



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

**Solicitation**

NUMBER
VNF1036

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
DEAN WINGERD 304-558-0468

RFQ COPY

TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DIVISION OF VETERANS AFFAIRS  
 VETERANS NURSING FACILITY

ONE FREEDOMS WAY  
 CLARKSBURG, WV  
 26301 304-627-2415

DATE PRINTED
02/04/2014

BID OPENING DATE: 03/04/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		271-80		
RESPIRATORY CARE SERVICES, SUPPLIES AND EQUIPMENT						
OPEN-END CONTRACT						
THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, WV VETERANS NURSING FACILITY, IS SOLICITING BIDS FOR AN OPEN-END CONTRACT TO PROVIDE RESPIRATORY CARE SERVICES AND RESPIRATORY CARE PRODUCTS FOR THE WEST VIRGINIA VETERANS NURSING FACILITY, CLARKSBURG, WV, PER THE ATTACHED SPECIFICATIONS						
ATTACHMENTS INCLUDE:						
<ol style="list-style-type: none"> <li>1. INSTRUCTIONS TO VENDORS SUBMITTING BIDS.</li> <li>2. GENERAL TERMS AND CONDITIONS.</li> <li>3. VNF1036 SPECIFICATIONS.</li> <li>4. CERTIFICATION AND SIGNATURE PAGE.</li> <li>5. PURCHASING AFFIDAVIT.</li> <li>6. RESIDENT VENDOR PREFERENCE (RVP) FORM.</li> </ol>						
THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATION						

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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



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 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
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DATE PRINTED
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BID OPENING DATE: 03/04/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
IN ACCORDANCE WITH SECTION 148-1-4 (F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.						
***** THIS IS THE END OF RFQ VNF1036 ***** TOTAL: _____						

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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

## INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.
  - A pre-bid meeting will not be held prior to bid opening.
  - A NON-MANDATORY PRE-BID meeting will be held at the following place and time:
  
  
  
  
  
  
  
  
  
  
  - A MANDATORY PRE-BID meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

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

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

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

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

Question Submission Deadline: February 21, 2014 at 5:00pm

Submit Questions to: Dean Wingerd

2019 Washington Street, East

Charleston, WV 25305

Fax: 304-558-4115

Email: [Dean.C.Wingerd@wv.gov](mailto:Dean.C.Wingerd@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

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: March 4, 2014 at 1:30pm

Bid Opening Location: Department of Administration, Purchasing Division  
 2019 Washington Street East  
 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.

**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:**  
\$1,000,000.00 or more.

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

Bodily Injury (including death) \$500,000.00 per person with a minimum of  \$1,000,000.00 per occurrence.

Property damage with a minimum of \$1,000,000.00 per occurrence.

Professional liability with a minimum of \$1,000,000.00 per occurrence.

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.

See Section 3-Qualifications in the specifications.

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](mailto:purchasing.requisitions@wv.gov).
- 51. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information



to submit to a fingerprint-based state and federal background inquiry through the state repository. 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.

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VNF1036 – Respiratory Care Services

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the WV Veterans Nursing Facility to establish an open-end contract for “locum-tenens” Respiratory Care Services to comply with the needs of the State owned and operated facility.
  
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
  - 2.1 **“Contract Item” or “Contract Items”** means the list of items identified in section 4.
  - 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals attached hereto as Exhibit A and used to evaluate the RFQ.
  - 2.3 **“RFQ”** means the official request for quotation published by the Purchasing Division and identified as VNF1036.
  - 2.4 **“RCS” means Respiratory Care Services**
  - 2.5 **“RTP” means Respiratory Therapy Program**
  - 2.6 **“PPD Testing” means tuberculosis testing**
  
3. **QUALIFICATIONS:** Vendor(s) must have the following minimum qualifications, copies to be submitted to the Business Manager prior to being placed in facility for work.
  - 3.1 Must have knowledge of Federal & State Long Term Care (LTC) regulations.
  - 3.2 Must have current (RCT) Respiratory Care Therapy license for each staff.
  - 3.3 Must be registered and in good standing with the WV Board of Respiratory Care.
  
4. **GENERAL REQUIREMENTS:**
  - 4.1 **Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

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4.1.1 All respiratory personnel will be employees of the Vendor's company; and will provide respiratory therapy-related services for residents of the facility during the term of this agreement.

