \text{gallon}$$

- 4.2 Price Adjustment of Fuel Oil No. 2 (Diesel Fuel):** Due to the uncertainty in estimating the cost of diesel fuel that will be used during the life of this Contract, adjustment in compensation for hauling aggregate for Contract Items A, B and C is provided for in Section 109.9 of the Standard Specs.

The following formula shall be used to convert the square yards of Contract Items A, B and C to tons of aggregate for use of "Factor C" in the fuel adjustment formula.

$$\text{Item A} \times 0.01 + \text{Item B} \times 0.0225 + \text{Item C} \times 0.040 = \text{ton}$$

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5. CONTRACT AWARD:

- 5.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. All qualified responsible Vendors that meet all mandatory requirements of this Contract shall be awarded a Contract.
- 5.2 Pricing Pages:** Vendor shall complete the Pricing Pages by providing unit prices per each Contract Items requested. Vendors must bid all Contract Items on the Pricing Pages to be awarded a Contract.

Also, on the Pricing Page, the Vendor shall provide the Equipment Storage Lot location's physical address that will be used to supply the material for this Contract.

The Pricing Pages contain a list of the Contract Items with no guarantee that any Contract Item will be purchased throughout the life of this Contract. Estimated quantities are not available.

Notwithstanding the foregoing, the Purchasing Division may correct errors at its discretion. Vendor should type or electronically enter the information into the Pricing Pages to prevent errors in the evaluation. The Pricing Pages were created as a Microsoft Excel document and Vendor can request an electronic copy for bid purposes by sending an email request to the following address:
alan.w.cummings@wv.gov.

- 6. DETERMINING LOW BID PER PROJECT:** To determine the low bid Vendor for individual treatment projects, the WVDOH District Manager will calculate the lowest overall total cost of Contract Item A, B or C, plus any additional cost items.

WVDOH reserves the right to request any one or combination of items for which bids are awarded at the lowest overall total as set forth in this section.

7. ORDERING AND PAYMENT:

- 7.1 Ordering:** Vendor shall accept orders by regular mail, facsimile, e-mail, or any other written forms of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Any on-line ordering system must have the capability to restrict prices and available items to conform to the Catalog originally submitted with this RFQ. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

7.2 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

8. PROJECT ACCEPTANCE, DELIVERY AND RETURN:

8.1 Project Acceptance: Upon receipt of an Agency Release, the Vendor shall advise the WVDOH, in writing, within five (5) calendar days of their acceptance of the project work of the Agency Release. Failure on the Vendor's part to acknowledge acceptance of the project work may result in cancellation of the Agency Release and re-award of the project to the next lowest bidder.

8.2 Delivery Time: All Agency Releases shall specify a starting date and a completion date based on the Vendor's acceptance of the Agency Release. If work is not started by the Vendor by the specified starting date on the Agency Release, the Agency Release may be cancelled and issued to the next low bidder. If work is not completed by the completion date as specified on the Agency Release, liquidated damages may be assessed in accordance with Section 108.7 of the Standard Specs. Vendor shall deliver emergency orders within an agreed upon acceptable timeframe after orders are received. Vendor shall ship all orders in accordance with the dates assigned to each project per the Agency Release and shall not hold orders until a minimum delivery quantity is met. No Vendor is authorized to ship, nor is the WVDOH authorized to receive materials prior to the issuance of an Agency Release.

8.3 Late Delivery: The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

8.4 Delivery Payment/Risk of Loss: Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

8.5 Return of Unacceptable Items – Acceptance Criteria: Materials found not in compliance with the requirements of this Contract or if the work performed, visually appears to be unacceptable, by visual inspection of the WVDOH District

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Manager, the work may be rejected, removed and replaced at the Contractor's expense. Aggregate not conforming to the gradation requirements will be paid for at the adjusted Contract price based the degree of nonconformance as specified in Table 405.2.3.2 of the Standard Specs.

