



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

Solicitation

NUMBER
HHR12071

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER 304-558-0067

RFQ COPY
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

HEALTH AND HUMAN RESOURCES
 OFFICE OF INSPECTOR GENERAL
 MEDICAID FRAUD CONTROL UNIT
 408 LEON SULLIVAN WAY
 CHARLESTON, WV
 25301 304-558-2055

DATE PRINTED
06/21/2012

BID OPENING DATE: 07/25/2012 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		099-00-01-001		
<p>THE STATE OF WEST VIRGINIA AND ITS AGENCY THE DEPARTMENT OF HEALTH AND HUMAN RESOURCES (DHHR), OFFICE OF INSPECTOR GENERAL, MEDICAID FRAUD UNIT REQUEST A QUOTE TO PROVIDE, INSTALL AND IMPLEMENT A NEW CASE MANAGEMENT SYSTEM PER THE ATTACHED SPECIFICATIONS.</p> <p>BID OPENING: JULY 25, 2012 AT 1:30 PM</p> <p>LOCATION: PURCHASING DIVISION, BUILDING #15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305</p> <p>SEE ATTACHED INSTRUCTIONS TO BIDDERS.</p> <p>NEW CASE MANAGEMENT SOFTWARE, PER ATTACHED SPECS.</p> <p>CASE MANAGEMENT SOFTWARE, INSTALLATION & IMPLEMENTATION PER THE ATTACHED SPECIFICATIONS.</p>						
SIGNATURE			TELEPHONE		DATE	
TITLE		FEIN		ADDRESS CHANGES TO BE NOTED ABOVE		

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



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RFQ HHR12071

SPECIFICATIONS

The West Virginia Department of Health and Human Resources (DHHR) Office of Inspector General (OIG) Medicaid Fraud Control Unit (MFCU), is seeking a contractor experienced in delivering and implementing federal or state criminal justice case management systems that can provide a web based case management, tracking, and reporting system for initiating, planning, executing, controlling, and reporting on prosecution and investigative assignments and activities.

PURPOSE

Case management software is necessary to maintain, enhance, and report to federal and state government entities the activities of the MFCU, including investigations and prosecutions of Medicaid providers that seek to commit criminal and civil violations against the Medicaid program, and individuals who abuse, neglect, or exploit persons who reside in Medicaid-funded facilities.

Specifically:

1. The MFCU carries criminal and civil case loads; 2) maintains statistical data; 3) performs analysis of case information; 4) responds to requests for information on caseload; and 5) performs quarterly and annual reporting to federal and State government entities.
2. The MFCU typically has 50 to 70 open investigations of both criminal and civil matters. The information in all matters is sensitive and confidential. Most matters will need access by a number of MFCU personnel; access to information in investigations may be restricted within the unit.
3. The MFCU case management system must be fully operational at contract completion with WV OIG MFCU staff members trained and competent with its use prior to December 31, 2012.

BACKGROUND

The MFCU case management and tracking system is the complete repository of all information related to its work investigating and prosecuting allegations of fraud against the Medicaid program, and abuse and neglect of persons in Medicaid-funded facilities. The information includes referral source and type, nature of allegation, parties involved, identifiers, staff assigned, dates, time tracking, case notes, settlement data, financial information, sentencing, and other data as needed. The MFCU currently utilizes software that is unreliable and outdated, necessitating continuous repairs which create delays in producing required reports, gathering data, and properly documenting the case load.

The new system is necessary to enable efficient and timely information gathering, analysis, controlling, and reporting so that prosecution and investigation activities are current, accurate, and complete for reporting purposes.

The system is to be deployed as a web-based system that seamlessly integrates the OIG suite of productivity tools, including the full complement of Microsoft Office, and Windows operating systems XP and 7. The software must support unified case management.

The software's database must be fully relational and require only single entry of data elements (i.e., name/party records must be entered only once and linked to other tables by reference only). Users should never need to duplicate entry of data elements. For example, MFCU can define an unlimited number of additional case types, without purchasing additional case type specific modules.

