

SOLE SOURCE DETERMINATION

The Purchasing Division has been requested to approve a sole source purchase for the commodity or service described below. Pursuant to West Virginia Code 5A-3-10c, the Purchasing Division is attempting to determine whether the commodity or service is a sole source procurement.

If you believe your company meets the required experience and qualification criteria stated below, please e-mail the Purchasing Division Buyer at krista.s.ferrell@wv.gov with a copy to w.michael.sheets@wv.gov to express your interest in the project. Please forward any and all information that will support your company's compliance with required qualification and eligibility criteria along with any other pertinent information relative to this project to the Purchasing Division no later than 1:30 PM on 08/13/2013.

Requisition Number: AIRFARE14A

Department/Agency: Administration/
Purchasing Division/Travel Management
Office

Detailed Description of Project:

The State of West Virginia is seeking a discount airline program based on performance. A RFP City Paid Bid Program is not acceptable. The State is looking to maximize savings by obtaining airline fares at the highest discount. Vendors must provide direct service from Charleston, West Virginia (CRW) to Hartsfield Jackson Atlanta International Airport (ATL) and Detroit Metropolitan Airport (DTW). Vendor must offer a vast domestic and international network with competitive fares which includes at a minimum two dozen code share and marketing partners.

Proposed Sole Source Vendor:

Delta International

Basis for Sole Source Consideration:

No other airline provides direct service out of Charleston, West Virginia to the specified locations.



CONFIDENTIAL
STATE DISCOUNT PROGRAM AGREEMENT

State Discount Program Agreement

State of West Virginia



CONFIDENTIAL
STATE DISCOUNT PROGRAM AGREEMENT

This Agreement including all schedules and Exhibits attached hereto ("Agreement"), effective September 1, 2013, is between Delta Air Lines, Inc., a Delaware corporation ("Delta"), Koninklijke Luchtvaart Maatschappij N.V. ("KLM Royal Dutch Airlines" or "KLM"), Société Air France ("Air France"), Compagnia Aerea Italiana S.p.A. ("Alitalia"), and the State of West Virginia ("State"). Delta Air Lines, KLM Royal Dutch Airlines, Air France, and Alitalia are hereinafter collectively referred to as the "Carriers" and individually as a "Carrier". The Carriers and State are referred to hereinafter collectively as the "Parties" and individually as a "Party."

1. **State Discount Program.** During the period set forth after Travel Begin Dates in Exhibit A (the "Effective Periods"), the Carriers will provide a State discount program to State on the terms and conditions described herein and in the attached Exhibit A. Tickets shall be purchased using the primary State-used travel portal as part of the overall State of West Virginia Travel Policy. The State discount program shall be used solely by State employees traveling on State business. Tickets purchased with the State discount shall not be advertised, offered, sold, bartered or otherwise used by any other person or entity. The terms and conditions of Schedule 1 attached hereto shall apply to all tickets issued under this Agreement.
2. **State Reports and Tracking.** State has separately agreed with the Carriers to furnish (or cause State's Agents or representatives to furnish) State's travel data to the Carriers (or its designated data contractor) for use by the Carriers. In order for State to receive proper revenue credit and discounts for all travel on the Carriers' flights, the booking and ticketing procedures provided in this Agreement must be strictly followed.
3. **Review.** The Carriers will monitor State's performance under this Agreement based on the requirements as detailed in Exhibit A.
4. **Confidentiality.** This Agreement and the discounts provided to State are confidential information. Except as required by law, no Party shall disclose the existence or terms and conditions of this Agreement or the attached Exhibit A to any person (other than State's Agents) without the prior written consent of each other Party; provided that, the Carriers may disclose such information to their airline partners with whom they have an effective order from the U.S. Department of Transportation granting antitrust immunity. The obligations of this Section 4 shall survive any termination of this Agreement for a period of 2 years.
5. **Term and Termination.** This Agreement is effective on the date set forth above and shall continue thereafter until terminated by any Party. Any Party may terminate this Agreement and the Exhibit A, with or without cause, on 15 days prior written notice to the other Parties. In the event State or its Agents or representatives fail to furnish State travel data, the Carriers may terminate this Agreement or suspend Exhibit A upon 15 days prior written notice to State. This Agreement and the State discount program shall automatically be suspended during any period when there is no Exhibit A in effect with current Effective Periods.
6. **Modifications.** The Carriers may modify Schedule 1 or Exhibit A by sending State a revised Schedule 1 or Exhibit A. In the event that State rejects such modification, State may terminate Exhibit A and this Agreement upon 15 days prior written notice to the Carriers. No action by State shall be required for State to accept such modification.
7. **Miscellaneous.** This Agreement constitutes the entire Agreement among the Parties and supersedes all prior understandings, whether written or oral, concerning the subject matter hereof. Except as allowed under Section 6, any modifications to this Agreement must be in writing and signed by the Parties. All written notices to the Carrier or State shall be sent to the addresses listed below. No term or condition of this Agreement shall be deemed waived, and no breach shall be excused, unless such waiver or excuse is in writing and signed by the Party against whom such waiver or excuse is sought to be enforced. This Agreement shall not be assigned or transferred by any Party without the prior written consent of the other Parties. All rights, remedies and obligations of the Parties hereunder shall accrue and apply solely to such Parties and their permitted successors and assigns and there is no intent to benefit any third parties. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware applicable to agreements fully made and performed therein, without regard to its choice of law principles to the contrary.

