



State of West Virginia  
**Agency Purchase Order**

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

Order Date: 09-13-2024

Order Number:	APO 0603 8211 ADJ2500000114 1	Procurement Folder:	1510980
Document Name:	Eleanor CSMS Weld Shop & Garage	Reason for Modification:	
Document Description:	Emergency Roof Repairs		
Procurement Type:	Agency Emergency Purchase		
Buyer Name:	Charles A Bowman		
Telephone:	(304) 561-6654		
Email:	charles.a.bowman26.nfg@army.mil		
Shipping Method:	Best Way	Effective Start Date:	2024-04-04
Free on Board:	FOB Dest, Freight Allowed	Effective End Date:	2024-04-18

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code: 000000203565				Requestor Name: Charles A Bowman	
TRI STATE ROOFING & SHEET METAL CO				Requestor Phone: (304) 561-6654	
PO BOX 1231				Requestor Email: charles.a.bowman26.nfg@army.mil	
CHARLESTON WV 25324					
US					
Vendor Contact Phone: 304-328-5244		Extension:			
Discount Details:					
	Discount Allowed	Discount Percentage	Discount Days		
#1	No	0.0000	0		
#2	Not Entered				
#3	Not Entered				
#4	Not Entered				

INVOICE TO	SHIP TO
STATE FINANCE ADJUTANT GENERALS OFFICE 1703 COONSKIN DR  CHARLESTON WV 25311-1085 US	BUILDING TRADE SPECIALIST ELEANOR COMBINED SUPPORT MAINTENANCE SHOP 111 ARMY/NAVY DR  RED HOUSE WV 25168 US

Total Order Amount: \$50,536.00

DEPARTMENT AUTHORIZED SIGNATURE  
SIGNED BY: Charles A Bowman  
DATE: 2024-09-13  
ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

The vendor, Tri-State Roofing & Sheet Metal Company, agrees to enter this Emergency Purchase Agreement with the WV Adjutant General's Office to provide all labor, materials, and equipment to repair the roof on garage and weld shop of the Eleanor CSMS in Eleanor, WV, per the vendor's proposal dated April 4, 2024, inclusive of the scope of work noted and the invoice #52298 for a contract total of \$50,536.00, in accordance with the Emergency Purchase procedures and the general terms and conditions.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	72152601	0.00000		0.000000	50536.00
Service From	Service To	Manufacturer		Model No	
2024-04-04	2024-04-18				

**Commodity Line Description:**     Roof Repair Services

**Extended Description:**

Invoice# 52298 dated 05/17/2024

	Document Phase	Document Description	Page 3
ADJ2500000114	Final	Emergency Roof Repairs	

# **ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions



# invoice

INVOICE DATE	INVOICE NO.	PAGE
5/17/24	52298	1

## ROOFING & SHEET METAL COMPANY

P.O. BOX 1231, CHARLESTON, WV 25324 • TELEPHONE (304) 755-8135 • FAX: (304) 755-5275 WV CONTRACTORS LICENSE NO. WV000104  
EMAIL: charleston@tri-stateservice.com • WEBSITE ADDRESS: www.tri-stateservicegroup.com

SOLD WVANG  
TO: 1707 COONSKIN DRIVE  
CHARLESTON, WV 25311

SHIP CSMS/OMS  
TO: 110 ARMY/NAVY DRIVE  
RED HOUSE, WV

PURCHASE ORDER NO.	SHIP VIA	SHIP DATE	TERMS
			NET 30 DAYS

Job # 814837 WVANG CSMS ROOF RIPPED UP

PERFORM ROOF REPAIRS PER ATTACHED  
PROPOSAL FOR WORK PERFORMED APRIL 4, 2024 THROUGH APRIL 18, 2024.  
This billing includes all costs and markups to perform the work as described including labor, material, taxes, supervision, insurance, tools and equipment, shop and warehouse expenses, vehicular cost, record keeping, dump charges and environmental compliance.

A 4.5% CREDIT CARD FEE WILL BE CHARGED FOR ALL CREDIT CARD PAYMENTS.

