



State of West Virginia
Agency Master Agreement

Order Date: 2023-12-28

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:	AMA 0511 2667 HHR2400000006 1	Procurement Folder:	1343777
Document Name:	Contract for accountants on an emergency basis for one year	Reason for Modification:	
Document Description:	Contract for accountants on an emergency basis for one year		
Procurement Type:	Agency Master Agreement		
Buyer Name:	Roberta A Wagner		
Telephone:	(304) 558-0437		
Email:	roberta.a.wagner@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2023-12-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2024-11-30

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	VS0000007708	Requestor Name:	Tara L Buckner
BDO USA PC		Requestor Phone:	(304) 558-9138
8401 GREENSBORO DR STE 800		Requestor Email:	tara.l.buckner@wv.gov
MCLEAN	VA	22102	
US			
Vendor Contact Phone:	7033361456	Extension:	
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

INVOICE TO	SHIP TO
BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES ADMINISTRATION AND FINANCE ONE DAVIS SQUARE, RM 300 CHARLESTON WV 25301 US	BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES ADMINISTRATION AND FINANCE ONE DAVIS SQUARE, RM 300 CHARLESTON WV 25301 US

Total Order Amount: Open End

DEPARTMENT AUTHORIZED SIGNATURE

SIGNED BY : Melissa S Spitzer

DATE: 2023-12-28

ELECTRONIC SIGNATURE ON FILE

Extended Description:

Support DHHR's CFO in obtaining accountants for one year to alleviate the backlog of work, while recruiting new staff, and allow time for proper training and process improvement to build better procedures during the move through restructuring to keep backlogs from happening in the future

Part or all of the funding for this contract may be provided from federal dollars. The vendor must adhere to the attached Federal Funds Addendum.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	80000000			Hour	\$340.00
	Service From	Service To		Service Contract Amount	
	2023-12-01	2024-11-30		0.00	

Commodity Line Description: Partner

Extended Description:

Partner

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	80000000			Hour	\$340.00
	Service From	Service To		Service Contract Amount	
	2023-12-01	2024-11-30		0.00	

Commodity Line Description: Managing Director

Extended Description:

Managing Director

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	80000000			Hour	\$340.00
	Service From	Service To		Service Contract Amount	
	2023-12-01	2024-11-30		0.00	

Commodity Line Description: Director

Extended Description:

Director

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	80000000			Hour	\$331.00
	Service From	Service To		Service Contract Amount	
	2023-12-01	2024-11-30		0.00	

Commodity Line Description: Senior Manager

Extended Description:

Senior Manager

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	80000000			Hour	\$265.00
	Service From	Service To		Service Contract Amount	
	2023-12-01	2024-11-30		0.00	

Commodity Line Description: Manager

Extended Description:

Manager

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	80000000			Hour	\$221.00
Service From		Service To		Service Contract Amount	
2023-12-01		2024-11-30		0.00	

Commodity Line Description: Senior Associate

Extended Description:

Senior Associate

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	80000000			Hour	\$173.00
Service From		Service To		Service Contract Amount	
2023-12-01		2024-11-30		0.00	

Commodity Line Description: Experienced Associate

Extended Description:

Experienced Associate

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	80000000			Hour	\$131.00
Service From		Service To		Service Contract Amount	
2023-12-01		2024-11-30		0.00	

Commodity Line Description: Associate

Extended Description:

Associate

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	80000000				\$0.00
Service From		Service To		Service Contract Amount	
2023-12-01		2024-11-30		0.00	

Commodity Line Description: Other Services

Extended Description:

Travel and out-of-pocket expenses to be billed as incurred

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	80000000			Hour	\$10.00
Service From		Service To		Service Contract Amount	
2023-12-01		2024-11-30		0.00	

Commodity Line Description: Engagement Charge

Extended Description:

Each engagement is assessed a \$10.00 per hour charge for professional time incurred with respect to each engagement. This charge is for time associated with internal quality control processes and other engagement oversight that is critical to the effectiveness of each engagement. These resources do not charge hours directly to the engagement.

GENERAL TERMS AND CONDITIONS:

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

2. DEFINITIONS: As used in this Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia or any other public entity seeking to procure goods or services under this Contract, to the extent such public entity agrees to be bound to the terms and conditions applicable to Agency under this Contract.

2.2. [reserved]

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the professional consulting services requested in this Contract.