4.1.2 Hiring and dismissal of respiratory personnel shall be the responsibility of the Vendor

4.1.3 Hiring of RCT personnel shall include criminal background checks, pre-employment drug screening and PPD testing.

4.1.4 Vendor shall maintain general and professional liability insurance coverage with annual limits of not less than one million (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate.

4.1.4 Facility reserves the right to ask for an employee to be removed.

**4.1.2 VENDOR RESPONSIBILITIES:** 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.

4.1.2.1 Successful vendor shall employ and provide the Facility with licensed, qualified RCT personnel in order to be compatible with residents therapy needs. Services may include, but limited to the following;

4.1.2.1.1 Assessments and diagnostic evaluations

4.1.2.1.2 Maintain artificial airways

4.1.2.1.3 Ventilator therapy

4.1.2.1.4 Therapeutic use and monitoring of oxygen equipment

4.1.2.1.5 Bronchial hygiene therapy

4.1.2.1.6 Pulmonary functions test/incentive spirometry/blood gas analysis

4.1.2.1.7 Breathing retraining

4.1.2.1.8 Patient education

4.1.2.1.9 Oxygen and oxygen equipment

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4.1.2.1.10 Respiratory supplies and equipment

4.1.2.1.10.1 Prices/Rates for these items are listed in pricing page labeled Respiratory Labor Rates, Supplies and Equipment Schedule Bid Form (see Exhibit A attached)

4.1.2.1.11 MAINTENANCE PROGRAMS

4.1.2.1.11.1 Vendor shall provide the facility with the respiratory personnel necessary to provide the maintenance programs as described in the maintenance programs schedule (see Exhibit B attached).

4.1.2.1.11.2 The time required to provide this service will be independent of the time spent in providing the services described in Respiratory Labor Rates (see Exhibit A attached in section called **Quarterly Maintenance**).

4.1.2.1.12 These services, hereinafter called **Respiratory Care Services (RCS)**, will be provided for the residents of the Facility, as and to the extent prescribed by physicians licensed in the practicing state. Additionally, at the Facility's request, the vendor shall provide the Facility with any or all of the following:

4.1.2.1.12.1 Vendor shall establish and assume administrative responsibility of the facility's Respiratory Therapy Program (RTP). The RTP will include:

4.1.2.1.12.1.1 Assigning patient care activities to professional and nonprofessional therapy personnel

4.1.2.1.12.1.2 Supervising and evaluating work performance and interpreting responsibilities and Facility Policies

4.1.2.1.12.1.3 Professional administration of all aspects of RCS at the Facility

4.1.2.1.12.1.4 In-service programs with respect to RCS

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- 4.1.2.1.12.1.5 Attendance at Facility in-service programs with respect to RCS
  - 4.1.2.1.12.1.6 Attendance at Facility staff meeting upon request of the Facility
  - 4.1.2.1.12.1.7 Emergency consultation with respect to the administration of RCS
  - 4.1.2.1.12.1.8 Execution of physicians' orders
  - 4.1.2.1.12.1.9 Oversee the maintenance of therapy records
  - 4.1.2.1.12.1.10 Assure the availability of supplies and equipment per attached (maintenance programs) and (Respiratory Labor Rates, Supplies & Equipment Schedule Bid Form)
  - 4.1.2.1.12.1.11 Conduct in-house rounds
  - 4.1.2.1.12.1.12 Ensure that all therapists provided to Facility are qualified therapy personnel, licensed and registered or certified, as required by applicable provisions of the state laws, rules and regulations
  - 4.1.2.1.12.1.13 Vendor shall keep Facility fully informed of the performance of the RTP through periodic reports.
- 4.1.2.1.13 Vendor shall provide quality assurance with any and all of the following:
- 4.1.2.1.13.1 Vendor shall ensure all documentation techniques provide accurate recordkeeping according to applicable state and federal laws and regulations.
  - 4.1.2.1.13.2 Vendor shall provide ongoing quality assurance by periodic observation and critiquing of treatment sessions
  - 4.1.2.1.13.3 Vendor shall provide consultation on reimbursement criteria
  - 4.1.2.1.13.4 Vendor shall provide consultation in accordance with state and federal laws, standards, rules and regulations, on integrated treatment programs with nursing staff

