



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

**Solicitation**

NUMBER
WSH14021

PAGE
1

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

RFQ COPY  
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

HEALTH AND HUMAN RESOURCES  
 OPERATIONS  
 VARIOUS LOCALES AS INDICATED  
 ON PURCHASE ORDER

DATE PRINTED
07/17/2013

BID OPENING DATE: 08/15/2013 BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		EOI		
COMMISSIONING EOI FOR WILLIAM R. SHARPE HOSPITAL  EOI TO PROVIDE COMMISSIONING SERVICES AT WILLIAM R. SHARPE, JR. HOSPITAL, PER THE ATTACHED DETAILED SPECIFICATIONS.  TERM OF THE CONTRACT SHALL BE FOR A FIVE (5) YEAR PERIOD WITH THE OPTION OF THREE (3) ONE YEAR RENEWALS.  ***** THIS IS THE END OF RFQ WSH14021 ***** 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'

## EXPRESSION OF INTEREST

Contract for Commissioning Services for William R. Sharpe, Jr. Hospital  
WSH14021

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### SECTION ONE: GENERAL INFORMATION

1. **PURPOSE:** The Acquisition and Contract Administration Section of the Purchasing Division (“Purchasing Division”) is soliciting Expression(s) of Interest (“EOI” or “Bids”) for West Virginia Department of Health & Human Resources, Bureau for Behavioral Health and Health Facilities (“Agency”), from qualified Engineering firms (“Vendors”) to provide professional services as a Commissioning Authority (“CxA”) for services as defined herein.
2. **PROJECT:** The mission or purpose of the project for which bids are being solicited is to provide Commissioning services for capital projects at William R. Sharpe, Jr. Hospital. The Agency is committed to commissioning the capital improvements to this facility to ensure that systems are complete and functioning properly prior to project completion and that the facility staff has adequate system documentation and training (“Project”).

### 3. SCHEDULE OF EVENTS:

Release of the EOI.....	7/19/2013
Firm’s Written Questions Submission Deadline. ....	7/30/2013
Expressions of Interest Opening ate.....	8/15/2013
Estimated Date for Interviews .....	TBD

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

Instructions begin on the next page.

**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: 7/30/2013

Submit Questions to: Roberta Wagner/File 22  
 2019 Washington Street, East  
 Charleston, WV 25305  
 Fax: 304-558-4115  
 Email:roberta.a.wagner@wv.gov

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The bid delivery address is:

Department of Administration, Purchasing Division  
 2019 Washington Street East  
 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 3 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: 8/15/2013 at 1:30 PM

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.

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## SECTION THREE: PROJECT SPECIFICATIONS

1. **Location:** Agency is located at One Davis Square, Charleston, WV for West Virginia Department of Health & Human Resources, Bureau for Behavioral Health and Health Facilities and the Project will be completed at William R. Sharpe, Jr. Hospital, 936 Sharpe Hospital Road, Weston, West Virginia.
2. **Background:** The Agency is committed to commissioning the capital improvements to this facility to ensure that systems are complete and functioning properly prior to project completion and that the facility staff has adequate system documentation and training. Commissioning is the process of ensuring that all building systems perform interactively according to the design intent, the systems are efficient and cost effective, and meet the Agency's operational needs. The intent is to secure a qualified Engineering Firm(s) ("Vendors") to provide professional services as a Commissioning Authority ("CxA") to oversee and coordinate commissioning of Heating, Ventilation, Air Conditioning (HVAC), electrical, plumbing and related systems in accordance with Guidelines for Design and Construction of Health Care Facilities as published by the Facility Guidelines Institute where applicable and in accordance with State adopted codes and standards for William R. Sharpe, Jr. Hospital.
  - 2.1. The Agency has embarked on a capital improvement program at William R. Sharpe, Jr. Hospital, located in Weston, West Virginia, involving multiple projects. The intent is this will be a contract for providing commissioning services and related work for the Agency for a 60 month period with the option to extend the contract term and scope for up to three (3) additional years at one-year intervals if capital improvement project(s) work at William R. Sharpe, Jr. Hospital is in progress and not complete. The Commissioning Authority is hired by the Agency and is not associated with any one Contractor providing services on the projects at William R. Sharpe, Jr. Hospital. The Commissioning Agent oversees, directs and coordinates the day-to-day commissioning activities. The Commissioning Agent does not take a decision-making role related to design or contractual issues.
  - 2.2. William R. Sharpe, Jr. Hospital: "50 bed addition project" comprising of approximately 32,000 ft<sup>2</sup> new addition to the existing hospital plus site renovations, specific plumbing renovations and modifications to the existing loading dock. This project has already bid and construction expected to start in the spring of 2013 with completion of construction 365 days after the notice to proceed. The project includes a two year warranty and service contract which will extend to project completion for two years beyond the completion of the construction.

