



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

Solicitation

NUMBER
LOT499

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
CONNIE OSWALD 304-558-2157

VENDOR

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

WEST VIRGINIA LOTTERY

 900 PENNSYLVANIA AVE
 CHARLESTON, WV
 25302 304-558-0500

DATE PRINTED:
05/14/2013

BID OPENING DATE: 06/18/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB	915-03	THE STATE OF WEST VIRGINIA AND ITS AGENCY, THE WEST VIRGINIA LOTTERY REQUEST A QUOTE TO PROVIDE AN OPEN-END CONTRACT FOR MARKETING SERVICES AND RELATED SERVICES AS INDICATED IN THE SPECIFICATIONS PER THE ATTACHED INSTRUCTIONS TO BIDDERS, TERMS & CONDITIONS AND SPECIFICATIONS PROVIDED. MANDATORY PRE-BID: MAY 29, 2013 AT 1:00 PM WEST VIRGINIA LOTTERY HEADQUARTERS BID OPENING: JUNE 18, 2013 AT 1:30 PM WEST VIRGINIA PURCHASING DIVISION SEE THE ATTACHED INSTRUCTIONS TO BIDDERS FOR LOCATIONS, TIMES, ETC. ALL CORRESPONDENCE SHALL BE DIRECTED TO THE BUYER AS INDICATED IN THE SOLICITATION.		
				MARKETNG SERVICES FOR THE WEST VIRGINIA LOTTERY TO INCLUDE, BUT NOT LIMITED TO ADVERTISING, PUBLIC RELATIONS, WEBSITE DEVELOPMENT AND MAINTENANCE, PROMOTIONAL EVENT MANAGEMENT, RETAILER POINT-OF-SALE MATERIALS, RESEARCH, NOVELTY ITEMS, AND ANY OTHER ADVERTISING SERVICE OR COMMODITY REQUESTED BY THE LOTTERY.		

SIGNATURE	TELEPHONE	DATE
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TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
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WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



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ADDRESS CORRESPONDENCE TO ATTENTION OF:
CONNIE OSWALD 304-558-2157

RFQ COPY
 TYPE NAME/ADDRESS HERE

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WEST VIRGINIA LOTTERY

 900 PENNSYLVANIA AVE
 CHARLESTON, WV
 25302 304-558-0500

DATE PRINTED
05/14/2013

BID OPENING DATE: 06/18/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
REFERENCE ATTACHED INSTRUCTIONS TO BIDDERS AND TERMS & CONDITIONS.						
***** THIS IS THE END OF RFQ LOT499 ***** 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:

The meeting is scheduled for Wednesday, May 29, 2013 and will begin at 1:00 pm.

West Virginia Lottery Headquarters
 900 Pennsylvania AV
 Charleston, WV 25302

The meeting place is on the 10th floor in Room 1006. +

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:	June 3, 2013
Submit Questions to:	Connie Oswald 2019 Washington Street, East P.O. Box 50130 Charleston, WV 25305 Fax: 304-558-3970 Email: Connie.S.Oswald@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:

June 18, 2013 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 Contract

Initial Contract Term: This Contract becomes effective on
 Upon Award
 and extends for a period of One (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.

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

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

*See Below for additional Bond Requirement

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: or more.

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

*Additional Bond Requirement

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.

[]	
[]	
[]	
[]	

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

See attached specifications.	for	Liquidated Damages Apply - See attached.
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This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 41. LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 42. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.
- 43. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

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

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

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

- 45. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting,

supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *etc.* and the filing of all necessary documents, forms and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- 46. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Lottery to establish a contract to provide the Lottery with marketing services including, but not limited to, advertising, public relations, website development and maintenance, promotional event management, retailer point-of-sale materials, research, novelty items, and any other advertising service or commodity requested by the Lottery.

2. **DEFINITIONS:** The terms listed shall have the meanings assigned to them. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **Accounting-** means the systematic process of identifying, recording, measuring, classifying, verifying, summarizing, interpreting and communicating financial information.

 - 2.2 **Contract Services-** means all services provided by Vendor under this Contract, which include, but is not limited to, providing advertising, public relations, website development and maintenance, promotional event management, retailer point-of-sale materials, research, novelty items, and any other advertising service or commodity.

 - 2.3 **Clerical Services-** means document preparation, correspondence, filing, accounting, secretarial support, data imaging and storage, and all other miscellaneous office activities relating to the Lottery's account. These services shall be included in the hourly rate for account management and shall include all, written, electronic and verbal correspondence.