This Agreement is not valid or enforceable against any Party unless signed by all Parties, including the Carriers' representative.

The Parties have executed this Agreement by their undersigned, duly authorized representatives:

State of West Virginia

Delta, KLM, Air France

Steven M. Sear

Name: _____ (date)
Title:
2019 Washington Street
East Charleston, WV 25305-0130

Steven M. Sear
Vice President, Global Sales
1030 Delta Blvd., Atlanta, GA 30320

Alitalia

Marla Sacconi

Marla Sacconi
Vice President of North America
51 Madison Avenue, Suite 2000, New York, NY 10010

Delta, KLM, Air France & Alitalia

Christine Chapman 7/18/13

(date)

Christine Chapman
Government Sales
Senior Sales Account Executive

Schedule 1

1. **APPLICABLE CARRIERS:** The incentives described in Exhibit A are available on flights operated by (1) Delta Air Lines, (2) Delta's codeshare partners ticketed under the DL code, including flights operated by (3) the Delta Connection Carriers ticketed under the DL code, except, in each case, as otherwise noted in the attached exhibits. (4) KLM, Air France and Alitalia operated and marketed flights as noted in the attached exhibits, except, in each case, as otherwise noted in the attached exhibits. Flights ticketed under the DL, KL, AF or AZ code, in each case are applicable only on a published fare or as otherwise expressly specified in this Agreement or the attached exhibits. All DL, KL, AF and AZ marketed flights are eligible for inclusion in performance goal measurements as defined in the terms of this agreement.

2. **COMPLIANCE WITH ETHICAL STANDARDS.** Alitalia, Air France, KLM and Delta have adopted their own Code of Conduct. Alitalia has adopted also an Organization, Management and Control Model pursuant to Italian Legislative Decree 231/01. The above mentioned documents, which are available on Alitalia, Air France, KLM and Delta's website, contain values, principles, rules of conduct which inspire Alitalia, Air France, KLM and Delta's behaviors, founded on correctness and transparency, also with the purpose to prevent the commission of crimes. The Client shall behave in compliance with law also with the purpose to prevent a liability to the other parties for crimes and shall inform, as soon as it become aware, Carrier's Supervisory Board (or, in case of absence of a Supervisory Board, the relevant legal representative) in the event the Client or other entity operating on its behalf, directly or indirectly, receives from Carrier's employees or representatives a request which might reasonably be considered in breach of correctness and transparency.

3. **TARIFF RULES.** All Carriers' rules and tariffs for the fare basis used apply to reservations and tickets issued or used pursuant to this Agreement, including, without limitation, rules relating to itinerary changes, surcharges and refunds.

4. **TICKETING.** The Carriers may, by written notice to Company, disallow or terminate the ability of any Agent to ticket under this Agreement. Company must inform Carriers in writing of any amendments in the ticketing location(s) PCC(s). Company's agent(s) agree(s) to follow strictly the Ticketing instructions.

Company and its employees may book reservations solely through Company's Agents, Delta, Delta's Exclusive Discount Program (EDP), Air France or Alitalia.

Tickets under this Agreement must be validated on Delta (006), Air France (057), or Alitalia (055) and contain no other airline space.

The Ticket Designator set forth in Exhibit A must appear in the Ticket Designator Box on all tickets under this Agreement, separated from the fare basis code by a slash. Company shall cause its Agents to place the Ticket Designator on every Carrier's ticket issued under this Agreement. Tickets without the Ticket Designator are not eligible for discounts described in Exhibit A.

The Tour Code set forth in Exhibit A (if applicable) must appear in the Tour Code box on each ticket with Air France-marketed flights and be noted in the PNR as an OSI remark.

5. **DEFINITIONS.** The following definitions apply to the Agreement (including Exhibit A):

Fair Market Share (FMS): Carriers' expected share (expressed as a percentage out of 100%) in a specified market, derived through a model based on Carriers and all other competitive airlines' scheduled service in such market.

Fare Class: the first character of the fare basis code, which determines applicability of an incentive discount.

Marketing Carrier: Airline whose code appears on the ticket coupon.

Operating Carrier: shall mean the airline having operational control of the aircraft used for a specific flight.