185 HRS	@ \$108.60 HR	\$20,091.00
3 HRS-OT	@ \$162.90 HR	\$ 488.70
TOTAL LABOR		\$20,579.70

MATERIALS	
PRIMER/CLEANER 13GAL	\$ 1,363.07
ADHESIVES 20GAL	\$ 948.44
SEALANT 20 TUBES	\$ 611.13
EPDM 1500 SF	\$ 3,666.67
FORMFLASH 3.1 ROLLS	\$ 2,408.71
SPLICE TAPE 4.5 ROLLS	\$ 850.00
BATTEN 119 ROLLS	\$ 6,231.22
COVERSTRIP 13.5 ROLLS	\$11,164.20
QUICKSEAM .3 ROLL	\$ 238.58
PAINTBRUSHES/ROLLERS 15 EA	\$ 53.18
FASTENERS/SEAM PLATES 2290 EA	\$ 2,319.36
TRASH BAGS 20 EA	\$ 29.30
RAGS 20 LB	\$ 72.44
TOTAL MATERIAL	\$29,956.30

WE APPRECIATE YOUR BUSINESS!

SALE AMOUNT	50,536.00
MISC. CHARGES	
SALES TAX	
FREIGHT	
TOTAL	50,536.00

Since 1923  
**TRI-STATE Roofing & Sheet Metal Company**

PO Box 1231, Charleston, WV 25324  
321 Harris Drive, Rock Branch Industrial Park, Poca, WV 25159  
Phone: (304) 755-8135  
Fax: (304) 755-5275  
E-mail: charleston@tri-stateservice.com  
www.tri-stateservicegroup.com

Contractors for:  
Roofing  
Roof Decks  
Industrial Sheeting and Roofing  
Sheet Metal Fabrication and Erection  
HVAC/Mechanical Service

WV Contractor's License: #WV000104

**PROPOSAL**

Chris Griffith  
WV National Guard

April 4, 2024

**Project:** Emergency Repair of Storm Damage  
**Location:** CSMS Eleanor  
**Areas:** Weld Shop and Garage

Chris,

Thank you for asking Tri-State Roofing & Sheet Metal to provide a budgetary proposal for the emergency roof repair of the above-mentioned roof areas damaged by the storms on April 2, 2024. The work on this project will be performed directly for the WV National Guard. Payment for this work will be the responsibility of the WV National Guard and is not contingent upon the decisions of any insurance company or other third parties. After viewing the existing conditions, we offer the following scope of work:

Scope of Work: Weld Shop

- Remove loose storm damaged coping.
- Temporarily secure membrane to prevent additional damage.
- Remove and dispose of damaged wall flashings.
- Install new base tie-in and install new EPDM wall flashings.
- Fabricate and install new coping.
- Install batten reinforcement strip in field of membrane and cover with EPDM material.

Scope of Work: Garage

- To secure loose membrane; Install batten securement 5 foot in, from the parapet, wall around entry perimeter and 10 foot on center in the field.
- Cover batten with EPDM cover material.

<b>Weld Shop Budget:</b>	<b>\$24,000.00</b>
<b>Garage Budget:</b>	<b>\$27,000.00</b>
<b>Total:</b>	<b>\$51,000.00</b>

**Note:**

- The price listed above is a time and material budgetary figure. This is not a hard dollar price. The actual price will be calculated upon completion of the repair and be based on actual labor and material used.
- Should the repair exceed the provided budget figure; written permission to exceed the budgeted figure will be requested.

Tri-State Roofing & Sheet Metal will make repairs to localized areas that appear to be the source of leaks and will make a good faith effort to locate and try to stop leaks. Tri-State Roofing & Sheet Metal does not warranty that further leaks will not occur. Depending upon the condition, age and type of roof, future leaks may well be expected. Tri-State Roofing & Sheet Metal is not responsible for indoor air quality, interior, or consequential damages, including mold, mildew, loss of use, damage to personal property, personal injury or claims from building occupants.

ACCEPTED:

Firm/Owner: WV Armory Board  
By: Rachel L. White  
Title: Maintenance Supervisor  
Date: 4-4-24

Tri-State Roofing & Sheet Metal Co.  
By: Brian E. Linville  
Brian E. Linville  
Title: Vice President  
Date: 4-4-24

The terms and conditions set forth on the reverse side are a part of this proposal and contract. This Proposal is subject to revision or withdrawal by Tri-State until communication of acceptance, and may be revised after communication of acceptance where an inadvertent error by Tri-State has occurred. This Proposal expires thirty (30) days after the date stated below, unless Tri-State Roofing & Sheet Metal expressly agrees to an extension.

