



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

## Solicitation

NUMBER
DEP15990

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
GUY NISBET 304-558-8802

RFQ COPY  
TYPE NAME/ADDRESS HERE

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ENVIRONMENTAL PROTECTION  
DEPARTMENT OF  
DIV OF WATER AND WASTE MGT  
601 57TH STREET SE  
CHARLESTON, WV  
25304 304-926-0499

DATE PRINTED
08/28/2012

BID OPENING DATE:

10/04/2012

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		493-09		
WATER, WASTE WATER AND SOIL SAMPLE ANALYSIS						
EXPRESSION OF INTEREST						
THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, IS SOLICITING EXPRESSIONS OF INTEREST FROM QUALIFIED FIRMS TO PROVIDE ARCHITECTURAL/ENGINEERING SERVICES TO DEVELOP TOTAL MAXIMUM DAILY LOADS (TMDLS) FOR IMPAIRED WATERS IN THE UPPER OHIO NORTH, UPPER KANAWHA, AND SOUTH BRANCH POTOMAC WATERSHEDS PER THE FOLLOWING BID REQUIREMENTS AND ATTACHED SPECIFICATIONS.						
***** THIS IS THE END OF RFQ DEP15990 ***** 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:

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

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:

N/A

Submit Questions to:

Guy Nisbet, Senior Buyer

2019 Washington Street, East

P.O. Box 50130

Charleston, WV 25305

Fax: 304.558.4115

Email: [guy.l.nisbet@wv.gov](mailto:guy.l.nisbet@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 ☐ 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:**

October 04, 2012 at 1:30 PM. EST.

**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 for one year from the date the Purchase Order is issued or from the date the Purchase Order is issued until all of the goods contracted for have been delivered, whichever is shorter.

| ☒ **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:**

\$1,000,000.00/ \$2,000,000.00 Aggregate or more.

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

- ☒  \$1,000,000.00 Automobile Liability

- ☒  \$1,000,000.00 Professional Liability

- ☒  WV. Workers Compensation including Mandolidis WV Code 23-4-2

- ☐

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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.

<input checked="" type="checkbox"/>	WV. Workers Compensation including Mandolidis WV Code 23-4-2
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

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

	for	

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.

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](mailto: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.

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.

**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 hearth, 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.

**ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)**

1. **CONTRACTOR'S LICENSE:** West Virginia Code § 21-11-2 requires that all persons desiring to perform contracting work in this state be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Applications for a contractor's license may be made by contacting the West Virginia Division of Labor.

West Virginia Code § 21-11-11 requires any prospective Vendor to include the contractor's license number on its bid. Failure to include a contractor's license number on the bid shall result in Vendor's bid being disqualified. Vendors should include a contractor's license number in the space provided below.

Contractor's Name:

Contractor's License No.

The apparent successful Vendor must furnish a copy of its contractor's license prior to the issuance of a purchase order/contract.

2. **DRUG-FREE WORKPLACE:** W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit at the same time an affidavit that the Vendor has a written plan for a drug-free workplace policy. To comply with this law, Vendor must either complete the enclosed drug-free workplace affidavit and submit the same with its bid or complete a similar affidavit that fulfills all of the requirements of the applicable code. Failure to submit the signed and notarized drug-free workplace affidavit, or a similar affidavit that fully complies with the requirements of the applicable code, with the bid shall result in disqualification of Vendor's bid.
3. **AIA DOCUMENTS:** All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the AIA A101-2007 and A201-2007 or the A107-2007 documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.
4. **SUBCONTRACTOR LIST SUBMISSION:** In accordance with W. Va. Code § 5-22-1, The apparent low bidder on a contract for the construction, alteration, decoration, painting or improvement of a new or existing building or structure valued at more than \$500,000.00 shall submit a list of all subcontractors who will perform more than \$25,000.00 of work on the project including labor and materials. This provision shall not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.

c. **Required Information.** The subcontractor list shall contain the following information:



- i. Bidder's name
- ii. Name of each subcontractor
- iii. License numbers as required by W. Va. Code § 21-11-1 et. seq.
- iv. Notation that no subcontractors will be used if the bidder will perform the work

d. **Submission.** The completed subcontractor list shall be provided to the Purchasing Division within one business day of the opening of bids for review. Failure to submit the subcontractor list within one business day after the deadline for submitting bids shall result in disqualification of the bid.

e. **Substitution of Subcontractor.** Written approval must be obtained from the Purchasing Division before any subcontractor substitution is permitted. Substitutions are not permitted unless:

- i. The subcontractor listed in the original bid has filed for bankruptcy;
- ii. The subcontractor in the original bid has been debarred or suspended; or
- iii. The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform his subcontract.

5. **GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

**ADDITIONAL TERMS AND CONDITIONS (Architectural and Engineering Contracts Only)**

1. **PLAN AND DRAWING DISTRIBUTION:** All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.
2. **PROJECT ADDENDA REQUIREMENTS:** The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda:
  - a. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Purchasing Division buyer by the Agency. The Purchasing Division buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Purchasing Division at least fourteen (14) days prior to the bid opening date.
3. **PRE-BID MEETING RESPONSIBILITIES:** The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.
4. **AIA DOCUMENTS:** Contracts for architectural and engineering services will be governed by the AIA document B101-2007, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein when procured under Chapter 5G of the West Virginia Code.
5. **GREEN BUILDINGS MINIMUM ENERGY STANDARDS:** In accordance with West Virginia Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: *Provided*, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

# EXPRESSION OF INTEREST

## TMDL Development Contract DEP15990

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2. Section One: General Information
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4. Section Three: Project Specifications
5. Section Four: Vendor Proposal, Evaluation, and Award
6. Section Five: Terms and Conditions
7. Certification and Signature Page

### SECTION ONE: GENERAL INFORMATION

1. **PURPOSE:** The Acquisition and Contract Administration Section of the Purchasing Division ("Purchasing Division") is soliciting Expression(s) of Interest ("EOI" or "Bids") for the West Virginia Department of Environmental Protection (WVDEP) ("Agency"), from qualified firms to provide architectural/engineering services ("Vendors") as defined herein.
2. **PROJECT:** The mission or purpose of the project for which bids are being solicited is to provide Total Maximum Daily Loads (TMDLs) for the impaired streams in the Upper Ohio North, Upper Kanawha, and South Branch Potomac watersheds ("Project").
3. **SCHEDULE OF EVENTS:**

Release of the EOI.....08/31/2012  
Expressions of Interest Opening Date.....10/04/2012

**EXPRESSION OF INTEREST**  
TMDL Development Contract DEP15990

**SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

Instructions begin on the next page.