VENDOR REQUIREMENTS

Vendor will meet the following requirements:

1. Vendor will have experience working with other state Medicaid Fraud Control Units.
2. Vendor will have a minimum of 10 years in case management software systems.
3. Vendor will not subcontract the work under this contract

INSURANCE REQUIREMENT

Insurance Requirements: The contractor shall maintain and furnish proof of coverage of liability insurance for loss, damage or injury (including death) of third parties arising from acts and omissions on the part of the vendor, its agents and employees in the following amounts:

- a. For bodily injury (including death) \$500,000 per person, a minimum of \$1,000,000 per occurrence.
- b. For property damage and professional liability: a minimum of \$1,000,000 per occurrence.

State of West Virginia, Department of Health & Human Resources, needs to be listed as the certificate holder

LIFE OF CONTRACT

Contract will become effective on the “go-live” date, after installation and training have been completed. The contract will be for one year, with two one-year renewals.

MANDATORYS

1. The software must use Microsoft SQL Server 2008 or later as the back-end database.
2. The software must use Microsoft SQL Reporting Services as report writer.
3. The software must be compatible with Windows XP or 7.
4. The software must be a Smart Client solution or equal.
5. The software must be written in Microsoft .NET.
6. The software must be deployed and updated from a central server(s).
7. Contractor must offer a hosted solution.
8. The software must allow for all coded values to be hidden or visible, based on a dependency to other fields. For instance, civil cases will only display those documents, matters, and events that apply to civil cases.
9. The software must apply data entry formatting in applicable number fields, i.e., Phone number (xxx)xxx-xxxx, ext. xx, zip code xxxxx-xxxx, social security number xxx-xx-xxxx, Medicaid identification numbers, and provider numbers.
10. The software must provide a method for automatically linking/triggering events, case status changes, documents, and correspondence (e.g., a certain event will automatically trigger a document).
11. The software must include or allow time tracking and reporting by case, attorney, and task.
12. The software must allow for automatic notification to users and staff of important case and event information.
13. The software must be able to electronically route cases and work tasks and notify users of those routed items.
14. The software must provide time tracking entry and reporting functionality on system users' main screen.
15. The software must allow for the tracking of MFCU-defined time events with Start Date, End Date, and easy to enter duration fields for time tracking entry.
16. The software must allow for the creation of Time Tracking reports for each case, as well as office-wide.

17. The software must be able to mark case or defendant account closed or some other designator.
18. Authorized users must be able to fully access and use the software via the web 24 hours a day, 7 days a week, without purchasing additional software.
19. Screen configuration and display must use XML without recompiling software application.
20. The contractor must provide a disaster recovery plan demonstrating a structured approach responding to unplanned incidents that threaten the system infrastructure, which includes hardware, software, networks, processes and people. In the event of a continuity interruption, the MFCU will be down no longer than 3 business days.
21. The software must store and link information with the appropriate case, using electronic case folders that contain automatically generated documents or any valid system file.
22. The software must be able to track correspondence by individual and by individual involvement to a particular case.
23. Screen configuration and display must allow for customizations for agency without recompiling software application.
24. The software must provide "dashboard" functionality for all users based on login, agency, or sub agency, where common reports, data entry screens, searches, cases, or calendars automatically run upon system start. Dashboards must be unique to different user groups or teams, as specified by MFCU.
25. Each functional group or team must have a unique view of the case management application, while still providing MFCU Administrators a global view on all system performance, cases and name/party records.
26. MFCU must be able to entirely define all screen displays, fields, coded values, and system views.
27. MFCU-defined conflict checking screens and reports must be able to be generated based on user login and function.
28. The software must allow users to open any third party software, file, or website from within the software (e.g., Westlaw, LexisNexis, and Internet Explorer).
29. The software must allow MFCU to define required fields and screens, including renaming or removing fields to meet local agency or user requirements.
30. The software must allow for adding an unlimited number of user-defined fields for case and name information.
31. The software must allow system administrator to easily modify, add to, or delete from the drop down menus.
32. MFCU must be able to define all coded values.