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- 2.3. William R. Sharpe, Jr. Hospital: Renovations to the existing site and entire existing facility including central plant upgrades and comprehensive HVAC, electrical, lighting renovations and related work. The project is expected to bid in the summer of 2013 and once awarded anticipated to take approximately two years to complete the phased construction while the hospital remains in use. The project is expected to include a two year warranty and service contract which will extend to project completion for two years beyond the completion of the construction.
  - 2.4. The primary role of the CxA will be to develop, write, and coordinate the execution of a commissioning plan; observe and document the installation, checkout, start-up, Owner training, and equipment and system testing to establish that equipment and systems are functioning in accordance with the requirements of the Contract Documents (as related to the capital improvement projects); and to assist the Agency in developing reasonably correct and reasonably complete documentation of the construction efforts in accordance with the standard of care for the area.
  - 2.5. Each capital improvement project has an HVAC/Electrical/Plumbing Engineer and Architect who will design the project, prepare construction and bidding documents and provide construction administration services. The intent of this EOI is to select the "Commissioning Authority" ("CxA") which is expected to be an integral part of the construction administration team to ensure commissioning elements are incorporated into the construction process.
  - 2.6. The projects are expected to be designed and constructed to a level of quality and energy efficiency that reflects the long-term use of facilities, while adhering to the Agency's budget and schedule. The Architects and Engineers designing the projects have incorporated commissioning requirements into the design documents. The projects are expected to adhere to ASHRAE 90.1 design principles of the version adopted by the State at the time project design was initiated unless directed otherwise.
- 3. Qualifications and Experience:** Vendors will provide information regarding its employees, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.
- 3.1. Provide the name, address, phone number, e-mail address and signature of the Firm's contact person responsible for the project and having full authority to execute a binding contract on behalf of the Firm submitting the proposal.

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- 3.2. Provide the names, function and resume of individuals within the lead Firm's organization who will be assigned to this project. Registered West Virginia Professional Engineers that are graduate mechanical engineers are required with experience in Commissioning with strengths in HVAC and direct digital controls (DDC) systems.
  - 3.3. The Firm's staff should be capable of being at the Agency located in Charleston, WV and to the project located in Weston WV within two (2) hours after notification.
  - 3.4. It is preferred that the Prime firm has provided commissioning services for 10 years or more. Demonstrate the size of the project is within the Vendor's capabilities by showing at least three projects of equal or larger in size. Demonstrate the Vendors expertise in the health care field including psychiatric care facilities.
  - 3.5. Provide a description of any litigation or arbitration proceedings, including vendor complaints filed with the State's Purchasing Division, disputes with other Agencies of the State of West Virginia that involved legal representation by either party related to the Firm's delivery of professional services, if applicable. Also any disputes with other Agencies of the State of West Virginia that involve legal representation by either party.
4. **Project and Goals:** The project goals and objectives are to provide necessary Architectural and Engineering Services for the commissioning of capital improvements at William R. Sharpe, Jr. Hospital as follows:
- 4.1. The CxA shall oversee and coordinate the functions of equipment startup, system performance testing and balancing, control system calibration, construction and system documentation, and training. Specific requirements of the commissioning process and responsibilities, duties, and obligations of the CxA are described below. To accomplish these tasks, the CxA shall be required to coordinate his or her activities with other entities. The commissioning process does not take away from or reduce the responsibility of the Architect or Mechanical/Electrical/Plumbing Engineer or installing contractor to provide a finished and properly functioning HVAC, electrical and plumbing system. The primary role of the CxA will be to develop, write, and coordinate the execution of a commissioning plan; observe and document the installation, checkout, start-up, Owner training, and equipment and system testing to establish that equipment and systems are functioning in accordance with the requirements of the Contract Documents; and to assist the Agency in developing correct and complete documentation of the construction effort.