(See reverse side for terms and conditions)

All agreements are contingent upon government requirements, strikes, acts of God, or other causes beyond our control. Offers to subcontract are based upon execution of the AGC/ASA/ASC Standard Form Construction Subcontract, 1994 Edition, or AIA Document A-401, 1997 Edition. Insurance certificates will be furnished in accordance with the standard form issued by our insurance company. Stenographic errors are subject to correction.  
(Shipping Address: Rock Branch Industrial Park, 321 Harris Drive, Poca, WV 25159)

## TERMS & CONDITIONS

1. **Acceptance.** This Proposal and the plans, specifications and such other documents, if any, as are referenced on the face of this Proposal shall constitute the entire agreement between the parties. If acceptance of this Proposal is conditioned upon any additional or inconsistent terms and the parties cannot agree on mutually acceptable terms and conditions, then in such event AIA Standard Form of Agreement and AIA Document A201, General Conditions of the Contract for Construction 2007 edition, shall be used.
2. **Nature of Work.** Tri-State Roofing & Sheet Metal Company ("Tri-State") shall furnish the labor and material necessary to perform the work described herein or in the referenced contract documents. Tri-State does not provide design, engineering, consulting or architectural services. It is the Owner's responsibility to retain a licensed architect or engineer to provide a proper design, which complies with applicable building code requirements, is consistent with desired fire and wind uplift resistance ratings, and includes a determination as to whether and what type of a vapor or air retarder is needed. If plans, specifications or other design documents have been furnished to Tri-State, Customer warrants that they are sufficient and conform to all applicable laws and building codes. Tri-State is not responsible for any loss, damage or expense due to defects or omissions in plans or specifications or building code violations unless such damage results from a deviation by Tri-State from what is specified. Tri-State is not responsible for condensation, moisture migration from the building interior or other building components, location or size of roof drains, deck deflection or existing deck conditions.
3. **Drainage.** Roof drainage, including secondary drainage, should be evaluated, designed and specified by a qualified mechanical engineer for compliance with current plumbing and other applicable codes and site conditions. Tri-State does not evaluate or design roof drainage, including the number, size and spacing of roof drains, and is not responsible for the adequacy of roof drainage and the consequences of inadequate roof drainage. Because retrofit drains reduce capacity of existing roof drainage, Tri-State does not recommend use of retrofit drains and is not responsible for the consequences of an owner's or design professional's decision to have Tri-State install retrofit drains. Tri-State is not responsible for damages resulting from clogged drains, scuppers and downspouts. The owner should regularly inspect all roof drains, scuppers (both primary and secondary) and downspouts to determine that drainage is not impeded.
4. **Deck Conditions.** Customer warrants that structures on which Tri-State is to work are in sound condition and capable of withstanding roof construction, equipment and operations and will not adversely affect the roofing materials or performance of the roof. Tri-State is not responsible for adhesion to concrete decks or the effects on the roofing materials of residual moisture in concrete decks. Tri-State is not responsible to test or assess moisture content of the deck or substrate and for water intrusion while the deck is drying and advises that admixtures are not effective in preventing moisture or vapor migration from adversely affecting roofing materials. Tri-State's commencement of roof installation indicates only that Tri-State has visually inspected the surface of the deck for visible defects or deficiencies. Tri-State is not responsible for the quality of construction, structural sufficiency, undulations, durability, fastening, moisture content, suitability, or physical properties of the roof deck or other trades' work or design.
5. **Asbestos and Toxic Materials.** This proposal is based on Tri-State's not coming into contact with asbestos-containing or toxic materials. Tri-State is not responsible for expenses, claims or damages arising out of the presence, disturbance or removal of asbestos-containing or toxic materials. Tri-State shall be entitled to reasonable compensation for all additional expenses incurred as a result of the presence of asbestos-containing or toxic materials at the work site. Customer agrees to indemnify Tri-State from and against any liability, damages, losses, claims, demands or citations arising out of the presence of asbestos or toxic materials at the work site.