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 and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. [reserved]

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

2.9. "Vendor" means 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: The Initial Contract Term will be for a period of One (1) Year. The Initial Contract Term 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 Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

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 delivered to the Agency and then 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. Unless otherwise specified below, renewal of this Contract is limited to zero 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. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **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, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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:

☐ the contract will continue for _____ years;

☐ the 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, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☐ **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 Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

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. [reserved]

7. [reserved]



8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below 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 that insurance requirement is listed in this section.

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000 per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \$1,000,000 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \$5,000,000 per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ [reserved]

☐ **Cyber Liability Insurance** in an amount of: \$5,000,000 per occurrence.

☐ [reserved]

☐ [reserved]

☐ [reserved]

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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. JURY TRIAL WAIVER: EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

11. 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.

12. [reserved]

13. PRICING: The pricing set forth herein is firm for the term of the Contract, unless specified elsewhere within this Contract by the State.

14. PAYMENT IN ARREARS: Payments services will be made in arrears only upon receipt of a proper invoice, detailing the services provided or receipt of the services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance. If an account has fees that are not paid in a timely manner, Vendor then reserves the right to suspend our Services, terminate the licensing arrangements under which the State receives a license to use, or suspend the State's access to, External Computing Options provided through Vendor, withhold delivery of any deliverables, or withdraw from this engagement entirely.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and 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.)

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. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not expressly included in the Contract. Unless such fees or charges are agreed to in writing by the State, requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. 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.

19. 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 objective 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 § 148-1-5.2.b. Vendor may terminate this Contract and/or any SOW and outstanding Services immediately if Vendor reasonably determines that it must do so to comply with applicable professional standards, applicable laws or regulations (e.g., a conflict of interest arises).

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. 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.

22. COMPLIANCE WITH LAWS: Vendor shall comply with statutory federal, state, and local laws, regulations and ordinances that are applicable to the provision of the Services hereunder.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. 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). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. 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.

26. 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, or by 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 or Agency's or Purchasing Division forms does not constitute acceptance of the terms and conditions contained thereon.

27. 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. Without Vendor's prior written consent, the State may not assign this Agreement except to a party that acquires substantially all of your assets and operations.

28. PERFORMANCE: The Vendor agrees that the services covered by this Contract will be performed with care, skill, and diligence in accordance with commercially reasonable professional standards applicable to the Services.

29. 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.

30. CONFIDENTIALITY: Each of the parties hereto shall treat and keep all the "Confidential Information" as confidential, with at least the same degree of care as it accords to its own confidential information, but in no event less than a reasonable degree of care. Each party shall disclose the Confidential Information only to its employees, partners, contractors, agents or its legal or other advisors, provided that they have: (i) each been informed of the confidential, proprietary and secret nature of the Confidential Information, or are subject to a binding, preexisting obligation of confidentiality no less stringent than the requirements of this Agreement and (ii) a demonstrable need to review such Confidential Information. "Confidential Information" means all non-public information that is marked as "confidential" or "proprietary" or has commercial value in the party's business and is obtained by one party (the "Receiving Party") from the other party (the "Disclosing Party"). All terms of this Agreement are considered Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include any information that was or is: (a) known to the Receiving Party prior to disclosure by the Disclosing Party; (b) as of the time of its disclosure, or thereafter

becomes, part of the public domain through a source other than the Receiving Party; (c) made known to the Receiving Party by a third person who is not subject to any confidentiality obligation known to Receiving Party and such third party does not impose any confidentiality obligation on the Receiving Party with respect to such information; (d) required to be disclosed pursuant to governmental authority, professional obligation, law, decree regulation, subpoena or court order; or (e) independently developed by the Receiving Party. If Vendor is providing tax services for the State, in no case shall the tax treatment or the tax structure of any transaction be treated as confidential as provided in Treas. Reg. sec. 1.6011-4(b)(3). If disclosure is required pursuant to subsection (d) above, the Receiving Party shall (other than in connection with routine supervisory examinations by regulatory authorities with jurisdiction and without breaching any legal or regulatory requirement), to the extent legally permissible, provide prior written notice thereof to allow the Disclosing Party to seek a protective order or other appropriate relief. Upon the request of the Disclosing Party, the Receiving Party shall return or destroy all of the Confidential Information except for: (y) copies retained in work paper files retained to comply with a party's professional or legal obligations; and (z) such Confidential Information retained in accordance with the Receiving Party's normal data back-up procedures.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Contract award documents may become public documents pursuant to applicable law. As public documents, they may be disclosed to the public following the 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.

