

WV HIGHER EDUCATION POLICY COMMISSION
REQUEST FOR QUOTATIONS #20121
Temporary Service Workers

The WV Higher Education Policy Commission (Commission) is requesting bids from qualified vendors for temporary service workers.

The workers will be placed at the Erma Byrd Higher Education Center (EBC) located at 300 University Drive, Beaver, WV 25813 and will report directly to the Director.

Workers are needed in the following categories:

Facilities and Grounds Maintenance Supervisor

Building and Grounds Maintenance Worker

Information Technology Technician

It is anticipated that the EBC will need four (4) workers who will work between thirty (30) and forty (40) hours per week, typically five (5) days per week, beginning April 1, 2020.

SCHEDULE OF EVENTS:

| | |
|---|-------------------|
| Release of the Request for Quotations: | January 22, 2020 |
| Deadline for Questions: | January 31, 2020 |
| Addendum/Response to Questions (if necessary) | February 7, 2020 |
| Bid Opening: | February 19, 2020 |

POSTING OF INFORMATION:

This Request for Quotations and any addenda, including answers to questions will be posted to:

<http://www.wvhepc.edu/resources/purchasing-and-finance/>

SOLE POINT OF CONTACT:

The sole point of contact for this Request for Quotations is:

Mary Blashford
Director of Procurement
WV Higher Education Policy Commission
1018 Kanawha Blvd., E, Suite 700

Charleston, WV 25301
Phone: 304-558-0281 Extension 241
E-mail: mary.blashford@wvhepc.edu

Discussion or inquiries with anyone other than the Director of Procurement may be considered grounds for disqualification.

BID SUBMISSION:

Deliver sealed bids on or before February 19, 2020 to:

Mary Blashford
Director of Procurement
WV Higher Education Policy Commission
1018 Kanawha Blvd., E, Suite 700
Charleston, WV 25301

The outside of the envelope should be clearly marked with the Request for Quotation Number, the bid opening date/time and the Director of Procurement's name.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order by the Director of Procurement for the Commission and approved as to form by the Attorney General's Office constitutes acceptance of this contract made by and between the WV Higher Education Policy Commission and the vendor. Vendor's signature on its bid signifies vendor's agreement to be bound by and accept the terms and conditions contained in this contract.
2. **ACCEPTANCE:** Vendor's signature on its bid constitutes an offer to the Commission that cannot be unilaterally withdrawn; it signifies that the product or service proposed by the vendor meets the mandatory requirements contained in the solicitation, unless otherwise indicated; and it signifies acceptance of the terms and conditions contained in the solicitation, unless otherwise indicate.
3. **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 on July 1st of the fiscal year for which funding has not been appropriated or made available.
4. **PAYMENT:** Payment in advance is prohibited under this contract. Payment may only be made after the delivery and acceptance of goods or services. The vendor shall submit invoices, in arrears.

5. **TAXES:** The vendor shall pay any applicable taxes arising out of this contract. The State of West Virginia/WV Higher Education Policy Commission is exempt from federal and state taxes and will not pay or reimburse such taxes.

6. **APPLICABLE LAW:** This contract is governed by and interpreted under West Virginia law. Any information provided either verbally or written, which contradicts or violates the WV Constitution, WV State Code or WV Code of State Rules is void and of no effect.

7. **COMPLIANCE:** Vendor shall comply with all applicable federal, state and local laws regulations and ordinances. By submitting a bid the vendor acknowledges that it has reviewed, understands and will comply with all such laws, regulations and ordinances.

8. **ARBITRATION:** Any references made to arbitration contained in this contract or the vendor's bid are hereby deleted, void and of no effect.

9. **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 or document submitted by the vendor to the Commission such as price quotes or invoices, 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.

10. **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 Commission and the Attorney General's Office (as to form).

11. **BANKRUPTCY:** In the event the vendor files for bankruptcy protection, the Commission may deem this contract null and void and terminate without notice.