33. The software must allow for an unlimited number of additional software-generated numbers that can be associated to the case and name (e.g., multiple SSN's, Driver License Numbers).
34. MFCU must be able to completely define number schemes and must be able to include case type, agency, and/or division abbreviations, sequential number (e.g. CR-04-1234) and be generated office-wide, division-wide, or for certain case types.
35. The software must be able to close a case automatically based on MFCU-defined business rules.
36. The software must be able to restrict users from closing a case unless other values are entered prior, based on MFCU-defined business rules. For instance, a case cannot be closed without a disposition.
37. The software must provide the ability for the closure of a case to auto-create MFCU defined documents, events, system reports, and notifications.
38. The software must document and track actions performed by staff and auto-create MFCU defined documents, events, and notifications based off these work actions.
39. The software must provide for MFCU-defined business rules for required fields entry based on other field values (e.g., cases cannot be closed without a disposition).
40. The software must provide for MFCU-defined mandatory use of all agency-specified required fields on all screens.
41. The software must provide for the mandatory use of MFCU-specified "codes" in certain fields.
42. The system must allow for automatic notification via email, or system prompts to key system users, and external MFCU-defined case involvements for changes in case and status.
43. The software must notify involved parties regarding activities or changes in case based on MFCU-defined business rules.
44. The software must allow for visual alert prompts for users for key MFCU-defined name and case information.
45. The software must accommodate single name/party record entry in a fully relational table (i.e., a name/party is entered only once and can then be linked with information anywhere else in the application). The software must require that all name records be entered in the same table.
46. The software must be able to track an unlimited number of addresses, phone numbers, and e-mails for any name.
47. The software must track the dates associated with address changes.

48. The software must be able to track an unlimited number of relationships between name records (e.g., spouse, ex-spouse, child, friend, brother, sister, business associate, acquaintance, alias, birth parent, step parent, niece, nephew, cousin, in-laws).
49. The software must allow users to view all involvements for a name on one screen. A name inquiry identifies, at a minimum: all aliases and cases; the person's relationship to each case (e.g., client, defendant, victim, witness, or parent/guardian of juvenile); and any associated charges.
50. The software must store an unlimited number of aliases.
51. The software must record an unlimited number of charges per case, defendant, or client.
52. The software must be able to generate a 'rap sheet' for all case involvements for any individual.
53. The software must provide a name table that contains ALL names entered. The name table must accommodate the names of people, businesses, and group names.
54. For each name record, the software must provide comments and notes fields that have unlimited entry capacity (within disk storage limits) and include a rich text editor.
55. The software must allow users to view all cases linked to a name, and from this view allow users to go directly to a specific case.
56. The software must provide duplicate name detection tools to prevent the database from becoming cluttered with duplicate name records.
57. The software must provide the ability to manually assign and reassign cases to an individual or group of attorneys.
58. The software must allow users to view all involvements to a case on one screen. For instance, a case inquiry identifies the defendant, co-defendant, victim, witness, parent/guardian of juvenile, and any related cases.
59. The software must be able to categorize a case with multiple case types (e.g., DWI, Domestic Violence, Drug, and Capital Punishment).
60. The software must allow law enforcement and court numbers to be linked to specific MFCU cases. These law enforcement and court numbers must be completely searchable.
61. The software must be able to reopen previously closed cases retaining previous case closure and current reopening information.
62. The software must allow for an unlimited number of witnesses, victims, and associated law agencies or counsel per case.
63. The software must allow users to link an involved person's events to a case.