The Purchasing Division may 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. pursuant to the terms of this Contract.

32. 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 reasonable request, the Vendor will use good faith efforts to 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.

[reserved]

33. [reserved] .

34. VENDOR NON-CONFLICT: Vendor is not aware of any conflicts of interest with respect to any of the names the State has provided. Vendor is not responsible for continuously monitoring other potential conflicts that could arise during the course of the engagement, although we will inform the State promptly should any come to our attention. We reserve the right to resign from this engagement at any time if conflicts of interest arise or become known to us. Additionally, our engagement by the State will in no way preclude us from being engaged by any other party in the future. Notwithstanding anything contained in confidentiality provisions set forth herein, Vendor shall be permitted to disclose

that it is engaged to provide the Services to the State under this Agreement if Vendor in its reasonable professional judgment determines that such disclosure is required in connection with Vendor's provision of services on behalf of other clients of Vendor, including, without limitation, professional services engagements under which Vendor personnel act as professionals in legal proceedings that require disclosures, arbitrators in post-acquisition disputes or act as expert witnesses.

35. 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 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, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations.

This Contract does not create any agency, employment, partnership, joint venture, trust, or other fiduciary relationship between the parties. Neither Vendor nor the State shall have the right to bind the other to any third party or otherwise to act in any way as a representative or agent of the other except as otherwise agreed in writing between the parties.

Vendor shall hold harmless the State against any and all third party claims due to Vendor's failure to make the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION; LIMITATION OF LIABILITY: The Vendor agrees to indemnify, and hold harmless the State and the Agency, their officers, and employees from and against any third party claims or losses relating to any personal/bodily injury or real property damaged arising out of the provision of the Services hereunder by the Vendor, its officers, employees, or subcontractors. Except to the extent finally determined to have resulted from Vendor Group's (i.e., Vendor and its partners, shareholders, principals, employees, affiliates, contractors and agents, collectively "Vendor Group") fraud or intentional misconduct, Vendor Group's aggregate liability to the State for all direct or third-party Claims (i.e., all claims, liabilities, damages or expenses (including attorneys' fees) of any kind relating to the Services or this Contract, whether arising in contract, statute, tort (including without limitation, negligence) or otherwise, collectively, the "Claims") shall not exceed \$300,000. In no event shall Vendor Group be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages, loss of profits or losses resulting from loss of data, business or goodwill relating to this Contract, regardless of whether Vendor has been advised of the possibility of such damages.

37. 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 entering into a contract with the State, Vendor is affirming that for this Contract, to the best of its knowledge, neither the Vendor nor any related party owe a debt as defined above, and neither the 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.

38. [reserved]

39. 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 reasonably request. Requested reports may include, but are not limited to, 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.

40. BACKGROUND CHECK: To the extent applicable to the provision of the Services hereunder, 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.

41. [reserved]

a.

b.

c.

1.

2.

42. [reserved]

43. [reserved]

44. [reserved]

45. 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.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

47. Professional Consulting Services Terms.

- a. **Statement of Work.** For each engagement or service that Vendor performs for the State, Vendor and the State shall agree upon a description of such services ("Services") and engagement-specific terms in a Statement of Work (each a "SOW").
- b. **Third-Parties and Use.** All Services and deliverables hereunder shall be solely for the State's use and benefit pursuant to our client relationship. This engagement does not create privity between Vendor and any person or party other than the State and is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the Services or deliverables of Vendor hereunder.
- c. **Vendor Responsibilities.** Vendor's Services will not constitute an audit, review, compilation, examination or other form of attest engagement. Vendor shall have no responsibility to address any legal matters or questions of law. After completion of the Services, Vendor will have no responsibility to update its advice, recommendations or work product for changes or modifications to the law and regulations or for subsequent events or transactions, unless the State separately engages Vendor in writing to do so.
- d. **State Responsibilities.** For Vendor to remain independent, professional standards require Vendor to maintain certain respective roles and relationships with the State regarding the Services. The State understands and agrees that Vendor will not perform management functions or make management decisions on behalf of the State. However, Vendor will provide advice and recommendations to assist management of the State in performing its functions and fulfilling its responsibilities. In connection with Vendor's provision of Services, the State agrees that the State shall perform the following functions: (a) make all management decisions and perform all management functions with respect to the Services performed by Vendor; (b) assign an individual who possesses suitable skill, knowledge and experience to oversee such Services and to evaluate the adequacy and results of such Services; and (c) accept responsibility for the results of such Services. Because professional and certain regulatory standards require us to be independent, in both fact and appearance, with respect to the State in the performance of our Services, any discussions that you have with personnel of Vendor regarding employment could pose a threat to our independence. Therefore, Vendor requests that you inform us prior to any such discussions so that we can implement appropriate safeguards to maintain our independence.
- e. **State Materials.** Vendor shall be entitled to rely on and assume, without independent verification, that all representations, assumptions, information and data supplied by or on behalf of the State, its personnel, representatives, and agents (the "State Materials") are complete and accurate. The State is responsible for ensuring that all State Materials provided to Vendor may be transferred to Vendor and processed in accordance with the terms of this Agreement and