**EXPRESSION OF INTEREST**  
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**SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

**Submit:**

One original, plus one convenience copy and one copy on CD to:

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

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

Buyer: 23  
Req#: DEP15990

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### SECTION THREE: PROJECT SPECIFICATIONS

1. **Location:** Agency is located at 601 57<sup>th</sup> Street, SE, Charleston WV 25304 and the Project will be completed at various locations.
2. **Background:** The West Virginia Department of Environmental Protection, Division of Water and Waste Management (DWWM), is responsible for the protection, restoration, and enhancement of the State's waters, and for Total Maximum Daily Load (TMDL) development in West Virginia. Section 303(d) of the Federal Clean Water Act and the U.S. Environmental Protection Agency's (EPA) Water Quality Planning and Management Regulations (40 CFR Part 130) require states to identify waters not meeting state water quality standards and to develop TMDLs for these waters. A TMDL establishes the maximum allowable pollutant loading for a stream to meet the applicable standard, allocates that load among pollutant contributors, and provides a basis for taking actions needed to restore water quality.

WVDEP is committed to implementing a TMDL development process that reflects the requirements of TMDL regulations, provides for the achievement of water quality standards, and ensures that adequate stakeholder participation is achieved in the process.

TMDLs are stream-specific and may involve any parameter for which numeric or narrative water quality criterion exists. West Virginia's most common impairments are those related to mine drainage, bacterial contamination, and general biological impairment. For streams impaired by mine drainage, TMDL development may be required with respect to the State's numeric water quality criteria for iron, aluminum, manganese, selenium, or pH. TMDLs for bacterial contamination must be based upon the State's numeric water quality criteria for fecal coliform bacteria. Another common impairment for which TMDL development may be necessary involves acidic atmospheric deposition based upon the State's pH numeric water quality criterion. Biologically impaired waters are determined by WVDEP. The causative pollutants and sources are often unknown or uncertain in biologically impaired waters and must be determined in the TMDL development process. TMDLs may be needed for any pollutant for which a numeric water quality criterion is established, or for other pollutants determined to be causative stressors of biological impairment.

The WVDEP will develop TMDLs in concert with a geographically-based approach to water resource management in West Virginia known as the Watershed Management Framework. Adherence to the framework ensures efficient and systematic accomplishment of statewide TMDL development. As such, each TMDL to be developed will correspond to specific geographical areas, within which impaired waters will be geographically nested into TMDL subwatersheds. The details for this TMDL development project will be accomplished through a specific work directive to the selected Vendor.

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### TMDL Development Contract DEP15990

Prior to Vendor involvement, the WVDEP will perform rigorous pre-TMDL monitoring at strategic locations in impaired or potentially impaired waters. Actual monitoring locations will vary based on the drainage pattern of studied watersheds. Station locations will attempt to characterize the extent of impairment. For impairments related to numeric water quality criteria, monthly monitoring will generally be performed for twelve months. Biological monitoring will also be conducted at selected stations to characterize stream health and assess general habitat conditions. Habitat evaluation and monthly water chemistry monitoring is conducted at biological assessment locations. Source tracking information will augment pre-TMDL water quality monitoring and biological assessment through the identification and characterization of pollutant sources. The WVDEP will compile the stream monitoring and source tracking information and provide it to the Vendor. The WVDEP will review the results of the pre-TMDL monitoring effort, determine impaired waterbodies requiring TMDLs and incorporate this information into the work directive for the TMDL project. WVDEP may also request the Vendor to evaluate model results at delineated subwatershed pour points and, in coordination with WVDEP, present TMDLs for any coded stream for which the modeling demonstrates nonattainment with applicable water quality criteria.

The Vendor will provide necessary TMDLs in accordance with established deadlines. The work directive under this contract is anticipated to be issued in October, 2012 with the TMDLs to be finalized by December 2014.

3. **Qualifications and Experience:** Vendors will provide information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives where and how they were met.
4. **Project and Goals:** The project goals and objectives are:

**General:**

Over the TMDL development period (approximately 24 months), the Vendor shall furnish the necessary labor, supervision and resources necessary to develop USEPA approved TMDLs for impaired waters as specified by the WVDEP. The labor, supervision and resources to be provided under this contract shall be for all aspects of TMDL development including, but not limited to, data compilation and formatting, model selection, model development and calibration, allocation scenario development, biological stressor identification, report



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## TMDL Development Contract DEP15990

development, public meeting participation, response to USEPA and public comments, and technology transfer/training.

In the TMDL development process, approximately eight months will be allotted for data development, source characterization, and biological stressor identification. During the next twelve months, the Vendor will complete model development and calibration, documentation of the base condition and allocation scenario alternatives, including consideration of stakeholder input to the allocation process, and will develop initial draft TMDL documents. During the subsequent four months, the Vendor will refine and finalize TMDL documents as directed by the WVDEP. Finalization components include revision of initial draft documents as directed by WVDEP, public notice of the draft TMDL, receipt and consideration of public comments, creation of a responsiveness summary that addresses public comments, and USEPA-required revisions as necessary for approval of the TMDL.

### **Project Description:**

The project will require comprehensive water quality assessment and hydrologic modeling of the Upper Ohio North, Upper Kanawha, and South Branch Potomac watersheds and development of TMDLs that are approvable by US EPA.

### **Scope of Work:**

The Vendor will develop TMDLs for the impaired waters in the Upper Ohio North, Upper Kanawha, and South Branch Potomac watersheds.