 - 2.4 **Creative Planning-** means the method of offering innovative solutions for marketing strategies, special events, computer graphics, layout and designs, art direction, advertising campaigns, copywriting, and all concepts related to advertising production.

 - 2.5 **Estimated Hours for Account Services-** means the amount of time required for contract services during the fiscal year (July 1 through June 30). The estimated hours for account services provided on the Pricing Page are based on hours billed during fiscal year 2012.

 - 2.6 **General Account Management-** means Administration of the day-to-day functions, which provide professional support in order to meet the Lottery's requirements.

2.7 Incidental Charges- means an expense to the Vendor, which includes, but is not limited to, payroll, payroll taxes, mileage, travel expense, meals, telecommunications, facsimile, copying, color copies, postage or delivery charges for all full-time, part-time, interning and contractual employees.

2.8 Lottery- means the state agency known as the West Virginia Lottery.

2.9 Lottery Headquarters- means the Lottery facility located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302.

2.10 Media Event- means public events focused on a news announcement or press conference in response to a major event, or planned events including speeches or demonstrations. For example, the Lottery uses this type of event to announce certain Lottery winners to all media outlets.

2.11 Media Planning and Buying- means the purchase and analysis of media placements through various channels of communication such as television, radio, newspaper, interactive, social media and print ads.

2.12 On-line- means connected to a central computer via telecommunication lines, satellites and/or wireless devices, such as ticket generating terminals used by lottery retailers to sell lottery products.

2.13 On-line Games- means Lottery games played through computer terminals installed in licensed Lottery retail establishments. Examples of on-line games include: Cash25, Hot Lotto® and Sizzler®, daily numbers games (Daily 3 & Daily 4), POWERBALL® and PowerPlay®, MegaMillions® and Megaplier®, and TRAVEL Keno.

2.14 Pricing Page- means the pages upon which Vendor should list its proposed price for the Contract Services. The Pricing Page is under Section 12 of this RFQ.

2.15 Promotional Planning- means the development and design of marketing activities that are organized by the Lottery. This would include but is not limited to support personnel, event staffing and promotional themes and supplies.

2.16 Public Relations- means public interactions promoting integrity that fosters mutual understanding, trust, and support with and for the Lottery. These interactions may also include Lottery support of arts, charitable causes, education, tourism, senior programs, sporting events, and other civic engagements.

2.17 Research- means the process of collecting data, detailing what methods will be employed, how the methods will be used and the intended means for analyzing data collected. To establish effective marketing tools, information is collected from consumer observation, surveys, interviews, and from published sources. Research also includes determining actual demand in a cost effective and timely manner to create or assist in the creation of Lottery products and promotions that satisfy the demand, including post-buy analysis and comparative data for Lottery promotions and marketing campaigns.

2.18 RFQ- means the official request for quotation published by the Purchasing Division and identified as LOT499.

2.19 Strategic Planning- means the ability to use the Lottery's long-term and tactical goals to create bench marks to achieve all marketing objectives. Strategic Planning is shaped by the marketing strategy, post-buy analysis of media placements, return on investment for all special events, evaluation of consumer behaviors and market conditions.

2.20 Vendor Hourly Rate or Hourly Rate- means the hourly rate requested on the Pricing Page, which the Vendor shall provide, for all contract services.

2.21 Website Development- means the process of coding or programming a website so it properly performs what the website owner would like to accomplish. The Lottery's website is developed to utilize a back-end administrative or content management system to administer and maintain the content on the website. Web design, web content development, web server and network security configuration, and e-commerce development are all aspects of website development.

2.22 Website Maintenance- means updating game information, jackpot alerts, banners, search tools, player's circle, and any additional website function required by the Lottery.

3. QUALIFICATIONS: Vendor shall have the following minimum qualifications:

3.1 Vendor must have a minimum of five (5) years of previous experience in providing a wide variety of advertising services to agencies or companies with similar marketing needs. Those advertising services include but are not limited to creativity, planning, media purchasing, point-of-sale marketing, Internet marketing and design, project management, public relations, and research to provide a quality product on time, as scheduled.

3.2 Vendor should possess marketing experience in the retail industry and/or in the entertainment industry.

3.3 Vendor must have at least one (1) staff member dedicated to each of the following areas: graphic design, creative development, media planning and buying, and other areas as requested by the Lottery. A staff member may be dedicated to one or more areas listed above to fulfill this requirement, provided that the staff member dedicated has experience in the areas for which he or she is dedicated.