applicable laws, and that to the extent required thereunder the State has obtained all consents required for Vendor's receipt and use of the State Materials. The State agrees that it will not transmit or make accessible to Vendor in any manner personally identifiable information unless reasonably required for Vendor's performance of the Services. Vendor will not audit or otherwise verify the accuracy or completeness of the data you submit, although we may need to ask you for clarification of some of the information. The State shall be responsible for maintenance and retention of its records. Unless otherwise agreed to by the parties, Vendor shall not assume any responsibility for any financial reporting with respect to the Services.

- f. **Ownership of Working Papers.** In connection with the performance of the Services, we will prepare records and deliverables as set forth in the SOW. We also will prepare documents that support our work and include items such as work programs and analyses that do not constitute part of the State's records ("Working Papers"). The Working Papers prepared pursuant to this Agreement are the property of Vendor. The Working Papers constitute confidential, proprietary, and trade secret information, and will be retained by Vendor in accordance with our policies and procedures and all applicable laws.
- g. **Subpoenas.** If the State requests Vendor to object to or respond to, or Vendor receives and responds to, a validly issued third party subpoena, court order, government regulatory inquiry, or other similar request for, or legal process for the production of, documents and/or testimony relative to information we obtained and/or prepared during the course of this or any prior engagements with the State, you agree to compensate us for all time Vendor expends in connection with such response, at our standard rates, and to reimburse Vendor for all related out-of-pocket costs (including outside attorneys' fees) that we incur.
- h. **Email Communications.** Vendor disclaims and waives, and the State releases Vendor from all liability for the interception or unintentional disclosure of e-mail transmissions or for the unauthorized use or failed delivery of e-mails transmitted or received by Vendor in connection with the performance of the Services.
- i. **External Computing Options.** If, at the State's request, any member of the Vendor Group agrees to use certain external commercial services, including but not limited to services for cloud storage, remote access, third party software and/or file sharing options (collectively "External Computing Options"), that are outside of Vendor's standard security protocol, the State acknowledges that such External Computing Options may be associated with heightened security and privacy risks. Accordingly, Vendor Group disclaims, and the State agrees to release Vendor Group from all liability arising out of or related to the use of such External Computing Options.
- j. **Restricted Federal Data.** The parties agree that the Services are not intended to involve the processing, storage, disclosure, or transmissions of Restricted Federal Data, defined as data or information subject to laws, regulations or government-wide policies that require safeguarding or dissemination controls, including but not limited to the Federal Acquisition Regulations ("FAR"), the Defense Federal Acquisition Regulation Supplement ("DFARS"), the International Traffic in Arms Regulation ("ITAR"), the Export Administration Regulations ("EAR"), and the Arms Export Control Act ("AECA"), and any other data or information that is restricted for dissemination or disclosure to foreign nationals. For clarity, and without limiting the foregoing, controlled unclassified information ("CUI") shall be included in the definition of Restricted Federal Data. Because Vendor relies on this information in order to fulfil its own compliance obligations, the State shall not provide or otherwise make available Restricted Federal Data to Contractor or its employees unless expressly agreed to in advance in writing by Contractor. If the State becomes aware that any known or suspected Restricted Federal Data will be or has been disclosed to Contractor by the State or otherwise in connection with the Services, the State will (a) immediately notify Contractor in writing to regulatedgovtdata@bdo.com and will cease any further transfer of such data unless and until Contractor expressly agrees in writing, (b) identify which documents at which pages contain such information, (c) identify which export control regulations apply where applicable, and (d) identify the relevant export control classifications that apply to the information in question. The State will fully cooperate with Contractor in the investigation of and response to any known or suspected Restricted

Federal Data that the State has disclosed to Contractor notwithstanding the foregoing. The State further agrees that it will be responsible for all fees, costs and expenses associated with processing, storage, disclosure, or transmissions of such Restricted Federal Data, including without limitation additional fees, costs and expenses related to compliance with obligations with respect to such Restricted Federal Data.