Service Class: Booking class of service.

Share of Flights: the percentage of Company's total tickets purchased in a specified market that are purchased on Carrier(s).

Share Gap: Difference between Share of Flights and FMS in the specified market.

Validating Carrier: Airline whose validation code is used for ticket issuance.

Hubs: The following airports (designated by three-letter airport code) are Hub Airports for purposes of this Agreement, unless otherwise noted in Exhibit A - Financial Terms: Atlanta, Georgia (ATL); Cincinnati, Ohio (CVG); Detroit (DTW); Memphis, Tennessee (MEM); Minneapolis, Minnesota (MSP); Salt Lake City, Utah (SLC)

Metro Entity: The following airports (designated by three-letter airport code) are Metro Entity for the purposes of this Agreement, unless otherwise noted in Exhibit A - Financial Terms:

Chicago, IL, USA (CGX, MDW, ORD, PWK); Dallas, TX, USA (FTW, DAL, DFW); Houston, TX, USA (EFD, HOU, IAH, SGR); London, UK (LCY, QQU, LHR, LTN, STN, ZEP, LGW); Los Angeles, CA, USA (BUR, LGB, LAX, ONT, SNA, PSP); Milan, IT (LIN, BGY, MXP); Moscow, RU (BKA, DME, SVO, VKO); New York, NY, USA (ISP, JFK, LGA, EWR, SWF, HPN); Paris, FR (CDG, ORY); San Francisco, CA, USA (OAK, SFO, SJC); Seoul, KR (GMP, ICN, SEL); Tokyo, JP (HND, NRT); Washington, DC, USA (BWI, IAD, DCA).

Gateways: The following airports (designated by three-letter airport code) are Gateway Cities for the purposes of this Agreement, unless otherwise noted in Exhibit A: New York-Kennedy, New York (JFK); Los Angeles, California (LAX); Newark, New Jersey (EWR); Boston (BOS); Philadelphia (PHL); Washington-Dulles (IAD); Miami (MIA); Detroit (DTW); Chicago (ORD); San Francisco (SFO); Seattle (SEA); Memphis (MEM); Minneapolis (MSP); Portland (PDX); Dallas Ft. Worth (DFW); Houston (IAH); Vancouver (YVR); Calgary (YYC); Toronto (YYZ); Montreal (YUL) as well as Atlanta, Georgia (ATL); Cincinnati, Ohio (CVG); Salt Lake City, Utah (SLC).

Geographical entities (lists subject to change without notice)

North America: Airports located within the United States of America, Canada, Mexico and the Caribbean

- **United States of America:** Continental United States of America, Alaska, Hawaii, Puerto Rico, US Virgin Islands
- **Canada:** Canada
- **Mexico:** Mexico
- **Caribbean:** Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda, Cayman Islands, Cuba, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Montserrat, Netherlands Antilles, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, Virgin Islands (British)

Latin America: Airports located in Central America and South America

- **Central America:** Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama
- **South America:** Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Falkland Islands (Malvinas), French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela

EMEA/: Airports located in Europe, Middle East, Africa and India

- **Europe:** Albania, Algeria, Andorra, Armenia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria (Rep), Canary Islands, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Georgia, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Madeira, Malta, Moldova, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Republic of Macedonia, Romania, Russia, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Svalbard and Jan Mayen Islands, Sweden, Switzerland, Turkey, Tunisia, Ukraine, United Kingdom
- **Middle East:** Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Sudan, United Arab Emirates, Yemen

° **Africa:** Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Cote D'Ivoire (Ivory Coast), Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mayotte, Mozambique, Namibia, Niger, Nigeria, Reunion, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, St. Helena, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe

° **India:** India

Asia Combined: Airports located in Asia, Australia, Micronesia, New Zealand and the South Pacific

° **Asia:** Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Hong Kong, Indian Ocean Islands, Indonesia, Japan, Kazakhstan, Kyrgyzstan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Republic of Korea, Singapore, Sri Lanka, Tajikistan, Taiwan Province of China, Thailand, Turkmenistan, Uzbekistan and Vietnam

° **Australia:** Australia

° **Micronesia:** Guam, Kiribati, Marshall Islands, Micronesia, Nauru, Northern Mariana Islands, Palau, US Minor Outlying Islands

° **New Zealand:** New Zealand

° **South Pacific:** American Samoa, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Fiji, French Polynesia, Macau, Maldives, New Caledonia, Niue, Norfolk Island, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, and Wallis and Futuna Islands