3.4 The members of Vendor's team, composed of management level and key personnel proposed for this account, shall each have five (5) years of marketing related experience as defined in Section 3.1 and Section 3.3. In addition to work experience, the Vendor's management level and key personnel proposed for this account must each possess a bachelor's degree in advertising, communications, or a related field such as journalism or marketing/sales. If the Vendor substitutes staff for this account, the experience and qualification levels must be of a similar quality. The Lottery reserves the right to approve and/or reject Vendor's personnel recommended to work on the Lottery's account. The Lottery reserves the right to request Vendor staff changes throughout the term of the contract and approval thereof. This requirement does not apply to clerical staff.

3.5 Vendor must have successfully completed at least three (3) comprehensive marketing projects less than two (2) years from the date of the bid to have included, but not limited to, media-related advertising and the subsequent buy, point-of-sale advertising and its positioning, publications, web pages, public relations endeavors, and other pertinent materials. Campaigns or projects that did not use aired or published, paid media shall not be considered as eligible for this qualification.

3.6 Vendor must have the ability to pledge and place commitments of advertising media on behalf of the Lottery, up to as much as \$1.5 million at any one time prior to the Lottery's reimbursement. The Lottery reserves the right to review Vendor's audited financial statements for the past three (3) years.

3.7 Vendor shall provide dedicated account services, creative services, talent, production and technical expertise. The Vendor must be able to assist in developing and implementing advertising and promotional campaigns, promotional activities, retailer and player information and other marketing-related services. Such services include, but are not limited to, radio, television, Internet, social media, and print advertising (including both indoor and outdoor advertising), printed materials, ad hoc event logistics on a twenty four hours per day, seven days per week, three hundred sixty five days per year (24/7/365) basis, supplemental event staffing, website design and maintenance, updates and server operations, qualitative and quantitative research, development and procurement of promotional items for both retailers and players, daily pickup and delivery of any hard copy correspondence between the Lottery and Vendor at Lottery headquarters, and oversight of specific or special ad hoc projects.

3.8 Vendor must have the ability to contract with outdoor advertising agents for all West Virginia Lottery billboards containing satellite-fed jackpot signage units, as well as additional advertising units located across the State leased from various other Vendors.

3.9 Upon the Lottery's request, the Vendor may use subcontractors for research services, website development, website maintenance, graphic design, database management, upkeep and configuration, leasing of rack space, and firewall and other software services with the Lottery's prior approval.

3.10 Vendor must have experienced staff to be dedicated to the Lottery's account, current business strategies, and infrastructure in place upon bid submission to service the Lottery account.

4. MANDATORY REQUIREMENTS: Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1. Vendor shall counsel the Lottery and conduct research in order to make recommendations with respect to media selection, themes, copy, multi-media presentations, and brand positioning, upon the Lottery's request.

4.2. Vendor shall create, produce and provide a central delivery of promotional materials to be used in advertising and marketing activities for the Lottery to include but is not limited to, point-of-sale materials, promotional items, ticket dispensers, drawing equipment and other semi-permanent items and signage for use at the retailer level. The Vendor may be requested to lease storage space for such items, as necessary, upon the Lottery's behalf.

4.3. Vendor shall develop, produce, and place advertising materials in all media including but not limited to newspapers, web-based mediums (Internet), social media, radio, outdoor and transit mediums, as well as network and cable television broadcasts

4.3.1 The successful Vendor shall be able to assume all current contracts for media advertising and short-term, long-term and permanent signage commitments.

4.4. All broadcast media will be placed at the local level. Upon the Lottery's request, all media placements shall be implemented within five (5) days of the request. Use of national or other third party representatives is strictly prohibited in the placement of broadcast media.

4.5. Vendor shall provide thorough research of rights, trademarks and legal procurement of stock photography, musical scores and vocals, film segments and any other copy written materials to be used in the Lottery's marketing endeavors.

4.6. Vendor may be required to attend one NASPL conference annually, all internal marketing meetings and any other meeting requested by the Lottery.

4.7. Vendor shall provide professional services necessary to develop and maintain successful marketing campaigns, including a minimum of two (2) full time employees to serve as account representatives, one (1) of whom shall be a dedicated account representative who will be on-call 24 hours a day, seven days a week with an in-person response time to Lottery Headquarters of, at maximum, sixty (60) minutes.