12. **PUBLIC DOCUMENT:** Vendor's entire response to the solicitation and the resulting contract are public documents. As such, they will be disclosed to the public following the bid opening or award of the contract.

13. **LICENSING:** In accordance with WV 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 WV Secretary of State's Office, WV Tax Department, WV Insurance Commission, or any other state agency or political subdivision. Upon request, the vendor must provide any documentation regarding licensing to the Commission.

14. **INDEMNIFICATION:** The vendor agrees to indemnify, defend and hold harmless the Commission, its officers and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing the service of this 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 delivery, performance and use of this contract; 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.

DEFINITIONS:

As used in this solicitation/contract, the following terms shall have the meanings attributed to them below:

1. “Commission” or “WVHEPC” means the WV Higher Education Policy Commission.
2. “EBC” or “the Center” means the Erma Byrd Higher Education Center.
3. “Bid” or “proposal” means the vendor’s submitted response to this solicitation.
4. “Contract” means the binding agreement that is entered into between the Commission and the vendor to provide the goods or services requested in the solicitation.
5. “Award Document” means the document signed by the Commission and the Attorney General’s Office that identifies the vendor as the contract holder.
6. “Solicitation” means the official notice of an opportunity to supply the Commission with goods or services that is published by the Commission.
7. “Vendor” 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 the context requires.
8. “Contract Services” means the four (4) specific temporary job classifications required by the Commission.
9. “Pricing and Evaluation Page” means the page upon which the vendor should list the proposed price for the Contract Services and also, where the evaluation scenario will be computed.
10. “Temporary Employee” or “Temporary Worker” means an employee provided by the vendor who is awarded a contract under this solicitation.
11. “Withholding” means any fee, tax or other sum of money required to be withheld from an employee’s paycheck by federal, state, county or municipal governing bodies.

SPECIFICATIONS:

1. **Qualifications:** Vendor, or vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications.
Note: If a vendor observes any periods of shutdowns for more than a public holiday or weekend, that information must be provided to the Commission. An emergency telephone number must be provided to permit the Commission to contact the vendor during any overtime hours worked.

1.1 The vendor’s company must be of the size and financial stature to reliably provide temporary workers to the Commission.

1.2 The vendor must illustrate, by way of references, it's ability to perform the services required by this solicitation.

1.3 The vendor must have been in a similar line of business for a minimum of three (3) years.

2. Mandatory Requirements: Contract services must meet or exceed the mandatory requirements listed below.

2.1 Payment. The Commission shall pay the vendor for all temporary services in accordance with the rates established by the Contract as shown on the Pricing and Evaluation Page (see Exhibit A).

2.2 The vendor's billing rate for each job classification shall include all costs associated with facilitating the temporary employment (e.g. employee compensation and overhead) as well as any/all insurance, taxes and other costs associated with the employment of the temporary employee.

2.3 Any temporary worker exceeding forty (40) hours per week must first obtain the approval of the Director of the EBC.

2.4 The vendor shall invoice, and the Commission will pay, 1.5 times the hourly billing rate contained in the Pricing Pages for all authorized work in excess of forty (40) hours per week.

2.5 Temporary employees may work on days recognized by the Federal Government as a holiday. Vendor shall invoice, and the Commission will pay, 1.5 times the hourly billing rate contained in the Pricing Pages for working such days.

2.6 The vendor shall supply all temporary employees with timecards. Hours worked shall be reviewed and approved by the Director of the EBC on a daily or weekly basis. Computer generated time keeping is acceptable as long as the time record is updated daily.

2.7 The vendor shall be responsible for the conduct and management of the temporary employees provided through this contract. The temporary employees are, and shall remain, the employees of the contractor. The Commission shall in no way be considered a co-employer.

2.8 Vendors must provide at least one week's notice (except in the case of a bona fide emergency) prior to replacing any temporary employee.