### **Data Development:**

It shall be the Vendor's responsibility to gather and assemble all relevant data as specified by the WVDEP, with details to be determined for each type of TMDL. The WVDEP shall generate recent and comprehensive water quality monitoring data for impaired waters and provide it to the Vendor. The Vendor must be capable of data manipulations in Microsoft® Access and ORACLE® formats in order to facilitate usage of WVDEP's current databases. The WVDEP will assist in the compilation of other available water quality data and pollutant source information as appropriate throughout the contract period. The data and sources necessary to fulfill TMDL development processes will be partitioned as follows:

Information supplied by WVDEP:

- Pre-TMDL water quality monitoring data and locations
- Source tracking data
- Stream reach coverage
- Impairment assessments based on water quality monitoring data:

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- Timber harvest and burn areas
- Permitted facility locations and NPDES data
- Abandoned mine locations and data
- Oil and gas well locations
- 911 addressable structures and roads
- Extent of public sewer systems/info on inadequate on-site sewage treatment

Information gathered by the Vendor:

- Meteorological station locations
- Rainfall
- Temperature
- Wind speed
- Dew point
- Humidity
- Cloud cover
- Soils surveys
- State Soil Geographic Database (STATSGO)
- Soil Survey Geographic Database (SSURGO)
- Federal standards and regulations
- Clean Air Interstate Rule (atmospheric deposition)
- Cataloging Unit boundaries (HUC)
- Historical Stream Flow Record (daily averages)
- Topographic maps (topo quads)
- Digital elevation maps (DEM)
- National Elevation Dataset (NED)
- Roads

#### **Subwatershed Delineation:**

In this project, the watershed will be subdivided into "TMDL watersheds". Further subdivision of the watersheds will be scaled to the extent and size of the impaired stream segments such that only one impaired stream is contained in an individual subwatershed. The location of pre-TMDL monitoring stations shall also be considered. Subwatershed delineation will be structured as to conserve pollutants from upstream watersheds to downstream (receiving) watersheds, and will adhere to topographic boundaries. Vendor will provide a subwatershed delineation directory (CD) of the project watersheds that will contain ArcView<sup>®</sup> shapefiles. The project will be developed in ArcView<sup>®</sup> 9 and at a minimum contain the following four layers:

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- Impaired Streams Layer -- Spatial coverage including an attribute table containing impaired stream names, NHD stream code, WV stream code, trout water designation, and fields identifying each impairment.
- Stream Layer -- Spatial coverage including an attribute table containing stream name, WV stream code, NHD stream code.
- Subwatershed Layer -- Spatial coverage including an attribute table containing watershed name, sub ID number, downstream sub ID number, area (M<sup>2</sup> & acres), GNIS ID, GNIS name, final stream name, WV stream code, and WV NHD stream code.
- TMDL Watershed Boundary Layer -- Spatial coverage of the TMDL watershed(s) including an attribute table containing watershed name.

## **NPDES Permit Summary Report:**

It is very important that all permitted point sources be correctly located and represented in the model in order to develop accurate TMDLs. The Vendor shall provide an NPDES permit data summary report for the project watershed. This permit summary report will identify and characterize the NPDES data associated with permitted point sources in the watershed. The permit summary report will contain two parts: mining-related permit summary spreadsheets (in a Microsoft<sup>®</sup> Excel filterable format) and non-mining related permit summary spreadsheets (in a Microsoft<sup>®</sup> Excel filterable format). These summaries will be submitted to WVDEP on a CD.

Mining permit data and the Division of Mining and Reclamation's (DMR) hydrologic protection unit GIS coverage (hpu.shp) will be provided to the Vendor from WVDEP's Environmental Resource Information System (ERIS) database. The hpu.shp GIS coverage will be used to determine the location of the mining-related NPDES permitted outlets. The ERIS database system will provide the effluent type, permit limits and discharge data for the permitted outlets. WVDEP will develop a comprehensive list of mining-related NPDES permitted outlets in the watershed, including permit number, permit type, outlet ID, outlet location (latitude and longitude), effluent type code, effluent limits, total and disturbed drainage area (for precipitation induced discharges), and continuous flow data (for pumped or constant discharges). This information will provide the basis for representing mining related discharge flows as either continuous flow or precipitation driven in the model.

Non-mining point sources include the following: home aeration units (HAUs), individual publically-owned treatment works (POTWs), individual other (sewage permits), individual POTW collection systems, general sewage, car washes, ground water remediation, water treatment, individual (industrial), solid waste land applications, stormwater industrial general permits (GPs), construction stormwater permits, combined sewer overflows (CSOs), and others. WVDEP's OWRNPDES GIS coverage will be used to determine the locations of the

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non-mining permitted sources and describe permit information such as discharge characteristics, permit limits, and discharge data, which will be obtained from WVDEP's ERIS database. These two datasets will be combined to generate the non-mining related permit summary list for each type of source and will provide the permit number, facility name, responsible party, permit type, outlet ID, outlet location (latitude and longitude), the watershed in which the outlet is located, outlet status (open/closed), the start and end dates for the outlet, and the parameters of interest for which limits are found (including flow, chemical concentrations and pH).

#### **Pollutant Source Summary:**

The Vendor shall provide a pollutant source report in a CD directory containing an ArcView<sup>®</sup> project that spatially represents the potential sources of stream impairments in the watershed. The project will contain a unique layer for each impairment type (metals, bacteria, biological, or other). Within each view, shapefiles will be presented that represent potential point and nonpoint pollutant sources, watershed physiographic data, and the monitoring data required for modeling. The shapefiles will be represented with appropriate symbols in the view legend and physical and observed details will be presented in the attribute table associated with each shapefile. A descriptive document (or legend) will also be submitted with the pollutant source report that explains in detail the contents of each project, view, and shapefile. The Arcview<sup>®</sup> pollutant source report layers for metals, bacteria, biological or other impairments will include the following details, where appropriate:

#### **Watershed Physiographic Data:**

Subwatershed Delineations -- Created by the subwatershed delineation process described in the above Subwatershed Delineation section, the attribute table will include the subwatershed ID number, stream name, stream code and next downstream reach.

Stream Reach -- Spatial representation of all digitized streams in the watershed that originates from WVDEP's dnreach.shp.

Impaired Streams (Metals, Bacteria, Biological, and Other) -- Spatial coverage of WVDEP's stream reach file including all of the impaired streams in the watershed. The theme legend will show the impaired streams and the attribute table will contain fields that indicate all pollutants for which each stream is impaired. The coverage will originate from dnreach.shp shapefile and the work directive.

Roads -- The extent of roads in project watersheds will be spatially represented through a combination of the following sources: wv\_roads.shp coverage from WCMS, TIGER/line files from the U.S. Census Bureau (2003). The Vendor will digitize unpaved roads found on topographical maps and aerial photos.

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Towns – Spatial coverage including locations and names of towns and municipalities in the watershed. The coverage will originate from wvppl.shp in WCMS.

Soils – Spatial soil classification will be represented as polygons. The coverage will originate from the USGS STATSGO database.

Landuse (USGS 2006 NLCD, or equivalent) -- A grid coverage of the landuse data set will include a legend showing each of the landuses.