6. **Mold.** Owner will make periodic inspections for signs of water intrusion and act promptly including prompt notice to Tri-State if Owner believes there are roof leaks. Tri-State is not responsible for indoor air quality, mold, mildew or any alleged injury resulting therefrom. Owner shall hold harmless and indemnify Tri-State from claims due to indoor air quality and resulting from a failure by Owner to maintain the interior of the building in a manner to avoid growth of mold or deterioration of Air Quality.
7. **Payment.** Payment by credit card is not permitted, unless agreed to by Tri-State. Unless stated otherwise on the face of this proposal, Customer shall pay the contract price plus any additional charges for changed or extra work within ten (10) days of substantial completion of the Work. If completion of the Work extends beyond one month, Customer shall make monthly progress payments to Tri-State by or before the fifth (5th) day of each month for the value of Work completed during the preceding month, plus the value of materials suitably stored for the project. All sums not paid when due shall earn interest at the rate of 1-1/2% per month. Tri-State shall be entitled to recover from Customer all costs of collection incurred by Tri-State, including attorney's fees, resulting from Customer's failure to make proper payment when due. Tri-State's entitlement to payment is not dependent upon criteria promulgated by Factory Mutual Global ("FMG"), including wind uplift testing.
8. **Insurance.** Tri-State shall carry worker's compensation, automobile and commercial general liability and such other insurance as required by law. Tri-State will furnish a Certificate of Insurance, evidencing the types and amounts of its coverages, upon request. Customer shall purchase and maintain builder's risk and property insurance, without a deductible, including the labor and materials furnished by Tri-State, covering fire, windstorm, extended coverage, malicious mischief, vandalism and theft on the premises to protect against loss or damage to material and equipment and partially completed work until the job is completed and accepted. Moneys owed to Tri-State shall not be withheld by reason of any damage or claim against Tri-State covered by liability or property damage insurance. If Customer requires and Tri-State agrees to name Customer or others as additional insureds on Tri-State's liability insurance policy, Customer and Tri-State agree that the naming of Customer or other parties as additional insureds is intended to apply to claims made against the additional insured to the extent the claim is due to the negligence of Tri-State and is not intended to make Tri-State's insurer liable for claims that are due to the fault of the additional insured.
9. **Working Conditions.** Tri-State shall not be charged for reasonable use of job utilities and services, watchmen and security, sanitary facilities, temporary structures, or general office expense or other prorated expenses of any description.
10. **Interior Protection.** Tri-State is not responsible for damage caused by the elements or debris that may fall into the building during the course of the work, including leakage due to the condition of the existing roof, drainage deficiencies or water entry through other parts of the building. Tri-State is not liable for special, incidental or consequential damages. Customer acknowledges that re-roofing of an existing building or substantial repairs may cause disturbance, dust, debris or fireproofing to fall into the interior. Customer agrees to remove or protect property directly below the roof to minimize potential interior damage and to provide written notice of locations of hi-tech equipment or machinery or sensitive operations located directly underneath areas to be re-roofed or repaired and take steps necessary to protect such equipment or machinery during re-roofing. Tri-State shall not be responsible for disturbance, interruption, clean up, loss of revenue or loss to interior property including gym floors and technical equipment or machinery that Customer did not remove or protect prior to commencement of roofing operations. Customer shall notify occupants and tenants of roofing work and the need to provide protection underneath areas being re-roofed. Customer agrees to hold Tri-State harmless from claims of tenants and occupants who were not so notified and did not provide protection. If there is interior damage due to water entry or debris that falls into the building for which the Customer contends Tri-State may be responsible, Tri-State shall be given prompt written notice by Customer and the opportunity to take needed remedial action without prejudice to Tri-State's or Customer's rights or contentions as to liability or responsibility for the costs incurred. Tri-State will not be liable for remedial expenses if Tri-State was not afforded the opportunity to perform the remedial work. Customer shall maintain builder's risk and property insurance which shall be used to cover such claims and losses. Tri-State and Customer waive rights of subrogation for claims covered under builder's risk and property insurance.
