



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

State of West Virginia  
**Master Agreement**

Order Date: 2018-05-16

CORRECT ORDER NUMBER  
 MUST APPEAR ON ALL PACKAGES,  
 INVOICES, AND SHIPPING PAPERS.  
 QUESTIONS CONCERNING THIS  
 ORDER SHOULD BE DIRECTED TO  
 THE DEPARTMENT CONTACT.

Order Number: CMA 0612 9105 DPS1800000002	Procurement Folder: 453142
Document Name: REISSUE OF DPS1600000001 ORIGINAL PROC FLDER: 94136	Reason for Modification:
Document Description: STATEWIDE CONTRACT FOR APPLICANT FINGERPRINT SERVICES	REISSUE OF DPS1600000001 ORIGINAL PROC FOLDER: 94136
Procurement Type: Central Master Agreement	
Buyer Name: Crystal Rink	
Telephone: (304) 558-2402	
Email: crystal.g.rink@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2018-01-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2018-07-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000187048 IDEMIA IDENTITY & SECURITY USA LLC 6840 CAROTHERS PKWY STE 650  FRANKLIN TN 37067  US Vendor Contact Phone: (978) 932-2200 Extension: Discount Percentage: 0.0000 Discount Days: 30	Requestor Name: Carole Woodyard Requestor Phone: (304) 746-2141 Requestor Email: carole.a.woodyard@wvsp.gov

INVOICE TO	SHIP TO
ALL STATE AGENCIES  VARIOUS LOCATIONS AS INDICATED BY ORDER  No City WV 99999  US	STATE OF WEST VIRGINIA  VARIOUS LOCATIONS AS INDICATED BY ORDER  No City WV 99999  US

**AGENCY COPY**

Total Order Amount	Open End
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*OK 5/18/18*

<b>PURCHASING DIVISION AUTHORIZATION</b> SIGNED BY: <i>Linda Harper</i> DATE: <i>5-18-18</i> ELECTRONIC SIGNATURE ON FILE	<b>ATTORNEY GENERAL APPROVAL AS TO FORM</b> SIGNED BY: <i>[Signature]</i> DATE: <i>[Signature]</i> ELECTRONIC SIGNATURE ON FILE	<b>ENCUMBRANCE CERTIFICATION</b> SIGNED BY: <i>Beverly Toler</i> DATE: <i>[Signature]</i> ELECTRONIC SIGNATURE ON FILE
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*5/25/18*

**Extended Description:**

REISSUE OF STATEWIDE CONTRACT DPS160000001  
ORIGINAL PROCUREMENT FOLDER: 94136

CONTRACT REISSUED DUE TO CORPORATE NAME CHANGE PER THE ATTACHED DOCUMENTS

FROM: MORPHOTRUST USA  
VENDOR NUMBER 000000100868

TO: IDEMIA IDENTITY & SECURITY USA LLC  
VENDOR NUMBER 000000187048 DOCUMENTS

EFFECTIVE DATE OF NAME CHANGE: 01/01/2018

ALL PROVISIONS OF THE ORIGINAL CONTRACT AND SUBSEQUENT CHANGE ORDERS NOT MODIFIED HEREIN SHALL REMAIN IN FULL FORCE AND EFFECT.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	92121602			EA	\$12.500000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services

**Extended Description:**

Vendor Electronic Rolling/Submission Fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	92121602			EA	\$12.500000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services

**Extended Description:**

Vendor Manual Rolling Fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	92121602			EA	\$12.500000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services

**Extended Description:**

Vendor Card Conversion/Submission Fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	92121602			EA	\$20.000000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services - State fee set by state statute

**Extended Description:**

Set by state statute -

State fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	92121602			EA	\$10.000000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services - State fee set by state statute

**Extended Description:**

Set by state statute -

State Authorized Central Abuse Fee, if applicable

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	92121602			EA	\$10.000000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services - State fee set by state statute

**Extended Description:**

Set by state statute -

State NCPANCA fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	92121602			EA	\$12.000000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services - FBI set fee

**Extended Description:**

Change Order No. 3 - decrease unit price from \$14.75 to \$12.00

Set by FBI - FBI fee

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	92121602			EA	\$10.750000
	<b>Service From</b>	<b>Service To</b>			

Commodity Line Description: Fingerprint services - FBI set fee

**Extended Description:**

Change Order No. 3 - decrease unit price from \$13.50 to \$10.75

Set by FBI - FBI Volunteer fee



January 1, 2018

RE: Idemia Identity & Security USA LLC: TIN 04-3320515

To Whom It May Concern:

Regarding Idemia Identity & Security USA LLC tax payer identification number and how we must complete a W-9, please be aware of the following:

1. Idemia Identity & Security USA LLC is a Delaware limited liability company with TIN 04-3320515.
2. Idemia Identity & Security USA LLC is the operating company which performs all work and holds the bank accounts (thus EFT forms reference Idemia Identity & Security USA LLC TIN 04-3320515).
3. Idemia Identity & Security USA LLC is a single-member limited liability company which is owned by Morpho USA Inc. (TIN 27-4388807). Morpho USA Inc. is strictly a holding company which does not perform work nor enter into contracts directly with customers.
4. For federal tax purposes Idemia Identity & Security USA LLC is treated as a disregarded entity (thus taxes are paid at the owner level).
5. When a single member LLC is treated as a disregarded entity, based on the way the IRS has designed the W-9 form, it must complete a W-9 using the name and taxpayer id number of the owner/corporate parent. In the directions which accompany the W-9 you will see under the name section on page 2 the form makes it clear that a disregarded LLC must use the name of the owner on "Name" line and its own name in the "Business name/disregarded entity name" line: Under the Taxpayer Identification Number section on page 3, a disregarded entity must use the TIN of the owner:

*Disregarded entity. Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8.*

**Part I. Taxpayer Identification Number (TIN)**

*Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see How to get a TIN below.*

*If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.*

*If you are a single-member LLC that is disregarded as an entity separate from its owner (see Limited Liability Company (LLC) on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.*

6. As such, Idemia Identity & Security USA LLC TIN is 04-3320515 but must complete a W-9 as attached listing the owner's TIN. Idemia Identity & Security USA LLC will not issue an invalid W-9. I urge you to contact your own tax group or the IRS to confirm if you have questions.