64. The software must track MFCU-defined attorney and court information, including, but not limited to: court location, docket number, judge name, court notes, all attorneys involved, attorney type, and attorney date assignment.
65. The software must fully support multi-defendant base case tracking. For instance, each co-defendant has a unique and possibly different judgment, events, restitution, attorneys, but all defendants can be managed from one screen.
66. The software must be able to track all relevant event information, including type, location, date, time, people present, and event notes.
67. The software must be able to link charges to law officers, persons involved in the case, and events.
68. The software must allow users to link a client's charges to specific involved persons, including witnesses, victims and law officers.
69. For cases with multiple charges, the software must allow users to repeat similar charge information automatically.
70. For statistical purposes the software must be able to track arresting charge, prosecuting charges, and final charge.
71. The software must allow users to document and track case court dispositions (guilty, not guilty, dismissed, etc.)
72. For each charge, the software must track the sentence, the sentence credit and suspended time, and the sentence location.
73. The software must track statute enhancers and modifiers.
74. The software must be able to track court conditions placed on a case, including non-monetary provisions such as work programs, community service, service restitution based on court order received to MFCU.
75. For each case record, the software must provide comments and notes fields that have unlimited entry capacity (within disk storage limits) and include a rich text editor.
76. The software must be able to link cases to other cases.
77. The software must be able to easily copy entire case information including charges, and involved person for co-defendant based cases.
78. The software must provide for the integrated collection, allocation, and tracking of fees, fines, and payments.
79. The financial tracking capability must use the same name database as the rest of the office (i.e. changing a defendant's address will change the address of a restitution payee.)
80. The software must maintain standard tables for costs, fees, & fines.
81. The software must be able to compute and enter monetary penalties including fines, fees, and restitution based on court orders received to MFCU.

82. The system administrator must be able to maintain a security system as directed by MFCU administrator that can be modified in minutes with no programming required.
83. The system administrator must be able to define security on both a group and an individual level, including what functions a user or group can access.
84. Security measures must ensure the confidentiality of all files within the system. A unique login and password must be available to each user, and must be linked to the defined application capabilities for each user.
85. The software must support the use of user privilege profiles to restrict access to specific data areas.
86. The software must be able to restrict access by case type, name type, agency type, or sub-agency entry type and those case types' subsequent values.
87. The software must provide for security on at least the following levels: table, function (add, modify, etc.), fields, coded values, and case type.
88. The software must support various types of access privileges including at least read-only, update, and no access.
89. The software must provide comprehensive auditing & logging giving administrators a granular view of what data is being edited, viewed, deleted, and added by system users.
90. For key records, such as name and case information, the software must track the date, time, and login of the person who added the record, and the date, time, and login of the person who last modified the record.
91. Users must be able to change domain password from within the software.
92. The software must provide integrated reporting within the case management software, without requiring system users to navigate to reports for access (i.e. case management system is the reporting system).
93. The software must include a collection of commonly used standard reports.
94. The software must allow for reports to be placed in user-defined locations for eased execution of reports (e.g., calendar reports are run from the calendar screens or tables).
95. The software must allow the general user to easily run reports without having any report writing knowledge.
96. The software must include an ad hoc reporting tool that provides the following functionality:
 - a. Drill down / hyperlink functionality (i.e., clicking on a hyperlinked case will open up the case record in the case management system).
 - b. Automated, scheduled email reporting to staff and external stakeholders (e.g., a report is delivered to director's email inbox every Thursday)

- c. Tightly integrated with case management system (i.e., case intake forms, automatically generate name summary reports rather than forcing user to run name summary report).
 - d. Graphing functionality
 - e. Ability to export and print all report contents. Must be exportable to Excel, PDF, XML, comma delimited, without purchasing additional third party software.
97. The software must include a report writer to create custom views for statistical and managerial reports.
98. The software must allow reports to run from a secure website.
99. Generated reports must be exportable to multiple formats including XML, CSV, Acrobat, HTML, and Excel, without purchasing additional third party software.
100. The software must be able to distribute reports to personnel not using the application.
101. The software must be able to format reports to accommodate multiple paper sizes, and viewing layouts.
102. The software must allow for staff to have a viewable calendar for upcoming associated events.
103. The software must allow for intelligent group, event scheduling, and rescheduling.
104. The software must produce schedules for individuals, events, tasks, and dates upon user request. These schedules must be printable; web accessible; and exportable to Excel, RTF, Adobe Acrobat, and Microsoft Outlook.
105. The software must display case and non-case event information in an intuitive and interactive PIM (Personal Information Manager) format similar to Microsoft Outlook calendar or GroupWise calendar.
106. The software must be able to generate MFCU-specified documents such as subpoenas, charging packets, letters, complex documents, and batch documents automatically using data contained in the system, without having to open the word processor program manually.
107. The software must allow users to create documents with Microsoft Word from within the application.
108. The software must allow for any file type to be linked and run from the "electronic" case file, including but not limited to documents, images, video, and email correspondence.
109. All files, documents, and other files that are stored in the "electronic" case file folders must be able to be searched using document indexing.
110. The system administrator may specify editing privileges for documents linked to the electronic case file. For example, he or she may specify that they

are always locked, always unlocked, or sometimes locked (e.g., when document is in use by another user).