4.7.1. Vendor shall provide account representatives or two (2) staff members to assist with promotional activities, whether full-time Vendor employees or qualified temporary Vendor employees, for summer fairs and festivals, retailer-

based promotions, retailer rallies or special events as determined by the Lottery.

4.7.2. The account representatives will also be expected to attend all monthly Lottery marketing meetings, *ad hoc* marketing meetings, media events, and special promotions held during daytime, evening and weekend hours upon request. The Vendor must have consistent and reliable transportation on a 24/7/365 basis for in-person representation. The Lottery reserves the right to visit and inspect all Vendor's facilities and offices.

- 4.8. Daily visits to the West Virginia Lottery's Headquarters must be made by personnel of the Vendor to pick up and deliver work-related materials and documents.
- 4.9. Vendor must agree and acknowledge that its employees assigned to the Lottery account and any employee with influence or control [management officials] over those employees, and his/her family members residing in the same household are restricted from wagering, winning, or participating in any racetrack video lottery or limited video lottery games, traditional games or table games regulated by the State Lottery Commission. Vendor must agree to convey this restriction to its employees and management officials by obtaining from each a signed statement providing that such management officials or employees will not play, or collect any prize in, any West Virginia regulated video lottery game, traditional game, or table game and that failure of any employee or management official to comply with this restriction may result in forfeiture of any winnings, termination of the offending management official or employee, and/or termination of this contract. Upon contract award, Vendor must provide the Lottery with the signed statements of the Vendor employees, who are working or have influence on those working on the Lottery's account.
- 4.10. Vendor must provide a detailed monthly summary, ad hoc, and annual cumulative reports of all actual and projected expenditures and remaining balances to the Lottery, sorted by Lottery-specified categories and available to the Lottery electronically, in Excel spreadsheet format.
- 4.11. Vendor shall provide full public relations and community relations services to be utilized on an ad hoc basis.

- 4.12. Vendor shall provide research concerning the target consumer and retailer base, including behaviors, attitudes and opinions, upon the Lottery's request. A minimum of one baseline study and one focus group study may be conducted annually. Ad hoc research projects, including web-based surveys/polls shall be provided on an "as needed" basis. Following special events, promotions and advertising campaigns, Vendor shall conduct post-buy analysis and provide results to the Lottery in a reasonable time frame. Research projects may be subcontracted to a qualified firm upon the Lottery's request. however, the subcontractor shall not be considered a partner entity. The Lottery reserves the right to select among multiple research firms for all projects based upon project research methodologies, techniques, and cost comparisons.
- 4.13. Vendor must have the ability to update web content and design, maintain and monitor the Lottery's Internet website and related services including, but not limited to, assumption of current Vendor-provided contracts for large scale data base server space for Internet-based marketing endeavors. Vendor shall coordinate with the Lottery and its Online System. Vendor will assure accurate information, updated in a timely manner. Vendor will provide 24/7/365 contact person for unplanned changes or disruptions to the website, so that they may be remedied in an expedient manner. Website design, upgrades and website maintenance may be provided to the successful Vendor on behalf of the Lottery, at the Lottery's request.
- 4.14. Vendor must possess adequate licensed software to edit and view graphic and other necessary files between the Vendor and the Lottery. In addition, Vendor must have software that is compatible with media and print outlets. Upon the Lottery's request, the Vendor shall provide the Lottery with additional software licenses and software upgrades throughout the duration of this contract for up to two (2) Lottery marketing staff members.
- 4.15. Vendor shall provide the continued graphic development, data transfer and website maintenance of the Lottery's Internet web site and the leasing of server space and related software. Vendor shall also provide the leasing of any additional web-based programs and increased server space for database management, which may include, but not be limited to, the West Virginia Lottery Players' Circle, retailer data access, and interactive promotions such as second chance drawings, at the Lottery's direction. Vendor is required to adapt to the lottery industry changes, selling processes, and marketing

strategies. The Lottery reserves the right to require the Vendor to use an outside agency or third party vendor to provide certain advertising materials or services in relation to website maintenance and ongoing development.