If you have additional questions, please contact Diane Grochmal in my department at (978)-215-2570 or [Diane.Grochmal@us.idemia.com](mailto:Diane.Grochmal@us.idemia.com).

Sincerely,

  
Gregory W. Magoon, CFO

Idemia Identity & Security USA LLC  
296 Concord Road - Suite #300  
Billerica, MA 01821

T: +1 978-215-2400  
F: +1 978-215-2500  
[www.morphotrust.com](http://www.morphotrust.com)

Subject: Notice Regarding Name Change

Dear Account Manager,

Effective January 1, 2018, MorphoTrust USA LLC changed its name to Idemia Identity & Security USA LLC ("Idemia"). We intend to update all of our pending contracts with you upon expiration to reflect this new name so that all *new* contracts issued are in the correct name of Idemia Identity & Security USA LLC. Please note that there will be no assignment, change to the corporate form, assets, or capabilities of MorphoTrust USA LLC and Idemia will maintain the same Tax Identification Number.

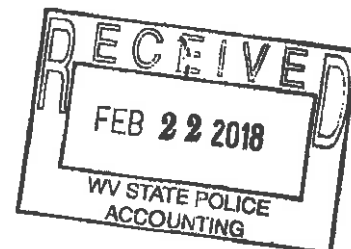
To facilitate this change, please provide the undersigned with any documentation required to update the names on MorphoTrust's pending proposals or contracts with you.

If you have any further questions, please contact Tom Maguire at 978-215-2714 or [Tom.Maguire@us.IDEMIA.com](mailto:Tom.Maguire@us.IDEMIA.com)

Very truly yours,

Lauren E. DiGiovine  
Legal Counsel

CC: Tom Maguire



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# Delaware

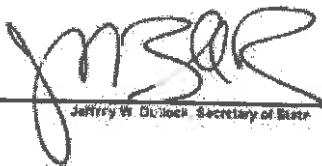
The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MORPHOTRUST USA, LLC", CHANGING ITS NAME FROM "MORPHOTRUST USA, LLC" TO "IDEMIA IDENTITY & SECURITY USA LLC", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF DECEMBER, A.D. 2017, AT 12:20 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF JANUARY, A.D. 2018.



  
Jeffrey W. Bullock, Secretary of State

2591343 8100  
SR# 20177817570

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203847527  
Date: 12-28-17

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:20 PM 12/28/2017  
FILED 12:20 PM 12/28/2017  
SR 20177817570 - File Number 2591343

**STATE OF DELAWARE**  
**CERTIFICATE OF AMENDMENT**  
**OF CERTIFICATE OF FORMATION**  
**OF**  
**MORPHOTRUST USA, LLC**

MorphoTrust USA, LLC (the "LLC"), a limited liability company formed and existing under and by virtue of the Delaware Limited Liability Company Act (the "Act") does hereby certify:

**FIRST:** That the LLC's certificate of formation was originally filed with the Secretary of State of the State of Delaware on December 23, 2013 (together with any amendments to date, the "Certificate of Formation").

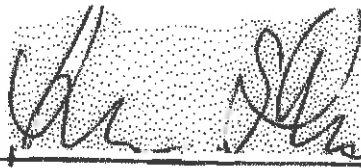
**SECOND:** That the name of the LLC is MorphoTrust USA, LLC.

**THIRD:** The Certificate of Formation is hereby amended by changing Article First thereof so that, as amended, said Article shall be and read as follows:

"The name of the Limited Liability Company is Idemia Identity & Security USA LLC."

**FOURTH:** This Certificate of Amendment shall become effective on January 1, 2018.

**IN WITNESS WHEREOF**, the LLC has caused this certificate to be signed this 28th day of December, 2017.

By: 

Name: Lauren DiGiovine  
Title: Authorized Signatory

## GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Award Document 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 or 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. "Award Document" 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 contract holder.
  - 2.6. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
  - 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 August 1, 2015 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 should be submitted to the Purchasing Division 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 six (6) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed 72 months in total. 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.

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery 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.

**Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional \_\_\_\_\_ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. Automatic renewal of this Contract is prohibited.

**One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will 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 Award Document 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 a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
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 \$50,000.00. The performance bond must be 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 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.

**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:** In the amount of \_\_\_\_\_ or more.

**Builders Risk Insurance:** In an amount equal to 100% of the amount of the Contract.

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

**LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

**9. WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. 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.

**11. LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of \_\_\_\_\_ for \_\_\_\_\_.  
This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

12. **ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Award Document, upon receipt.
13. **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.
14. **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.
15. **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.
16. **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 also 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.
17. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
18. **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.
19. **COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable law.
20. **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.

21. **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.
22. **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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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.

**29. 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>.

**30. 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. and the competitive bidding laws found West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-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. 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. Additionally, pricing or cost information will not be considered exempt from disclosure and requests to withhold publication of pricing or cost information 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.

**31. 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.