111. The software must contain a document scanning feature that allows users to scan documents directly into the electronic case file.
112. The software must enable users to redact sensitive information from documents, clean scanned documents or alter their appearance, highlight information on documents, and add notations to documents
113. The software must provide a document routing function that allows MFCU to move or copy files from the electronic case file of one name or case record to the electronic case file of another name or case record.
114. The software must provide for the easy retrieval of information by using on-screen, web-style searching using almost any data or combination of data contained within the record(s), including but not limited to partial names, addresses, and other data elements.
115. The software must provide global, web-style searching which ranks, sorts, and lists search results functionality to quickly locate case and name records (e.g., index of entire database with searching on case or name data).
116. The software must enable users to search on ranges of information in applicable fields, such as date and weight fields and export all search results.
117. The software must provide for administration and managerial searches to be conducted on screen & provide number counts of search performed (e.g., number of cases of certain type, with certain status will visually display how many records meet criteria).
118. Software must contain a navigation bar to help users navigate.
119. Users must be able to navigate throughout the software using just keyboard shortcuts or just a mouse, according to their preferences.
120. The software must use a tabbed browsing interface metaphor to allow users to have multiple cases, names, calendars, and dashboards open simultaneously (i.e., Microsoft Internet Explorer 7.0 or later or Mozilla Firefox).
121. The software must maximize the use of function/hot keys for one-stroke execution of key commands, drop-down codes, save, search and navigation functions.
122. MFCU must be able to define function/hot keys to execute key commands, drop-down codes, save, search, and navigation functions.
123. The software must allow users to manually or automatically link an involved person's events to a case.
124. Contractor must have experience in providing training for a statewide implementation and provide training to statewide user groups for software rollout.

125. As part of implementation, the Contractor must provide sufficient onsite training for all MFCU employees who will use the system. Contractor must provide administrator training where administrators are trained to manage code tables, statutes, security permissions, and system tools. Contractor must offer an annual onsite training conference for administrators of the application software.
126. Contractor must provide document author and report author training to enable specified users to create MFCU-specific documents and reports following the implementation.
127. Contractor must offer additional training courses regularly and without additional charge, which MFCU administrators can attend remotely.
128. Contractor must provide annually renewable support and maintenance that include software support and regular software releases. With every new software update, Contractor must make updated user and administrator manuals available without additional charge.
129. Contractor must provide custom documentation services as part of the project implementation.
130. Contractor must guarantee a response to all help requests within 4 hours of receiving the request, when submitted during the hours of 8:00am – 5:00pm, Eastern Time.
131. Contractor must maintain a customer accessible section of their web site for enhancement/bug submission, message board/forum access, and online access to support representatives and for sharing documents and reports with other software customers.
132. Contractor must use web tools such as remote diagnostic tools as much as possible to diagnose and resolve problems.

DESIRABLES

1. When users choose to delete a name or case, a message should appear warning users of the implications of the delete operation and confirming that they wish to delete.
2. Software should provide bar-coding capability to help users easily record the location of all cases and exhibits. Software should be able to associate barcodes with people, locations, exhibits, and cases.