- 4.16.** Vendor shall provide talent for all radio, television, and media productions. Vendor must obtain talent not covered by collective bargaining agreements in addition to obtaining talent involving the Screen Actors Guild (SAG) and American Federation of Radio and Television Artists (AFTRA). West Virginia based talent and production shall be considered whenever possible. Vendor shall negotiate the best possible rate for all talent. If Vendor chooses to use talent covered by collective bargaining agreements, Vendor shall provide written justification to the Lottery in a timely manner, and it will be at the discretion of the Lottery to approve or disapprove all talent.
- 4.17.** All contracts, papers, correspondence, copy, books, accounts, and other information in the Vendor's care relating to the business of the Lottery shall be open to inspection and examination by an authorized representative of the Lottery at all reasonable times, as well as expenses incurred by the Vendor. All records, including subcontracts, shall be kept for a minimum of five (5) years for billing purposes and internal audits.
- 4.18.** All layouts, sketches, art work, computer images and copy including, but not limited to, advertising copy, film, master tapes, typesetting, photocopies, storyboards, and computer data storage disks/cards used in advertisements or other materials developed or placed by the successful Vendor for the Lottery, shall become the exclusive property of the Lottery.
- 4.18.1.** The Lottery shall have the full and free right to possess and use any and all said property in any way deemed by the Lottery to be necessary or advisable, either directly, or through the Vendor or otherwise and without payment of any compensation to the Vendor for the same.
- 4.19.** Vendor must have the ability to accept data electronically, and from disk, USB drive, CD, CDR, CDRW, DVD, DVDR, DVDRW or tape. E-mail capabilities with file transfer (both Macintosh and PC) must be provided by the Vendor.
- 4.20.** Vendor shall see that the Lottery receives all media cash discounts, rebates, frequency discounts, or special adjustments allowed to the Vendor for ads placed for

and on behalf of the Lottery. Vendor shall conduct post audits and require refunds for advertising not aired or placed according to the buy. Any obligatory correction or replacement of inventory must be authorized by the Lottery. Vendor shall make available to the Lottery copies of all invoices, including broadcast affidavits, and proof of payment of all invoices, including any third party that was used to provide production services or materials for the Lottery's account. Such proof shall be made available to the Lottery for audit once per month, or upon request.

- 4.21.** Vendor must work with the Lottery's marketing department to determine the proper time schedule in which all advertising and promotions are to take place. The Lottery shall approve all work to be written, developed, or otherwise performed by the Vendor before the Vendor incurs any costs. Work that does not have prior written approval for payment shall not be compensated by the Lottery.
- 4.22.** The Lottery may request that the Vendor use an outside agency or third party vendor to provide certain advertising and promotional materials or services. The successful Vendor resulting from this RFQ will, at the request of the Lottery, process payment of any related invoices for materials and/or services provided to the Vendor on behalf of the Lottery, and the Lottery shall reimburse the Vendor. The Vendor's payment processing shall be included in the Vendor's hourly rate for general account management on the Pricing Page. Vendor shall submit all invoices to the Lottery on a monthly basis. The Lottery may request invoice statement(s) outside of the monthly billing. Invoice statement(s) for services and/or materials provided to the Vendor on behalf of the Lottery must be approved by the Lottery. Upon receiving the Lottery's approval of the invoice statement(s), the Vendor shall issue respective payment(s), within the specified invoice payment due date or fourteen (14) business days for the services and/or materials.
- 4.23.** Vendor shall obtain competitive bids or cost estimates for all products and services procured on behalf of the Lottery. A minimum of three (3) detailed bids or cost estimates from three (3) different subcontractors shall be presented for the Lottery's review and selection on all procurements of commodities or services, with the exception of media buys.

5. HOURLY RATE: The Lottery shall pay an hourly rate as proposed by the Vendor, as shown on the Pricing Page, for all contract services performed and accepted under this contract.

5.1 The hourly rate must include all costs necessary to fulfill requirements described in this RFQ, excluding third-party commodities and services. The hourly rate shall be billed to the Lottery in 15-minute increments, on a monthly basis. The hourly rate bid by Vendor must also be sufficient to cover the following costs provided in Sections 5.1.1, 5.1.2, and 5.1.3, as Vendor will be responsible for all costs listed and may not invoice Lottery separately for these costs.

5.1.1 Incidental charges must be included in the hourly rate for general account management proposed by the Vendor on the Pricing Page. Incidental charges that are incurred in order to perform the routine conduct of business including, but not limited to hourly wages, payroll taxes, mileage, travel expense, meals, facsimile telecommunications, copying, color copies, postage or delivery charges for all full-time, part-time, interning and contractual employees.