- k. Intellectual Property.** Vendor shall retain the right to reuse the ideas, concepts, know-how, and techniques derived from the rendering of the Services so long as it does not require the disclosure of any of the State's Confidential Information (as defined above). Vendor shall be entitled to all protections afforded under state and Federal statutory or common law with respect to any report, computer program (source code and object code) or programming and/or material documentation, manual, chart, specification, formula, database architecture, template, system model, copyright, diagram, description, screen display, schematic, blueprint drawing, tape, license, listing, invention, record, development frameworks, code libraries, best practices, general knowledge, skills and experience, or other materials preexisting the execution of this Agreement ("Vendor Intellectual Property"). Unless otherwise specifically stated in this Agreement, the reproduction, distribution or transfer, by any means or methods, whether direct or indirect, of any of Vendor's or its agents' Intellectual Property or proprietary information by the State is strictly prohibited.
- l. Licensing Representation.** To the extent necessary for Vendor to perform its obligations described in an applicable SOW, the State represents and warrants that it will obtain, maintain and comply with all of the licenses, consents, permits, approvals and authorizations that are necessary to allow Vendor and its employees, contractors and subcontractors to access and use the services or software provided for the benefit of the State under the State's third-party services contracts, licenses or other contracts granting the State the right to access, use or receive services or software (each a "Licensing Representation"). Upon Vendor's request, the State will provide Vendor any references available evidencing the Licensing Representation (e.g., order number, customer support identifier). Tools subject to this Licensing Representation are hereby deemed External Computing Options (as defined in this Agreement). The State hereby releases Vendor Group from all claims and liabilities resulting from (i) Vendor's reliance on a Licensing Representation and (ii) the functionality of any third-party software or services used or accessed by Vendor.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) David Clark, Managing Director

(Address) 421 Fayetteville St, Suite 300, Raleigh, NC 27601

(Phone Number) / (Fax Number) (919) 278-1954 / (919) 754-9369

(email address) dclark@bdo.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

BDO USA, P.C.
 (Company) DocuSigned by:
Andrea Espinola Wilson
 (Signature of Authorized Representative) 33158F6244E0440...
Andrea Wilson, Managing Principal December 11, 2023
 (Printed Name and Title of Authorized Representative) (Date)
(301) 354-0760
 (Phone Number) (Fax Number)
aewilson@bdo.com
 (Email Address)

Certificate Of Completion

Envelope Id: C4C372848994458CB1A70803D04A5CC7

Status: Completed

Subject: Complete with DocuSign: Purchasing Terms & Conditions - One Year Term - AMA HHR24_06.pdf

SN Ticket #:

Project #:

Client #:

Source Envelope:

Document Pages: 15

Signatures: 1

Envelope Originator:

Certificate Pages: 2

Initials: 0

BDO ISS eSign Assurance

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130 E Randolph St

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Holder: BDO ISS eSign Assurance

Location: DocuSign

12/11/2023 7:51:39 AM

BDOISSDocuSign@bdo.com

Signer Events

Andrea Espinola Wilson

aewilson@bdo.com

Managing Partner, Industry Specialty Services

BDO USA, P.C.

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



Signature Adoption: Pre-selected Style

Using IP Address: 98.169.55.234

Timestamp

Sent: 12/11/2023 7:56:15 AM

Viewed: 12/11/2023 7:56:52 AM

Signed: 12/11/2023 7:57:01 AM

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In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

David Clark

dclark@bdo.com

BDO USA, P.C.