3. Instead of entering locations manually for cases and/or exhibits, users should be able to scan the relevant barcodes (i.e., barcodes of the name record taking physical possession, the physical location where the case/exhibit will be, and the cases/exhibits) and have the information auto-populate in the appropriate place.
4. Each name and case summary report should contain a unique software-generated barcode that users can scan to pull up the associated name or case record in the system immediately.
5. The software should provide the capability to merge duplicate names.
6. From the office or division wide activity list, system users should be able to navigate directly to a selected case with one keystroke.
7. Users should be able to access reports without ever exiting the system.
8. Ability to export and print all report contents. Should be exportable to Excel, PDF, XML, comma delimited, without purchasing additional third party software.
9. All cases or names referenced in reports should hyperlink to the case or name record in the software.
10. The software should be able to display office- or division-wide calendars.
11. Auto-generated documents should automatically link to the related case file for future reference.
12. Users should be able to search for cases, names, events, and documents from any screen and export all search results.
13. A system user should be able to search on the client name and directly navigate to any upcoming events.
14. Navigation bar should only show options that are available from that screen (e.g., if users are not in a case or name session, the option to "close session" should not be available).
15. Keyboard shortcuts should copy familiar Microsoft Windows shortcut keys as much as possible, to enable users to quickly use many of the shortcuts (e.g., "Ctrl" + "S" will save the screen).
16. The software should allow users to navigate directly to names and cases with duplicate identifiers with one keystroke.
17. The software should provide a practice database, independent of the actual database, for training purposes.

RFQ HHR12071 COST SHEET

Services:

- Project Management \$ _____
- Installation \$ _____
- Configuration \$ _____
- Hosted setup \$ _____
- Onsite assistance \$ _____
- Training \$ _____

Add-on Software, 3rd party software \$ _____

Yearly Support and Subscription Fees \$ _____

Grand Total \$ _____

Note: Bid will be awarded to the Vendor with the lowest total cost meeting the specifications.

Vendor Name: _____

Vendor Address: _____

Remit address: _____

Fax number: _____

Phone number: _____

Email: _____

Vendor Signature: _____

DATE

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 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: July 10, 2012

Submit Questions to: Roberta Wagner
 2019 Washington Street, East
 P.O. Box 50130
 Charleston, WV 25305
 Fax: 304-558-3970
 Email: Roberta.A.Wagner@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 or expression of interest 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: July 25, 2012 at 1:30 pm

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 for Open End, Service, and Similar Contracts**

Initial Contract Term: This Contract becomes effective on
 Upon Award and extends for a period of
 1 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 Two (2) 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.

- | **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.

4. **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.
5. **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.
6. **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 a 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.
7. **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 Minimum or more.

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

| Property Damage Insurance \$1,000,000.00 Minimum

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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: In addition to anything required under Section 39, entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses prior to Contract award, in a form acceptable to the Purchasing Division.

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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.

- 8. 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.
- 9. 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.
- 10. 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.
- 11. 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.
- 12. 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.
- 13. 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.
- 14. 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.
- 15. 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.

16. **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."
17. **UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
18. **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.
19. **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.
20. **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.
21. **SMALL, WOMAN-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, woman-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
22. **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.
23. **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.
24. **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.
25. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.

26. **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.
27. **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.
28. **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.
29. **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.
30. **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.** Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
31. **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 remain in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
32. **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.
33. **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.

- 34. 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.
- 35. 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.
- 36. 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.
- 37. 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.
- 38. 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>.
- 39. 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 the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 40. 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.
- 41. 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.
- 42. 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.
- 43. 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.
- 44. 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.

- 45. 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.
- 46. 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.
- 47. 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.
- 48. 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.
- 49. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services may 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.

CERTIFICATION AND SIGNATURE PAGE

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

(Company)

(Representative Name, Title)

(Contact Phone/Fax Number)

(Date)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: HHR/2071

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 that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

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

AGREEMENT ADDENDUM FOR SOFTWARE

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. *Fees for software licenses, subscriptions, or maintenance are payable annually in advance.* Payment for services will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination. *In such event, Agency will not be entitled to a refund of any software license, subscription or maintenance fees paid.*
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT
P.O.# HHK12071

This agreement constitutes the entire agreement between the parties, and there are no other terms and conditions applicable to the licenses granted hereunder.

Agreed

Signature Date

Title

Company Name

Signature Date

Title

Agency/Division

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

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

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

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

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

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

Bidder: _____ Signed: _____
Date: _____ Title: _____

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

STATE OF WEST VIRGINIA
Purchasing Division

0035

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

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

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

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

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____