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- 4.1.2.1.13.5 Vendor shall provide coordination and education of related staff with regard to implementation of new treatment techniques and reimbursement for those procedures.
- 4.1.2.1.13.6 Vendor shall devote such time as may be required in order to fulfill satisfactorily the requirements for services specified in this contract
- 4.1.2.1.13.7 Vendor shall provide training programs to Facility staff, as reasonably requested by the Facility
- 4.1.2.2 Successful vendor must provide hourly rates (per bid sheet attached) that are inclusive of all federal, state, and local withholding taxes, social security & Medicare taxes, as well as all unemployment compensation, workers, compensation, general and professional liability premiums.
- 4.1.2.3 Successful vendor shall provide the Facility with information on each RCT staff member according to the state and federal standards, including application, CPR Certification; references; confidentiality agreement, and other requested documents such as current physical examination, immunization records, negative 9-panel drug screening, criminal background check, and licensure confirmation. No RCT providing services to the Facility under this agreement will have been investigated and substantiated by the WV Board of Respiratory Care or currently subject to discharge results from an investigation by the WV Board of Respiratory Care.
- 4.1.2.4 Successful vendor and RCT staff must comply with all Agency/Facility conduct, and ethics regulations and all other applicable regulations as determined by applicable state and federal laws, regulations, policies and procedures.
- 4.1.2.5 Successful vendor shall supply the Facility with documentation of company hiring/dismissal and orientation, as well as employee conduct policy and training documents including grievance procedures, if any.
- 4.1.2.6 Successful vendor shall ensure the following regarding all RCT personnel to be provided:
- 4.1.2.6.1 Has completed the required training and education.

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- 4.1.2.6.2 Possess a current valid certification and/or professional license with the State of West Virginia Board of RC.
- 4.1.2.6.3 Meet current Agency immunization requirements for purified protein derivative (PPD) and Hepatitis B Series.
- 4.1.2.6.4 Successful Vendor must incorporate into the bid, all inclusive fees, any anticipated costs, and travel related expenses, administrative and overhead cost.
- 4.1.2.6.5 Successful Vendor must maintain all required records for Facility to obtain reimbursement for such services.
- 4.1.2.6.6 Successful Vendor must provide all necessary records, charts and reports to Facility subject to such confidentiality requirements as pursuant to applicable laws, rules and regulations.
- 4.1.2.6.7 Facility will **not** allow any previous employee who was dismissed for disciplinary or performance reasons by a State facility or office to return and work through the staffing vendor.

4.1.2.7 Confidentiality; that the systems, methods, procedures, written materials and controls employed in the performance of this agreement are confidential and proprietary in nature, and shall always remain the property of the parties; and shall, not at in time in the future, be disclosed to the third parties, or utilized, distributed, copied or otherwise used by the parties or their employees or agents except as necessary to comply with legal or regulatory requirements.

#### 4.1.3 DUTIES AND RESPONSIBILITIES OF THE FACILITY

- 4.1.3.1 The Facility will be billed on an hourly rate for any of the services which are requested by the Facility or prescribing physicians.
- 4.1.3.2 Facility assumes overall administrative responsibility for services rendered.
- 4.1.3.3 Facility will maintain our own liability insurance coverage provided by BRIM (Board of Risk Insurance Management)



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4.1.3.4 Confidentiality; that the systems, methods, procedures, written materials and controls employed in the performance of this agreement are confidential and proprietary in nature, and shall always remain the property of the parties; and shall, not at in time in the future, be disclosed to the third parties, or utilized, distributed, copied or otherwise used by the parties or their employees or agents except as necessary to comply with legal or regulatory requirements.

4.1.3.5 Cooperation; Facility shall immediately report to Vendor any personnel or clinical problems associated with RCS it becomes aware of, and shall cooperate fully with Vendor in the investigation of such problems and of problems independently uncovered by or reported to Vendor.

**4 CONTRACT AWARD:**

**5.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price for the Contracted Services. Award will be made for low bid to high and usage will be in the same manner. If the low bid cannot provide the needs for the Facility at the requested time, the second low bid will be contacted. We will allow 48 hours for vendor to determine if they will be able to meet our needs.

**6.1 Pricing Pages:** The Facility will be billed on an hourly rate for any of the services which are requested by the Facility or prescribing physicians (see pricing page attached).

**6.1.1** Vendor should complete the Pricing Pages (attached) by providing the unit cost; total cost; on the attached pricing schedule. Vendor should complete the Pricing Page in its entirety as failure to complete the Pricing page in its entirety may result in the Vendor's bid being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Notwithstanding the foregoing, the Purchasing Division may correct errors at its discretion. Vendor should enter the information into the Pricing Pages to prevent errors in the evaluation. The Pricing Pages were created as a Microsoft Excel document and Vendor can request an electronic copy for

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bid purposes by sending an email request to the following address: W V Veterans Nursing Facility, One Freedoms Way, Clarksburg, WV 26301.