11. **Roof Projections.** Tri-State will flash all projections through roofing that are shown on the architectural plans provided to Tri-State and that are in place prior to installation of roofing. Any penetrations through the roofing to be installed by Tri-State not shown on the plans provided to Tri-State prior to submittal of this proposal or required after installation of roofing shall be considered an order for extra work, and Tri-State shall be compensated at its customary time and material rates for performing such additional work.
12. **Backcharges.** No backcharges or claims for payment of services rendered or materials and equipment furnished by Customer to Tri-State shall be valid unless previously authorized in writing by Tri-State and unless written notice is given to Tri-State within ten (10) days of the event, act or omission which is the basis of the backcharge.
13. **Availability of Site.** Tri-State shall be provided with direct access to the work site for the passage of trucks and materials and direct access to the roof. Tri-State shall not be required to begin work until underlying areas are ready and acceptable to receive Tri-State's work and sufficient areas of roof deck are clear and available for continuous full operation until job completion. The expense of any extra trips by Tri-State to and from the job as a result of the job not being ready for the Work after Tri-State has been notified to proceed will be charged as an extra.
14. **Safety.** Owner warrants there will be no live power lines on or near the roof servicing the building where Tri-State will be working and that Owner will turn off any such power supplies to avoid an electrocution risk to Tri-State's employees. Tri-State's price is based upon there not being electrical conduit or other materials embedded within the roof assembly or attached directly to the underside or topside of the roof deck upon which Tri-State will be installing the new roof. Owner will indemnify Tri-State from personal injury and other claims and expenses if Owner fails to turn-off power so as to avoid injury to Tri-State's personnel or resulting from the presence of concealed electrical conduit and live electrical power. Tri-State is not responsible for costs of repair or damages, including disruption of service, resulting from damage to undisclosed or concealed electrical or other utility lines. Owner shall shut down roof located electronic equipment that emits or receives radio frequency waves while roofing contractor is to be working on the roof so that roofing personnel will not be subject to radio frequency waves or electromagnetic radiation while working on the roof and shall indemnify and hold Tri-State and its personnel harmless from any personal injury claims resulting from a failure by Owner to do so. Tri-State is not responsible for the safety of persons on the roof other than its own employees. Owner and general contractor agree to indemnify and hold Tri-State harmless, including attorney's fees, from claims for personal injury by persons or entities whom owner or general contractor have allowed or authorized to be on the roof. Tri-State is not responsible for and shall be compensated for additional costs incurred due to the existence of utilities, damaged or wet insulation, deteriorated deck or other subsurface or latent conditions not disclosed in writing to Tri-State and specifically referenced on the face of this proposal.
15. **Mechanic's Lien and Payment Bond.** Tri-State shall be entitled to file a lien if payment to Tri-State is not made. If a payment bond is issued, a copy of payment bond shall be furnished to Tri-State upon request.
16. **Warranty.** Tri-State's work will be warranted by Tri-State in accordance with its standard warranty, which is made a part of this proposal and contract and incorporated by reference. A facsimile of Tri-State's standard warranty is attached or, if not, will be furnished upon request. Tri-State is not liable for special, incidental or consequential damages. The acceptance of this proposal by the Customer signifies his agreement that this warranty shall be and is the exclusive remedy against Tri-State. A manufacturer's warranty shall be furnished to Customer if a manufacturer's warranty is called for on the face of this proposal. It is expressly agreed that in the event of alleged defects in the materials furnished pursuant to this contract, Customer shall have recourse only against the manufacturer of such material. If solar panels or green roofing materials are installed on the roof, Customer will be responsible for deconstructing or removing such panels or materials at customer's expense to allow Tri-State to perform roofing work and respond to warranty requests.