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- 4.2. The CxA will not be responsible for design concept, design criteria, compliance with codes, or the contractor's means and methods of construction.
- 4.3. The specific systems that will be commissioned include, the following unless modified by the Agency and shall be based on the HVAC, electrical and plumbing design requirements and project budget requirements:
- Domestic Hot water Heating System
  - Domestic Hot Water Booster Pump(s)
  - Hot Water Heating Systems
  - Chemical Water Treatment Systems
  - Chilled Water Systems
  - Cooling Towers and Condenser Water Systems
  - Air Terminal Unit Systems, VAV
  - Unit Heaters
  - Variable Frequency Drives & Motors
  - Air Distribution Systems
  - Kitchen Hoods/Makeup Air Systems
  - Direct Digital Controls Systems
  - Exhaust Air Systems
  - Trend Logs
  - Service switchgear
  - Emergency Power System Generators
  - Automatic Transfer Switches (ATS)
  - Lighting Controls
  - Power Monitoring and Metering
  - Smoke Control Systems as Directly Related to the HVAC Systems.
  - Fire Alarm Systems as Directly Related to HVAC Systems.
  - Grounding and Ground Fault Systems
  - Over Current Protective Devices
- 4.4. The CxA may be brought into the project at various stages of construction. However, in general and depending on when the CxA is engaged, the CxA will assist in documenting the Owners Project Requirements (OPR), the design intent, the design team's basis of design and rationale for accomplishing these requirements as follows:
- 4.4.1. Review Agency project requirements for completeness and clarity.
- 4.4.2. Participate with Agency in developing and including contractor commissioning requirements in initial project schedule.
- 4.4.3. Refine Agency's Project Requirements based upon design stage decisions.
- 4.4.4. Prepare and distribute the initial commissioning plan.
- 4.4.5. Prepare draft pre-functional checklists and functional tests for equipment and systems to be used in the commissioning process.
- 4.4.6. Submit test procedures to the Agency and Architect/Engineer for review and comments.
- 4.4.7. The Architect and Engineer will assist the CxA in providing Basis of Design and full sequences of operations, complete with points lists and specifying Contractor furnished control schematics for all equipment and



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systems for inclusion in the Operating & Maintenance (O&M) manuals and for the CxA to use in writing functional tests.

- 4.5. Commissioning during the **construction phase** is intended to assure the Agency that the Owners Project Requirements, as defined by the contract documents, are met and to achieve the following specific objectives. The CxA shall complete, at a minimum, the following tasks during the construction phase:
  - 4.5.1. Conduct and lead a partnering meeting with the contractor and appropriate subcontractors to discuss commissioning scope, plan, and schedule.
  - 4.5.2. Revise and update the commissioning plan as necessary.
  - 4.5.3. Coordinate the commissioning work with the contractor and subcontractors; ensure that commissioning activities are being scheduled into the construction schedule.
  - 4.5.4. Continue to update schedule and coordination throughout construction with contractor and subcontractors.
  - 4.5.5. Submit the final commissioning plan to the Agency, Architect/Engineer and Contractor.
  - 4.5.6. Review and advise on Contractor's submittals applicable to systems being commissioned for compliance with commissioning needs and forward comments to the Agency and Architect/Engineer.
  - 4.5.7. Review Requests For Information's (RFI's) generated during the construction process by others and changes for impacts on commissioning plan.
  - 4.5.8. The CxA shall provide a review of the contractor submittals to help identify any issues that might otherwise result in re-work and/or change orders.
  - 4.5.9. Ensure that O&M manual is submitted according to the requirements of the Project Manual. This material will be needed to assist in finalizing start-up and testing procedures.
  - 4.5.10. Prepare final pre-functional and final functional test procedures for the equipment and systems.
  - 4.5.11. Submit test procedures to Contractor, with copies to the Agency and Architect/Engineer, for comments on appropriate startup, operations, and systems safety. Testing should include each sequence in the sequence of operations under central and packaged equipment control; including startup, shutdown, capacity modulation, emergency and failure modes, alarms and interlocks to other equipment.