**7 PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that 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.

**7. ORDERING AND PAYMENT: PAYMENT:** Agency shall pay as described in section 7.2, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

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

**7.2 Payment:** The vendor shall submit monthly invoices, in arrears, on a monthly basis, to the Business Office at the West Virginia Veterans Nursing Facility for all services provided pursuant to the terms of the contract. For tracking purposes only, the Vendor will provide the Agency a monthly spreadsheet to complete hours worked. These spreadsheets are collected monthly by the Business Office.

The Agency reserves the right to reject any or all invoices for which proper documentation has not been provided. The vendor will be notified within ten (10) working days of any invoice deficiencies.

State law forbids payment of invoices prior to receipt of services.

**8. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

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

**9.1** Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.

**9.2** Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.

**9.3** Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.

**9.4** Anyone performing under this Contract will be subject to Agency's security protocol and procedures.

**9.5** Vendor shall inform all staff of Agency's security protocol and procedures.

**10. DELIVERY AND RETURN:**

**10.1 Delivery Time:** Vendor shall deliver standard orders within 48 after orders are received. Vendor shall deliver emergency orders within two (2) hours after emergency orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

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

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

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

**10.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense

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and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

**10.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**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.

**11.2** The following remedies shall be available to Agency upon default.

**11.2.1** Cancellation of the Contract.

**11.2.2** Cancellation of one or more release orders issued under this Contract.

**11.2.3** Any other remedies available in law or equity.

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**12. MISCELLANEOUS:**

- 12.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the RFQ unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 12.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 12.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 12.4 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:** \_\_\_\_\_

### Exhibit A-Respiratory Labor Rates, Supplies and Equipment Schedule Bid Form

Charges are according to schedule by the Each, Day, Month, Etc..

**\*\*\*\*ALL ORDER QUANTITIES ARE ESTIMATED AND FOR BIDDING PURPOSES ONLY\*\*\*\***

Description		Estimated Usage	Unit Price	Total
Equipment Technician	Hourly Rate	24 Hours		
Respiratory Therapist	Hourly Rate	200 Hours		
Emergency Call-Out	Hourly Rate	10 Hours		
<b><u>SUPPLIES</u></b>				
BAG Kit	Each	25		
Aero chamber	Each	50		
Aerosol Face mask	Each	200		
Aerosol Tubing, 6 ft.	Each	200		
Bacteria Filter	Each	100		
Drain Bag/Water Trap	Each	100		
Drain Sponge, 4 x 4	Each	100		
E-Z Wrap	Each	50		
Humid, Bottle 340 ml	Each	150		
Humid, Bottle 650 ml	Each	50		
Incentive Spiro meter	Each	125		
Inner Cannula Shiley	Each	200		
Jet Neb, 769 ml	Each	100		
Manual Resuscitator	Each	200		
NaCl, 3 cc Unit Dose	Each	200		
Nasal Cannula	Each	200		
Non-Retreater Mask	Each	225		
Nebulizer Kit	Each	200		
O2 Tube connector	Each	150		
O2 Tubing, 7 ft.	Each	100		
Passkey Muir Valve	Each	125		
Respiratory Exerciser	Each	125		
Sputum Trap	Each	100		
Suction Bottle w/Lid	Each	100		
Suction Catheter Kit	Each	50		
Suction Tubing, 6 ft	Each	50		
Trach Care Cleaning Kit	Each	200		
Trach Mask (Collar)	Each	150		
Trach Tubes, Shiley Cuffed	Each	150		
Trach Tube Holder	Each	150		
Treatment Bag	Each	150		
Yankauer Suction Tip	Each	150		
BiPAP/CPAP Tubing	Each	100		
BiPAP Mask	Each	100		