2.9 The Commission may, without justification, request to replace a temporary employee. The Commission will give a minimum of a one-week advance notice.

2.10 Vendors shall advise their employees that the Commission requires a smoke free and drug free workplace. This contract may require drug testing of the vendor's employees for specific placements.

2.11 The Commission may request a background check and/or references for any temporary employee.

2.12 The Commission may request to interview the temporary employee prior to filling a position to verify that the individual has the needed qualifications.

2.13 Vendors shall provide temporary workers that are in compliance with the Immigration Reform and Control Act of 1986 (or current immigration laws).

2.14 Vendors shall be an Equal Opportunity Employer and shall take all employment actions without regard to an individual's race, color, national origin, ancestry, sex, religion, age, physical handicap, disability or political affiliations.

2.15 Any temporary worker provided by the vendor will be subject to the Commission's security protocol and procedures.

2.16 There shall be no penalty or fee incurred by the Commission if the EBC decides to hire a temporary employee into a permanent position.

ORDERING PROCEDURE:

1. The Commission will submit to the vendor a Temporary Worker Request Form (see Exhibit B). This form will detail the job description, acceptable dress code, overtime requirements and any other pertinent information.
2. The vendor shall respond to the request within forty-eight (48) hours.
3. Interviews, if required by the Commission, shall be scheduled at a mutually agreed upon time and location.
4. The Commission will make a determination as to the acceptability of the candidate and notify the vendor of their decision.
5. If the Commission deems a candidate as unacceptable, the vendor will be notified and the vendor will be expected to provide additional candidates as necessary.
6. If the Commission desires to move forward with a candidate, the vendor will receive notification via a Purchase Order. The Purchase Order will specify the start date of service, the classification of the worker and the amount of pay as provided for in the contract. If a purchase order is already in place, a change order to the existing purchase order will be used to add the additional temporary worker.

JOB CLASSIFICATIONS:

Temporary Worker's Job Classifications job description and requirements are provided in Exhibit C for the following:

1. Exhibit C1: Facilities and Grounds Maintenance Supervisor
2. Exhibit C2: Building and Grounds Maintenance Worker
3. Exhibit C3: Information Technology Technician

REMOVING A TEMPORARY WORKER:

1. The Commission reserves the right to remove a temporary worker.
2. The Commission will give the vendor a minimum of a one (1) week notice of their desire to remove the temporary worker.

CONTRACT AWARD:

1. This will be a five (5) year, contract with the option of an additional three (3) one-year renewals.
2. The vendor must complete the Pricing and Evaluation Page as shown in Exhibit A, including signature and company information, to be eligible for evaluation or award of this solicitation.
3. The contract will be awarded to the lowest cost vendor meeting all qualifications and mandatory requirements.* If vendor proposes terms and conditions in its' bid response, the Commission will require the vendor to sign a WV-96 Agreement Addendum. The WV-96 is shown in Exhibit D.
4. At the time of contract award, the vendor must complete a Purchasing Affidavit. See Exhibit E.
4. Through the life of this contract, the Commission may consider a vendor's request to increase the hourly billing rate if the federal or state minimum wage rate changes or if vendor provides adequate justification for the request.
5. Through the life of this contract, the Commission may consider an increase to a temporary employee who is placed in the same position at the EBC for two (2) years or longer. The Commission will be the final decision maker in this circumstance as to if, when and how much of an increase may be granted. Longevity in a position is not a guarantee of higher wages.

* Note: The Commission reserves the right to award to multiple vendors if it is in the best interest of the Center.

PAYMENT FOR SERVICES:

The Commission's preferred method of payment is P-card. Preference may be given to a vendor who accepts the P-card. A payment schedule will be negotiated at the time of contract award.