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 12/11/2023 7:56:16 AM

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Electronic Record and Signature Disclosure:

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Witness Events**Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent

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12/11/2023 7:56:16 AM

Certified Delivered

Security Checked

12/11/2023 7:56:52 AM

Envelope Summary Events	Status	Timestamps
Signing Complete	Security Checked	12/11/2023 7:57:01 AM
Completed	Security Checked	12/11/2023 7:57:01 AM
Payment Events	Status	Timestamps



Tel: 703-893-0600
Fax: 703-893-2766
www.bdo.com

8401 Greensboro Drive, Suite 800
McLean, VA 22102

November 21, 2023

Tara Buckner
Chief Financial Officer
State of West Virginia, Department of Health and Human Resources
One David Square, Suite 100 East
Charleston, WV 25301

Re: **Statement of Work** – Related to State Purchasing Terms and Conditions dated August 21, 2023

Dear Tara,

This Statement of Work ("SOW") is provided to the State of West Virginia, specifically the Department of Health and Human Resources ("DHHR" or "Client") for the services described below (the "Services"), which Services may be modified upon our mutual written agreement (email shall suffice).

Client acknowledges that Client previously executed the State's Purchasing Terms and Conditions dated August 21, 2023, which are incorporated by reference into this SOW. The Services Agreement along with this SOW constitutes the Agreement for Professional Services ("Agreement") between BDO USA ("BDO" or "we") and Client.

To the extent there is any conflict or inconsistency between the Services Agreement and any SOW, unless otherwise agreed to in writing, the Services Agreement shall prevail.

The SOW is effective the date set forth above. Any term or condition incorporated into this SOW that is an addition to the terms and conditions contained in the Services Agreement applies only to the Services (described below) provided under this SOW.

Russian Ownership or Control

By executing this SOW, Client represents that the Client is not owned or controlled, directly or indirectly, by one or more Russian citizen(s), Russian national(s), persons physically located in Russia, or entity(ies) organized under the laws of Russia. Client agrees that if at any time while BDO is providing Services to the Client the foregoing representation is no longer true, Client will immediately notify BDO.

⁽¹⁾BDO USA refers to BDO USA, P.C., a Virginia professional corporation, also doing business in certain jurisdictions with an alternative identifying abbreviation, such as Corp. or P.S.C.

BDO USA, P.C. is the U.S. member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.



Scope of Services

BDO agrees to provide the services as described below ("Services"):

- Conduct an assessment of the accounting operations within the Bureau for Public Health's Finance office to:
 - Identify process gaps and inefficiencies
 - Evaluate resource needs and skillsets
 - Evaluate system capabilities and utilization
- Provide DHHR with a roadmap for enhancement of accounting operations, including assessment and quantification of needs regarding the people, processes, and technology.
 - Roadmap will include specific details and activities to help DHHR address gaps related to resourcing and technical knowledge.

We anticipate that the Services will be completed in approximately 12 - 16 weeks. Services will largely be performed remotely, which we believe is the most efficient approach for completion of the work scope, though we assume that we would conduct 2-3 site visits as part of this work. We are happy to discuss additional on-site activities as needed. Notwithstanding anything herein to the contrary, any timing set forth in this SOW is the estimated timing subject to dependencies, including without limitation, satisfaction of its obligations by Client.

In coordination with and likely resulting from the results of the assessment described herein, BDO will also provide staffing support in areas needing accounting resources. Such support will include augmenting existing vacant positions with transactional accounting resources as well as support for process redesign, implementation, and education of existing resources.

Any Service not specifically described in this SOW is outside the scope of this Agreement.

Assumptions

The following general assumptions have been made in the development of this SOW and its associated fees. All fees and expenses are contingent upon the accuracy of these assumptions and are subject to change if any of the assumptions is/are incorrect. These assumptions should be carefully reviewed by DHHR to verify accuracy. To the extent that the assumptions described in this arrangement are not met or turn out to be inaccurate, the cost and delivery schedule of the services may be impacted. If this occurs, DHHR agrees to negotiate in good faith to mutually develop a work-around plan, revised schedule and revised fees.

- ▶ BDO will be able to hold information-gathering sessions with key DHHR personnel to gather information required for creating project deliverables in a timely manner.
- ▶ DHHR will provide BDO with copies of any existing documentation describing any pertinent information prior to the project commencement.