9. **LABOR RATES:** All labor rates paid by the Vendor under this Contract must be in compliance with the West Virginia Department of Labor Prevailing Rates, Chapter 21-5A, Series 15, 2006 as stipulated in Section 29 of the General Terms and Conditions.
10. **MISCELLANEOUS:**
- 10.1 **No Substitutions:** The Vendor shall supply only Contract Items submitted in response to the RFQ unless a Contract modification is approved in accordance with the provisions contained in this Contract.
- 10.2 **Vendor Supply:** The Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, the Vendor certifies that it can supply the Contract Items contained in its bid response.
- 10.4 **Reports:** The Vendor shall provide quarterly reports and annual summaries to the Agency showing the Contract Items purchased, quantities of Contract Items purchased and the total dollar value of the Contract Items purchased. The Vendor shall also provide reports, upon request, showing the Contract Items purchased during the term of this Contract, the quantity purchased for each of those Contract Items and the total value of purchases for each of those Contract Items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 10.5 **Contract Manager:** During its performance of this Contract, the Vendor must designate and maintain a primary Contract manager responsible for overseeing the Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. The Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

Exhibit A

Pricing
Page

Surface Treatment
District 1

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Boone	TON	
	Clay	TON	
	Kanawha	TON	
	Mason	TON	
	Putnam	TON	

Pricing
Page

Surface Treatment
District 2

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Cabell	TON	
	Lincoln	TON	
	Logan	TON	
	Mingo	TON	
	Wayne	TON	

Pricing
Page

Surface Treatment
District 3

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Calhoun	TON	
	Jackson	TON	
	Pleasants	TON	
	Ritchie	TON	
	Roane	TON	
	Wirt	TON	
	Wood	TON	

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Page

Surface Treatment
District 4

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Doddridge	TON	
	Harrison	TON	
	Marion	TON	
	Monongalia	TON	
	Preston	TON	
	Taylor	TON	

Pricing
Page

Surface Treatment
District 5

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Berkeley	TON	
	Grant	TON	
	Hampshire	TON	
	Hardy	TON	
	Jefferson	TON	
	Mineral	TON	
	Morgan	TON	

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Surface Treatment
District 6

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Brooke	TON	
	Hancock	TON	
	Marshall	TON	
	Ohio	TON	
	Tyler	TON	
	Wetzel	TON	

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Surface Treatment
District 7

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Barbour	TON	
	Braxton	TON	
	Gilmer	TON	
	Lewis	TON	
	Upshur	TON	
	Webster	TON	

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Surface Treatment
District 8

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Pendleton	TON	
	Pocahontas	TON	
	Randolph	TON	
	Tucker	TON	

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Surface Treatment
District 9

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	Fayette	TON	
	Greenbrier	TON	
	Monroe	TON	
	Nicholas	TON	
	Summers	TON	

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Surface Treatment
District 10

6613C030

Item	Items A, B and C shall include FOB Vendor's Equipment Storage Lot Item Description	Unit of Measure	Cost Per Unit
A	Section 405, Surface Treatment, Type B Single		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
B	Section 405, Surface Treatment, Type C Double		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
C	Section 405, Surface Treatment, Type D Triple		
	a) 0 - 25,000	SQ YARD	
	b) 25,001 - 75,000	SQ YARD	
	c) 75,001 and greater	SQ YARD	
D	Pilot Truck and Driver	DAY	
E	Traffic Control Devices	UNIT	
F	Flagger	HOUR	
G	Arrow Board	DAY	
H	Mobilization for the First Mile	MILE	
I	Mobilization for each Additional Mile	MILE	
	Vendor's Equipment Storage Lot Location - Physical Address:		
Item	Item Description	Unit of Measure	Cost Per Unit
J	Hauling Surcharge per County		
	McDowell	TON	
	Mercer	TON	
	Raleigh	TON	
	Wyoming	TON	

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, 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: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. 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.

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.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"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.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

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 _____

Purchasing Affidavit (Revised 07/01/2012)

NOTE:

Vendor and Notary's date must be the same.

Notary required to AFFIX SEAL on Purchasing Affidavit.