VENDOR DEFAULT:

The following shall be considered a vendor default under this contract:

1. Failure to perform Contract Services in accordance with the requirements contained herein.
2. Failure to comply with other specifications and requirements contained herein.
3. Failure to comply with any laws, rules and ordinances applicable to the Contract Services provided under this contract.
4. Failure to remedy deficient performance upon request.

REMEDIES:

Upon default of the vendor, the Commission reserves the right to immediately cancel the contract.

CONTRACT MANAGER:

1. Throughout the life of this contract, the vendor must designate and maintain a primary contract manager responsible for overseeing the vendor's responsibilities under this contract.
2. The contract manager must be available during normal business hours to address any customer service or other issues related to the contract.
3. Vendor should identify its contract manager below:

Contract Manager: _____

Telephone Number: _____

Emergency Telephone Number: _____

E-mail Address: _____

EVALUATION OF BIDS:

Vendor bid responses to this solicitation will be evaluated as a per weekly cost of services based upon the current average weekly usage.* The vendor with the lowest weekly bid cost will be considered as the apparent successful vendor. However, the Commission reserves the right to award to multiple vendors if it is in the best interest of the Center. See Exhibit A for the Pricing and Evaluation Sheet.

*The average number of weekly hours utilized for evaluation purposes is not a guarantee of actual hours that will be requested from the temporary workers but only an estimate being used for evaluation purposes.

REQUEST FOR PROPOSALS #20121**EXHIBIT A****PRICING AND EVALUATION SHEET**

| Job title | Expected Weekly Hours | EBC Paid Hourly Rate of Pay | Employee Paid Hourly Rate of Pay | EBC Paid Overtime Rate of Pay | Employee Paid Hourly Overtime Rate of Pay |
|----------------|-----------------------|-----------------------------|----------------------------------|-------------------------------|---|
| F/G Supervisor | 40 | | | | |
| F/G Worker(s) | 60 | | | | |
| IT Tech | 40 | | | | |

EVALUATION OF PRICING TO DETERMINE LOW BID:Facilities and Grounds Maintenance Supervisor

Rate of Pay X Expected Weekly Hours = Total Cost

_____ X 40 = _____

Facilities and Grounds Maintenance Worker (hours represent two workers)

Rate of Pay X Expected Weekly Hours = Total Cost

_____ X 60 = _____

1. Information Technology Technician

Rate of Pay X Expected Weekly Hours = Total Cost

_____ X 40 = _____

Total Expected Weekly Cost: _____

Signed and Submitted by:

_____(signature)

_____(printed name)

_____(company name)

_____(company address)

_____(company phone/e-mail)

EXHIBIT B

REQUEST FOR QUOTATIONS #20121
Temporary Service Worker Request Form

Commission/EBC requirements for Temporary Worker:

Commission/EBC Job Classification requested:

Form must be signed by both the vendor (temporary agency) and the temporary worker to ensure understanding and acceptance of worker requirements.

Signed: _____
(Temporary Agency Representative)

Signed: _____
(Temporary Worker)

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

EXHIBIT C-1, PAGE 1

Erma Byrd Higher Education Center & Allied Health Wing
Facilities and Grounds Maintenance Supervisor
Job Description

Job Title: Facilities and Grounds Maintenance Supervisor

Reports to: Director, Erma Byrd Higher Education Center and Allied Health Wing

Job Duties:

- Schedule and direct janitorial and grounds work including the ordering of janitorial supplies and facility, grounds, equipment repair and maintenance.
- Work with the Director to determine event scheduling needs for internal residential colleges and universities and external facilities usage request(s).
- Report weekly to the Director all scheduled events and planned maintenance.
- Take messages, record incidents, and hold all requests of building needs for the Director.
- Assist students with various facility needs.
- Participate with Security site personnel in the provision of security and building safety.
- Monitor and maintain HVAC system and fluid levels and alert the Director to any performance issues.
- Monitor the electrical 3-Lag Main Circuit of the building to ensure against spikes or brown-outs during storms.
- Conduct fire drills and records information on log sheet and maintain fire extinguishers as required by code.
- Drive a John Deere Gator utility vehicle to transport trash, mulch, rock bedding, soil, tools, and equipment.
- Operate a John Deere Skid Steer 320E for snow removal from the sidewalk grounds.
- Serve as the Information Technology Technician back-up providing IT services such as assisting the faculty and staff on the usage of technology in the classroom and assisting with computer maintenance, updates and repairs.
- Observe safety rules and ensure compliance with the operating procedures of corporate, federal, state and local regulations, including OSHA regulations and Safety and Environmental guidelines.
- Performs other duties as assigned .