- ▶ BDO will not be held responsible for unreasonable delays in the timetable due to unavailability of information or resources from DHHR or its vendors.
- ▶ The information supplied to BDO to create this SOW is accurate and will not substantially change.
- ▶ Each of DHHR and BDO hereby agrees that DHHR shall not provide any controlled unclassified information (CUI), or classified information, or International Traffic in Arms Regulations (ITAR) data (the "Subject Information") to BDO or access to the Subject Information to BDO.
- ▶ DHHR will provide a single point of contact for all project activities.
- ▶ DHHR will provide the logistics for meetings including; room arrangements, transportation and other incidentals related to on-site visits.
- ▶ When the project team is working on-site, DHHR will provide appropriate workspace with access to wifi/internet, phones, copiers, printers, etc.
- ▶ DHHR, and as necessary, its advisors, will make timely decisions regarding approach, review of deliverables, completion of any questionnaires distributed and personnel interviews.
- ▶ DHHR is the owner of the control environment and financial information, including the notes within the financial statements and the applicable disclosures in the financial report.
- ▶ DHHR will retain ultimate responsibility for policy decisions and judgment decisions, as well as for concluding on the adequacy of the design and operating effectiveness of the internal control environment.
- ▶ BDO does not guarantee or warrant any particular outcome as a result of this engagement and our fees are not contingent on such an outcome.

Non-Solicitation

BDO incurs great expense in hiring and training its personnel. Accordingly, during the period beginning with the effective date of this SOW and ending twelve (12) months after the date of the last invoice from BDO to Client relating to this SOW, neither the Client nor its respective affiliates will offer employment to or hire any current or recent BDO employee who performed services for the Client under this SOW within the last twelve (12) months, without the prior written consent of BDO. "Recent Employee" shall include any individual employed by BDO during the preceding twelve months. "Employment" shall include any form of employment, consulting, independent contractor relationship, or other arrangement in which an individual will directly or indirectly perform services or work for, or on behalf of, Client. While the parties agree that a breach of this provision would cause BDO to suffer damages, including without limitation the time and cost in recruiting and training a new employee, the actual amount of damages, loss or harm from a breach of this provision is difficult to estimate with certainty. In the event that Client breaches this clause, Client shall pay BDO an amount equal to the hired employee's prior twelve (12) month compensation with BDO, which the parties agree is a reasonable estimate of the damages that would be caused by such breach.



Fees

Our charges for the Services will be billed on a time and materials basis at our current negotiated rates with the State, which represent an average discount of approximately 50% from Standard. In accordance with firm-wide adjustments, these rates will increase 5% effective August 1st 2024, and annually thereafter.

Resource	Standard Rate	WV Negotiated Rates
Partner	\$785	\$340
Managing Director	\$735	\$340
Director	\$635	\$340
Senior Manager	\$565	\$331
Manager	\$515	\$265
Senior Associate	\$415	\$221
Experienced Associate	\$335	\$173
Associate	\$265	\$131

Our estimate for completion of this SOW is between 200 and 250 hours, with corresponding fees ranging from \$50,000 to \$62,500.

Needs associated with staffing support for vacant accounting positions or other needs identified through the gap assessment described above will be provided as needed and via discussion and confirmation with DHHR leadership. We assume such positions would be provided on a full-time basis, which allows us to provide further discounted pricing and enhanced value to DHHR. Specific resources and related pricing will be confirmed and mutually agreed to upon identification, with total costs not to exceed \$1.5 million. This amount may be increased by mutual agreement if needs are identified beyond those currently communicated. Should we encounter unforeseen problems that will warrant additional time or expense, you will be notified as soon as possible regarding the anticipated impact on fees or project schedule.

We have structured our team to provide a cost-effective resource mix where possible. We also will bill you for travel and out-of-pocket expenses as incurred.

Each engagement also is assessed a \$10.00 per hour charge for professional time incurred with respect to each engagement. This charge is for time associated with our internal quality control processes and other engagement oversight that is critical to the effectiveness of each engagement. These resources do not charge hours directly to the engagement.

This engagement includes only those services specifically described in this Agreement; any additional services not specified herein will be agreed to in a separate SOW.



Next Steps

We will coordinate with your designated representative to determine an appropriate timeline and immediate next steps for the Services.

If you have any questions pertaining to this SOW, please contact David Clark. BDO values your business and looks forward to many years of providing quality professional services to you.

Very truly yours,

BDO USA

By: _____

A handwritten signature in black ink, appearing to read "Andrea Wilson", written over a horizontal line.