911 Coverage -- Spatial coverage provided by WVDEP based on information collected through the 911 initiatives. The point coverage includes all buildings and structures on a countywide basis. This coverage may be used to update the landuses to reflect population growth, if necessary.

### **Monitoring Data:**

WAB Stations -- Spatial coverage to include locations of all WVDEP Watershed Assessment Branch (WAB) in-stream monitoring stations. The attribute table will include the station ID, stream name, stream code, and location coordinates. The coverage will be based on the WAB stations shapefile provided by WVDEP.

Additional Monitoring Stations -- Spatial coverage to include locations of all other water quality monitoring stations provided to WVDEP by permittees or other sources. The attribute table will include the permit #, stream name, stream code, and location coordinates.

Trend Stations -- Spatial coverage to include locations of the water quality sampling efforts by the WVDEP Division of Mining and Reclamation (DMR). The attribute table will include the stream name, stream code, and location of the station.

Weather Stations -- Spatial coverage to include locations of weather stations (including precipitation gages and surface airways stations) within and surrounding the watershed. The attribute table will include the station name and ID, period of record, elevation, and location.

USGS Gage Stations -- Spatial coverage of USGS Gage Stations located within and surrounding the project watersheds. The attribute table will include the gage name and ID, period of record, flow rate, and location.

CSO Spill Reports -- Spatial coverage to include supplemental sampling data of CSO overflows provided by WVDEP and/or collected during source tracking.

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## Potential Point Sources:

DWWM NPDES Permits -- Spatial coverage to include a summary of the non-mining permit limit information for each of the OWRNPDES permit outlets. The coverage will originate from the ownrpdes.shp shapefile and permit information retrieved from ERIS by WVDEP.

Mining NPDES Permits -- Spatial coverage to summarize mining-related NPDES outlets. The attribute table will include the permit #, outlet #, effluent type and the permit information for each outlet. The coverage will originate from the hpu.shp shapefile and from information provided by WVDEP.

Permitted Mining Areas -- Spatial coverage to include area of existing mining operations. The coverage will originate from the perbd.shp shapefile provided by WVDEP.

Valley Fills -- Spatial coverage to include area coverage of valley fills from mountaintop removal coal operations. The coverage will originate from the vallf.shp shapefile provided by WVDEP.

## Potential Nonpoint Sources:

AML Area -- Spatial coverage to include locations and areas of AML surface disturbances. Coverage originates from the aml\_poly.shp.

AML Highwall -- Spatial coverage to include locations of AML highwalls. Coverage originates from the aml\_line.shp.

AML Portals (WVDEP) -- Spatial coverage to include locations of AML portals. Coverage originates from the aml\_pnt.shp.

Oil and Gas Wells -- Spatial coverage to include locations and status of oil and gas well operations. Coverage originates from the oog.shp.

Bond Forfeiture Sites -- Spatial coverage to include locations and status of bond forfeiture sites. Coverage created based on information from the Office of Special Reclamation in WVDEP's Division of Land Restoration.

Burned Forest Info -- Spatial coverage to include locations of burned forest areas. The attributes table includes date of burn, total area burned (acres), and the calculated radius. Coverage created based on the coordinates from the burned forest information provided by WV Division of Forestry.

Harvested Forest Info - Spatial coverage to include locations of forest harvest operations. The attributes table includes the registration number, start date, end date, landing (areas) haul road



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(acres), total logging area (acres) and calculated radius (meters). Coverage created based on the coordinates from the harvested forest information provided by WV Division of Forestry to WVDEP.

### **Additional Information Generated by WVDEP Source Tracking:**

AML Seeps -- Spatial coverage to include sample locations taken during WVDEP source tracking efforts. The attributes table includes the site description and the analytical results for each sample.

AML Disturbances -- Spatial coverage to include the identified AML areas during WVDEP source tracking efforts. The attributes table includes the site description of each AML, associated PADS#, and ranks the runoff potential.

Sediment Sources -- Spatial coverage to include the potential sediment sources identified during WVDEP source tracking efforts. The attributes table includes rankings of potential sediment impacts for the following sources: AML, oil and gas, unmapped roads, agriculture, metal hydroxides, bank erosion, and residential areas.

Stream bank stability (S-Values) -- Spatial coverage created by WVDEP to include the actual S-values collected by WVDEP, as well as S-values assigned by best professional judgment for subwatersheds where data was not collected.

Metals Source Photos -- Spatial coverage that shows the locations of selected metal source photos taken by WVDEP during source tracking efforts. A hotlink tool will enable the user to view the photos.

Sewered Areas -- Spatial coverage created by WVDEP that includes the aerial coverage of local PSDs.

Unsewered Areas -- Spatial coverage created by WVDEP that includes the # of unsewered houses / stream segments.

Septic Zones -- Spatial coverage created by WVDEP that includes seasonal flow and septic system failure rates for separate zones within the watershed.

MS4 Permits -- Spatial coverage including areas/outlets associated with Municipal Separate Storm Sewer Systems. Where applicable, delineation of MS4s versus CSO drainage areas.

Sewage Overflow Events -- Spatial coverage that includes location and sewage overflow events that are provided on the source tracking data spreadsheet created by WVDEP.



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CSO Samples -- Spatial coverage provided by WVDEP to include supplemental sampling data of CSO overflows collected during source tracking.

CSO Outlets -- Spatial coverage of areas/outlets associated with CSOs. Where applicable, delineation of MS4s versus CSO drainage areas.

Sludge Application Sites -- Spatial coverage that includes locations and application rates collected during source tracking.

Agricultural Sites -- Spatial coverage created from the potential fecal coliform bacteria sources that were identified during WVDEP source tracking efforts. The attributes table includes the category for the source, a description of the type of source, size and runoff potential.

Fecal Source Photos -- Spatial coverage to include the locations of selected fecal source photos taken by WVDEP during source tracking efforts. A hotlink tool will enable the user to view the photos.