17. **Wind Loads or Uplift Pressures.** Tri-State relies upon the Design Professional to specify appropriate materials and components including deck construction to obtain the required or desired wind uplift rating. If wind load or uplift pressures are specified but Owner has not retained a Design Professional, Tri-State will install insulation and membrane materials that have been listed either by FMG, the membrane manufacturer or others as having been tested and found to meet the designated load or rating. Tri-State itself makes no representation regarding wind uplift capacity and assumes no liability for wind uplift.
18. **Right to Stop Work.** The failure of Customer to make proper payment to Tri-State when due shall, in addition to all other rights, constitute a material breach of contract and shall entitle Tri-State, at its discretion, to suspend all work and shipments, including furnishing warranty, until full payment is made. The time period in which Tri-State shall perform the work shall be extended for a period equal to the period during which the Work was suspended, and the contract sum to be paid Tri-State shall be increased by the amount of Tri-State's reasonable costs of shut-down, delay and start-up.
19. **Damages and Delays.** Tri-State is not responsible for damage done to Tri-State's work by others. Any repairing of the same by Tri-State will be charged as an extra. Tri-State will not be responsible for roof damage or impaired performance or diminished roof life expectancy due to installation of solar equipment or green roofing materials, whether such damage occurs during or after installation Tri-State shall not be liable for liquidated or delay damages due to a delay in completion of the Project unless the delay was caused by Tri-State. Tri-State shall not be responsible for loss, damage or delay caused by circumstances beyond its reasonable control, including but not limited to acts of God, accidents, fire, weather, vandalism, regulation, strikes, jurisdictional disputes, failure or delay of transportation, shortage of or inability to obtain materials, equipment or labor. In the event of these occurrences, Tri-State's time for performance under this proposal shall be extended for a time sufficient to permit completion of the Work.
20. **Tolerances.** All labor and materials shall be furnished in accordance with normal industry standards and industry tolerances for uniformity, color, variation, thickness, size, weight, finish and texture. Specified quantities are intended to represent an average over the entire roof area.
21. **Oil-canning.** Metal roofing and especially lengthy flat-span sheet-metal panels often will exhibit waviness, commonly referred to as "oil-canning." The extent of oil-canning and the appearance of the panels will vary depending on factors such as panel length and color, alloy, gauge, galvanizing process, substrate condition, and exposure to sunlight. Oil-canning pertains to aesthetics and not the performance of the panels and is not controlled by Tri-State. Tri-State is not responsible for oil-canning or aesthetics. Oil-canning shall not be grounds to withhold payment or reject panels of the type specified.
22. **Fumes and Emissions.** Customer acknowledges that odors and emissions from roofing products will be released and noise will be generated as part of the roofing operations to be performed by Tri-State. Customer shall be responsible for interior air quality, including controlling mechanical equipment, HVAC units, intake vents, wall vents, windows, doors and other openings to prevent fumes and odors from entering the building. Customer is aware that roofing products emit fumes, vapors and odors during the application process. Some people are more sensitive to these emissions than others. Customer shall hold Tri-State harmless from claims from third parties relating to fumes and odors that are emitted during the normal roofing process.
23. **Dispute Resolution.** If a dispute shall arise between Tri-State and Customer with respect to any matters or questions arising out of or relating to this Agreement or the breach thereof, such dispute shall be decided by arbitration administered by and conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association unless the parties mutually agree otherwise. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any Court having jurisdiction thereof. Any legal claim against Tri-State, including a claim alleging any breach of this contract or negligence by Tri-State must be initiated no later than two (2) years after Tri-State performed the roofing installation covered by this contract. Collection matters may be processed through litigation or arbitration at the discretion of the Tri-State.
24. **Material References.** Tri-State is not responsible for the actual verification of technical specifications of product manufacturers; i.e., R-value or ASTM or UL compliance, but rather the materials used are represented as such by the material manufacturer.
25. Tri-State shall have the benefit of all rights, remedies and redress against the Contractor, which the Contractor has against the Owner, as provided in the Prime Contract. Acceptance of payment shall not constitute a waiver of Tri-State's rights.