Name: Andrea Espinosa Wilson

Title: Managing Principal

Acknowledged and Agreed:

This Statement of Work correctly sets forth the understanding of the parties. By signing below, the authorized signatory represents that he/she has power and authority and has obtained all approvals, authorizations and consents necessary to enter into this Agreement on behalf of the Client set forth below for whom the authorized signatory is executing this Agreement. The authorized signatory represents that this Agreement constitutes the legal, valid and binding obligation of the Client set forth below for whom the authorized signatory is executing this Agreement and is enforceable against the Client in accordance with its terms. The Client set forth below acknowledges and agrees that the authorized signatory is duly authorized to bind the applicable party hereto.

State of West Virginia Department of Health and Human Resources

By: _____

A handwritten signature in blue ink, appearing to read "Tara Buckner", written over a horizontal line.

Name: Tara Buckner

Title: Chief Financial Officer

FEDERAL FUNDS ADDENDUM

2 C.F.R. §§ 200.317 – 200.327

Purpose: This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

Instructions: Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)”

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

Changes to Specifications: Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

State Level: In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” to establish a contract for both standard state procurements and state federal funds procurements.

County Level: In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” omitted to establish a contract for County/Local federal funds procurement.

Award: If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

State Government Use Caution: State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

County/Local Government Use Caution: County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)” have been added.

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FEDERAL FUNDS ADDENDUM**REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

**1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR
SURPLUS AREA FIRMS:
(2 C.F.R. § 200.321)**

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

**2. DOMESTIC PREFERENCES:
(2 C.F.R. § 200.322)**

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

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States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

- b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.
- c. Definitions: For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:

(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

4. TERMINATION FOR CAUSE AND CONVENIENCE:

(2 C.F.R. § 200.327 and Appendix II)

- (a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

5. EQUAL EMPLOYMENT OPPORTUNITY:

(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, this contract includes the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

6. DAVIS-BACON WAGE RATES:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must:

- (a) pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

7. ANTI-KICKBACK ACT:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply with the Copeland Anti-KickBack Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State must report all suspected or reported violations to the Federal awarding agency.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.

(2 C.F.R. § 200.327 and Appendix II)

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

10. CLEAN AIR ACT

(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. DEBARMENT AND SUSPENSION

(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12. BYRD ANTI-LOBBYING AMENDMENT

(2 C.F.R. § 200.327 and Appendix II)

Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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13. PROCUREMENT OF RECOVERED MATERIALS

(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia
Purchasing Division

Vendor Name:

By: Tara L. Bidner

By: BDO USA, P.C

Printed Name: Tara L. Bidner

Printed Name: Andrew

Title: CFo

Title: Managing Principal

Date: 12/21/2023

Date: 12/21/2023

EXHIBIT A To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

W. Va. CSR § 148-1-5

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West Virginia Code of State Rules
Title 148. Department of Administration
Legislative Rule (Ser. 1)
Series 1. Purchasing

W. Va. Code St. R. § 148-1-5

§ 148-1-5. Remedies.

Currentness

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.1. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. The Director may cancel a purchase or contract for any reason or no reason, upon providing

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the vendor with 30 days' notice of the cancellation.

5.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.4. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

5.4.1. The Director may suspend, for a period not to exceed 1 year, the right of a vendor to bid on

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procurements issued by the Purchasing Division or any state spending unit under its authority if:

5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.

5.4.1.b. The vendor has exhibited poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; or failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.1.c. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.

5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.

5.4.2. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:

5.4.2.a. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.2.b. A notice of suspension must inform the vendor:

5.4.2.b.1. Of the grounds for the suspension;

5.4.2.b.2. Of the duration of the suspension;

5.4.2.b.3. Of the right to request a hearing contesting the suspension;

5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;

5.4.2.b.5. That the vendor's failure to request a hearing no later than 5 working days of

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the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.2.b.6. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 5 working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond.

5.4.2.d. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.2.e. Within 5 working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.3. A vendor may appeal a decision of the Director to the Secretary of the Department of Administration. The appeal must be in writing and served on the Secretary no later than 5 working days of receipt of the Director's decision.

5.4.4. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.5. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

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5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.2. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.3. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor, including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated.

5.5.4. Pursuant to W.Va. Code § 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.5. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party

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status will be presumed to be a related party subject to debarment.

5.6. Damages.

5.6.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.3. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

Credits

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

End of Document

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EXHIBIT B To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

Prevailing Wage Determination

☒ – Not Applicable Because Contract Not for Construction

☐ – Federal Prevailing Wage Determination on Next Page