#### **Watershed Model:**

The Vendor must use the Load Simulation Program in C<sup>++</sup>/Mining Data Analysis System (LSPC/MDAS), or an equivalent, modeling system to develop WVDEP TMDLs for streams that are in violation of West Virginia numeric water quality criteria or the narrative criterion 3.2.i. The Vendor shall use nonproprietary models, model codes, and tools (i.e. those in the public domain for TMDL development). In addition, Vendor shall also provide adequate technical transfer of all models, model codes, tools, and relevant data to WVDEP personnel without restriction to distribution. The modeling and data management process must provide the following:

- Simulation of watershed hydrology using hourly local meteorological data
- Capable of modeling numerous (+500) subwatersheds simultaneously
- Simulation of all land and in-stream pollutants under a range of flow conditions for existing, baseline, and TMDL pollutant loading scenarios. The model must calibrate for existing conditions, but be able to be modified to allow for baseline and allocation scenarios
- Evaluates compliance with all water quality criteria, including exposure duration and exceedance frequency components
- Representation of loading processes for both point and nonpoint sources as either precipitation driven or constant discharge, as appropriate

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- Representation of pollutant build-up/washoff rates for various landuse categories
- Representation of pollutants transferred from upstream watersheds to receiving (downstream) watersheds in a conservative manner
- Incorporation of a graphical interface that supports GIS functions
- Representation of in-stream dissolved metals stemming from total metal source inputs and prescription of total metal allocations that result in compliance with dissolved metal water quality criteria
- Presentation of allocations in an acceptable manner (usable by WVDEP) through a post-processing system that provides waste load allocations (WLAs) to individual point sources and load allocations (LA) to categories of non-point sources
- Storage of all geographic, modeling, and point source permit data in a Microsoft® Access or equivalent database and text file formats to provide for efficient manipulation of data

## **Model Hydrology Calibration:**

The Vendor shall perform a calibration of the utilized model(s) with respect to hydrological prediction and provide a report showing the results. The hydrology calibration shall involve the comparison of model results with in-stream flow measurements at selected locations and subsequent adjustment of the hydrologic parameters. The calibration period will be based on the availability of weather and flow data collected during the same time period. The model hydrology calibration must entail the following:

- Incorporation of in-stream flow data from USGS flow gaging stations throughout the watershed. In watersheds without USGS flow gaging stations, the hydrology calibration will be performed on a nearby watershed with similar characteristics and well-documented land uses. This calibration will be supplemented by instantaneous flow measurements from pre-TMDL monitoring.
- Utilization of hydrologic data selected with respect to the following criteria:
  - Completeness of the weather data available for the selected period
  - Adequacy of low-flow and high-flow years
  - Consistency of selected period with key model inputs

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- Achievement of the overall goals of the calibration (to decrease the error between the simulated and observed flows) in the following order:
  - Maintenance of annual water balance
  - Representation of seasonal and monthly flow volumes
  - Representation of base-flow conditions
  - Representation of storm events
- Report presentation on a CD containing worksheets that represent the observed and modeled data, graphs and tables designed to assess the goodness-of-fit, and a statistical analysis of the calibration. Calibration shall be performed on a reasonable number of subwatersheds to assure scientific validity of the process.

#### **Model Water Quality Calibration:**

The Vendor shall perform a water quality calibration for all pollutants of concern at multiple locations throughout the watersheds. This calibration will consist of executing the watershed model, comparing time series water quality output with available water quality observation data, and adjusting water quality parameters within a reasonable range. In-stream concentrations from the model are to be compared directly with observed data. The objective is to best simulate low flow, mean flow, and storm peaks at representative water quality monitoring stations.

The water quality calibration shall be presented on a CD and contain worksheets that represent the observed and modeled output data, graphs and tables designed to assess the goodness-of-fit, and a statistical analysis of the calibration. Calibration shall be performed on a reasonable number of subwatersheds to assure scientific validity of the process.

#### **Biological Stressor Identification:**

Stressor identification will be accomplished by a weight-of-evidence/best professional judgment approach that incorporates evaluation of field narratives, and available information on water chemistry, habitat, and benthic biota. The Vendor will build upon the stressor identification methodologies and threshold criteria developed in the previous TMDL projects. The use of biological information, particularly statistical diagnostic resources developed in concert with DEP biologists, will be used in the stressor identification processes to increase the effectiveness of the identification of significant biological stressors. The Vendor will utilize and integrate the abiotic and biotic information relating to stream health to formulate a candidate list of biological stressors for DEP review. Typical stressors include pH/metals toxicity, sedimentation, organic enrichment, and ionic stress; however, additional stressors may be encountered and will require diagnosis via stressor identification processes, including statistical modeling. The use of developed and tested diagnostic resources (e.g. statistical models) to enhance biological stressor identification, including stressor identification diagrams

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which correlate likely stressors to biological trends evidenced in benthic macroinvertebrate communities will be necessary. The Vendor shall have experience with statistical model(s) which assign probabilities for likely stressors impacting benthic macroinvertebrate assemblages based on genus and/or species-level taxonomy.

Additionally, the Vendor will adhere to the following protocol for biological stressor identification:

- Thorough review of DEP/WAB database for all information related to biologically impaired streams, including water chemistry data, physical habitat assessments, field narratives, and taxonomic information.
- Review of source tracking data to provide guidance and direction as to stressor identification pathways.
- The Vendor will assist WVDEP personnel in the selection of appropriate reference watersheds for use in stressor identification and to support the total iron surrogate approach discussed in the following section. WVDEP will provide an initial list of potential reference watersheds based on knowledge of the watersheds, biological condition, similarity to impaired watersheds, and best professional judgment.

Under direction of and in cooperation with DEP, the Vendor will assemble biological stressor identification resources, which include but are not limited to the results of diagnostic statistical models, the designation of potential biological stressors as proposed through the integration of abiotic and biotic information, and the judgments of professional personnel. Utilization of stressor identification resources will generally follow the protocol below, culminating in a decision meeting between DEP and the Vendor:

- Application of knowledge regarding benthic fauna, including the application of appropriate ecological and taxonomic components relating to macroinvertebrate assemblage structure.
- Incorporation of all database information regarding biotic potential of specific streams or assemblages.
- Quantification of biological assemblage stress through the latest diagnostic stressor identification resources, particularly statistical models which assign probabilities to likely stressors based on attributes of macroinvertebrate assemblages. The incorporation of additional diagnostic resources, like RIVPACS Models, may also be utilized if readily available and appropriate. Also, the use of non-conventional biological metrics may be appropriate where there is sufficient information that can be used to evaluate stressor-response relationships at an appropriate level.

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- Application of a list of stressor-specific indicator taxa and potential impairment thresholds as determined by biotic tolerance values.
- Quantification or summarization of chemical, physical, and narrative information regarding each assemblage's potential stressors into a spreadsheet, which conserves individual site attributes, but is also illustrative of potential cumulative impacts.