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- 4.5.12. Coordinate with the Contractor to witness startup of major equipment.
  - 4.5.13. Review and provide comments on the Testing Adjusting Balancing (TAB) execution plan.
  - 4.5.14. Perform site observations during rough-in of systems and equipment.
  - 4.5.15. Attend selective on-site meetings for review of progress, coordination, and issues resolution.
  - 4.5.16. Participate in Mechanical/Electrical/Plumbing coordination discussions with Contractor and subcontractors. This may be done via conference call.
  - 4.5.17. Witness a sample of HVAC pipe test and flushing procedure, sufficient to be confident that proper procedures were followed.
  - 4.5.18. Witness a sample of any ductwork testing and cleaning procedures, sufficient to be confident that proper procedures as defined by the construction documents were followed.
  - 4.5.19. Witness a sample of checkout, TAB, end-to-end testing, and calibration of the DDC controls.
  - 4.5.20. Observe first pre-functional test of each type of system, including mechanical, controls, electrical, and lighting control specialty systems.
  - 4.5.21. Prepare progress reports and submit them to the Agency and Architect/Engineer.
  - 4.5.22. Hold construction phase commissioning meetings in conjunction with construction progress meetings.
- 4.6. Commissioning during the **acceptance phase** is intended to demonstrate the performance of the equipment and that systems installed during the construction phase meet the requirements of the Contract Documents. The CxA shall complete the following tasks during the acceptance phase:
- 4.6.1. Continue to update the schedule and coordination throughout construction with the Contractor and subcontractors.
  - 4.6.2. Maintain Record of functional testing.
  - 4.6.3. Obtain pre-functional reports from the Contractor with sign-offs that the systems have been checked out.
  - 4.6.4. Oversee TAB, to include verification and witnessing of final TAB of equipment, heat exchangers, air terminals, diffusers, grilles, hoods, terminal devices, equipment testing, and document findings.



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- 4.6.5. Witness performance testing of smoke control systems where applicable. Testing should include each sequence in the sequence of operations under central and packaged equipment control including startup, shutdown, capacity modulation, emergency and failure modes, alarms and interlocks to other equipment.
- 4.6.6. Witness functional testing of each major piece of equipment to demonstrate that each item of equipment and system is operating according to the Design Intent and contract documents. Functional testing shall include operating the system and components through each of the written sequences of operation. Tests on respective HVAC equipment may be executed during both heating and cooling seasons.
- 4.6.7. Provide troubleshooting advice to assist in resolving control problems, as they are uncovered. Functional testing may be performed on all or a sample of control points as defined in the construction documents for the projects.
- 4.6.8. Check the system graphics to assure all graphics are developed. Check a percentage (i.e. 10% or as established for the specific project) sample of points' mapped graphics to assure they are correct.
- 4.6.9. Keep a detailed log of testing for each piece of equipment.
- 4.6.10. Maintain a deficiency log of any items found to be a problem, poorly installed, or discrepancies. Provide the log and test results to the Agency, Contractor, and Architect/Engineer with recommended actions. Coordinate and verify final status of commissioning deficiencies.
- 4.6.11. The Commissioning Authority shall be responsible for participating in one additional retest of failed systems/equipment as part of normal checkout. More than one retest will be considered work outside the normal scope of work and considered additional services.
- 4.6.12. Notify the Agency, Architect/Engineer and Contractor of the unacceptable findings of equipment that fails to perform to the requirements of the contract documents because of manufacturing defects which do not allow it to meet the submitted performance specification. Request an explanation of the problem from the Contractor and the Contractor's proposed solution(s), and then review and advise the Agency and Architect/Engineer on the proposed solution(s).
- 4.6.13. Attend meetings while on-site for functional testing.
- 4.6.14. Attend on-site meetings for review of progress, coordination, and issues resolution.