**GENERAL TERMS AND CONDITIONS:  
(Agency Delegated Procurements Only)**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Agency and approved as to form by the Attorney General's office, if required, constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, 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. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "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.

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

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

**2.6. "Award Document"** means the document signed by the Agency that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services.

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

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

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

☐ **Term Contract**

**Initial Contract Term:** This Contract becomes effective on \_\_\_\_\_ and the initial contract term extends until \_\_\_\_\_.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be delivered to the Agency 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. Unless otherwise specified below, renewal of this Contract is limited to \_\_\_\_\_ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited.

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

**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 of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for \_\_\_\_\_ year(s) thereafter.

☒ **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.



☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the State Agency (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** See attached.

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**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/Award Document 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.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. 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.

**7. REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Agency by the Vendor as specified below.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐☐☐☐

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

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies Vendor shall provide the Agency with proof that the insurance

mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. 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 in this section.

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

☐

☐

☐

☐

**9. WORKERS' COMPENSATION INSURANCE:** 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. LIQUIDATED DAMAGES:** 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. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

**11. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**12. 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. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**13. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

**14. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer or P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**15. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**16. 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.

**17. 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. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**18. CANCELLATION:** The State 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 Agency may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**19. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.

**20. 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.

**20A. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**21. COMPLIANCE WITH LAWS:** 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 laws, regulations, and ordinances. Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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 and any other government agency or office that may be required to approve such assignments.

**27. 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.

**28. 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.

**29. PRIVACY, SECURITY, AND 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 [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy).

**30. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**31. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, 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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. 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. Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section.

**32. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document 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.

**33. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

**34. 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.

**35. 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.

**36. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, 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 in the statute cited above unless the debt or employer default is permitted under the statute.

**37. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an 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.

**38. 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.division@wv.gov](mailto:purchasing.division@wv.gov).

**39. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, 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.



**40. 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 hearth, 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:
- c. 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
- d. 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.

**41. 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.

**42. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**43. VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

APD ADJ25\*114

**Manual Compliance Search Verification Form**  
**(Agency Delegated Purchases)**

**Manual Search Verifications:** By signing below the procurement officer certifies that he or she has verified that:

- ☒ **Vendor is in compliance** with the Secretary of State requirements for business registration (or is not required to register with that office or has obtained the necessary exemption), that the vendor is not identified as a debarred vendor within the Federal SAM system, and that the vendor is not listed on the West Virginia Purchasing Division's list of debarred vendors.
- ☐ **Vendor is not in compliance** with the Secretary of State requirements for business registration and this will need to be remedied before contract award.



Procurement Officer Signature

9/9/2024  
Date

CHARLES A. BOWMAN  
Procurement Officer Printed Name



STATE OF WEST VIRGINIA  
Purchasing Division

## CERTIFICATION OF NON-CONFLICT OF INTEREST

**West Virginia Code § 5A-3-31:** "It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of services, commodities or printing to the state under the provisions of this article if the purpose or effect of such action, combination, collusion or conspiracy is either to: (1) Lessen competition among prospective vendors; or (2) cause the state to pay a higher price for such services, commodities or printing than would be or would have been paid in the absence of such action, combination, collusion or conspiracy; or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years, and be fined not exceeding \$10,000."

**West Virginia Code § 6B-2-5(b)(1):** "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

**West Virginia Code § 6B-2-5(d)(1):** "[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control . . . ."

The individual(s) listed below have been charged to evaluate or serve as members or advisors of an evaluation committee for the solicitation as specified [ AP0ADJ25\*114 ] ELEANOR

By signing this form, each individual acknowledges that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified above with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division.

Name/Title	Agency	Signature	Date
Charles A. Bowman, Jr. Chief Procurement Officer	WV Adj Gen / Armory Bd/ WVMA		09/30/2024
<u>Daniel W Cleenger</u> <u>Facilities Maint officer</u>	<u>CFMD</u>	<u>Daniel W Cleenger</u>	<u>09/03/24</u>

**DEPARTMENT OF THE ARMY  
ADJUTANT GENERAL'S OFFICE  
JOINT FORCES HEADQUARTERS WEST VIRGINIA  
1707 COONSKIN DRIVE  
CHARLESTON, WEST VIRGINIA 25311-1026**

## **MEMO TO FILE**

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**DATE:** September 9, 2024

**TO:** File **APO 0603 8211 ADJ25\*114**  
Eleanor CSMS Emergency Roof Repair  
Tri-State Roofing & Sheet Metal Company

**FROM:** Mr. Chuck Bowman, Chief Procurement Officer  
West Virginia Office of the Adjutant General

**RE: Purchasing Division Procedures Handbook  
6.3.3 Emergency Purchases Exceeding the Delegated Limit  
H. Contract Submission Deadline**

The above referenced agency delegated emergency purchase order is a result of storm damage that occurred after hours on April 2, 2024, to the Eleanor CSMS in Red House, WV. CFMO leadership was apprised of the damage on the morning of April 3, by CSMS personnel. Agency Procurement Officer, Chuck Bowman, was consulted. He granted verbal approval to initiate emergency procurement procedures, based on our agency delegated authority of \$50K, to mitigate the emergency. He also required follow-up with a written emailed request for the emergency purchase.