**Exhibit A-Respiratory Labor Rates, Supplies and Equipment Schedule Bid Form**

**Charges are according to schedule by the Each, Day, Month, Etc..**

**\*\*\*\*ALL ORDER QUANTITIES ARE ESTIMATED AND FOR BIDDING PURPOSES ONLY\*\*\*\***

<b>Description</b>		<b>Estimated Usage</b>	<b>Unit Price</b>	<b>Total</b>
BiPAP Whisper Swivel	Each	100		
Headgear	Each	125		
Flutter Valve Mucous Clearing Device	Each	100		
Nipple and Nut	Each	250		
Ballard Suction Catheter	Each	100		
Pressure Line Adapter	Each	100		
Suction Catheter Only	Each	100		
Aerosol T Adapter	Each	100		
Vent Adapter	Each	120		
Vent Circuit Single	Each	120		
Cannula 25 ft w/Tubing	Each	50		
Cannula 14 ft w/Tubing	Each	50		
Adapter 15 x 22 mm	Each	50		
Oxygen Mash Simple	Each	100		
<b><u>RENTALS</u></b>				
Medium Volume Compressor	Month (Each)	75		
Neb. Compressor (Pulmo Aide)	Month (Each)	50		
O2 Concentrator	Month (Each)	40		
Pulse Oximetry	Day	5		
Suction Machine	Month (Each)	100		
BiPAP-S	Month (Each)	50		
CPAP	Month (Each)	25		
E or H Stand	Day	50		
E or H Regulator	Day	75		
EKG Test	Each	50		
<b><u>Oxygen (O2)</u></b>				
E-Cylinder/Grab & Go Refill	Each	50		
H-Cylinder Refill	Each	50		
E-Cylinder Rental	Month	250		
H-Cylinder Rental	Month	50		
Grab & Go Cylinder Rental	Month	50		
<b><u>Quarterly Maintenance</u></b>				
Concentrators (see Exhibit B)	Quarterly Rate	45		
Suction Machines (see Exhibit B)	Quarterly Rate	120		
Nebulizer (see Exhibit B)	Quarterly Rate	50		

**Exhibit A-Respiratory Labor Rates, Supplies and Equipment Schedule Bid Form**

**Charges are according to schedule by the Each, Day, Month, Etc..**

**\*\*\*\*ALL ORDER QUANTITIES ARE ESTIMATED AND FOR BIDDING PURPOSES ONLY\*\*\*\***

Description		Estimated Usage	Unit Price	Total
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\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title



**Concentrators - Quarterly Maintenance**

Vendor will follow the manufacturer's suggested maintenance schedule to include but not limited to:

- |  |  |  |  |
|--|--|--|--|
| 1. Analyze concentrator to assure unit is producing the percentage of oxygen specified by the manufacturer |  |  |  |
| 2. Tag unit with the results including ; date, hours and purity  |  |  |  |
| 3. Test flow rate for accuracy must be within (+ or - 0.5 LPM)   |  |  |  |
| 4. Clean unit with disinfectant  |  |  |  |
| 5. Test disconnect alarm to assure proper activation in case of power failure.                             |  |  |  |
| 6. Examine electrical cord for loose or frayed wires.  |  |  |  |
| 7. Inspect the case and power cord for any damage, loose or broken ground plugs.                           |  |  |  |
| 8. Remove, clean and replace side air take filter.   |  |  |  |
| 9. Provide documentation for state inspection.   |  |  |  |
| 10. Document the test on Maintenance Form  |  |  |  |

**Suction Machines - Quarterly Maintenance**

- |  |  |  |  |
|--|--|--|--|
| 1. Inspect the case and power cord for any damage, loose or broken ground plugs  |  |  |  |
| 2. Inspect filter intake (replace per occluded)  |  |  |  |
| 3. Check vacuum gage to assure needle is on zero in the off position   |  |  |  |
| 4. Turn unit on, the needle should continue to increase when end of hose is occluded.  |  |  |  |
| 5. Clean unit with disinfectant. Fill out the Preventive Maintenance Form. Tag with your initials and the date next inspection is due. |  |  |  |
| 6. Document the test on Suction Maintenance Form   |  |  |  |

**Nebulizer - Quarterly maintenance**

- |  |  |  |  |
|--|--|--|--|
| 1. Inspect the case and power cord for any damage, loose or broken ground plug.                      |  |  |  |
| 2. Inspect intake filter (replace if occluded).  |  |  |  |
| 3. Connect Oxygen Flow tester to outlet connector, Unit must be at 8 LPM to pass.                    |  |  |  |
| 4. Clean unit with disinfectant  |  |  |  |
| 5. Fill out the Preventative Maintenance Tag with your initials and the date next inspection is due. |  |  |  |
| 6. Document the test on Nebulizer Maintenance Form   |  |  |  |

**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)

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** \_\_\_\_\_

# 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: \_\_\_\_\_