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- 4.6.15. Review O&M documentation for completeness. This review shall be in parallel with the Architect/Engineer team's review of the O&M documentation for conformance to the project specification.
- 4.6.16. Assist the Contractor in training the facility's staff on "how the building equipment and/or systems are supposed to operate."
- 4.6.17. Verify that the requirements specified in the design documents for training are completed and include results in the commissioning log.
- 4.6.18. Review equipment warranties provided by the Contractors to see if they clearly define the Contractor and Agency responsibilities as specified in the construction documents for the projects.
- 4.6.19. Prepare the Commissioning Final Report. The report may include an summary of the overall commissioning process, list of participants and roles, brief building description, and the following sections:
  - a. Owner's Project Requirements
  - b. Basis of design
  - c. Pre-functional checklists complete
  - d. Functional checklists complete
  - e. TAB reports
  - f. System schematics
  - g. Control strategies and set points
  - h. Deficiency Log
  - i. Guidelines for energy accounting
- 4.6.20. Coordinate deferred and seasonal testing and balancing in the event they are not able to be performed during the normal construction period.
- 4.6.21. Address concerns with operating facility as intended.
- 4.7. Commissioning during the warranty period is intended to assist the facility operating staff in identifying any defects in the installed equipment or system operation. The CxA shall complete the following tasks during the warranty phase:
  - 4.7.1. Return to the site around the 11th month and again around the 23rd month after substantial completion and review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. The intent is to identify any issues relevant of non-conformance to the Contractor's 24 month service contract where the Contractor is responsible for seasonal commissioning in accordance with the contract documents for corrective action to be considered.

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- 4.7.2. Interview facility staff and identify problems or concerns they have with operating the building as originally intended.
  - 4.7.3. Identify deficiencies that may come under warranty or under the original construction contract but not discovered until during the warranty period.
  - 4.7.4. Prepare a detailed evaluation after substantial completion on the status of warranty issues for the facility staff and Agency.
  - 4.7.5. Attend on-site meetings to discuss warranty issues.
- 4.8. The installing subcontractors shall provide all labor and tools or the use of tools required to start, checkout, and functionally test equipment and systems, except for specified testing with supplemental portable data loggers, which may be supplied and installed by the CxA. To expedite air-water balance testing, and to minimize additional cost to the Contractor, the CxA may verify the TAB contractor's air-water balance values by witnessing the testing and verifying the results while on site. Equipment provided shall meet the minimum accuracy, calibration, and performance standards required by the performance test as specified in the construction documents.
- 4.9. The documentation (reports) submitted to the Agency shall be in electronic form and paper form (up to two copies) as determined by the Agency. Documentation refers to all correspondence (letters, memos, observations, etc.); all test reports and all Test and Balance Reports.
- 4.10. The actual scope of services for each project to be commissioned and overseen by the CxA shall have tasks defined that are specific to that project and communicated to the selected CxA for each specific project as defined in the construction documents for the projects.
- 5. Oral Presentations:** The Agency is requiring oral presentations of all Vendors short listed during the technical evaluation in the EOI process. It is listed in the Schedule of Events (Section 1.3) of this EOI. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information.

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

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

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qualified professional firm.

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

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

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

• Years Vendor provided Commissioning 10 year preferred	10 Points Possible
• Ability to on site at Agency and/or Project within 2 hours	15 Points Possible
• Qualifications and experience	25 Points Possible
• Approach and methodology for meeting Goals and Objectives	25 Points Possible
• <u>Oral interview</u>	<u>25 Points Possible</u>
<b>Total</b>	<b>100</b>

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### **SECTION FIVE: TERMS AND CONDITIONS**

Terms and conditions begin on the next page.

**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 Five (5) 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 Three (3) 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.
  - \$2,000,000.00 Aggregate General Liability
  - \$1,000,000.00 Auto Liability
  - \$1,000,000.00 Professional Liability
  - WV Statutory Requirements including WV Code 23-4-2 (Mandolidis)
  -

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.

- WV Certificate of Authorization from the WV Bd. of Regist. for Prof. Engineers
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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

**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.

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

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

RFQ No. WSH14021

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

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

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

**DEFINITIONS:**

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

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

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

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

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

**AFFIX SEAL HERE**

**NOTARY PUBLIC** \_\_\_\_\_

**CERTIFICATION AND SIGNATURE PAGE**

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

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(Company)

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(Authorized Signature)

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(Representative Name, Title)

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(Phone Number)

(Fax Number)

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(Date)

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: WSH14021**

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

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

**Addendum Numbers Received:**

(Check the box next to each addendum received)

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

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

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Company

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Authorized Signature

---

Date

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