Knowledge, Skills and Ability:

- Knowledge of HVAC systems, lighting, floor maintenance, inventory, building and grounds maintenance.
- Ability to provide exceptional customer service to students, faculty, staff, and visitors including individuals from diverse cultures and backgrounds.
- Ability to communicate orally and in writing.

- EXHIBIT C-1, PAGE 2

- Ability to operate John Deere Skid Steer 320E.
- Ability to drive John Deere Gator utility vehicle.
- Ability to operate John Deere Zero-Turn Mower.
- Ability to use carpentry tools and electrical meters.

Supervisory Responsibilities:

- Supervises and plans the work of the two (2) facilities and grounds maintenance workers.

Physical demands:

- Must be able to lift 50 pounds.
- Must be able to sit, stand, bend, squat, climb and walk the entire building and grounds complex daily.

Work environment:

- Ability to work in different weather conditions such as rain, snow, sleet, hail, ice, and heat.

Required education and experience:

- Three years' experience as a building and grounds maintenance supervisor. Preference is for at least two (2) years of college or university coursework completed in the areas of business or information technology.
- Must possess a valid driver's license.
- Must be able to pass a drug screen and background check.

EXHIBIT C-2, PAGE 1

Erma Byrd Higher Education Center & Allied Health Wing
Building and Grounds Maintenance Worker
Job Description

Job Title: Facilities and Grounds Maintenance Worker

Reports to: Facilities and Grounds Maintenance Supervisor

Job Duties:

- Clean facilities to include all glass, doors, windows, carpet, offices, laboratories, Library, classrooms, floors.
- Re-stock bathroom supplies daily to include toilet tissue, paper towels, Lysol, and feminine products.
- Monitor the grounds and parking lots for trash and debris daily.
- Collect and discards trash from receptacles inside and outside of the facilities.
- Mop restroom and classroom floors daily.
- Maintain an attractive and orderly appearance of facilities and grounds.
- Assist with mowing the grass during the spring, summer and early fall.
- Weed-eating the grounds to include the lawn, islands, and parking lot.
- Report all machinery, building, equipment and tool malfunctions to the Facilities and Grounds Maintenance Supervisor.
- Dust mop hallways and Student Atrium.
- Check hand sanitizer stations through out the building to replace refill bags as needed.
- Replace worn white board erasers and dried white board markers as needed.
- Shampoo carpets and chairs as needed.
- Monitor cleaning and janitorial supply inventory.
- Clean all classroom whiteboards daily.
- Remove all collected trash from the facility and deliver to the dumpster daily.
- Check offices and suites to ensure that all Keurig's, coffee pots, heaters, decorative lights, trees, and lamps are turned off nightly.
- Secure building before leaving.
- Disinfect classroom and Atrium tables.
- Vacuum all carpeted rooms (including Auditorium, Library, Conference Rooms, and Administrative Suites).
- Assist with grounds beautification projects.
- Assist with facilities beautification projects.
- Observe safety rules and ensure compliance with the operating procedures of corporate, federal, state and local regulations, including OSHA regulations and Safety and Environmental guidelines.
- Perform all other duties as assigned.

Knowledge, Skills and Ability:

- Ability to provide exceptional customer service to students, faculty, staff, and visitors including individuals from diverse cultures and backgrounds.
- Ability to communicate orally and in writing.