The Vendor will incorporate all research/findings, both statistical and taxonomic, regarding biological impact/impairment into stressor identification reports. More specifically, the results of consensus decisions emanating from the joint stressor identification meeting will be conveyed in the reports.

#### **Sediment-to-Metals Relationships (via TSS-to-Fe)**

TMDLs relative to numeric water quality criteria for iron will require the control of iron loading from sediment-producing sources and biological stress due to sedimentation may involve a total iron surrogate approach. As such, the Vendor will be required to examine potential sediment-to-iron (TSS-to-Fe) relationships at the subwatershed scale and document/quantify areas where positive correlations exist. This information will be used in the development of iron or sediment-related biological TMDLs, where appropriate.

#### **Allocations:**

The Vendor and WVDEP will collaborate on an overall allocation strategy from which wasteload and load allocations shall be developed. The Vendor will provide waste load allocations (WLAs) to individual point sources and load allocations (LAs) to specific categories of non-point sources. These allocations will be provided on a CD with filterable spreadsheets. The allocations will include a margin of safety, seasonality considerations, analysis of background conditions, and future growth allocations, if requested by the WVDEP.

Generally, the allocations must be reasonable and the prescribed reductions cannot be more stringent than the background conditions. The Vendor and WVDEP will select the target date for the finalization of an overall allocation strategy during the project kick-off meeting. WVDEP and Vendor will cooperate as necessary to ensure that the strategy is finalized with ample time for the completion of the Preliminary Draft TMDL deliverable by its scheduled due date.

#### **TMDL Report Development:**

The TMDL reports to be submitted during the course of this contract shall be subject to the federal regulatory requirements for the development of an approvable TMDL as specified at 40 CFR 130, and any applicable EPA Region III guidance. The Vendor will be responsible for all document revisions at various points in the process, from draft stages until final document approval. WVDEP shall direct the Vendor to make report revisions when necessary.

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The TMDL reports should allow the general public to understand existing impairments and the corrective actions necessary to restore water quality. Information should also be presented in formats that maximize the usefulness of the TMDL to agencies and programs responsible for implementation. The WVDEP and Vendor will cooperate in the development of a report format that meets those needs.

Prior to submission of all internal draft reports, the Vendor will perform a thorough technical review for accuracy of content, general grammatical correctness, and graphical representation.

#### **Status Report and Other Meetings:**

The Vendor and WVDEP will hold project status meetings monthly. The meetings will be conducted by conference call or in-person at WVDEP headquarters. In discussion/solving of complex issues, the Vendor will be required to come to WVDEP headquarters (typically twice per month). Additionally, the Vendor and WVDEP staff will tour the TMDL development project watershed. Watershed tours typically consist of one or two day events.

#### **Public Participation Meetings:**

The Vendor will participate in up to two public meetings at locations near the TMDL watershed(s), which will be determined at a later date. These meetings will be arranged by the WVDEP. The first series of meetings will be a status update, reviewing general TMDL concepts, water quality standards, and the progress of TMDL development for the impaired streams within the project watershed. Other topics will include the selection and calibration the TMDL models, description the base conditions, and general allocation strategies. The second series of meetings will occur following the development of the draft TMDLs and notice of their availability for comment. During these meetings, WVDEP and Vendor will provide a brief overview of the substantive components of the TMDLs, and facilitate interaction between the stakeholders and the WVDEP. The purpose of these meetings is to educate the stakeholders so they can make informed comments on the draft TMDLs. At least three (3) working days prior to each meeting, the Vendor shall provide any proposed presentation material to the WVDEP for review.

#### **Response to Public Comment:**

WVDEP and Vendor will prepare a responsiveness summary document during the TMDL finalization step in the process. The responsiveness summary shall answer questions posed by stakeholders, identify revisions of the draft TMDL that resulted from stakeholder input, and explain decisions regarding public comments that did not result in TMDL revision. WVDEP will address comments related to agency policy or procedures and the Vendor will address technical issues as necessary. Additional revisions may be required by the Vendor in regard to comments provided by USEPA during TMDL approval.



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**Vendor MUST complete the attached Consultant Qualification Questionnaire (CQQ)**

Vendor must provide a detailed description of technical proficiency and necessary resources to accomplish described TMDLs within established timeframes. If the Vendor intends to subcontract work, similar information must be provided for the subcontractor. Vendor will be evaluated on the following categories of organizational and management resources necessary to complete the project:

### **A. Organization**

The Vendor will be evaluated according to company resources, including the types of environmental services performed, length of time in business, in-house capabilities, amount of resources and equipment available for direct attention to this project, location of primary office and number of full and part-time employees with experience and responsibilities appropriate to this work assignment.

### **B. Resources**

Vendor's description of hardware, software, licenses, databases, models/programs, contacts and other resources available to accomplish the project requirements will be evaluated.

### **C. Personnel**

Vendor will be evaluated on the personnel that will be assigned to this project. The Vendor's submission for evaluation should include titles, education, and work experience.

### **D. Project Management**

Vendor will be evaluated on a description of a management plan that supports personnel and project activities within the organization and coordinates with the WVDEP to achieve timely TMDL development within budgetary constraints. Vendor will also be evaluated on any unique qualities that demonstrate an enhanced ability of the organization to meet the TMDL development requirements of WVDEP.

5. **Oral Presentations (Agency Option):** The Agency has the option of requiring oral presentations of all Vendors participating in the EOI process. If this option is exercised, it would be listed in the Schedule of Events (Section 1.3) of this EOI. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below:

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#### 5.1. Materials and Information Required at Oral Presentation:

Interviews will be conducted with the three firms selected as the most qualified by the WVDEP Selection Committee. The Committee will schedule the interviews.

The format for the interviews will be a 30-60 minute PowerPoint presentation consisting, at a minimum, of the following:

- TMDL development methodology relating to the proposed project
- Corporate/personnel experience as it relates to the proposed project
- Proposed project management plan
- Key personnel available for the proposed work
- Proposed subcontractors
- Product quality control
- Project cost control

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#### SECTION FOUR: VENDOR PROPOSAL, EVALUATION, & AWARD

1. **Economy of Preparation:** EOI's should be prepared simply and economically, providing a straightforward, concise description of firm's abilities to satisfy the requirements and goals and objectives of the EOI. Emphasis should be placed on completeness and clarity of content. The response sections should be labeled for ease of evaluation.
  
2. **BIDS MUST NOT CONTAIN PRICE QUOTATIONS:** The State shall select the best value solution according to §5G-1-3 of the West Virginia State Code. In accordance with the Code requirements, no "price" or "fee" information is requested or permitted in the bid response.
  