Later in the day of April 3, West Virginia National Guard military and civilian personnel contacted Tri-State Roofing & Sheet Metal Company (the Vendor), to assess the damage to the facility. That same morning, the Vendor toured the site, inspected the roof damage, and determined the degree of roof damage necessitated roof repairs. A proposal for the roof repair was prepared by the Vendor and submitted to the WVNG on April 4. WVNG personnel also accepted the proposal on April 4.

In our Agency's haste to get the emergency mitigated, neither military nor civilian personnel followed up with the Agency Procurement Officer to inform him of the accepted proposal or to obtain additional instructions of the required processes when the proposed emergency project cost exceeds that of our agency delegated authority. Thus, approval from the Purchasing Director to initiate emergency procurement procedures was not requested or obtained.

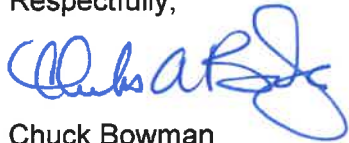
The Vendor began work to repair the roof areas on the Weld Shop and the Garage on April 5, concluding said work on April 18, 2024. The Agency Procurement Officer first became aware of the roof repair on July 18, 2024, when discussions of vendor invoices for the project were brought to his attention. He was informed at that same time that dual-status Federal Technicians were in the process of requesting Act of Nature funding from the National Guard Bureau to pay for this project. That funding was approved by NGB on August 7, 2024.

The attached Memorandum of Record was requested by the Agency Procurement Officer and was received August 12, 2024. The vendor was contacted to provide detailed invoice/pay applications for inclusion with this contract's file of record. Consequently, contrary to WV Purchasing Division Handbook Section 6.3.3.D, there is no "correspondence relating to the emergency approval, copy of the actual approval, any solicitation to obtain bids, or vendor forms" because the project's completion date rendered their submission obsolete. The vendor is in compliance and was properly registered with the West Virginia Purchasing Division and the West Virginia Secretary of State's Office at the time of their work.

Pressing demands on WVNG Procurement staff at the end of the Federal Fiscal Year 2024 has further delayed the completion of this contract and its submission to more than 30 days past the time of the emergency contrary to WV Purchasing Handbook 6.3.3.H.

Agency Procurement Officer, Chuck Bowman, and Construction Facilities & Maintenance Officer, COL Melvin P. Hodges, have reviewed and reinforced the proper emergency purchase approval protocols with all military and civilian maintenance staff members involved in this emergency event to ensure a situation of this magnitude does not occur again.

Respectfully,



Chuck Bowman  
Chief Procurement Officer  
West Virginia Adjutant General / WVANG / WVMA  
304.561.6654  
[charles.a.bowman26.nfg@army.mil](mailto:charles.a.bowman26.nfg@army.mil)



DATE: 13 SEP 24

William E. Crane  
Major General, WVNG  
The Adjutant General



DEPARTMENT OF THE ARMY  
JOINT FORCES HEADQUARTERS WEST VIRGINIA  
1707 COONSKIN DRIVE  
CHARLESTON, WEST VIRGINIA 25311-1026

NGWV-FMO-Z

12 August 2024

MEMORANDUM FOR RECORD

SUBJECT: Justification of Act of Nature Damage Eleanor CSMS

1. On April 3rd, 2024, tornadic winds hit the roof at Eleanor CSMS. Verbal approval was requested and given by Chuck Bowman per his delegated authority to begin repairs. Discussions around the replacement/repairs of the damage occurred shortly their after. Eleanor CSMS roof was partially blown over the welding shop. The affected area was repaired to prevent further damage. Communication of this method was discussed. Additionally, this office began the process requesting funding from National Guard Bureau to cover the cost of repairs from this act of nature to prevent a BRIM claim. This process completed on August 7<sup>th</sup>. The full extent of the repairs was missed in written communication to Mr. Bowman, until July 18<sup>th</sup>. In future natural disaster occurrences this office will include the appropriate purchasing contact in all correspondence of emergency repairs/abatement.

2. The point of contact is the undersigned, at 304-561-6446, or Daniel.w.clevenger.mil@army.mil.

A handwritten signature in blue ink, reading "Daniel W. Clevenger", is positioned above the printed name.

LTC Daniel W. Clevenger  
Facilities Maintenance Officer  
WV Army National Guard