5.1.2 Overhead expenses must be included in the hourly rate for general account management. Overhead expenses include, but are not limited to, accounting fees, depreciation, insurance, interest, legal fees, rent, repairs, supplies, taxes, telephone bills, and utilities.

5.1.3 Travel expenses associated with attending any Lottery related activities including, but not limited to the NASPL conference, other conferences, marketing meetings, special promotions, media events and retailer visits must be included in hourly rate for general account management. These expenses include, but are not limited to airline tickets, rental cars, mileage, meals, hotel accommodations and conference fees.

5.2 Vendor will not bill Lottery for travel time between or among the Lottery's office in Charleston and the Vendor's office(s). This travel time shall be the responsibility of the Vendor.

- 5.3 The Lottery will reimburse Vendor for third party commodities and/ or services at Vendor's net cost, with no additional mark up. Media placements will be reimbursed at net cost only, with no mark up. Any services or materials provided to the Vendor on behalf of the Lottery shall be approved and reimbursed without any additional mark up. Public service announcements are not subject to media charges.
6. **PERFORMANCE:** This contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
- 6.1 Vendor must have prior written authorization from the Lottery Director, the Director's designee or the Lottery Marketing Director for all work prior to performance and submission of an invoice for payment by the Vendor. Billing for work of any nature without prior written authorization will not be paid by the Lottery.
- 6.2 Total expenditures for the Lottery's advertising and promotions program shall not exceed the amount approved by the Lottery unless such change is requested, and by mutual consent is agreed upon by the Lottery and the Vendor. Detailed payment information is located in Section 7.
7. **PAYMENT:** The Vendor shall submit invoices, in arrears, to the Lottery at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract.
- 7.1 The Lottery must approve **ALL** invoices. Upon receiving the Lottery's approval of the invoiced statement, Vendor shall make payment on the Lottery's behalf within the specified invoice payment due date or fourteen (14) business days, whichever time period is shorter. Vendor shall submit invoices on a monthly basis. Invoices may be requested by the Lottery outside of the monthly billing. There shall not be an additional markup on media, production or any other services provided by outside entities. Payment to the Vendor from the Lottery shall directly reflect the reimbursement of services from outside entities. All invoices to be paid by the Lottery shall show the net cost to the Vendor.
- 7.2 Progress payments may be made at the option of the Lottery on the basis of percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 50% retainage until the final deliverable is accepted.

If progress payments are permitted, Vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must

be submitted to Lottery with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. State law forbids payment of invoices prior to receipt of services.

8. CONTRACT AWARD: The Contract is intended to provide Lottery with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the lowest TOTAL FISCAL YEAR COST FOR VENDOR SERVICES as shown on the Pricing Page.

9. PRICING PAGE: Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified. Notwithstanding the foregoing, the Purchasing Division may correct errors as it deems appropriate. Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

9.1. PRICING PAGE: The Vendor shall provide an hourly rate for the services listed on the Pricing Pages. The Vendor must provide the hourly rate for each SERVICE (1-20). The hours listed on the Pricing Pages are estimates only and may be adjusted on a monthly basis with prior approval of the Lottery.

TOTAL ANNUAL COSTS for each SERVICE is calculated by taking the provided ESTIMATED HOURS and multiplying that figure by the VENDOR'S HOURLY RATE. The hourly rate for each service may vary but must be rounded to the nearest whole dollar.

The Vendor must add each SERVICE for each CATEGORY (i.e. Account Services + General Account Management + Public Relations + Research Services = Account Management).

The TOTAL FISCAL YEAR COST FOR VENDOR SERVICES is calculated by taking the sum of the TOTAL ANNUAL COSTS for each CATEGORY (Account Management + Media + Creative + Digital + Production + Promotions = TOTAL FISCAL YEAR COST FOR VENDOR SERVICES).

10. FACILITIES ACCESS: Performance of Contract Services may require access cards and/or keys to gain entrance to the Lottery's facilities. In the event that access cards and/or keys are required:

- 10.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
- 10.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
- 10.3. Vendor shall notify the Lottery immediately of any lost, stolen, or missing card or key.
- 10.4. Anyone performing under this Contract will be subject to the Lottery's security protocol and procedures.
- 10.5. Vendor shall inform all staff of the Lottery's security protocol and procedures.