3. **Evaluation and Award Process:** Expressions of Interest for projects estimated to cost \$250,000 or more will be evaluated and awarded in accordance with West Virginia Code §5G-1-3. That Code section requires the following:
  - 3.1. **Required Elements of EOI Response:** The director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications, and performance data and may include anticipated concepts and proposed methods of approach to the project.
  
  - 3.2. **Public Advertisement:** All EOI requests shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-1 et seq.
  
  - 3.3. **Selection Committee Evaluation & Negotiation:** A committee comprised of three to five representatives of the agency initiating the request shall:
    - 3.3.1. evaluate the statements of qualifications and performance data and other material submitted by the interested firms and select three firms which in their opinion are the best qualified to perform the desired service.
  
    - 3.3.2. conduct interviews with each firm selected and the conduct discussions regarding anticipated concepts and the proposed methods of approach to the assignment.
  
    - 3.3.3. rank in order of preference no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional

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firm.

3.3.4. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm.

3.3.5. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

3.4. **Vendor Ranking:** All evaluation criteria is defined in the Procurement Specifications section and based on a 100 point total score. Points shall be assigned based upon the Vendor's response to the evaluation criteria as follows:

• Qualifications and experience	25 Points Possible
• Approach and methodology for meeting Goals and Objectives	35 Points Possible
• Oral interview	20 Points Possible
• Management and Resources	<u>20 Points Possible</u>
<b>Total</b>	<b>100</b>

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**SECTION FIVE: TERMS AND CONDITIONS**

Terms and conditions begin on the next page.

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### Special Terms and Conditions:

#### *Bid and Performance Bonds:*

#### Insurance Requirements:

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

### General Terms and Conditions:

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

#### *Conflict of Interest:*

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

#### *Prohibition Against Gratuities:*

Firm warrants that it has not employed any company or person other than a bona fide employee working solely for the firm or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract. For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

#### *Certifications Related to Lobbying:*

Firm 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



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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 firm shall complete and submit a disclosure form to report the lobbying.

Firm 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.

### *Vendor Relationship:*

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

Firm shall be responsible for selecting, supervising and compensating all individuals employed pursuant to the terms of this EOI and resulting contract. Neither the firm nor any employees or contractors of the firm shall be deemed to be employees of the State for any purposes whatsoever.

The Firm shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans, including but not limited to Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

The Firm shall hold harmless the State, and shall provide the State and Agency with a defense against all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns.

The firm shall not assign, convey, transfer or delegate any of its responsibilities and

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obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

#### *Indemnification:*

The firm 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 firm, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; (3) Any failure of the firm, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.

#### *Contract Provisions:*

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

#### *Governing Law:*

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

#### *Compliance with Laws and Regulations:*

The firm 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 firm 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.

#### *Subcontracts/Joint Ventures:*

The State will consider the firm to be the sole point of contact with regard to all contractual matters. The firm may, with the prior written consent of the State, enter into written

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subcontracts for performance of work under this contract; however, the firm is totally responsible for payment of all subcontractors.

### *Term of Contract:*

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

### *Non-Appropriation of Funds:*

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

### *Contract Termination:*

The State may terminate any contract resulting from this EOI immediately at any time the firm fails to carry out its responsibilities or to make substantial progress under the terms of this EOI and resulting contract. The State shall provide the firm with advance notice of performance conditions, which are endangering the contract's continuation. If after such notice the firm fails to remedy the conditions contained in the notice, within the time contained in the notice, the State shall issue the firm an order to cease and desist all work immediately.

The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination. The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

### *Changes:*

If changes to the original contract become necessary, a formal contract change order will be required. Prior to any work being performed, the change must be negotiated and approved by the State, the Agency and the firm. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office prior to the effective date of such amendment. **NO CHANGE SHALL BE IMPLEMENTED BY THE FIRM UNTIL THE FIRM RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**

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### *Invoices, Progress Payments, & Retainage:*

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

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

### *Liquidated Damages:*

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

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

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

Firm shall have access to private and confidential data maintained by Agency to the extent required for firm to carry out the duties and responsibilities defined in this contract. Firm agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the firm, subcontractors, or individuals permitted access by the firm.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**TMDL VENDOR QUALIFICATION QUESTIONNAIRE** **Attachment A**

PROJECT NAME Upper Ohio North, Upper Kanawha, and South Branch Potomac TMDL Project		DATE (DAY, MONTH, YEAR)		FEIN	
1. FIRM NAME		2. HOME OFFICE BUSINESS ADDRESS		3. FORMER FIRM NAME	
4. HOME OFFICE TELEPHONE	5. ESTABLISHED (YEAR)	6. TYPE OWNERSHIP Individual      Corporation Partnership    Joint-Venture			
7. PRIMARY TMDL DEVELOPMENT OFFICE: ADDRESS/ TELEPHONE/ PERSON IN CHARGE/ NO.OF TMDL DEVELOPMENT PERSONNEL IN OFFICE					
8. NAMES OF PRINCIPAL OFFICERS OR MEMBERS OF FIRM			8a. NAME, TITLE, & TELEPHONE NUMBER - OTHER PRINCIPALS		
9. PERSONNEL BY DISCIPLINE					
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> — CONTRACT ADMINISTRATOR(S)  — PROGRAM MANAGER(S)  — PROJECT MANAGER(S)  — QA/QC MANAGER(S)  — BIOLOGICAL ANALYST(S)  — MODEL DEVELOPER(S) </div> <div style="width: 30%;"> — WATERSHED ANALYST(S)  — SOILS SPECIALIST(S)  — TECHNICAL EXPERT(S)  — TECHNICAL WRITER(S)  — OUTREACH SPECIALIST(S)  — SENIOR WATER RESOURCE ENGINEER(S) </div> <div style="width: 30%;"> — OTHER (LIST BELOW)  — _____  — _____  — _____ </div> </div>					
					— TOTAL PERSONNEL
10. DO YOU NEED ADDITIONAL EMPLOYEES TO FULFILL THE REQUIREMENTS OF THIS CONTRACT? <input type="checkbox"/> YES <input type="checkbox"/> NO					

11. OUTSIDE KEY CONSULTANTS/SUB-CONSULTANTS ANTICIPATED TO BE USED. Attach "TMDL Vendor Qualification Questionnaire".

NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
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NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No
NAME AND ADDRESS:	SPECIALTY:	WORKED WITH BEFORE ____ Yes ____ No



12. A. Is your firm experienced in development of TMDLs for total recoverable metals?

YES NO

12.A.1 Provide Names and Number of Projects

12.A.2 Provide an example TMDL for total recoverable metals

12.A.3 Provide a detailed description of the methodology to develop a total recoverable metals TMDL as per  
EOI.