EXHIBIT C-2, PAGE 2

- Ability to use basic equipment such as vacuum cleaner, mops, weed eaters, mowers, shovels, screw drivers, hammers, chisels, and paint brushes.

Physical demands:

- Must be able to lift 50 pounds.
- Must be able to sit, stand, bend, squat, climb and walk the entire building and grounds complex daily.

Work environment:

- Ability to work in different weather conditions such as rain, snow, sleet, hail, ice, and heat.

Required education and experience:

- High school diploma or GED.
- One (1) year of similar experience completing janitorial and grounds work.
- Must be able to pass a drug screen and background check.

Erma Byrd Higher Education Center & Allied Health Wing
Information Technology Technician
Job Description

Job Title: Information Technology Technician

Reports to: Director, Erma Byrd Higher Education Center & Allied Health Wing

Job Duties:

- Complete the inspection and update of computer hardware/network/software/server needs/Wi-Fi routers and reports any needs to the Director.
- Monitor network speed(s) and report any issues to the Director.
- Perform general network, hardware and software troubleshooting.
- Assist students with computer and printing needs; and, how to use the Jamex Self-Service Card Machine and Xerox Copiers located in both Computer Labs and the Library.
- Train faculty and staff on the usage of technology located inside of the classrooms, Library, Computer Labs and the Auditorium.
- Monitor security cameras and determines need for repair/replacement.
- Complete computer/server/router set up and maintenance.
- Assist residential colleges and universities with IVN classes using soft codec (Skype, Zoom and Blackboard)
- Assist with determining the need for replacement of light bulbs, batteries and other computer and audio/visual equipment needs.
- Assist with the monitoring of the computer HVAC system and alerts the Director to any performance issues.
- Respond to any IT service request of students, faculty, staff and guest.
- Perform other duties as assigned including serving as the Building and Grounds Maintenance Supervisor back-up and providing the Building and Grounds Supervisor assistance when needed.
- Observe safety rules and ensure compliance with the operating procedures of corporate, federal, state and local regulations, including OSHA regulations and Safety and Environmental guidelines.
- Other duties as required including assisting with maintenance of the facility and grounds during down time.

Knowledge, Skills and Ability:

- Knowledge of computer maintenance, networking, software, Wi-Fi, security firewall, server installation and maintenance.
- Ability to provide exceptional customer service to students, faculty, staff, and visitors including individuals from diverse cultures and backgrounds.
- Ability to communicate orally and in writing.

Physical demands:

- Must be able to lift 50 pounds.
- Must be able to sit, stand, bend, squat, climb and walk the entire building and grounds complex daily.

Work environment:

- Ability to work in different weather conditions such as rain, snow, sleet, hail, ice, and heat.

Required education and experience:

- Associates Degree or Certification in various products including LINUX, WINDOWS, MICROSOFT OFFICE. Prefer an A+ Certification.
- Must possess a valid driver's license.
- Must be able to pass a drug screen and background check.

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STATE OF WEST VIRGINIA ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – 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.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. 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.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. 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.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

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12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: _____

Vendor: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT**

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

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

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

DEFINITIONS:

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

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

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

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that: (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 above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20____.

My Commission expires _____, 20____.

AFFIX SEAL HERE**NOTARY PUBLIC** _____

EXHIBIT F

TITLE PAGE

The undersigned declares that he/she has read the RFQ and that the following proposal is submitted as a good faith response.

The undersigned declares that he/she has the authority to obligate the company.

The undersigned acknowledges receipt of the following addenda, if released. If no addenda are released, this section is to be left blank:

Addendum 1 _____ (initial receipt)

Addendum 2 _____ (initial receipt)

Addendum 3 _____ (initial receipt)

(Signature of Signee)

(Name of Signee)

(Title)

(Company Name)

(Street Address)

(City, State, Zip)

(Telephone Number)

(E-mail)

(Date)