Exhibit A - Term Summary

State of West Virginia

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State of West Virginia			
2019 Washington St E, Charleston WV 25305			
Contract: State of West Virginia 13-15: Pending		Contract Dates: 01 Sep 13 Through 31 Aug 15	
Contract Carriers			
Please see Agency Ticketing Instructions to determine which carriers are eligible for specific discounts.			
Term: DOM HUB			
			Requirement
Term Requirement: 1	Share Gap		8 pts
			Discount
Discount 1:	DL - F, A, J, C, D, Y Fares	Time of Ticketing	7%
			Discount
Discount 2:	DL - B, M, S, H, Q Fares	Time of Ticketing	6%
			Discount
Discount 3:	DL - K, L Fares	Time of Ticketing	2%
			Discount
Discount 4:	DL - U, T Fares	Time of Ticketing	2%
			Discount
Discount 5:	DL - X, V Fares	Time of Ticketing	2%
Ticketing Dates: 01 Sep 13 Through 31 Aug 15		Travel Dates: 01 Sep 13 Through 31 Aug 16	

Term: DOM NON-HUB			
			Requirement
Term Requirement: 1	Share Gap		1 pts
			Discount
Discount 1:	DL - F, A, J, C, D, Y Fares	Time of Ticketing	8%
			Discount
Discount 2:	DL - B, M, S, H, Q Fares	Time of Ticketing	7%
			Discount
Discount 3:	DL - K, L Fares	Time of Ticketing	3%
			Discount
Discount 4:	DL - U, T Fares	Time of Ticketing	2%
			Discount
Discount 5:	DL - X, V Fares	Time of Ticketing	2%
Ticketing Dates: 01 Sep 13 Through 31 Aug 15		Travel Dates: 01 Sep 13 Through 31 Aug 16	

Term: US50 to Intl All Other			
			Requirement
Term Requirement: 1	No Requirement		0
			Discount
Discount 1:	DL- Business- J/C/D/I (EMEA)	Time of Ticketing	2%
			Discount
Discount 2:	AF/KL - Business - J/C/D/I Fares	Time of Ticketing	2%
			Discount
Discount 3:	AF - Premium Economy - W/S/A	Time of Ticketing	2%
			Discount
Discount 4:	DL - Premium Economy - W Fares	Time of Ticketing	2%
			Discount
Discount 5:	DL - Economy - Y/B/M/S/H Fares	Time of Ticketing	2%
			Discount

Exhibit A - Term Summary

State of West Virginia

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State of West Virginia 13-15		Contract Dates: 01 Sep 13 Through 31 Aug 15	
Discount 6:	AF/KL - Economy - Y/B/M/U/K Fares	Time of Ticketing	2%
			Discount
Discount 7:	DL -Discount Economy -Q,K,L,U	Time of Ticketing	2%
			Discount
Discount 8:	AF/KL- Discount Economy - H,L,Q,T	Time of Ticketing	2%
			Discount
Discount 9:	AZ -Business - J/E/D Fares	Time of Ticketing	2%
			Discount
Discount 10:	AZ - Premium Economy - P/A Fares	Time of Ticketing	2%
			Discount
Discount 11:	AZ - Economy - Y/B/M/H Fares	Time of Ticketing	2%
			Discount
Discount 12:	AZ - Discount Economy - K, V, T, N	Time of Ticketing	2%
			Discount
Discount 13:	DL- Business - J/C/D Fares (TPAC)	Time of Ticketing	2%
			Discount
Discount 14:	DL - Economy - Y/B/M/S/H Fares	Time of Ticketing	2%
			Discount
Discount 15:	DL - Discount Economy - Q,K,L,U	Time of Ticketing	2%
			Discount
Discount 16:	DL- Business- J/C/D/I	Time of Ticketing	2%
			Discount
Discount 17:	DL-Economy -Y/B/M/S/H	Time of Ticketing	2%
			Discount
Discount 18:	DL - Discount Economy - Q,K,L,U	Time of Ticketing	2%
			Discount
Discount 19:	DL - Discount Economy - Q, K	Time of Ticketing	2%
			Discount
Ticketing Dates: 01 Sep 13 Through 31 Aug 15		Travel Dates: 01 Sep 13 Through 31 Aug 16	

GENERAL TERMS AND CONDITIONS:

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

2. **DEFINITIONS:** As used in this Solicitation / Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation / Contract.
 - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

 - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.

 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

 - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

 - 2.5 **"Purchase Order"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.

 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.

 - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

 - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

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

Term Contract

Initial Contract Term: This Contract becomes effective on _____
and extends for a period of _____ year(s).

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

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

Release Order Limitations: In the event that this contract permits release orders, a release order may only be issued during the time this Contract is in effect. Any release order issued within one year of the expiration of this Contract shall be effective for one year from the date the release order is issued. No release order may be extended beyond one year after this Contract has expired.

Fixed Period Contract: This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

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

- BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.
- PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of _____ . The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.
- LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Purchasing Division prior to Contract award.

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

- MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.
- WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.
- INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

- 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.
-
-
-
-
-
-

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
for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38. [RESERVED]

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.