ATTACH ADDITIONAL PAGES AS NECESSARY

12. B. Is your firm experienced in development of TMDLs for pH/dissolved metals?

YES NO

12.B.1 Provide Names and Number of Projects

12.B.2 Provide an example TMDL for pH/dissolved metals

12.B.3 Provide a detailed description of the methodology to develop a pH/dissolved metals TMDL as per  
EOI.

ATTACH ADDITIONAL PAGES AS NECESSARY

12. C. Is your firm experienced in development of TMDLs for fecal coliform bacteria?

YES NO

12.C.1 Provide Names and Number of Projects

12.C.2 Provide an example TMDL for bacteria

12.C.3 Provide a detailed description of the methodology to develop a fecal coliform bacteria TMDL as per  
EOI.

ATTACH ADDITIONAL PAGES AS NECESSARY

12. D. Is your firm experienced in biological stressor identification and development of TMDLs for biological impairments?

YES NO

12.D.1 Provide Names and Number of Projects

12.D.2 Provide an example TMDL for biological impairment

12.D.3 Provide a detailed description of the methodology to develop a biological impairment TMDL as per EOI.

ATTACH ADDITIONAL PAGES AS NECESSARY

12. E. Describe your firm's management plan that supports personnel and project activities within the organization and coordinates with the WVDEP to achieve timely TMDL development within budgetary constraints as per EOI.

ATTACH ADDITIONAL PAGES AS NECESSARY

12. F. Describe your firm's experience with the LSPC/MDAS or equivalent modeling system in TMDL development. Provide names and number of projects for which this type of modeling system was employed.

ATTACH ADDITIONAL PAGES AS NECESSARY

13. PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES RESPONSIBLE FOR TMDL DEVELOPMENT PROJECTS (Insert additional copies as necessary)

NAME & TITLE (Last, First, Middle Int.)	YEARS OF EXPERIENCE		
	In EPA-approved TMDL development	In TMDL-related projects	With modeling system(s), e.g., LSPC, MDAS, etc...
Brief Explanation of Responsibilities			
EDUCATION (Degree, Year, Specialization)			
MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS		REGISTRATION (Type, Year, State)	

13. PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES RESPONSIBLE FOR TMDL DEVELOPMENT PROJECTS

NAME & TITLE (Last, First, Middle Int.)	YEARS OF EXPERIENCE		
	In EPA-approved TMDL development	In TMDL-related projects	With modeling system(s), e.g., LSPC, MDAS, etc...
Brief Explanation of Responsibilities			
EDUCATION (Degree, Year, Specialization)			
MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS		REGISTRATION (Type, Year, State)	

13. PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES RESPONSIBLE FOR TMDL DEVELOPMENT PROJECTS (Insert additional copies as necessary)

NAME & TITLE (Last, First, Middle Int.)	YEARS OF EXPERIENCE		
	In EPA-approved TMDL development	In TMDL-related projects	With modeling system(s), e.g., LSPC, MDAS, etc...

Brief Explanation of Responsibilities

EDUCATION (Degree, Year, Specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, Year, State)

13. PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES RESPONSIBLE FOR TMDL DEVELOPMENTS PROJECTS

NAME & TITLE (Last, First, Middle Int.)	YEARS OF EXPERIENCE		
	In EPA-approved TMDL development	In TMDL-related projects	With modeling system(s), e.g., LSPC, MDAS, etc...

Brief Explanation of Responsibilities

EDUCATION (Degree, Year, Specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, Year, State)

14. PROVIDE A LIST OF SOFTWARE AND EQUIPMENT AVAILABLE IN THE PRIMARY OFFICE WHICH WILL BE USED TO COMPLETE TMDL DEVELOPMENT SERVICES

15. CURRENT PROJECTS/ACTIVITIES IN WHICH YOUR FIRM IS PRESENTLY INVOLVED

PROJECT NAME, TYPE AND LOCATION	NAME AND ADDRESS OF OWNER	NATURE OF YOUR FIRM'S RESPONSIBILITY	ESTIMATED PROJECT COST	PERCENT COMPLETE
TOTAL NUMBER OF PROJECTS:			TOTAL ESTIMATED PROJECT COSTS: \$	



16. CURRENT ACTIVITIES ON WHICH YOUR FIRM IS SERVING AS A SUB-CONSULTANT TO OTHERS

PROJECT NAME, TYPE AND LOCATION	NATURE OF FIRMS RESPONSIBILITY	NAME AND ADDRESS OF OWNER	ESTIMATED COMPLETION DATE	ESTIMATED PROJECT COST	
				ENTIRE PROJECT	YOUR FIRM'S RESPONSIBILITY

17. COMPLETED WORK WITHIN LAST 5 YEARS IN WHICH YOUR FIRM WAS THE DESIGNATED FIRM OF RECORD				
PROJECT NAME, TYPE AND LOCATION	NAME AND ADDRESS OF OWNER	ESTIMATED PROJECT COST	YEAR	EPA APPROVED?

18. COMPLETED WORK WITHIN LAST 5 YEARS ON WHICH YOUR FIRM HAS BEEN A SUB-CONSULTANT TO OTHER FIRMS (INDICATE PHASE OF WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE)

PROJECT NAME, TYPE AND LOCATION	NAME AND ADDRESS OF PRIMARY FIRM	ESTIMATED PROJECT COST OF YOUR FIRM'S PORTION	YEAR	EPA APPROVED?	CLIENT NAME AND ADDRESS

19. Use this space to provide any additional information or description of resources supporting your firm's qualifications to perform work for the WVDEP's TMDL Program.

20. The foregoing is a statement of facts.

Signature: \_\_\_\_\_

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

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

Printed Name: \_\_\_\_\_

## 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.

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(Company)

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(Authorized Signature)

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(Representative Name, Title)

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(Phone Number)

(Fax Number)

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(Date)

**ADDENDUM ACKNOWLEDGEMENT FORM****SOLICITATION NO.:** DEP15990

**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.

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 Company

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 Authorized Signature

---

 Date

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