11. VENDOR DEFAULT:

11.1. The following shall be considered a vendor default under this Contract.

- 11.1.1 Failure to perform Contract Services in accordance with the requirements contained herein.
- 11.1.2 Failure to comply with other specifications and requirements contained herein.
- 11.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 11.1.4 Failure to remedy deficient performance upon request.
- 11.1.5 The following remedies shall be available to Lottery upon default.
- 11.1.6 Cancellation of the Contract.
- 11.1.7 Cancellation of one or more release orders issued under this contract.
- 11.1.8 Any other remedies available in law or equity.

REQUEST FOR QUOTATION
[RFQ Number LOT499] [MARKETING & ADVERTISING SERVICES]

12. MISCELLANEOUS:

12.1. Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

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

PRINT NAME	
SIGNATURE	
COMPANY NAME	
COMPANY ADDRESS	
PHONE	
FAX	
EMAIL ADDRESS	

<u>CATEGORY</u>	<u>SERVICE</u>	<u>ESTIMATED HOURS (BASED ON HOURS IN FY 2012)</u>	<u>VENDOR'S HOURLY RATE</u>	<u>TOTAL ANNUAL COSTS</u>
ACCOUNT MANAGEMENT	1. Account Services	885		0
	2. General Account Management	1652		0
	3. Public Relations	75		0
	4. Research Services	1280		0
MEDIA	5. Media Planning and Buying	910		0
	6. Radio	7910		0
	7. Television	10780		0
	8. Newspaper	6970		0
	9. Outdoor Ads	8010		0
CREATIVE	10. Illust/Layout/Design and Copywriting Adv.	305		0
	11. Creative/Art Direction or Planning	1220		0
	12. Computer Graphics	15		0
DIGITAL	13. Web Site Development and Maintenance	110		0
	14. Web Hosting & Dominion	1240		0
PRODUCTION	15. Printing	5290		0
	16. Film Production	6720		0
	17. Audio Production	885		0
	18. Music Rights/ Trademark	5		0
PROMOTIONS	19. Sponsorships- Collegiate/ Fairs & Festivals	30		0
	20. Marketing Supplies and Promotions	7545		0

TOTAL FISCAL YEAR COST FOR VENDOR SERVICES (1-20): 0

ADDENDUM TO THE GENERAL TERMS AND CONDITIONS

The parties agree that the following modifications shall be made to the General Terms and Conditions contained in request for quotation No. LOT499 issued by the Purchasing Division on behalf of the West Virginia Lottery to solicit bids for Advertising Services.

Term 12 entitled “LIQUIDATED DAMAGES” shall be removed in its entirety and replaced with the following:

12. LIQUIDATED DAMAGES: According to West Virginia State Code §5A-3-4(a)(8), Vendor agrees that liquidated damages shall be imposed at any time during the course of the contract resulting from this Request for Quotation, or at any time during the course of possible renewal years, as described below. This clause shall in no way be considered exclusive and shall not limit the State or Lottery’s right to pursue any other additional remedy to which the State or Lottery may have legal cause for action including further damages against the Vendor.

Liquidated damages for Vendor default may include, but are not limited to:

Failure to respond to a request for on-site staff within the specified sixty (60) minute timeframe requirement: **\$350 per incident per requested person.**

Failure to provide and maintain account staffing at the experience and educational levels of, or similar levels to, those originally proposed: **\$350 per day, per person.**

Failure to comply with the Covenant Related to Purchasing Lottery Tickets (Section 3.3.8 of RFQ LOT 499): **Amount equal to the cash value of the prize won.**

Failure to meet documented deadlines due to carelessness or poor planning on the part of the Vendor: **\$500 per day, per occurrence.**

Failure to make payments on the Lottery’s behalf within the specified invoice payment due date or fourteen (14) business days, whichever time period is shorter, upon receiving the West Virginia Lottery’s approval of the invoiced statement: **\$50 per incident.**

Breach of any of the foregoing, or any action of the Vendor or any associate, agent or subcontractor of the Vendor involved in the contract, which reflects negatively upon the integrity, credibility, honesty, or security of the State Lottery Commission will result in decisive remedial action, and may include cancellation of the contract by the State of West Virginia.

The West Virginia Lottery Director shall have discretion to determine whether liquidated damages, as described in this section of the RFQ, will be assessed. The West Virginia Lottery Director’s determination shall not be arbitrary or capricious. In the event of a dispute regarding the imposition or the amount of liquidated damages, the Vendor shall designate one (1), and only one (1), on-site individual to discuss the dispute with the West Virginia Lottery Director or West Virginia Lottery Commission. In all possible areas of liquidated damages assessment, there shall be no prorated damages unless otherwise expressed for partial periods. Excessive liquidated damages, and events leading to such, may be grounds for termination of the contract.

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

Vendor

West Virginia Lottery

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

West Virginia Purchasing Division

West Virginia Attorney General (as to form)

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

BID BOND PREPARATION INSTRUCTIONS

AGENCY (A)
RFQ/RFP# (B)

Bid Bond

- (A) WV State Agency (Stated on Page 1 "Spending Unit") Request for Quotation Number (upper right corner of page #1)
(C) Your Company Name
(D) City, Location of your Company
(E) State, Location of your Company
(F) Surety Corporate Name
(G) City, Location of Surety
(H) State, Location of Surety
(I) State of Surety Incorporation
(J) City of Surety Incorporation
(K) Minimum amount of acceptable bid bond is 5% of total bid. You may state "5% of bid" or a specific amount on this line in words.
(L) Amount of bond in figures
(M) Brief Description of scope of work
(N) Day of the month
(O) Month
(P) Year
(Q) Name of Corporation
(R) Raised Corporate Seal of Principal
(S) Signature of President or Vice President
(T) Title of person signing
(U) Raised Corporate Seal of Surety
(V) Corporate Name of Surety
(W) Signature of Attorney in Fact of the Surety

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, (C) of (D), (E), as Principal, and (F) of (G), (H), a corporation organized and existing under the laws of the State of (I) with its principal office in the City of (J), as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of (K) (\$ (L)) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the Department of Administration a certain bid or proposal, attached hereto and made a part hereof to enter into a contract in writing for (M)

NOW THEREFORE.

- (a) If said bid shall be rejected, or
(b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the agreement created by the acceptance of said bid then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such bid: and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be affixed hereto and these presents to be signed by their proper officers, this (N) day of (O), 20 (P).

Principal Corporate Seal (R) (Q) (Name of Principal)
By (S) (Must be President or Vice President)
(T) Title
(U) Surety Corporate Seal (V) (Name of Surety)
(W) Attorney-in-Fact

NOTE: Dated, Power of Attorney with Raised Surety Seal must accompany this bid bond.

IMPORTANT - Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised Corporate Seals must be affixed and a Power of Attorney must be attached.

Agency _____
REQ.P.O# _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____
_____ of _____, _____, as Principal, and _____
_____ of _____, _____, a corporation organized and existing under the laws of the State of _____
_____ with its principal office in the City of _____, as Surety, are held and firmly bound unto the State
of West Virginia, as Obligee, in the penal sum of _____ (\$ _____) for the payment of which,
well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that whereas the Principal has submitted to the Purchasing Section of the
Department of Administration a certain bid or proposal, attached hereto and made a part hereof, to enter into a contract in writing for

NOW THEREFORE,

- (a) If said bid shall be rejected, or
- (b) If said bid shall be accepted and the Principal shall enter into a contract in accordance with the bid or proposal attached
hereto and shall furnish any other bonds and insurance required by the bid or proposal, and shall in all other respects perform the
agreement created by the acceptance of said bid, then this obligation shall be null and void, otherwise this obligation shall remain in full
force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event,
exceed the penal amount of this obligation as herein stated.

The Surety, for the value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no
way impaired or affected by any extension of the time within which the Obligee may accept such bid, and said Surety does hereby
waive notice of any such extension.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals, and such of them as are corporations
have caused their corporate seals to be affixed hereunto and these presents to be signed by their proper officers, this
_____ day of _____, 20_____.

Principal Corporate Seal

(Name of Principal)

By _____
(Must be President or
Vice President)

(Title)

Surety Corporate Seal

(Name of Surety)

Attorney-in-Fact

**IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised corporate seals
must be affixed, a power of attorney must be attached.**

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 in the agreement limiting the Vendor's liability for direct damages is hereby deleted. Vendor's liability under the agreement shall not exceed three times the total value of the agreement. 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
PO# _____

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.
7. Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with West Virginia Code §5A-3-59 and West Virginia Code of State Rules. Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

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: _____

RFQ No. LOT499

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

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

DEFINITIONS:

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

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

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

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

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

CERTIFICATION AND SIGNATURE PAGE

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

(Company)

(Authorized Signature)

(Representative Name, Title)

(Phone Number)

(Fax Number)

(Date)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: LOT499

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

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

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

Company

Authorized Signature

Date

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